§10.610. Tenant Selection Criteria

(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 for the property, including any preferences or restrictions for resident selection, and requirements applicants must meet to be eligible for tenancy;

(2) Procedures the Development uses in taking applications and opening, closing, and selecting applicants from the waitlist, including but not limited to how preferences are applied and procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and considering applicants covered by the Violence Against Women Reauthorization Act of 2013;

(3) Applicant screening criteria including what is screened and what scores or findings would result in ineligibility. Applicants must be provided the names of any third party screening companies upon request;

(4) The manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any;

(5) Occupancy Standards; and

(6) Unit transfer policies.

(b) The criteria cannot:

(1) 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;

(2) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program;

(3) Use a financial or minimum income standard for a household participating in a voucher program that requires the household to have a monthly income of more than 2.5 times the household's share of the total monthly rent amount. However, if a family's share of the rent is $50 or less, Owners may require a minimum annual income of $2,500;

(4) 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;

(5) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside programs;
(6) 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;

(7) 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); and

(8) 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; and

(9) Be applied retroactively 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 termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria.

(c) The criteria must:

(1) 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;

(2) 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;

(3) Provide information on how reasonable accommodations for persons with disabilities may be requested by an applicant during the application process and provide notice to applicants about VAWA protections. The Development must provide a timeframe in which it will respond to a request;

(4) 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;

(5) Be reasonably related to program eligibility and the applicant's ability to perform obligations under the lease;

(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;

(7) 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); and

(8) Provide an effective date for the tenant selection criteria. Any amendments to the criteria require a new effective date.

(d) Owners of all multifamily developments must also:
(1) Maintain a written waiting list.

   (A) The waitlist must be managed as described in the Tenant Selection Criteria;

   (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 household demographic and rental assistance information, if requested during any part of the application process, along with the specific reason for which an applicant was denied, the date the decision was made, and the date the denial notice was mailed or hand-delivered to the applicant. This information may be kept in conjunction with the Development's waitlist or as a separate log. The log must be made available to the Department upon request;

   (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.

(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 leasing criteria upon which the denial is based within seven (7) days of the determination. Rejection letters must include contact information for any third parties that provided the information on which the rejection was based and information on the appeals process if one is used by the property;

(3) Provide in any non-renewal or termination notice as allowed under applicable program rules a specific reason for the termination or non-renewal. The notification must be delivered as required under applicable program rules, include information on rights under VAWA if the Development is subject to VAWA, and provide how a person with a disability may request a reasonable accommodation in relation to such notice. The notification must also include information on the appeals process if one is used by the property.