



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

**Multifamily Training  
Fair Housing Updates  
February 2, 2016**

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# Fair Housing



**EQUAL HOUSING  
OPPORTUNITY**





# Relevant Fair Housing Laws & Guidance

- ❖ Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)
- ❖ Title VI of the Civil Rights Act of 1964
- ❖ American with Disabilities Act (ADA), Title II and Title III
- ❖ Section 504 of the Rehabilitation Act of 1973
- ❖ HUD and DOJ Memos
- ❖ The VAWA Act of 2013
- ❖ HUD Executive Orders, #13166 - LEP
- ❖ The Housing for Older Persons Act of 1995
- ❖ Age Discrimination Act of 1975
- ❖ Architectural Barriers Act of 1968
- ❖ General Federal Requirements (24 CFR part 5), including New Equal Access to Housing in HUD Programs (Final Rule)



# State and Local Civil Rights Laws & Rules

- ❖ The Texas Fair Housing Act (Chapter 301 of the Texas Property Code)
- ❖ Local County and City Fair Housing laws ([texas.gov](http://texas.gov))
- ❖ TDHCA Rules - Texas Administrative Code (Title 10, Part 1, Chapter 1 and Chapter 10)
- ❖ TDHCA NOFA & Contracting Requirements

# What is a Protected Class?

- ❖ Individual characteristics that a Subrecipient must not use to distinguish who receives services
- ❖ Covered characteristics depend on which laws are triggered
- ❖ Applies whenever using federal funds



# Protected Classes

## ❖ Title VI:

1. **Race**
2. **Color**
3. **National Origin** (includes language access)

## ❖ Section 504:

1. **Disability**

## ❖ Equal Access to Housing Final Rule:

1. **Sexual orientation** (Lesbian, Gay, Bisexual, or Transgender)
2. **Gender identity** (a person's private sense of their own gender, Male to Female or Female to Male identification or change)
3. **Marital status**



# Protected Classes

## Fair Housing Act:

Protect the right to rent, buy a home, obtain a mortgage, or purchase homeowners insurance free from discrimination based:

1. **Race**
2. **Color**
3. **National Origin**
4. **Religion**
5. **Sex**
6. **Disability**
7. **Familial Status**

The background of the slide features a vertical gradient from blue at the top to white at the bottom, with a faint image of a house on the left side. The house is a two-story brick building with a chimney and several windows. The sky is blue with white clouds. In the top left corner, there is a small blue speech bubble icon.

# Affirmatively Furthering Fair Housing, Final Rule

- ❖ Requires Government entities that are HUD program participants\* to take “meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”
- ❖ Assessment of Fair Housing tool – replaces AI

\*The AFFH rule governs what block grant recipients of HUD CPD funds and Public Housing Authorities funded under 42 U.S.C. §1437e must do to affirmatively further fair housing and the tool by which they can identify those steps. AFFH applies to all HUD program participants, which include public housing authorities (“PHAs”) and cities and counties receiving Community Development Block Grant Program, Emergency Solutions Grant Program, HOME Program, and Housing Opportunities for Persons with AIDS Program. The Office of Community Planning and Development is a division of HUD.





# Reasonable Accommodations



# Reasonable Accommodations

## **Subrecipients must:**

- ❖ Make reasonable accommodations in policies, practices, and procedures to accommodate individuals with disabilities
- ❖ Pay for modifications to a physical structure for reasonable accommodations

## **Subrecipients may not, on the basis of disability:**

- ❖ Deny qualified individuals the opportunity to participate in housing program
- ❖ Deny access to housing assistance as a result of physical barriers

**Written standards should include reasonable accommodations**

## **Citations:**

Section 504

ADA Title II and Title III

TAC : Chapter 1, Subchapter B, Section §1.204



# How Reasonable Accommodations Work

- 1. An individual with a disability requests verbally or in writing an accommodation (related to their disability) to a program policy, practice or procedure**
- 2. The entity reviews the request and makes the modification or accommodation**  
if request represents a fundamental alteration of the nature of the program or service or an undue financial or administrative burden it's not reasonable)
- 3. If accepted, the reasonable modification is made at the Subrecipient's expense. If denied, alternatives must be discussed with the requestor**



# Affirmative Marketing Overview

# Affirmative Marketing Basics



- ❖ HUD's guiding regulations:
  - ❖ FHA and non-FHA multifamily properties: 24 CFR 200.600 Subpart M, including 200.610, 200.615, 200.620, 200.625
  - ❖ FHA Insured properties: 24 CFR 203.12
  - ❖ HOME/TCAP properties: 24 CFR 92.351, 24 CFR 92.504
  - ❖ Federally assisted properties: 24 CFR Part 5, 24 CFR Part 108
  - ❖ General guidance: The Fair Housing Act, HUD Memo 11063, 935.2A, HUD Affirmative Marketing FHEO Memos (most recently September 22, 2014), HUD's 8025.1 Rev-2

# Affirmative Marketing Basics

- ❖ The Basics of Affirmative Marketing:
  - ❖ Housing opportunities should be advertised and offered to all persons, regardless of race, color, religion, sex, disability, familial status, or national origin.



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# Affirmative Marketing Basics

- ❖ **Marketing** - marketing programs to groups under-represented in your service data
- ❖ **Partnerships** - creating partnerships or referral relationships with community based agencies or non-profits
- ❖ **Translating documents** - translating documents advertising assistance, services, and contact information into other languages prevalent in the community
- ❖ Chapter 10, Subchapter F, §10.617

# Affirmative Marketing §10.617

- ❖ **10.617(b): Must develop and carry out an Affirmative Fair Housing Marketing Plan to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as “least likely to apply”.**
- ❖ **Persons with Disabilities are always required**
- ❖ **General definition of least likely to apply:**

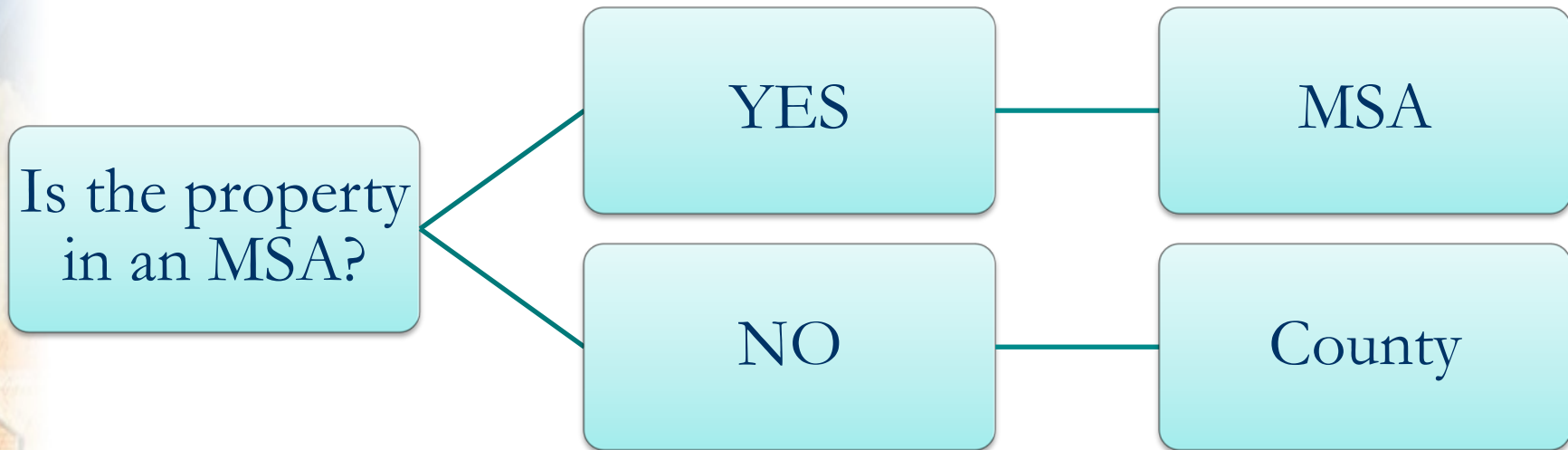
Based on your completed Worksheet 1, indicate which demographic group(s) in the housing market area is/are *least* likely to apply for the housing without special outreach efforts. (check all that apply)

- |  |   |  |  |
|--|---|--|--|
| <input type="checkbox"/> White                                     | <input type="checkbox"/> American Indian or Alaska Native             | <input type="checkbox"/> Asian                     | <input type="checkbox"/> Black or African American |
| <input type="checkbox"/> Native Hawaiian or Other Pacific Islander | <input type="checkbox"/> Hispanic or Latino                           | <input type="checkbox"/> Persons with Disabilities |  |
| <input type="checkbox"/> Families with Children                    | <input type="checkbox"/> Other ethnic group, religion, etc. (specify) | <input type="text"/>                               |  |



# Affirmative Marketing §10.617

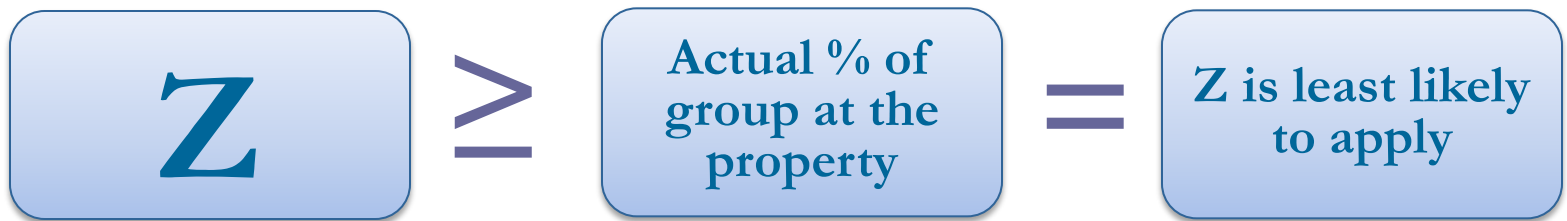
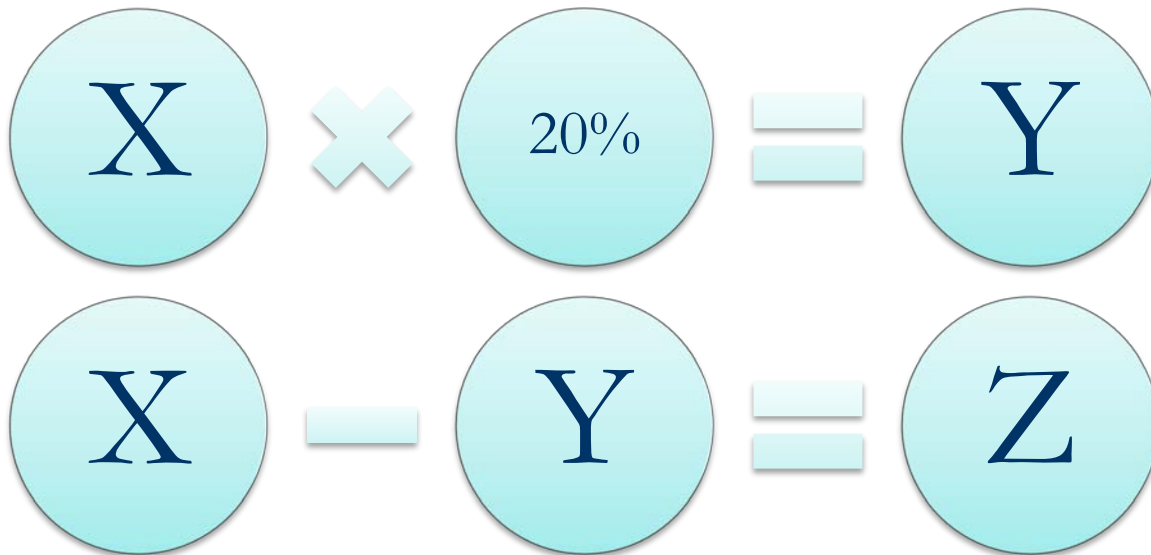
- ❖ How to determine your housing market area...



# Affirmative Marketing §10.617

- ❖ How to determine least likely to apply...
- ❖ Housing Market= X
- ❖ 20% threshold= Y
- ❖ Determination of least likely to apply threshold= Z

# Affirmative Marketing §10.617



# Affirmative Marketing §10.617

❖ The *Affirmative Marketing Web Tool* does all this for you!!!

es. Strengthening Communities.

5 Programs Support & Services Board Manufactured Housing

Administrative Divisions Communities & Nonprofits

- [Employment Verification \(PDF\) or \(DOC\)](#)
- [Income Verification for Households with Section 8 Certificates \(PDF\) or \(DOC\)](#)
- [Release and Consent \(PDF\) or \(DOC\)](#)

### Compliance Forms for Multifamily Properties

#### Affirmative Marketing Tools

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- [Affirmative Marketing Web Tool](#)
- [Outreach Census Data \(XLS\)](#)
- [Affirmative Marketing Tools Guide \(PDF\)](#)

#### Tenant Rights and Resources Guide

- [A Tenant Rights and Resources Guide: Information Related to Living in Monitored Rental Property \(DOC\) | Spanish \(DOC\)](#)

in Texas than in any other state? On average, our state experiences about 155 each year, according to the National Climatic Data Center.

FAQs  
Contact List

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# Affirmative Marketing §10.617

- ❖ The Affirmative Marketing Web Tool relies on current household data that you enter into the Unit Status Report (CMTS) in CMTS
- ❖ If new construction, unoccupied,  $\leq 40$  total units, or data in USR not current/accurate, use the census tract and NOT the property name in the tool
- ❖ Process is the same in both cases

FFAIRS  
mmunities.

Programs ▾ Support & S

## Affirmative Marketing Tool

Select a property from the drop down menu. If a property is unoccupied, a new construction property beginning lease up, or a property with less than 40 units, enter the census tract of the development. Select Go to view results for groups considered underrepresented in your development or area to whom you must affirmative market.

Select a development ▾ Go Or, enter a census Tract: 48XXXXXXXXXX Go

# Affirmative Marketing §10.617

- ❖ Step 1- Enter property name OR census tract number and select the “Go” button in the tool

## Affirmative Marketing Tool

03/13/2015

Select a property from the drop down menu. If a property is unoccupied, a new construction property beginning lease up, or a property with fewer than 40 units, enter the census tract of the development. Select Go to view results for groups considered underrepresented in your development or area to whom you must affirmatively market.

Select a development

- 1025 Sutton Drive (1039)
- 1209 Keralum (901)
- 1213 Pecan (912)
- 1229 Pecan (917)
- 1348 North 45th (2307)
- 2100 Memorial (1500)
- 2424 Sakowitz (4582)
- 2503 N. Wilson (913)
- 2512 Thome (2344)
- 2904 Walnut Street (2345)
- 3013 Place Apartments (2200)
- 377 Villas (4477)

Go Or, enter a census Tract:  Go

# Affirmative Marketing §10.617

- ❖ Step 2- Tool will populate groups least likely to apply; all groups identified in the tool must appear on the AFHM plan

## Affirmative Marketing Tool

03/13/2015

Select a property from the drop down menu. If a property is unoccupied, a new construction property beginning lease up, or a property with fewer than 40 units, enter the census tract of the development. Select Go to view results for groups considered underrepresented in your development or area to whom you must affirmatively market.

Brazos Bend Villas (2641)  Or, enter a census Tract: 48XXXXXXXX

The Census Tract, County, and MSA designation are displayed below. This information is based on CMTS property information. If the property or census tract provided is not in an MSA, use the MSA dropdown to widen the report to include areas in a nearby MSA. You may choose to widen your marketing area by using this feature. This is not required under the Rule.

Property: Brazos Bend Villas	
<b>CMTS #</b>	2641
<b>Total Units</b>	120
<b>Vacant Units</b>	1
<b>Date Updated</b>	03/11/2015
<b>Census Tract</b>	<a href="#">48157674900</a>
<b>County</b>	FORT BEND
<b>MSA</b>	Houston-The Woodlands-Sugar Land, TX

As a reminder, persons with disabilities will always appear in your results and must always be included in your affirmative marketing. Results will not display for any populations representing less than 1% of the total population of the County or MSA. These populations will not be required in your affirmative marketing.

Tenant Pool vs. MSA			
Least Likely to Apply	% Development	% MSA	Tract for Outreach Consideration
Persons with Disabilities	5.11	9.32	48339690402
Not Hispanic	44.73	64.59	48157673101
Asian	0.00	6.57	48039660602

[Map Census Tracts](#)

The report above shows the groups to whom you must affirmatively market based on a comparison of your tenant data pool or census tract to the applicable County or MSA area as identified in the Rule. You must select these groups on the HUD 935.2A form as groups least likely to apply.

The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location or the demographic make up of its tenant pool. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

# Affirmative Marketing §10.617

- ❖ The tool will also give you the census tract where the highest concentration of the group identified is located your housing market and a map showing where that census tract is
- ❖ These census tracts are suggested places to BEGIN finding outreach partners to develop your marketing
- ❖ Not the ONLY census tract where the group may be found
- ❖ Not required to use this method

<b>Tenant Pool vs. MSA</b>			
<b>Least Likely to Apply</b>	<b>% Development</b>	<b>% MSA</b>	<b>Tract for Outreach Consideration</b>
Persons with Disabilities	5.11	9.32	48339690402
Not Hispanic	44.73	64.59	48157673101
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[Map Census Tracts](#)



# Affirmative Marketing §10.617

Consider Limited English Proficiency (LEP) and consider how to mitigate language barriers in advertising and community outreach for identified groups least likely to apply

Identify specific media, organizations, or community contacts that work with the least likely to apply population or work in areas where least likely to apply populations live

## Step 3- Marketing and Outreach

Rental Applications must be accepted by mail, site or leasing office at minimum. (Applications must include address, email, or other contact information for other alternate ways to submit an application)

Marketing and advertising materials must include the Fair Housing Logo and provide contact information if reasonable accommodations are needed. At minimum in English and Spanish

# Affirmative Marketing §10.617

## Timeframes

AFHMP must be updated every 2 years (or as required for HUD/USDA funded properties)

New properties must begin Affirmative Marketing efforts six month prior to the 1<sup>st</sup> building being ready for occupancy

Biennial plan review; include how, by whom, and what process the owner will use to collect and evaluate the AFHMP for success

# Affirmative Marketing §10.617

- ❖ What else do you need to know about Affirmative Marketing requirements.....
- ❖ Applies to properties with five (5) or more units
- ❖ Must market to all groups identified as least likely to apply
- ❖ The LURA may require additional affirmative marketing to veterans or other special populations
- ❖ Affirmative marketing is always required unless the property's waitlist is closed
- ❖ Maintain reasonable documentation on the development, (re) evaluation and strategies used for the AFHM plan



# Wait List Management

# Written Policies and Procedures §10.610

- ❖ Chapter 10, Subchapter F, §10.610
- ❖ All policies must have an effective date (update and policies change)
- ❖ Must make available in the leasing office or wherever applications are taken
- ❖ Provide a copy to applicants and their representatives at the time of application or upon request
- ❖ In general, cannot be applied retroactively

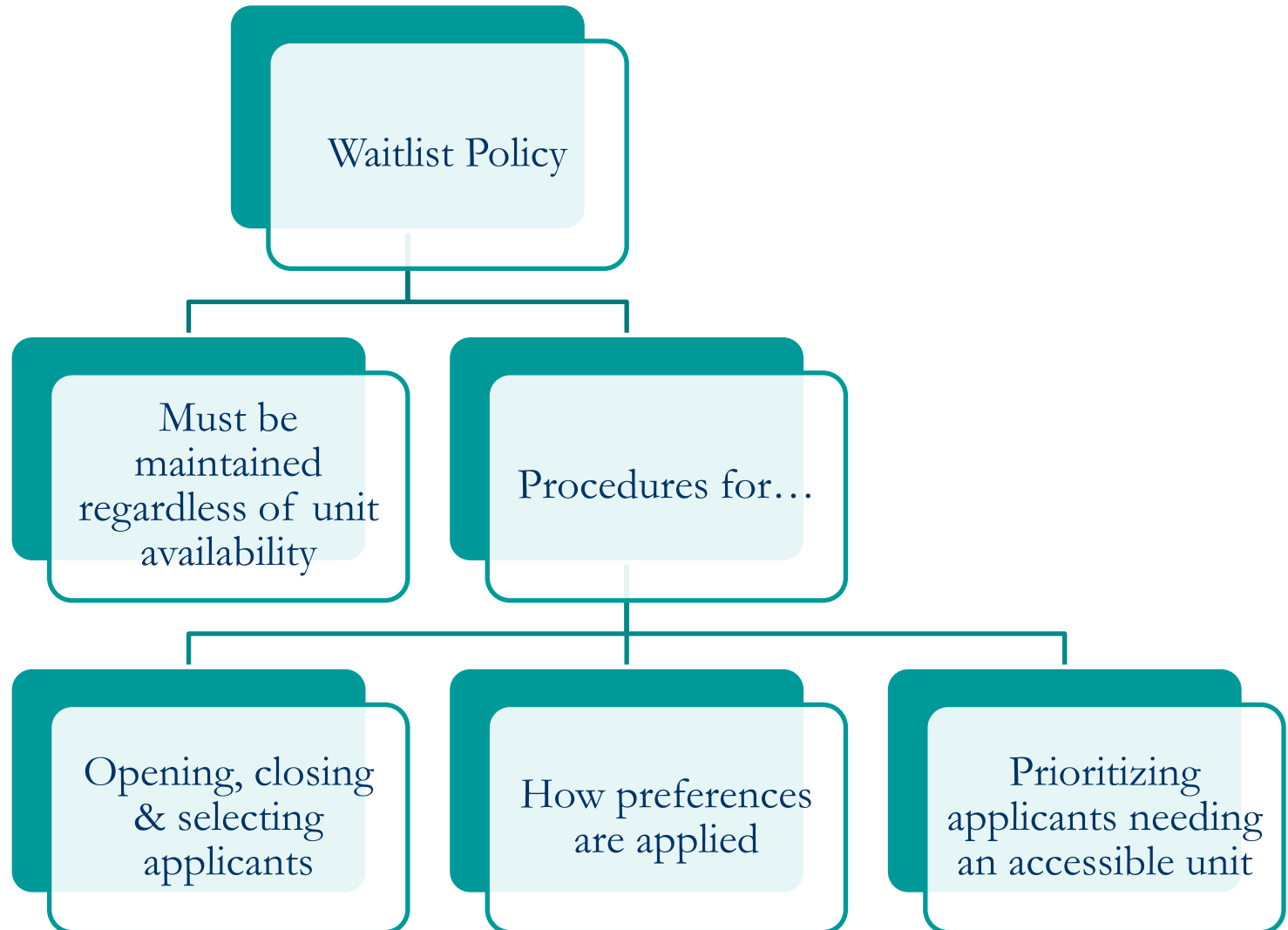
# Written Policies and Procedures §10.610

- ❖ Tenant Selection Criteria (“TSC”)- The goal is for a prospective applicant to know, up front, if they are qualified to live at your property!
- ❖ Include:
  - ❖ Program requirements (income, rent, student restrictions, fees and/or deposits, preferences, etc...)
  - ❖ Applicant screening criteria related to credit, criminal and/or rental history expectations
  - ❖ Occupancy standards
  - ❖ Specific age requirements if Housing for Older Persons

# Written Policies and Procedures §10.610

- ❖ TSC must not:
  - ❖ Includes preferences, unless...
    - ❖ Allowed for under program rules
    - ❖ Property received Federal assistance and has written approval from HUD, USDA or VA for preference
  - ❖ Deny occupancy to a household because participates in rental housing program (e.g. section 8 voucher)
  - ❖ Set financial standard  $> 2.5$  times tenant rent (or \$2500 if tenant rent  $\leq$  \$50)

# Written Policies and Procedures §10.610





# Written Policies and Procedures §10.610

- ❖ If you also have additional rent & occupancy restrictions
  - ❖ Address how the waitlist for the lower rent restricted units will be managed
  - ❖ Cannot give a preference to prospective tenants over existing households

# Written Policies and Procedures §10.610


- ❖ Other policies required under §10.610
  - ❖ Reasonable Accommodations policy
  - ❖ Denied Application policies
  - ❖ Non-renewal and/or Termination Notices
  - ❖ Unit transfer policy

# 2013 Violence Against Women Act ("VAWA")

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.

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



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