

# Affirmative Marketing Webinar

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February 23, 2015

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Q1. Are you monitoring for whether or not the owner should have identified an "other" ethnic or religious group to market to?

A1. Religion is not a category commonly reported for housing developments and, as a result, there is no data to compare to that of a development to the housing market for a least likely to apply determination. As for "other" ethnic groups, currently, ethnicity is limited to Hispanic or Non-Hispanic. However, if the owner is aware of a disproportionate religious or "other" ethnic population between the development and the housing market, it may be appropriate to affirmatively market to those groups. Please see 10 TAC§10.617(e).

Q2. Does TDHCA envision developing its own AFHMP form?

A2. Not at this time.

Q3. For clarification. Do these new rules, affective 4-1-15, mean that we have to do new plans for our portfolio as of April 1st? If I have an AFHMP that does not expire for 2 years, will I use this method in 2 years, or do I need to re-draft all of my plans for my properties?

A3. An owner should be reviewing your current Affirmative Marketing Plan and determining if it meets the requirements under the new rule. If it does not, then, yes, there would need to be a new plan in place by April 1, 2015.

Q4. I have several properties that are 100% tax credit, does this AFMP apply?

A4. Yes. This rule applies to Housing Tax Credit Program (HTC); The HOME Investment Partnerships Program (HOME); The Tax Exempt Bond Program (Bond); The Housing Trust Fund Program (HTF); The Tax Credit Assistance Program (TCAP); The Tax Credit Exchange Program (Exchange); The Neighborhood Stabilization Program (NSP); and Section 811 Project Rental Assistance (PRA) Program.

Q5. If a project has no HUD funding, only LIHTC, please explain the relevance to the AFHMP to the housing credits. It is my understanding that, IRS does have a "Memo of Understanding" with HUD and DOJ regarding violations of fair housing impacting credits, failure to have an AFHMP is not grounds for loss or recapture of tax credits.

A5. The Department requires that owners market housing options to underrepresented groups so that individuals in the same housing market have available to them a varied range of housing choices regardless of a protected class. The Memorandum of Understanding (MOU) Among Treasury, HUD and DOJ is an effort to promote compliance with the Fair Housing Act. The MOU outlines procedures for notifying parties of charges, lawsuits or other actions under the Fair Housing Act and training requirements. TDHCA is responsible for reporting to the IRS when HUD and/or DOJ finds that a violation of the Fair Housing Act occurred and the noncompliance is subject to recapture. Violations of the Fair Housing Act are reportable to the IRS on Form 8823. Affirmative Marketing is a state requirement.

Q6. If property is receiving section 8 HAP subsidy along with HOME and Tax Credits. Does the development only have to update every five years versus two?

A6. If the property is also funded by HUD or USDA where Affirmative Marketing is a program requirement, compliance with timeframes prescribed under those programs will satisfy the plan review requirements outlined in 10TAC§10.617(h). Please note, HUD released a Clarification of Affirmative Fair Housing Marketing Plan Review and Approval Guidance ([http://portal.hud.gov/hudportal/documents/huddoc?id=Clarification\\_AFHMPs.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Clarification_AFHMPs.pdf)) on September 22, 2014 addressing when plan should be updated. Please review this memo to ensure compliance

Q7. Please clarify -- who is updating the property information? Is this automatically populating out of the TDHCA system, or is the owner doing this manually or through some other system?

A7. The Affirmative Marketing Web Tool pulls the household demographics from the information the owner entered into Unit Status Report (USR) in the Compliance Monitoring and Tracking System (CMTS). For further information on CMTS, please visit: [http://www.tdhca.state.tx.us/comp\\_reporting.htm](http://www.tdhca.state.tx.us/comp_reporting.htm).

Q8. Please clarify where the "20%" is coming from?

A8. In many funding NOFAs, HUD uses a 20% threshold for identifying minority or "racially/ethnically-impacted areas". It uses as a basis of comparison the fact that either the percentage of households in a particular racial or ethnic minority group is at least 20 percentage points higher than the percentage of that minority group for the housing market area or the total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities in the housing market area. TDHCA's 2013 Analysis of Impediments also uses this definition for a minority impacted area. For this rule, the Department inverted this figure and assumed that if 20% higher than the housing market area could be considered a minority impacted area that we could also consider that 20% below the housing market area could be defined as underrepresented.

Q9. Regarding the LEP issue, is the Department following the same benchmarks as HUD does for what threshold means you have to translate documents, etc?

A9. In the Outreach Census Data workbook (<http://www.tdhca.state.tx.us/pmcomp/forms.htm>) there is a "Language Tab" that breaks down language spoke on a census track level. You should consider what language is primarily spoken in the area you have targeted for affirmative marketing to ensure that the marketing material used is understood by your target audience.

Q10. Since the AFHM Plan is now required by TDHCA, if the property is NOT a HUD Property, do we still mail the AFHM Plan to our local HUD Office for approval or send it to TDHCA for Approval?

A10. Except if required as part of the initial application or as otherwise required by a specific funding source, do not send in the Affirmative Fair Housing Marketing Plan to the Department or to HUD for review. The plan and the marketing materials will be reviewed at the Department's regular onsite review.

Q11. Since you did not include families with children in your tool, are owners expected to go through the census data on their own to determine if outreach to families with children is required?

A11. Yes. Families with Children are a protected class and, while CMTS is not currently set up to capture this data, an owner has this information available on a development level. The tool is meant to assist in making determinations regarding least likely to apply and not the only resource an owner should use. Families with Children should be considered when identifying populations least likely to apply.

Q12. Since your AFHMP is based on comparing your residents to the market area, how do you determine the least likely to apply in a development that has not been occupied?

A12. 10TAC§10.617(d)(2) addresses how to make this determination when the development is located in an MSA and 10TAC§10.617(d)(3) addresses how to make this determination when the development is located outside an MSA .

Q13. So, if we do not use the HUD Form 935.2A Form, we can type up our own Marketing Plan, but just note the least likely to apply groups and how we will market to them?

A13. While the use of the HUD Form 935.2A is not required, it is encouraged. Remember, any version of that form can be used; it does not have to be the newest version (except if required by a funding source).

Q14. The form you are reviewing is the long form for 2013 (which is not yet posted to the HUD site.) We use the previous "short" form. Is this OK (our properties are LIHTC)?

A14. Yes; For LIHTC, any version of the HUD Form 935.2A is acceptable.

Q15. What will TDHCA accept as specific marketing to "White" "least likely to apply" group? Any outreach wouldn't be specific to "White" ... true?

A15. You should treat this group as any other group that has been determined as least likely to apply and follow the same process for identifying where you intend to focus your marketing efforts.