The background of the slide is a collage. On the left, there is a photograph of the Texas state flag waving on a pole against a blue sky with white clouds. Below the flag, there is a stylized illustration of a multi-story brick apartment building. On the right side, there is a textured, yellowish-gold background featuring faint architectural blueprints and handwritten notes in cursive. The text of the logo is positioned in the upper right quadrant of the slide.

TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS
Building Homes. Strengthening Communities.

The Tenant Selection Criteria Rule

Highlights of 2015 Changes

February 17, 2015

Self Test: How Much Do you Know?



- ❖ True or False: The New Rule is effective April 1, 2015.
- ❖ True or False: I cannot state in my criteria that applicants must have good credit unless I also provide information on what will be considered 'good credit'.
- ❖ True or False: I cannot require a 1 person per bedroom occupancy standard.
- ❖ True or False: Pet rules will still apply to service animals.
- ❖ True or False: A letter listing a failed combined applicant score for credit and criminal history is acceptable as a denial letter under the new rule.

Welcome and Training Overview

Introduction

- ❖ Laura DeBellas, Fair Housing Team Lead
- ❖ Stephanie Naquin, Director of Multifamily Compliance



Welcome and Training Overview

- ❖ Tenant Selection Criteria Subchapter F, Section 10.610
 - ❖ The basics of Tenant Selection
 - ❖ Highlights of the new rule
 - ❖ Best Practices
 - ❖ How monitoring will be affected
 - ❖ Q&A session



Fair Housing Laws & Tenant Selection

❖ Relevant Laws & Guidance:

- ❖ Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)
- ❖ Title VI of the Civil Rights Act of 1964
- ❖ The Texas Fair Housing Act
- ❖ Section 504 of the Rehabilitation Act of 1973
- ❖ HUD and DOJ Memos
- ❖ TDHCA's Reasonable Accommodations Rule
- ❖ The VAWA Act of 2013
- ❖ HUD Executive Orders
- ❖ The Housing for Older Persons Act of 1995

Structure of the Rule

- ❖ Structure of the rule:
 - ❖ (a)(1) – (6): Tenant Selection Criteria must maintain the following minimum information
 - ❖ (b)(1) – (9): The Criteria Cannot (Prohibitions)
 - ❖ (c)(1) – (8): The Criteria Must (Requirements)
 - ❖ (d)(1) – (3): Other Related Requirements

Defining Tenant Selection



- ❖ (a): Effective April 1, 2015, Owners must maintain written tenant selection criteria that includes, at a minimum, the following information:
 - ❖ (1) Requirements that determine an applicant's basic eligibility
 - ❖ Eligibility Requirements
 - ❖ Preferences
 - ❖ Restrictions
 - ❖ (2) Procedures the Development uses in taking applications and opening, closing, and selecting applicants from the waitlist
 - ❖ (3) Applicant screening criteria
 - ❖ What do you screen for?
 - ❖ What results make applicants ineligible?

Defining Tenant Selection

- ❖ (a): Effective April 1, 2015, Owners must maintain written tenant selection criteria that includes, at a minimum, the following information:
 - ❖ (4) The manner by which rejections of applications will be handled
 - ❖ Timeframes (screening company and notification – the rule requires notification within 7 days of a screening company rejection result)
 - ❖ Appeals processes, if any
 - ❖ (5) Occupancy standards
 - ❖ Minimum or maximum number of people per bedroom, if any
 - ❖ (6) Unit transfer policies
 - ❖ When transfers are allowed (VAWA, RAs, household changes)
 - ❖ Any policies related to unit transfers

How these changes will affect monitoring:

- ❖ Compliance will look for:
 - ❖ Required basic eligibility criteria provisions
 - ❖ *NOTE:* Items that satisfy the provision may be in the Tenant Selection Criteria itself *or found in an adjoining document* (like a separate screening policy or application packet that is given out with the criteria)
 - ❖ If you are planning to show adjoining documents during monitoring, make sure that:
 - ❖ All relevant provisions are tabbed or highlighted for easy access,
 - ❖ All relevant provisions are given to tenants in some way at the time of application

Notes on VAWA

An Act

To reauthorize the Violence Against Women Act of 1994.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

- ❖ HUD is still in the process of issuing guidance on the 2013 Violence Against Women Act (VAWA); however, the Act makes it clear under Title VI that:
 - ❖ (j) The law covers HUD *and* Housing Tax Credit Programs
 - ❖ (b)(1) An applicant or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated assistance under, or evicted from the housing on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the tenant otherwise qualifies for admission, assistance, participation, or occupancy

Notes on VAWA

- ❖ The Act specifically mentions that victims are protected from actions relating to such circumstances that could be construed as:
 - ❖ Serious and repeated violations of a lease
 - ❖ Good cause for termination
 - ❖ Termination on the basis of criminal activity
 - ❖ Reasons to deny tenancy

- ❖ The Act also includes directions for:
 - ❖ Bifurcation of the lease in when one member of the household has engaged in such criminal activity
 - ❖ Emergency unit transfers related to sexual assault or imminent harm
 - ❖ Documenting protected status if an Owner chooses to do so

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(1) The criteria cannot include preferences for admission of persons who reside in a specific geographic area unless such preferences are approved by TDHCA or the property receives Federal assistance and has received written approval from HUD or USDA for such preference;
 - ❖ (b)(2) The criteria cannot exclude households from admission solely because the household participates in a federal, state or local government rental assistance program.
 - ❖ (b)(3) The criteria cannot use a financial or minimum income standard that requires a household to have a monthly income of more than 2.5x the household's share of the monthly rent; Owners may require a minimum income of \$2,500/yr.

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(4) The criteria cannot exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available or require a household to rent a unit that has already been made accessible;

Prohibited Provisions



❖ (b)(4) – Examples

A family of four has a household member with a mobility disability. All of the 2 bedroom accessible units are occupied. The household is asked to wait to move in until an accessible unit becomes available. This is not generally allowable under the rule. Reasonable modifications should be considered on a case by case basis.

An existing tenant household has a household member with a mobility disability who requests a 1 bedroom unit with a roll in shower in their second floor unit. A 1 bedroom, accessible unit is available with a roll in shower on the first floor. Due to the development's plumbing structure and the size of the unit's bathroom, the modification would not be possible because of a financial or administrative burden. The Owner offers a transfer to the ground floor unit as an alternative.

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(5) The criteria cannot require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodations or special needs set aside programs;
 - ❖ (b)(6) The criteria cannot, in accordance with the Violence Against Women Reauthorization Act of 2013, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking ;
*(***Note: VAWA 2013 – This includes criminal history considered during admission)*

Prohibited Provisions



❖ (b)(5) - Examples

A development asks for medical records verifying pregnancy because a development has an occupancy requirement stating that a household must have a minimum of three household members to rent a 2 bedroom unit. This is not allowable, even to verify occupancy requirements.

A development's disability status verification form requests the tenant's specific diagnosis and copies of medical records to verify a requested accommodation. This is not allowable. HUD provides sample disability verification forms and several groups, such as the Austin Tenants Council, provide sample reasonable accommodation request forms.

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(7) The criteria cannot prioritize households not residing in the Development over those already residing at the Development in instances in which an existing tenant household is seeking a unit with a lower income restriction than the unit in which they currently reside. *Example:* A household residing in a 60% AMI unit is income qualified for a 50% AMI unit and wishes to be placed on the waiting list for a 50% AMI unit. The household should be entered on the waitlist using the same process as households not currently residing in the Development.);

Prohibited Provisions



❖ (b)(7) - Examples

An existing resident moves into a 60% AMI unit because a 30% AMI unit is not available. The resident wishes to be considered for a 30% AMI unit the next time one comes available. Management should prioritize the household for placement in a 30% AMI unit using its normal waitlist process.

A property only designates its 1 bedroom units at 30% AMI and considers its unit designations to be fixed. An existing resident needing a 3 bedroom unit requests to be added to the property's waitlist for a 30% AMI unit. The property should explain that only its 1 bedroom units are designated as 30% AMI units.

Prohibited Provisions



❖ (b)(7) - Examples

An existing resident who moved into a 1 bedroom 60% AMI unit is income eligible for a 1 bedroom 30% AMI unit and has requested to be added to the waitlist for the next available 30% AMI unit. Rather than asking the household to move, management decides to re-designate the household's current 1 bedroom unit as a 30% AMI unit and re-rent the vacated unit as a 60% AMI unit.

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(8) The criteria cannot require unreasonable occupancy standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided;

Prohibited Provisions

- ❖ (b)(1) – (9): The Criteria Cannot (Red = New)
 - ❖ (b)(9) No retroactive application of tenant selection criteria (*except under circumstances in which market developments have received a new award of tax credits or TDHCA funds and a household is not income eligible under program requirements or prior criteria violate federal or state law*). Tenants who already reside in the development at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease must not receive notices of non-renewal or termination.

Prohibited Provisions



❖ (b)(9) - Examples

You take over a property in March and establish new tenant selection criteria on April 1, 2015. You notify tenants of the new criteria going into effect and publish the criteria with a new effective date. You re-run a background screening during a renewal and find a tenant was convicted of an offense in 2010 that is now prohibited under the new criteria. If the tenant is otherwise in good standing under the lease, the tenant cannot be terminated or non-renewed based solely on the new criteria.

A property receives a new award in July, 2015. You decide to establish a new provision excluding applicants with felony convictions when you amend your criteria in September, 2015. When you re-run a background screening during a renewal in November, 2015, you find that a tenant was convicted of a prohibited offense in October, 2015. You may non-renew based on the new criteria.

How these changes will affect monitoring:

- ❖ Compliance will look for:
 - ❖ Evidence of prohibited provisions or practices in either onsite documentation or as discovered based on a review of the development's rejected application log
 - ❖ *Example: Monitoring discovers that out of 20 applicants denied during the month of October, 18 were Section 8 voucher holders denied based on a minimum income standard that was above \$2,500 annually.*
 - ❖ Items may be requested for review based on Fair Housing related or Compliance complaints entered to the Department
 - ❖ *Example: An applicant calls and states her husband was denied for tenancy because a property has a 1 person per bedroom limit for occupancy. A copy of the tenant selection criteria may be requested to resolve the complaint.*

Required Provisions

- ❖ (c)(1) – (8): The Criteria Must (Red = New)
 - ❖ (c)(1) The criteria must avoid the use of vague terms such as "elderly", "bad credit", "negative rental history", "poor housekeeping", or criminal history" unless terms are clearly defined within the criteria made available to applicants;

Required Provisions



❖ (c)(1) – Examples

A property's criteria states: "Previous rental history will be reviewed and no negative rental history will be accepted." No further information is provided. This is not allowable under the rule.

A property's criteria states: "Previous rental history will be reviewed and no negative rental history will be accepted. Negative rental history is determined by: Failure to pay rent timely and/ or evictions filed within the last year, damages in amounts exceeding \$1,000, repeated disturbances not related to circumstances protected under VAWA, prior management references describing reports of drug dealing or manufacturing, gambling, or prostitution on the property premises."

Required Provisions

- ❖ (c)(1) – (8): The Criteria Must (Red = New)
 - ❖ (c)(2) The Criteria must provide that the Development will comply with state and federal fair housing and antidiscrimination laws, including but not limited to consideration of reasonable accommodations requested to complete the application process as identified in Chapter 1, Subchapter B of this title;

Required Provisions

- ❖ (c)(1) – (8): The Criteria Must (Red = New)
 - ❖ (c)(3) Must provide information on how reasonable accommodations for persons with disabilities may be requested by an applicant during the application process and provide notice about VAWA protections.
 - ❖ Must include a timeframe for response.

Required Provisions



❖ (c)(3) - Examples

A Development's tenant selection criteria or application states that applicants wishing to request a reasonable accommodation may contact the Development Manager by phone or letter and that requests will be responded to within 7 business days.

A Development gives out a reasonable accommodation request form attached to its applications or screening criteria that states how to submit the form and when management will respond.

Required Provisions

- ❖ (c)(1) – (8): The Criteria Must (Red = New)
 - ❖ (c)(4) The criteria must provide that screening criteria will be applied uniformly and in a manner consistent with all applicable law, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules;
 - ❖ (c)(5) The criteria must be reasonably related to program eligibility and the applicant's ability to perform obligations under the lease;
 - ❖ (c)(6) All Developments operating as Housing for Older Persons under the Housing for Older persons Act of 1995 as amended (HOPA) and in accordance with a LURA must list specific age requirements and continue to meet qualifying criteria under the HOPA to maintain such designations.

Required Provisions

- ❖ (c)(1) – (8): The Criteria Must (Red = New)
 - ❖ (c)(7) Must provide that specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s)
 - ❖ *Note: Accommodations generally do not extend to any animal posing a direct threat to the health or safety of others.*
 - ❖ (c)(8) Must provide an effective date (and a new one each time the criteria is amended)

How these changes will affect monitoring:

- ❖ Compliance will look for:
 - ❖ Evidence of required provisions
 - ❖ *Example: A property's application includes instructions on how to access protections under the VAWA and how to request reasonable accommodations related to the application process. The manager highlights these sections of the application and keeps the application alongside the tenant selection criteria for monitoring reviews.*
 - ❖ Items may be requested for review based on Fair Housing related or Compliance complaints entered to the Department
 - ❖ *Example: A 2002 HTC property tenant calls and says a manager stated they do not accept reasonable accommodations requests. A copy of the tenant selection criteria and any adjoining documents may be requested to resolve the complaint.*

Owners also must:

- ❖ (d)(1)-(3) (Red = New)
 - ❖ (d) Owners of all multifamily developments must also:
 - ❖ (d)(1) Maintain a written waiting list.
 - ❖ (d)(1)(A) The waitlist must be managed as described in the Tenant Selection Criteria;

Owners also must:

- ❖ (d)(1)-(3) (Red = New)
 - ❖ (d)(1)(B) The Development must keep a log of all denied applicants that completed the application process and maintain a file of all rejected applications for the length of time specified in the applicable program's recordkeeping requirements.
 - ❖ The log must list basic demographic information, if requested
 - ❖ The log must list rental assistance information, if requested
 - ❖ The log must list the specific reason for denial, the date the denial decision was made, and date the denial notice was mailed or hand-delivered to the applicant.

Owners also must:

- ❖ (d)(1)-(3) (Red = New)
 - ❖ (d)(1)(C) Have written waitlist policies and tenant selection criteria available in the leasing office or wherever applications are taken and provide a copy to applicants and their representatives upon request.
 - ❖ (d)(2) Provide any rejected or ineligible applicant/household that completed the application process with a written notification of the grounds for rejection that includes:
 - ❖ The specific reason for the denial and references the specific criteria upon which the denial is based
 - ❖ MUST be hand delivered or mailed within 7 days of the *determination*
 - ❖ MUST include contact information for any third parties that provided the information on which the rejection was based, and
 - ❖ MUST provide information on the appeals process (if one is used)

Example Letter:



April 6, 2015

Dear Ms. Johnson:

We regret to inform you that your application for tenancy at Shining Swans Apartments has been denied. Your application has been denied based on:

- A credit score of 490. Shining Swans currently requires prospective applicants to demonstrate a credit score of 520.
- An eviction that occurred in the last 2 years. Shining Swans currently requires prospective applicants to demonstrate no history of evictions within the last 3 years.
- One or more criminal convictions (as shown on the attached scoring matrix). Items marked "Pass" are items that did not come up on your criminal background screening; items marked "Fail" are items that showed an offense within an ineligible time period or category as noted on the attached resident screening criteria for Shining Swans.

Credit and criminal history screening was provided by Texas Background Checks, Inc., our third party screening service. For more information or to resolve discrepancies on your credit or criminal history screening, please contact Texas Background Checks, Inc. directly at (512) 999-9999.

If you would like to appeal this rejection, please contact Joe Smith, Shining Swans Apartment Manager, at (512) 999-9991.

Thank you for your application,

Owners also must:

- ❖ (d)(1)-(3) (Red = New)
 - ❖ (d)(3) Provide in any non-renewal or termination notice as allowed under applicable program rules:
 - ❖ A specific reason for the termination or non-renewal
 - ❖ Include information on rights under VAWA
 - ❖ Provide how a person with a disability may request a reasonable accommodation in relation to such notice
 - ❖ Include information on the appeals process if one is used by the property

Example Letter:



NOTICE OF NON-RENEWAL OF LEASE

Date: April 1, 2015

From: Joe Manager, Manager, 512-999-9999, Shining Swans Apartments, 1003 N. 3rd St. Best C in Texas, TX 78681

To: Jane Doe, Apartment 6, Shining Swans Apartments, 1003 N. 3rd St. Best City in Texas, TX 78681

Re: Property located at 1003 N. 3rd St. Best City in Texas, TX 78681

This letter is notice to you that the current Lease/Rental Agreement for the above described premises will expire at midnight on **April 31, 2015** and that this lease will not be renewed. No option for month-to-month tenancy is offered at this time. The Lease/Rental Agreement will not be renewed for the following reason(s):

- Failure of unit inspection during the month of March. The unit was cited for blocked egress, several fire code hazards, and unreported infestations of German cockroaches.
- Evidence of 7 unapproved pets that have caused significant interior destruction to the unit, including stained and torn carpeting, scratches and holes in unit doors, and destruction of countertops.
- Nonpayment of rent during the month of March.

You are required by law to surrender the premises to **Joe Manager** upon lease expiration. Please return the premises to the same condition as you found it upon move-in, normal wear and tear excepted. You are required to return all keys when vacating the premises.

Our records show that you have a security deposit in the amount of **\$600** and a pet deposit in the amount of **\$200**. Any refunds due to you after deducting for repairs and unpaid rent will be sent to your new address within **30 days** after you turn over the property to us as required by law. If you do not provide a new address, any refund will be mailed to your last known address.

Failure to surrender the premises on the date required by law will result in forfeiture of your deposits, proceedings for immediate eviction and could harm your credit rating.

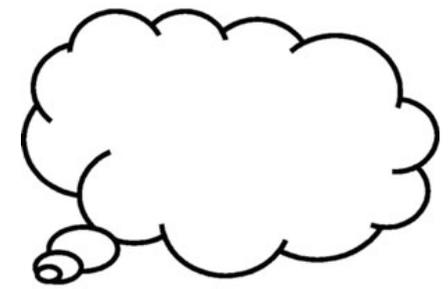
If you believe you are subject to protections under the Violence Against Women's Act (VAWA) or need to request a reasonable accommodation to understand or respond to this notice, please contact Joe Manager at 512-999-9999.

If you wish to appeal this non-renewal, you may do so by contacting Lila Upper Division Manager at (512) 999-9991 and following the process in the attached appeals document.

How these changes will affect monitoring:

- ❖ Compliance will look for:
 - ❖ Evidence of a rejected application log
 - ❖ Sample rejection letters or denied applicant files showing compliance with timeframe and third party contact information requirements
 - ❖ Sample termination or non-renewal letters stating a specific reason for termination or non-renewal and other required provisions (VAWA, RA, and appeals process, if any)

Things to Consider



- ❖ Does my criteria clearly identify who is and is not eligible?
- ❖ If a tenant files a fair housing complaint, will my tenant selection criteria and the consistency of my practices stand up to review by a third party?
- ❖ Is the process for requesting a reasonable accommodation clear?
- ❖ Have I reviewed all of my corresponding tenant selection criteria and documents and made them consistent with the new rules?
- ❖ If I am using a screening company that issues a score result, am I able to find the reason for the denial?

Best Practices



- ❖ Do not seek to impose a geographic preference unless it is already approved by HUD or USDA and is essential to your property's operations
- ❖ Develop clear and transparent processes for evaluating reasonable accommodation requests for persons with disabilities and make sure everyone on your staff knows what they are
- ❖ Make sure any application materials or advertisements include information about how persons with disabilities can request reasonable accommodations
- ❖ Think carefully about preferences or priorities that could have a direct impact on persons with disabilities.

Self Test: How Much Do you Know?



- ❖ **True:** The New Rule is effective April 1, 2015.
- ❖ **True:** I cannot state in my criteria that applicants must have good credit unless I also provide information on what will be considered 'good credit'.
- ❖ **False:** I cannot require a 1 person per bedroom occupancy standard. *(Not without a written justification)*
- ❖ **False:** Pet rules will still apply to service animals.
- ❖ **False:** A letter listing a failed combined applicant score for credit and criminal history is acceptable as a denial letter under the new rule. *(Not unless the scores clearly define the specific reason(s) for the tenant denial)*

Questions?

A list of FAQs will be posted and a survey will be emailed out following our training series on the new rules.

Contact:

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