

CDBG Crosscutting Issues: Fair Housing and Non-discrimination

Date
Trainer



Prepared by Abt Associates for the U.S. Department of Housing and Urban Development



Purpose of the Workshop

To Ensure That Every Participant:

- is familiar with the relevant Federal fair housing and non-discrimination statutes, Executive Orders, and regulations;
- understands the administration and enforcement of fair housing requirements; and
- understands the difference between non-discrimination and affirmatively furthering fair housing.

Applicable Statutes

- Title VI of the Civil Rights Act of 1964 as amended in 1988.
 - Prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, 42 U.S.C. 3601-3619) as amended.
 - Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, disability, and familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18).

Applicable Statutes (cont.)

- Architectural Barriers Act of 1968.
 - Requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by persons with disabilities.
- Title IX of the Education Amendments Act of 1972.
 - Prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973.
 - Prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

Applicable Statutes (cont.)

- Section 508 of the Rehabilitation Act of 1973.
 - Enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals.
- Section 109 of Title I of the Housing and Community Development Act of 1974.
 - Prohibits discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Development Block Grant Program.

Applicable Statutes (cont.)

- Section 104(b)(2) of the Housing Community Development (HCD) Act of 1974, as amended, (42 U.S.C. 5304).
 - This governing statute for the CDBG program requires that each grantee certify to HUD's satisfaction that (1) the grant will be conducted and administered in conformity with the Fair Housing Act (42 U.S.C. 3601-20) and that (2) the grantee will affirmatively further fair housing.

Applicable Statutes (cont.)

- Title II of the Americans with Disabilities Act of 1990.
 - 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.
- Housing for Older Persons Act of 1995
 - HOPA makes several changes to the 55 and older exemption. Since the 1988 Amendments, the Fair Housing Act has exempted from its familial status provisions properties that satisfy the Act's 55 and older housing condition.

Executive Orders

- Executive Order 11063: Equal Opportunity in Housing, 11/20/1962 (State grantees and Entitlement grantees).
- Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, 1/17/1994.
- Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 2/11/1994.

Executive Orders

- Executive Order 13166: Improving Access To Services For Persons With Limited English Proficiency, 8/11/2000.
- Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, 6/19/2001.
- Executive Order 13330: Human Service Transportation Coordination, 2/24/2004.

What is non-discrimination?

- CDBG grantees are responsible for ensuring that all housing assisted with CDBG funds is made available on a non-discriminatory basis: that is, without regard to race, color, religion, sex, disability, familial status, age, or national origin.
- Discriminatory housing practices might include any action in which an individual or class of individuals in a specific protected class is treated differently than others who are not in that protected class, when the result of that action denies that individual or class of individuals equal access to or benefit of a housing opportunity. Note that specific actions may be required to create equal program access for people with disabilities.

Illegal vs. Legal Discrimination

- Illegal discrimination includes such practices as:
 - Discrimination in the sale or rental of a dwelling
 - Discriminatory conduct by members of the real estate industry
 - Discriminatory advertisements, statements, and notices
 - Engaging in blockbusting practices
 - Discrimination in the provision of brokerage services
 - Discrimination in residential real estate-related transactions
- Legal Discrimination

What is affirmatively furthering fair housing?

"Affirmatively Furthering Fair Housing" is defined in the regulations as:

- Having an Analysis of Impediments (AI) to fair housing choice;
- Taking appropriate actions to overcome the effects of identified impediments; and,
- Keeping records reflecting the analysis and showing the actions taken.

Applicable Regulations

- 24 CFR Part 1: Nondiscrimination in Federally Assisted Programs of HUD.
 - Implementing regulations for Title VI of the Civil Rights Act of 1964.
- 24 CFR Part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
 - Implementing regulations for Title IX of the Education Amendments Act of 1972.
- 24 CFR Part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
 - Implementing regulations for Section 504 of the Rehabilitation Act of 1973.

Applicable Regulations (cont.)

- 24 CFR Parts 91.225 (a)(1): Affirmatively Furthering Fair Housing.
 - Each jurisdiction must certify that it will affirmatively further fair housing, including conducting an analysis of impediments to fair housing choice, taking appropriate actions, and maintaining records.
- 24 CFR Part 91.325 (a)(1): Affirmatively Furthering Fair Housing.
 - Each State must certify that they will affirmatively further fair housing, including conducting an analysis of impediments to fair housing choice, taking appropriate actions, and maintaining records.

Applicable Regulations (cont.)

- 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
 - Requires the state and each local government to certify that it will affirmatively further fair housing. The state is required to assume responsibility by: conducting an analysis to identify impediments to housing choice; taking appropriate actions to overcome the effects of the impediments; maintaining records of analysis and actions; and ensuring that units of local government funded by the state comply with the certification requirements.

Applicable Regulations (cont.)

- 24 CFR 570.601: Fair Housing (Entitlement grantees). The following apply: Title VI of the Civil Rights Act of 1964 (and implementing regulations at 24 CFR part 1); Housing and Community Development Act (including section 104(b)(2)); and Executive Order 11063, as amended by 12259 (with implementing regulations in 24 CFR part 107).
- 24 CFR Parts 100-125: Fair Housing.
- 24 CFR 570.206(c): Fair Housing Activities. Provision of fair housing services designed to further the objectives of the Fair Housing Act.

Applicable Regulations (cont.)

- 24 CFR 570.602: HCDA Section 109 nondiscrimination (Entitlement grantees)
- 24 CFR 570.495(b): HCDA Section 109 nondiscrimination (State grantees). HUD enforcement practices.
- 24 CFR 570.904: Equal Opportunity and Fair Housing Review Criteria (Entitlement grantees)
- 24 CFR Part 91.325(b)(5): Compliance with Anti-discrimination laws.
 - A certification that the grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, and implementing regulations.

Applicable Regulations (cont.)

- 24 CFR 570.912: Nondiscrimination compliance
- 24 CFR Part 570.490(a)(b): Recordkeeping requirements
- 24 CFR 570.506(g): Fair Housing and equal opportunity records.
- 24 CFR 570.614: ABA and ADA (Entitlement grantees)
- 24 CFR 570.487(e): ABA and ADA (State grantees).

Applicable HUD Notices

- CPD-05-03 (issued June 6, 2005). Implementing the New Freedom Initiative and Involving Persons with Disabilities in the Preparation of the Consolidated Plan through Citizen Participation
- CPD-05-09 (issued November 3, 2005). Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act and their applicability to housing programs funded by the HOME Investment Partnerships Program and the Community Development Block Grant Program
- CPD-05-10 (issued November 3, 2005). Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds – Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Architectural Barriers Act

Strategies to Affirmatively Further Fair Housing

- Understand how HUD defines affirmatively furthering fair housing
- Understand how impediments to fair housing choice are defined
- Understand what actions or omissions constitute impediments to fair housing choice
- Ensure that analysis of impediments process is inclusive
- Implement actions to address the impediments identified

Case Study

“Fair Housing”

Key HUD Documents

- Handbook 6509.2, Rev-5: CPD Monitoring Handbook-Chapter 22: Fair Housing and Equal Opportunity
- Fair Housing: Equal Opportunity for All
- Fair Housing Act Design Manual (Revised April 1998)
- Fair Housing Planning Guide, Volume 1 (March 1996)
- Joint letter on Analysis of Impediments to Fair Housing Choice (August 4, 2004)
- Occupancy Standards – Keating Memo (March 1991)
- Guidelines for FHEO Implementation of HUD Policy on Race and Ethnicity Data (November 2002)

Recordkeeping

- Each recipient shall establish and maintain records that include:
 - Documentation of analysis of impediments and actions
 - Data on participation in CDBG funded programs or activities, by racial and ethnic group, and single head of households
 - Data on employment in each of the recipients operating units funded in whole or in part with CDBG funds
 - Race and ethnicity data of households displaced as a result of CDBG-funded activities
 - Documentation of actions undertaken to meet the requirements of the Section 3 program
 - Race/ethnicity data for each business receiving a contract or subcontract of \$25,000 or more from CDBG funds
 - Documentation of affirmative action measures taken to overcome prior discrimination
 - Documentation of Limited English Proficiency compliance

Strategies to Improve Access for Persons with Limited English Proficiency

- Use the Language Assistance and Planning Self Assessment tool (<http://www.lep.gov/selfassesstool.htm>)
- Translate written materials into key languages
- Adapt written materials to be understandable for the target population
- Use the “I Speak” card (<http://www.lep.gov/ISpeakCards2004.pdf>)
- Use interpreter services when appropriate

Case Study

“Limited English Proficiency”

Discussion Questions

1. What are the key provisions of the Housing and Community Development Act of 1974, as they pertain to CDBG grantees?
2. What is the key provision of Section 504 of the Rehabilitation Act of 1973?
3. Describe three ways in which HUD funded recipients may carry out the requirements of the Fair Housing Act to affirmatively further fair housing.
4. What is an analysis of impediments to fair housing choice?