

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER F</u>	COMPLIANCE MONITORING
<u>§10.617</u>	AFFIRMATIVE MARKETING

### **§10.617. Affirmative Marketing Requirements**

(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five (5) or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five (5) or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program. The Department may make additional forms or tools available for use.

(d) Determination of populations "least likely to apply." Owners must determine the populations "least likely to apply" (also "identified populations") using the methods identified in paragraphs (1) - (4) of this subsection. Owners may use the methods in paragraphs (1) and (2) of this subsection if the Development is not occupied, if the Development is in initial lease-up, if the Development is less than 40 total units, or the Owner determines that the demographic data on the tenant households and waiting list for the Development ("Tenant Pool") is not sufficiently complete to yield an accurate profile of the populations the Development is serving. Except in the cases of populations that must be the subject of affirmative marketing pursuant to LURA requirements and persons with disabilities, any populations that represent less than 1% of the total population of the county or MSA, as applicable, are not required to be considered "least likely to apply." To assist Owners in identifying least likely to apply populations, the Department shall make the tool described in paragraph (5) of this subsection available to Owners.

(1) New Developments located in Metropolitan Statistical Areas ("MSAs"). The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the entire MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and MSA. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the MSA (i.e. a population is more than 20% underrepresented in the census tract as compared to the MSA as a whole).

(2) New Developments not located in MSAs. The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and county. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the county (i.e., a population is more than 20% underrepresented in the census tract as compared to the county as a whole). Example 617(1), County data shows 80% of the population in the County is Non-White Hispanic; the new development's census tract shows that 40% of the new development's census tract is Non-White Hispanic. The development must market to the Non-White Hispanic population because the 40% of Non-White Hispanics represented in the census tract shows an underrepresentation of more than 20% (e.g., it is lower than 64%, which is 20% of 80%) when compared with the County percentage ( $80\% \times 20\% = 16\%$ ;  $80\% - 16\% = 64\%$ ). If the census tract showed evidence of 65% or more Non-White Hispanics in the area, the development would not market to the Non-White Hispanic population.

(3) Established Developments located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and MSA. The Owner will identify any population in which the percentage representation in the Tenant Pool is more than 20% less than the same population's percentage representation in the MSA (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the MSA as a whole). Example 617(2), the Owner's tenant pool shows that 5% of the population in the development is African American and that 8% of the population in the MSA is African American. The development must market to African American populations because the 5% of African Americans represented in the development shows an underrepresentation of more than 20% ( $8\% \times 20\% = 1.6\%$ ;  $8\% - 1.6\% = 6.4\%$ ). If the development showed evidence of 6.4% or more African Americans in the tenant pool, the development would not market to the African American population. In a development with 150 units in this scenario, at least 6.4% or 10 residents must be African American to show that the population is adequately represented and should not be selected as a "least likely to apply" group requiring special outreach and marketing.

(4) Established Developments not located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and county. The Owner will identify any population in which the percentage representation in the tenant pool is more than 20% less than the same population's percentage representation in the county (i.e., a population is more than 20% underrepresented in the tenant pool as compared to the county as a whole).

(5) The Department will develop and maintain an online tool for performing the comparisons required by paragraphs (1) - (4) of this subsection, and an Owner may rely on analysis required under paragraphs (1) - (4) (but not an analysis made pursuant to subsection (e) of this section) made correctly using this tool. The Department may update the tool more frequently than an Owner is required to review and/or revise their Affirmative Marketing Plan pursuant to subsection (g) of this section. Provided an Owner is in compliance with subsection (g), an Owner is not required to update their plan as updates to the Department's tool are made available.

(e) Other determinations of "least likely to apply." If the owner identifies other ethnic and/or religious groups that may be underrepresented and chooses to incorporate such group(s) into the Affirmative Marketing Plan, the Owner must perform and document a reasonable process by which the groups were identified.

(f) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.

(2) Developments must utilize methods of outreach throughout the MSA or, where subdivided into a Metropolitan Division, such Division (for Developments located in an MSA) or county (for Developments not located in an MSA). Efforts can be made beyond these areas at the discretion of the Owner. While these areas may be very large, in many instances outreach in areas located in another county or across town are necessary to effectively reach the identified populations.

(3) Developments must consider how Limited English Proficiency may affect populations least likely to apply, including ways it plans to mitigate language barriers related to advertising and community outreach. Such information should be included in the Affirmative Marketing Plan as an additional consideration or as an attachment to the Plan.

(4) Development Owners must allow applicants to submit applications via mail or at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. If the Development requires an application fee, the consideration of an application without payment may be deferred pending receipt of the fee. Applications must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria. If the development chooses to use an electronic application, prior approval from the Department is required to mitigate fraud, waste and abuse.

(5) Advertisements and/or marketing materials used must include the Fair Housing logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. The contact information must be in English and Spanish, at a minimum.

(g) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six (6) months prior to the anticipated date the first building is to be placed in service; and

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply at least every two (2) years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(h) Biennial Plan Review. The plan must include how, and by whom, data will be collected and evaluated, how often the plan will be re-evaluated, and how the re-evaluation will be completed. The Owner must review demographic data and household characteristics from the Tenant Pool relative to the county or MSA. If any identified population is or remains underrepresented by more than 20%, the Owner should determine whether the percentage of change is greater or less than when the Affirmative Marketing Plan was last evaluated. If, upon review of the Tenant Pool, the Owner determines that there has been no change (including negative change) or only a limited amount of success, the Owner must:

(1) Complete an evaluation of efforts to date (including a review of current advertising, outreach, and networking strategies and what, if any of the strategies used, has been successful) and gather a list of existing and new community resources available for use in revising the current Affirmative Fair Housing Marketing Plan; and

(2) Revise the Affirmative Fair Housing Marketing Plan to include a wider distribution area and/or new strategies for outreach and/or more frequent outreach efforts.

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

(j) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under paragraph (g)(1) of this section.