

#### Fair Housing Act, Section 3, and Section 504

Fair Housing Act, Section 3, and Section 504 Requirements

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**Community Planning and Development** 

#### Speakers and Q and A Format

- Speakers
  - Nicole Bouvier and Kelly Price, ICF
- HUD experts
  - Jason Chang, Mark Matulef, and John Laswick
- How to ask questions
  - Change status in Live Meeting from green to purple
  - Press \*1 to ask a question through Premiere Conference
    - Provide Name and Organization
  - After question is answered, press \*2 to exit queue

- Change status back to green after question answered Department of Housing and Urban Development • Community Planning and Development

## Today's Agenda

- Overview of civil rights and related laws applicable to NSP
  - Fair Housing Act
  - Civil Rights and related statutes tied to receipt of Federal of HUD funding
  - Emphasis on:
    - Affirmatively furthering fair housing (AFFH)
    - Accessibility requirements under Section 504 and Fair Housing Act
    - Economic opportunity requirements (Section 3)

## Applicable Civil Rights Laws

- Fair Housing Act (Title VIII of Civil Rights Act of 1968), as amended
- Nondiscrimination in the programs and activities of recipients receiving Federal/HUD funding
  - Title VI of the Civil Rights Act of 1964
  - Age Discrimination Act of 1975
  - Section 109 of the Housing and Community Development Act of 1974
  - Section 504 of the Rehabilitation Act of 1973

#### **Other Statutes and Requirements**

- Section 3 of the Housing and Urban Development Act of 1968
- Additional Requirements:
  - Executive Orders 11063, 12892, 12259, and 11246
  - Executive Order 13166 and HUD's Final LEP Guidance
  - Applicable state and local laws

#### Intent of Fair Housing Act

- To prohibit discrimination in housing on basis of race, color, religion, sex, national origin, familial status or disability
  - Nondiscrimination in housing
  - Equal opportunity in provision of housing services, facilities & improvements (program benefit)
  - Equal opportunity in employment



## **Fair Housing Compliance**

- Grantee's obligations:
  - Do not discriminate in housing unlawfully
  - Administer NSP activities without discriminating against protected classes
  - Ensure that housing partners comply with fair housing laws
  - Affirmatively further fair housing

- Jurisdiction's Affirmatively Furthering Fair Housing Certification
  - 1. Conduct analysis of impediments to fair housing choice
  - 2. Take actions to overcome the effects of the impediments identified
  - 3. Maintain records reflecting the analysis and actions



- Analysis of Impediments (AI) to Fair Housing Choice
  - Comprehensive review of jurisdiction's laws, regs & policies that impact, for each protected class:
    - Location of housing
    - Availability of housing
    - Accessibility of housing
  - Consider public and private sector barriers
  - Consider barriers that have the *effect* of limiting choice, regardless of intent

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- Actions to overcome impediments
  - Actions should align with the impediments
  - Choose actions strategically
  - Describe actions in annual action plan of the Consolidated Plan
- Records to be maintained
  - Copy of AI, and updates
  - Records related to any actions taken to address impediments
  - Records related to the AI & impact of the actions on impediments artment of Housing and Urban Development • Community Planning and Development

- Nonprofit Grantees' Affirmatively Furthering Fair Housing Certification
  - Affirmatively market NSP-assisted housing
  - Provide information to, and otherwise attract, eligible persons in the housing market to the housing program without regard to protected class status



- Nonprofit Grantees' AFFH Certification (cont.)
  - Further fair housing in NSP activities
    - Increase access for people with disabilities through housing design or construction
    - Provide language assistance services to LEP persons
    - Increase housing opportunity/choice for protected class members through location of new or rehabilitated housing



- Recordkeeping
  - Data on racial, ethnic & gender characteristics
    - Applicants for, participants in, and beneficiaries of NSP
    - Employment in NSP operating units funded by NSP/CDBG
    - Households displaced by NSP/CDBG
  - Efforts to AFFH and meet LEP requirements

#### For More Information

www.hud.gov/offices/fheo



### Questions on Fair Housing Act

To ask question:

- Press \*1 to get in queue
- Change status in Live Meeting to purple

After question is answered:

- Press \*2 to leave queue
- Change status back to green





## Accessibility – Applicable Laws

- Architectural Barriers Act of 1968
- Title II of the Americans with Disabilities Act (ADA) of 1990
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968), as amended
- Implementing regulations
  - FH Act: 24 CFR Part 100
  - Section 504: 24 CFR Part 8
  - ABA: 24 CFR Part 40

#### Intent of Accessibility Laws

- To ensure full use and enjoyment of all housing by persons with disabilities
  - Prohibit discrimination against people with disabilities in housing
  - Remove physical barriers in housing stock
  - Build new housing that is accessible
  - Ensure that grantee's overall housing program is accessible to persons with disabilities



## Accessibility Compliance – Removing Physical Barriers under Section 504

- For Federally-funded Rental Housing
  - New construction of MF housing, 5 or more units
  - Substantial alterations of MF housing, 15 or more units
    - Substantial alterations cost of alterations is 75% or more of replacement cost of completed facility



Accessibility Compliance – Removing Physical Barriers under Section 504 (cont.)

- Must make accessible:
  - Min. 5% of units (at least 1 unit) for mobility impairments
  - Additional min. 2% of units (or at least 1 unit) for hearing/vision impairment
  - Entrance/exit routes & public/common use areas
- Currently, must meet Uniform Federal Accessibility Standards (UFAS)

# Accessibility Compliance – Removing Physical Barriers under 504 (cont.)

- Rental Housing (other alterations, not substantial)
  - Must make accessible to the max. extent feasible
  - Make entire unit accessible if
    - Kitchen renovated/cabinets replaced
    - Bathroom (replacing tub/shower or toilet)
    - Replacing entrance door jams
- Up to 5%/2% requirement
- Make routes and common areas accessible
- Use UFAS standard (rehabbed elements)

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## Accessibility Compliance – Removing Physical Barriers under 504 (cont.)

- Homeownership
  - Applies to new construction and rehabilitation
  - Make unit accessible when requested by prospective buyer
  - Must meet needs of buyer/occupant; entire unit need not meet full UFAS
  - Use UFAS standard for the needed features



## Accessibility Compliance – Complying with Design & Construction Reqs of the FH Act

- Applies to covered multifamily dwellings
  - Newly constructed housing –whether or not Federal assistance is involved
  - Available for first occupancy after March 1991
  - Ground floor units in bldgs w/ 4 or more units
  - Buildings w/ 4 or more units with 1 or more elevator(s)
- Design and construction requirements at 24 CFR 100.205(c)

## Accessibility Compliance – Program Accessibility

- Program accessibility = Grantee's housing program, when viewed in its entirety, is accessible to and usable by, people with disabilities
- Examples:
  - Ensure effective communication w/ applicants, beneficiaries & members of public
  - Making reasonable accommodations
  - Wheelchair access to program in-take offices, public hearings, tenant meetings, etc.



#### For More Information

- www.hud.gov/offices/fheo/disabilities/index.cfm
- www.fairhousingfirst.org



## Questions on Accessibility Requirements

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- Change status back to green





## Economic Opportunity-Applicable Law

 Section 3 of the Housing and Urban Development Act of 1968

– Implementing regulations at 24 CFR Part 135



#### Intent of Section 3

- Purpose of Section 3 is to ensure that employment & other economic opportunities generated by certain types of HUD assistance, including NSP, shall, to the greatest extent feasible, be directed to low- and very low-income persons & to business concerns which provide economic opportunities to low- & very low-income persons
  - Regulation is race & gender neutral
  - Applies to new jobs & contracts only

## Section 3 Applicability

- Recipients that receive \$200,000 or more in NSP funds are required to comply with Section 3
  - Requirement "flows down" to subgrantees, subrecipients, developers, etc.
  - Includes jobs that directly support rehab/construction activities, incl. mgmt/admin
- If contract or subcontract for construction-related work (housing rehab & construction, other public construction) exceeds \$100,000, responsibility for Section 3 compliance shared with that contractor/subcontractor
  - Does not include contracts for supplies or materials unless involving installation

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#### Section 3 – Grantee Obligations

- Implement procedures to notify residents, businesses
- Notify contactors & include Section 3 clause verbatim in all solicitations and contracts
- Facilitate the training & employment of Section 3 residents & award of contracts to Section 3 businesses
- Do not use contractors with outstanding Section 3 violations
- Document actions taken to comply with Section 3
- Attempt to reach numerical goals (more later)

#### Section 3 Goals

- Section 3 regs contain minimum numeric goals
- Goals are:
  - <u>Hiring</u>: 30% of aggregate number of new hires be Section 3 residents
  - <u>Contracting</u>: 10% total dollar amount of covered construction contracts to Section 3 businesses



## Section 3 Residents

- <u>Section 3 residents</u> defined as:
  - Residents of Public Housing
  - Individuals that reside in the metropolitan area or nonmetropolitan county in which the project is occurring and whose income do not exceed the local HUD income limits for low-income households
- Can use HUD sample certification form to document: <u>http://www.hud.gov/offices/fheo/section3/Sample\_</u> <u>Certification\_Form\_for\_Residents.doc</u>



## **Section 3 Businesses**

- Section 3 business defined as:
  - 51% or more owned by Section 3 residents or
  - Whose permanent, full-time employees:
    - At least 30% Section 3 residents, or
    - Within three years date of first employment with the firm were Section 3 residents; or
  - Evidence of a commitment to subcontract >25% awarded to businesses that meet the qualifications described above
- Can use HUD sample certification: <u>http://www.hud.gov/offices/fheo/section3/Sample\_C</u> <u>ertification\_Form\_for\_Businesses.doc</u>



#### "How To" Achieve Goals

- <u>Training & Hiring</u> examples:
  - Enter into 1<sup>st</sup> source hiring agreements with organizations representing Section 3 residents
  - Sponsor or refer to employment/training programs
  - Advertise in neighborhoods & other local media reaching Section 3 residents
  - Contact local organizations that represent Section 3 residents
  - Coordinate econ development/workforce planning with housing efforts

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#### "How To" Achieve Goals

- <u>Contracting</u> examples:
  - Use registration lists/database (firms certify as Section 3 businesses)
  - Must adhere to Federal, state & local procurement requirements but may be able to:
    - Use preferences or award points if bidder is Section 3 business or will meet Section 3 hiring goals



#### Section 3 Report

- Submit HUD Form 60002 (Section 3 Annual Summary Report) annually
  - Due at same time as annual performance reports (e.g., CAPER)
  - Report must include quantitative info. as well as narrative explaining efforts
  - Can submit on-line: <u>http://www.hud.gov/offices/fheo/section3/section3/section3.cfm</u>



#### **Section 3 Compliance**

- Grantees that fail to meet the minimum numerical goals bear the burden of demonstrating why it was not possible to do so
- Such justifications should describe the:
  - Efforts that were taken
  - Barriers encountered
  - Other relevant information that will enable HUD to make a compliance determination



#### For More Information

<u>http://www.hud.gov/section3/</u>



#### **Questions on Section 3 Requirements**

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#### Give us your Feedback

- Answer a few short questions
- Link: <u>http://www.surveymonkey.com/s/FHEO\_3\_504</u>

