

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Special Attention of: Notice FHEO 96-4

All FHEO Directors Issued: October 28, 1996
All Multifamily Housing Directors
All Owners/ Managers HUD Assisted Expires: October 28, 1997
Housing

Cross References: Public Law # 104-99
Public Law # 104-204
Housing Notice H-96-7, PIH Notice 96-7

Subject: Discretionary Preferences for Admission to Multifamily
Housing Projects

Title VIII of the Civil Rights Act of 1968 which applies to all housing providers and Title VI of the Civil Rights Act of 1964 which applies to all programs which receive Federal financial assistance prohibit discrimination and disparate impact in provision of housing based on certain prohibited bases.

Section 402(d)(4) of Public Law No. 104-99, The Balanced Budget Downpayment Act, 1, signed into law on January 26, 1996, suspended mandatory Federal Preferences in Section 8 and certain other programs. This suspension included any local preferences then in effect. The law expired September 30, 1996 but the suspension was extended through September 30, 1997 by Public Law No. 104-204 (FY 1997 HUD-VA-Independent Agencies Appropriations Act) signed into law on September 30, 1996.

PIH Notice 96-7 states that Housing Authorities must provide public notice and opportunity to comment for any change to their preferences even if only to drop the Federal Preferences. The Notice gives additional guidance and requires HUD approval of any changes to residency preferences.

Housing Notice H 96-7 advises owners and managers of HUD-assisted-and insured housing previously subject to federal preferences that they may voluntarily choose to maintain their Federal and local preference system or to implement other preferences of their own choosing (so long as it is consistent with their Affirmative Fair Housing Marketing Plans). The Office of Housing did not require notice or approval of changes to Federal preferences for multifamily housing owners. Housing Notice H 96-7 encourages, but does not require, owners who make any changes to their preference system (including the elimination of any preferences) to provide appropriate notification to applicants on the waiting list and other interested persons. FHEO is concerned that a preference which appears neutral on its face could result in violations of various Civil Rights requirements contained in Title VI, Title VIII and other Civil Rights statute.

EPSS: Distribution: W-3-1

This Notice is expanding that guidance. In cases where owners

adopt preferences not previously in effect, a copy of the change should be sent to the HUD FHEO field office for review of its consistency with Civil Rights law and Civil Rights related program requirements. All applicants should be appropriately notified of their position on a revised waiting list in accordance with the procedures set out at 24 CFR 5.410 (f).

Elizabeth K. Julian
Assistant Secretary for Fair Housing
and Equal Opportunity