Fair Housing and Civil Rights Compliance

MPNAHRO/ Montana Housing Partnership Conference, June 9-11, 2015

Fair Housing Laws

- Federal Fair Housing Act - Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq.
- Recipients of federal money:
  - **Title VI of the Civil Rights Act of 1964**.
  - **Section 504 of the Rehabilitation Act of 1973**.
  - **Section 109** of the Housing and Community Development Act of 1974.
  - **Title II** and Title III of the Americans with Disabilities Act.
  - Age Discrimination Act of 1975.

Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. 24 C.F.R. Part 1

Section 504 of the Rehabilitation Act of 1973

Section 504 Prohibits discrimination based on disability in any program or activity receiving federal financial assistance. 24 C.F.R. Part 8

Section 109 of the Housing and Community Development (HCD) Act of 1974

Section 109 prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex within Community Development Block Grant (CDBG) programs or activities. 24 C.F.R. Part 6

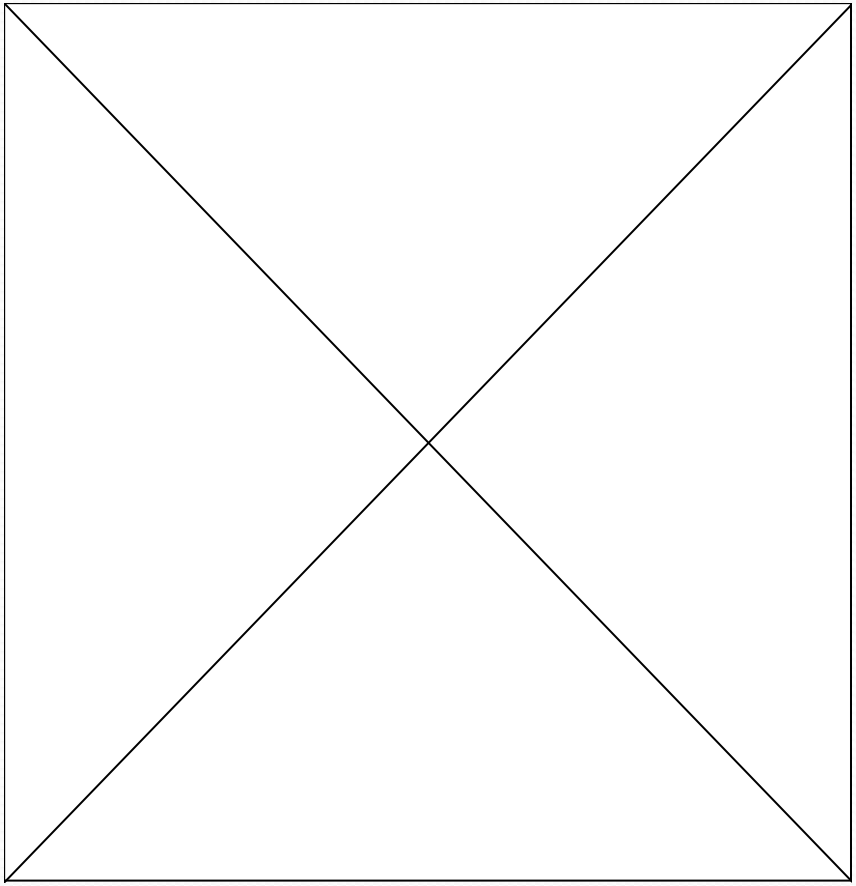
Title II of the Americans with Disabilities Act, as amended

Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance, and housing referrals.

History of the Fair Housing Act:

Events Leading to its Passage in 1968

- Dr. King's marches for open housing in 1966
- Minority Veterans returning from Vietnam only to be denied housing choice
- Assassination of Dr. King on April 4, 1968



History of the Fair Housing Act: Events Leading to its Passage in 1968

- Rioting and civil unrest after the assassination of Dr. King
- President Lyndon Johnson
  - Utilized tragedy as motivation for congress to pass the act
  - Viewed the Act as a fitting memorial to the life of Dr. King
  - Signed into law on April 11, 1968

Title VIII of the Civil Rights Act of 1968: What did it do?

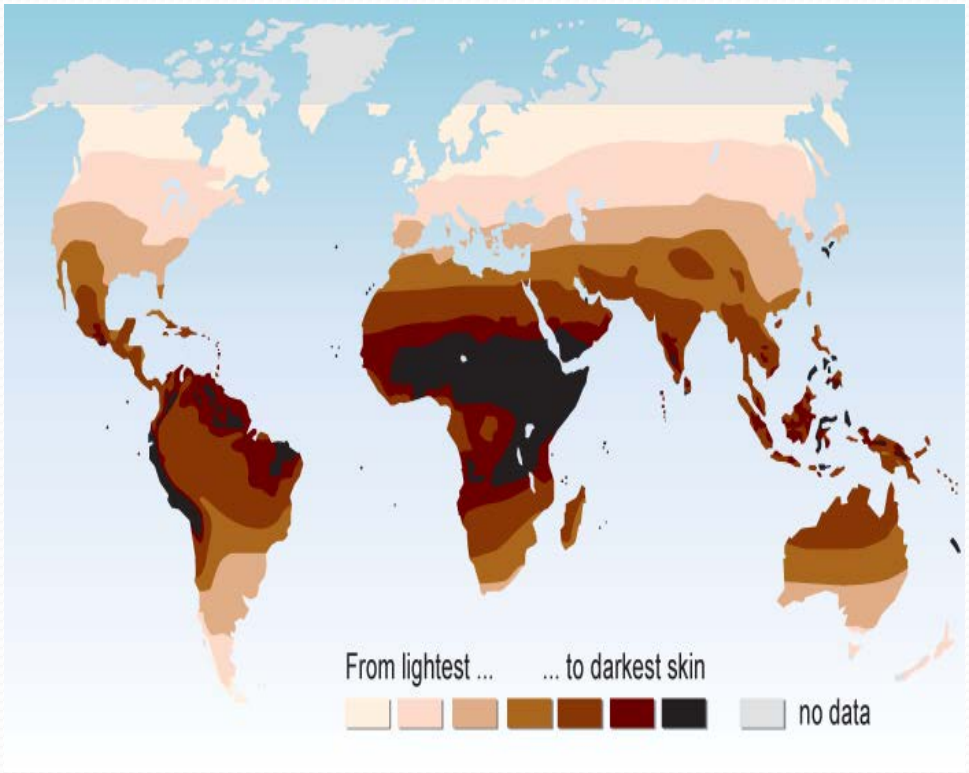
- Prohibited discrimination concerning the sale, rental, and financing of housing based on:
- Race
- Color
- Religion
- National Origin
- Sex (1974)

The Fair Housing Amendments Act of 1988: Additional Protection

- Strengthened Title VIII's enforcement mechanisms:
  - Provided authority to HUD to investigate and enforce the Act
- Extended protections of Title VIII to additional protected classes:
  - Familial Status
  - Disability (mental and physical)

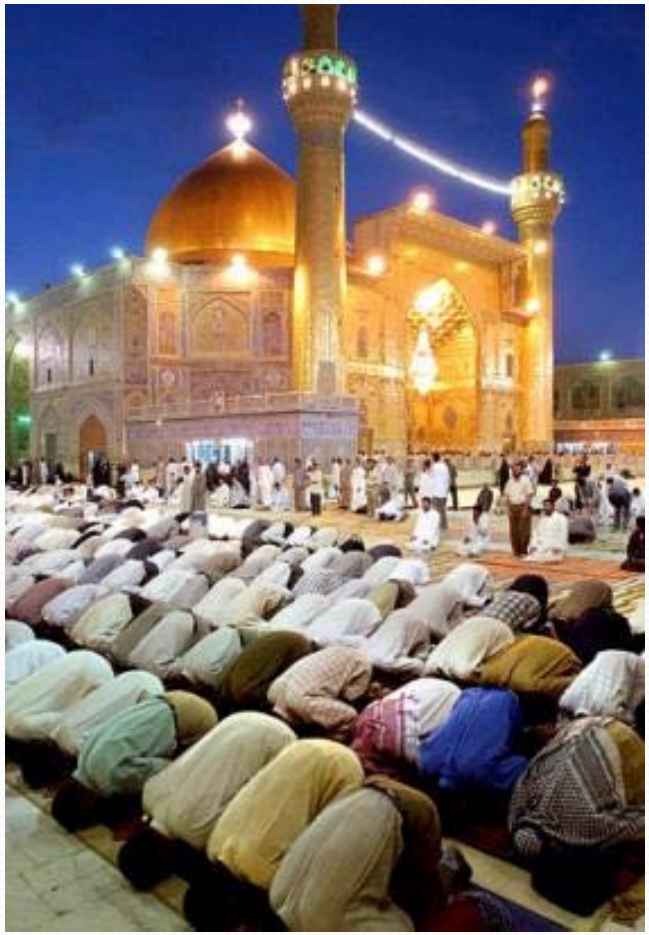
The Fair Housing Act: Who is Protected?

- Race and Color
  - The two terms are often used interchangeably
  - Color is important to cover discrimination within races, or discrimination against only certain members of races with varying skin tones
    - e.g. difference of skin color from north to south of India, southerners being darker in skin color



The Fair Housing Act: Who is Protected?

- Religion
- May be based on religious beliefs of all parties involved in the transaction:
  - Buyers
  - Sellers
  - Renters
  - Property Managers
  - Real Estate Agents



The Fair Housing Act: Who is Protected?

- National Origin
- Determined by two main factors:
  - The Country of an individuals birth
  - The Country where one's ancestors originated
- Hispanic is a National Origin

The Fair Housing Act: Who is Protected?

- Sex
- Includes Sexual Harassment
  - Two main types:
    - Quid Pro Quo
      - "this for that" harassment occurs when housing benefits are conditioned on sexual favors.
      - e.g. Conditioning repairs on sexual favors
    - Hostile Environment
      - occurs when sexually offensive behavior interferes with the use & enjoyment of the premises.
      - e.g. a property manager regularly makes lewd or sexually suggestive remarks to a female tenant. Such conduct might also include sexual requests and physical touching.

The Fair Housing Act: Who is Protected?

- Familial Status
- Persons under the age of 18 living with:
  - Parent or legal custodian
  - Designee of a parent or custodian with written permission
- Pregnant Women
- Persons in the process of securing legal custody

The Fair Housing Act: Who is Protected?

- Familial Status
  - Occupancy Standards:
    - No national occupancy standards
    - Housing providers ***may*** adopt reasonable occupancy standards
    - Housing providers ***may not*** occupancy standards which:
      - Exclude families with children
      - Unreasonably limit the ability of families with children to secure housing

The Fair Housing Act: Who is Protected?

- Familial Status
- Occupancy Standards: Two Heartbeats per bedroom
  - Good general rule of thumb for occupancy standards
  - Special Circumstances:
    - Size of bedrooms and/or unit
    - Age of Children
    - Configuration of unit
    - Physical limitations of housing
    - State and local law

Housing for Older Persons

- Section 807(b) of the Fair Housing Act states that the familial status prohibitions do not apply to "housing for older persons," which means:
  - housing intended for, and solely occupied by, persons 62 years of age or older; or
  - intended and operated for occupancy by at least one person 55 years of age or older per unit.

Housing for Older Persons Act of 1995

- Commonly referred to as “HOPA”
- Signed into law by President Clinton on December 28, 1995
- Modified statutory definition of “housing for older persons”
- Eliminated significant services and facilities requirement
- Required age verification procedures

The Fair Housing Act: Who is Protected?

- HOPA revised the definition of the original exemption in the Fair Housing Act as it applied to "55 and older housing" as follows:
  - Housing intended and operated for occupancy by persons 55 years of age or older;
  - At least 80% of the occupied units are occupied by at least one person who is 55 years of age or older;
  - The housing facility or community publishes and adheres to policies and procedures to demonstrate its intent
  - The housing facility or community complies with rules for verification of occupancy

The Fair Housing Act: Who is Protected?

- What Demonstrates Intent?
  - Written rules and regulations
  - Actual practices, implementation, and enforcement of those rules and regulations
  - Advertising
  - Manner the property is described to prospective residents
  - Age verification procedures and ability to produce properly conducted age verification surveys

HOPA and Advertising

- To qualify for a HOPA exemption, a housing facility's advertisements must demonstrate its intent to be housing for older persons
  - Use of "adult," "adult housing," or "senior housing" does not demonstrate intent to be housing for persons 55 years of age an older
    - Clearly describe the property as housing for person 55 years of age and older in all advertisements

HOPA and Age Verification

- Must be completed every two years
- Must verify a minimum of 80% of units are occupied by ***at least one person*** 55 years of age or older
- Failure to complete age verification every two years results in a failure to demonstrate intent to be housing for older persons and may result in loss of exemption
- Must include reliable forms of identification:
  - birth certificate, drivers license, passport, immigration card, military identification, or any other state, local, national or international documentation, provided it contains current information about the age or birth of the possessor
  - self certification in a lease, application affidavit, or other document signed by an adult member of the household asserting that at least one occupant in the unit is 55 years of age or older will satisfy this requirement

HOPA and Age Verification

- Does a Housing Provider Count All Units in its Age Verification Survey?
  - No. Housing provider should obtain the total number of units and exclude the following from the 80/20 calculation:
    - the number of units that have been continuously occupied by the same household since September 13, 1988, and the household did not contain and does not currently contain at least one person over the age of 55
    - the number of unoccupied units (excluding temporarily vacant)
    - the number of units occupied by employees of the housing facility or community who are under 55 years of age, and who provide substantial management and maintenance services to the housing facility or community
    - the number of units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents

Conversion to HOPA

- Can a housing facility who does not meet the exemption covert to housing for older persons?
  - Yes. A housing facility may covert to housing for older persons only if it does so without discriminating against families with children
    - May not advertise as housing for older persons, or publish polices and procedures to demonstrate and intent to be housing for older persons until after the 80/20 requirements have been met
    - May not deny occupancy, discourage occupancy, or evict families with children to meet the threshold
    - New construction or substantial renovations where property was not occupied for 90 days.
  - Housing facility who was not compliant with HOPA regulations and previously discriminated against children may lose their exemption for good unless they are able to demonstrate they complied with the 80/20 requirement prior to the expiration of HOPA's transition period (May 3, 2000)

Reasonable Accommodations

- Section 804(f)(3)(b) of the Fair Housing Act makes it unlawful to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be **necessary** to afford (a disabled person) equal opportunity to use and enjoy a dwelling."

Reasonable Accommodations

- Necessary:
  - Necessity, at a minimum, means the accommodation will affirmatively enhance the disabled persons quality of life by ameliorating the effects of the disability
  - Must be a nexus between the requested accommodation and the disability of the requester

Reasonable Accommodations

- Disability defined:
  - A person with a physical or mental impairment that substantially limits one or more **major life activities**
  - A person with a record of such impairment
  - A person regarded as having such an impairment

Reasonable Accommodations

- Major Life Activities:
  - Caring for one's self
  - Performing manual tasks
  - Walking
  - Seeing
  - Hearing
  - Breathing
  - Learning
  - Working

Reasonable Accommodations

- Examples of Reasonable Accommodation Requests:
  - Waiving a no pets policy to allow an assistance animal
  - Waving guest fees for live-in-aides
  - Designating an accessible parking space for a mobility impaired tenant
  - Emailing notices and correspondence to blind tenants so they can use screen reader software

Reasonable Accommodations

- When can a housing provider deny a reasonable accommodation request?
  - Request was not made on or on the behalf of a person with a disability
  - No disability related need for the accommodation
  - Accommodation is not reasonable:
    - Imposes an undue financial and administrative burden
    - Causes a fundamental alteration to the nature of the program
  - Tenancy of the resident poses a direct threat to the health or safety of other individuals, unless that threat can be eliminated or reduced significantly by a reasonable accommodation

Reasonable Accommodations

- Undue Financial and Administrative Burden
  - An action that requires significant difficulty or expense
  - Must balance the burden to the housing provider with the benefits to the resident
  - Factors to consider:
    - Cost of the accommodation
    - Financial resources of the housing provider
    - Administrative responsibilities imposed on the housing provider because of the requested accommodation

Reasonable Accommodations

- Example of Undue Financial and Administrative Burden:
  - Requesting maintenance staff of a small housing provider take out the garbage of a disabled tenant who is physically unable to open the dumpster on a daily basis when maintenance staff is only onsite two days per week.
- If a housing provider believes an accommodation imposes an undue financial and administrative burden, it should start an interactive dialogue with the requester and explore alternative accommodations

Reasonable Accommodations

- Fundamental Program Alteration
  - Change that would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change
  - Examples of Fundamental Alterations:
    - Mobility impaired resident requests housing provider transport him to the grocery store and assist him with his shopping
- If a housing provider believes granting an accommodation would cause a fundamental program alternation, it should start an interactive dialogue with the requester and explore alternative accommodations

Assistance Animals

- An assistance animal is not a pet!
- An assistance animal is an animal that:
  - Works, provides assistance or performs tasks for the benefit of a person with a disability **<u>or</u>**;
  - Provides emotional support that alleviates one or more identified symptoms or effects of a person's disability

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- HUD Notice Issued April 25, 2013;
- Discusses Fair Housing Act, Section 504, and the ADA;
- Located at http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

Evaluating Reasonable Accommodation Requests for Assistance Animals

- Housing providers must consider the following:
  - Does the person seeking to use and live with the animal have a disability?
  - Does the person making the request for the animal have a disability related need for an assistance animal?
    - If the answer to **either** question is **no** the Fair Housing Act does not require the housing provider to waive its no pets policy as a reasonable accommodation
    - If the answers to both questions are **yes** the Fair Housing Act requires the housing provider to provide an exception to its no pets policy unless:

Evaluating Reasonable Accommodation Requests for Assistance Animals

- Housing providers may also deny requests for assistance animals if:
  - The **specific** assistance animal in question poses a direct threat to the health of safety of others that cannot be reduced or eliminated by another reasonable accommodation
  - The **specific** assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation

Evaluating Reasonable Accommodation Requests for Assistance Animals

- Breed, size, and weight limitations may not be applied to an assistance animal
- Any determination that an assistance animal poses a direct threat must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct and not:
  - Speculation or fear about the types of harm or damage an animal may cause
  - Evidence of harm or damage caused by other animals

Evaluating Reasonable Accommodation Requests for Assistance Animals

- Conditions and restrictions housing providers impose on pets may not be applied to assistance animals
  - Cannot charge a pet deposit for assistance animals
  - Cannot charge pet rent for assistance animals
  - May require a tenant to cover cost of repairs to damage caused by the assistance animal if it is the housing provider's practice to charge tenants for any damages they cause to the property

Evaluating Reasonable Accommodation Requests for Assistance Animals

- Housing providers may not deny a request because they are uncertain whether the person seeking the accommodation has a disability and/or a disability related need for an assistance animal
  - May ask for reliable documentation of disability and/or disability related need for an assistance animal if either is not readily apparent from:
    - Physicians, psychiatrists, social workers, other mental health professionals, or a reliable third party who is in a position to know about an individual's disability
  - May not ask for access to medical records or for detailed/extensive information or documentation of a person's physical or mental impairments

Evaluating Reasonable Accommodation Requests for Assistance Animals

- A reasonable accommodation request for an assistance animal may not:
  - Be unreasonably denied
  - Conditioned on payment of a fee or deposit
  - Conditioned on terms applied to applicants or residents with pets
  - Be unreasonably delayed
- Persons with disabilities who believe a request for reasonable accommodation has been improperly delayed or denied may file a complaint with HUD

Reasonable Accommodations

- What do we look for when investigating complaints of alleged denials of reasonable accommodations?
  - The Department analyzes the request utilizing the following factors:
    - Complainant is disabled
    - Respondent knew that the Complainant is disabled
    - Complainant specifically requested an accommodation in Respondent's housing-related rules, policies, practices, or services because of a disability
    - The requested accommodation was necessary in order to afford Complainant an equal opportunity to use and enjoy the subject property
    - Respondent denied or unreasonably delayed the accommodation request

Reasonable Accommodations

- What do you do if you believe a Reasonable Accommodation request is unreasonable?
  - Start an interactive process
  - Discuss alternative accommodations with the requester
- What if you cannot reach an agreement through the interactive process?
  - The accommodation has effectively been denied, the requester has the right to file a fair housing complaint and have the Department conduct an investigation

Reasonable Accommodations

- Reasonable Accommodation Safe Zone:
  - Implement formal polices and procedures for reviewing reasonable accommodation requests
  - Inform residents of the availability of reasonable accommodations as a standard part of the application process
  - If the accommodation is believed to be unreasonable, enter into an interactive process with the requester
  - Ensure your policies and procedures are adaptable to accept alternative forms of requests

Reasonable Modifications

- Section 804(f)(3)(b) of the Fair Housing Act makes it unlawful to refuse "to permit" at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

Reasonable Modifications

- Under Title VIII, expenses for reasonable modifications are incurred by the resident
- When reasonable, may condition approval of the modification on restoration of the premises to its original condition
  - May request grab bars be removed, but may not request the grab bar backing studs be removed
- Common area modifications never need to be removed

Reasonable Modifications

- When necessary, may negotiate provisions for resident to pay into interest bearing account to ensure funds are available for restoration
- May require a reasonable description of the proposed modifications
- May require reasonable assurances the work will be conducted in a workmanlike manner with proper permits
  - Cannot require the use of certain contractors
  - Cannot require a resident to obtain liability coverage for the modification

Reasonable Modifications

- When can a housing provider deny a reasonable modification request?
  - Same standards as reasonable accommodations
    - Undue Financial and Administrative Burden
    - Fundamental Program Alteration
  - Reasonable Modifications almost never impose an undue financial and administrative burden because the cost of the modification is incurred by the resident

Reasonable Modifications

- Examples of Reasonable Modifications:
  - Wheel Chair Ramps
  - Grab bars
  - Widening of doors
  - Removing base cabinets below sink

Reasonable Modifications

- Reasonable Modification Safe Zone:
  - Implement formal polices and procedures for reviewing reasonable modification requests
  - Inform residents of the availability of reasonable modifications as a standard part of the application process
  - If the modification is believed to be unreasonable, enter into an interactive process with the requester
  - Ensure your policies and procedures are adaptable to accept alternative forms of requests

Limited English Proficiency (LEP)

- The U.S. Census Bureau defines Limited English Proficiency as speaking English "less than very well."
- The entire LEP population grew by 52% between 1990 and 2000, from 14 million people to 21.3 million people.
- LEP population growth is fastest in states with the greatest immigrant population growth.

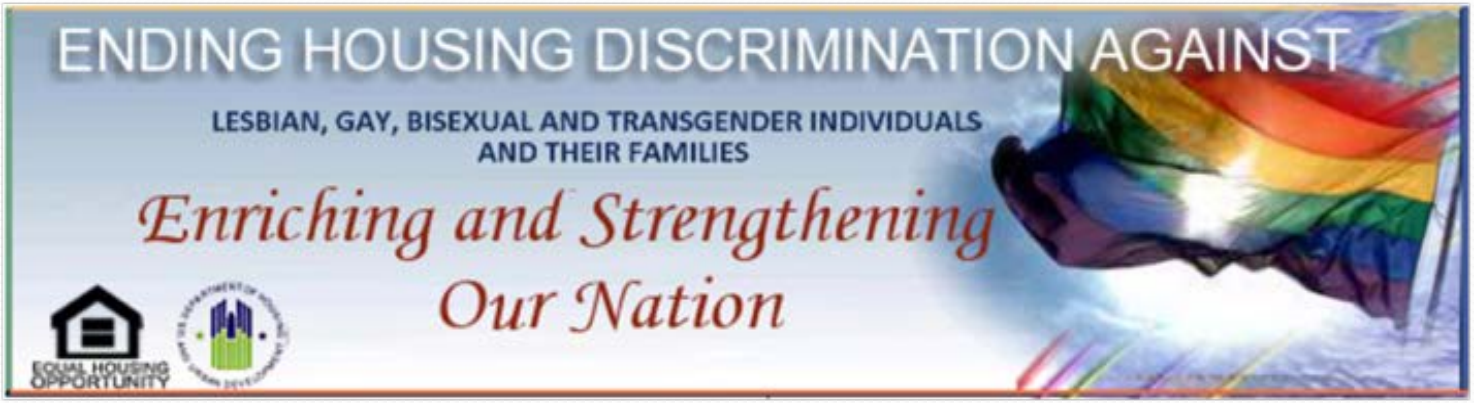
LEP and Title VI of the Civil Rights Act of 1964

- HUD LEP Guidance issued in 2007 pursuant to Executive Order 13166 and Title VI applies to recipients of federal financial assistance.
- Provides four factors to assess the needs of LEP persons:
  - The number or proportion of LEP persons served or encountered in the eligible service area
  - The frequency with which LEP individuals come into contact with program
  - The nature and importance of the program, activity, or service provided by the program
  - The resources available to the recipient

HUD Equal Access Rule

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (24 C.F.R. 5)

- Effective March 5, 2012
- Applies to all HUD programs



HUD Equal Access Rule, Continued

DEFINITIONS:

- Sexual Orientation – Homosexuality, heterosexuality, or bisexuality.
- Gender Identity – Actual or perceived gender-related characteristics.

HUD Equal Access Rule, Continued

THREE COMPONENTS:

1) General equal access provision: Housing assisted by HUD or insured by FHA must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
2) Definition of family: Must include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.
3) Inquiries: Prohibits inquiries about an applicant's or occupant's sexual orientation or gender identity for the purposes of determining eligibility or otherwise making housing available.

What is Section 3?

- Section 3 of the Housing and Urban Development Act of 1968 (Section 3) ensures that HUD-funded jobs training, and contracts are provided to local low-income residents, particularly those that reside in public housing, and businesses that substantially employ them.

Why did HUD Publish a Proposed Rule to Amend the Current Section 3 Regulation?

The current Section 3 regulation at 24 CFR § 135 is vague in areas that have proved to be confusing and lead to differing interpretations.

The Section 3 proposed rule seeks to:

1) clarify obligations for PHAs and other grantees;
2) incorporate HUD programs that have been created since the publication of the current regulation; and
3) codifies "best practices" that have proved successful for providing employment and contracting opportunities

What Are the Major Highlights of the Section 3 Proposed Rule?

1) Establishes clearer guidelines for achieving compliance "to the greatest extent feasible".
2) Requires "new hires" to work a minimum percentage of hours.
3) Revises the definition of a "Section 3 Business"
4) Sets a new funding threshold for non-PHA grantees.
5) Removes the 3% minimum numerical goal for non-construction contracts.
6) Requires PHAs and other grantees to monitor contractor payroll data

What Are the Major Highlights of the Section 3 Proposed Rule ?

7) Mandates reference to Section 3 requirements in Project Labor Agreements.
8) Incentivizes job retention and the provision of apprenticeship opportunities for Section 3 residents.
9) Allows grantees to accept self-certifications or presume eligibility.
10) Imposes penalties for failure to submit Section 3 annual reports.
11) Imposes program sanctions on PHAs and grantees that fail to comply.
12) Stipulates that relief may possibly be provided to aggrieved entities.

What is the Status of the Section 3 Proposed Rule?

- The Section 3 Proposed Rule was published in the Federal Register for a 60 day public comment period that expired May 26, 2015.

For more information on Section 3, please see www.hud.gov/section3

Questions, Comments, Complaints?

Contact Information

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Example

- Roberto and his wife own a house within a homeowners association (HOA). Roberto has a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. The homeowner's association does not permit the Roberto's modification because Roberto provided no evidence that the shingles permitted by the homeowner's association provide inadequate fire protection.
- Is the HOA engaging in disability discrimination?

Example

- Martha is hearing impaired and lives in a cooperative residential community where parking spaces are available on a first come first served basis. Martha requests an accommodation of a reserved parking space closest to her front door. She is denied the accommodation.

- Did the co-op engage in disability discrimination by denying Martha a reasonable accommodation?

Example

- Jade has an undisclosed mental illness. She lives on her own and is on medication to control her illness. Jade's doctor changed her medication two years ago, and her condition worsened. Jade became despondent and unable to pay her bills or care for herself. She did not pay her rent for three months. Jade's social worker visits her quarterly and discovered Jade's condition. Jade had her medications fixed, took care of her outstanding bills and became current on her rent. Jade has had no problems with her illness or medications since; however this incident resulted in several negative items being placed on her credit report. Jade applied for a new apartment and was declined due to a poor credit and rental history during this time. Jade submitted an accommodation request to the apartment manager to waive her credit report and rental history for the relevant time period. Jade's request was denied.

- Did the apartment manager deny a reasonable accommodation?

Example

- Joan, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers.
- Should the property manager allow Joan to replace the doorknobs?

Example

- Denise was evicted because the property manager of an apartment complex received several complaints about Denise's menacing behavior and loud cursing. Denise has Tourette Syndrome, which causes her to suffer from involuntary movements and to curse. Denise is shy and does not socialize with her neighbors, which makes their discomfort increase.

- Did the property manager violate fair housing law when they evicted Denise for threatening behavior?

Example

- Aaron has an undisclosed mental illness. He submits a request for the reasonable accommodation of an assistance animal. The property manager denies the request stating that they do not allow "pets." Aaron provides the property manager information regarding reasonable accommodations with regard to assistance animals. The property manager reviews the information and allows Aaron the accommodation with an additional security deposit of $250 and a monthly fee of $20.
- Did the property manager take the right action with regard to Aaron's request?