



**Department of  
Development**

**Ted Strickland**, Governor  
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May 29, 2009

TO: Office of Housing and Community Partnerships Award Recipients and Their Affiliates

FROM: Michael A. Hiler, Office Chief, Office of Housing and Community Partnerships

SUBJECT: Civil Rights and Fair Housing Requirements

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The purpose of this memorandum is to ensure that recipients and subrecipients of Neighborhood Stabilization Program (NSP) and American Recovery and Reinvestment Act of 2009 funds comply with the applicable nondiscrimination and equal opportunity statutes, regulations and Executive Orders.

All recipients and their subrecipients must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination including language access for limited English proficient persons), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services), and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on recipients and subrecipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (ADA) (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting discriminatory housing practices based upon race, color, religion, sex, national origin, disability, or familial status), as well as any other applicable civil rights laws.

Grantees should evaluate their program designs, so that opportunities are made available to all eligible persons on an equal opportunity basis and eliminates racial and ethnic segregation, illegal physical and other barriers to persons with disabilities, and other discriminatory practices in housing and housing-related services.

Below is a brief overview of the fair housing and nondiscrimination requirements. Detailed information related to the civil rights regulations is available on the U.S. Department of Housing and Urban Development's (HUD's) Fair Housing and Equal Opportunity web page located at <http://www.hud.gov/offices/fheo/index.cfm>.

**Affirmatively Furthering Fair Housing**

Grantees will be required to certify in their grant agreement to affirmatively further fair housing and are required to carry out the responsibilities of the certification.

**Affirmative Fair Housing Marketing**

Affirmative Fair Housing Marketing (AFHM) plans and affirmative marketing procedures are required to be included in applications for state and/or federal housing funds administered by the Ohio Department of Development (ODOD) and the Ohio Housing Finance Agency. All recipients and subrecipients of funds for projects consisting of five or more rehabilitated or newly constructed units must comply with the affirmative marketing requirements. Affirmative marketing procedures must continue throughout the period of affordability. For single-family homeownership dwellings, the plan remains in effect until the dwelling units are sold.

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The AFHM Plan is a marketing strategy designed to attract buyers and renters of all majority and minority groups, regardless of sex, handicap and familial status to assisted rental units and sales dwellings which are being marketed. There are four components of the AFHM Plan: (1) Targeting: Identify the segments of the eligible population which are least likely to apply for housing without special outreach efforts; (2) Outreach: Outline an outreach program which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total population; (3) Indicators: State the indicators to be used to measure the success of the marketing program; and (4) Staff Training: Demonstrate the capacity to provide training and information on fair housing laws and objectives to sales or rental staff. Grantees must make a good faith effort to conduct outreach. This requires recorded activities and documented outreach to those individuals identified as least likely to apply for the housing. For more information on ODOD's affirmative marketing requirements, visit: <http://www.odod.state.oh.us/cdd/ohcp/AFHMGUIDE.pdf>. HUD's Affirmative Marketing requirements are included in 24 CFR Part 200, Subpart M.

### **Analysis of Impediments**

HUD and ODOD agree that the obligation to affirmatively further fair housing includes requiring grantees to: (1) Conduct an analysis to identify impediments to fair housing choice (the AI) within the jurisdiction; (2) Take appropriate actions to overcome the effects of any impediments identified through the analysis; and (3) Maintain records reflecting the analysis and actions taken in this regard. The AI involves an assessment of how laws, regulations, policies, and procedures affect the location, availability, and accessibility of housing. It also assesses how conditions, both private and public, affect fair housing choice.

Once the jurisdiction completes the AI, it must report on its implementation by summarizing the impediments identified and describing the actions taken to overcome the effects of the impediments identified through the Annual Performance Evaluation Report. Each jurisdiction should maintain its AI and **update** the AI annually where necessary. In addition, grantees should review their current AI to fair housing choice to determine whether an update is necessary at this time because of current market conditions or other factors.

HUD regulations allow the use of Community Development Block Grant (CDBG) funds to provide fair housing services as a program administration cost. Eligible fair housing costs designed to support the "affirmatively furthering fair housing" efforts include: making all persons aware of the range of housing options available; fair housing enforcement, education and outreach; working to avoid undue concentrations of assisted persons in areas with many low- and moderate-income persons; and other appropriate activities.

### **Accessibility Requirements**

In addition to the Fair Housing Act, grantees must comply with obligations under the regulations which provide additional protections to persons with disabilities, including the Rehabilitation Act of 1973 and the ADA.

These federal laws require housing providers, state and local governments and all recipients of federal financial assistance to ensure accessibility for persons with disabilities. Public facilities and buildings, as well as all projects receiving federal financial assistance, must be designed, constructed, and altered to be fully accessible to people with mobility and sensory impairments.

Recipients of HUD funding include, but are not limited to, public housing authorities, CDBG Program grantees, and private organizations receiving HUD grant monies. Recipients must ensure full compliance with these federal laws and must also ensure compliance by all subrecipients to whom funds are distributed.

HUD provides free training and technical assistance on the Fair Housing Act's design and construction requirements through its Fair Housing Accessibility FIRST program. ADA regulations and technical assistance materials are available at <http://www.ada.gov/publicat.htm>. More information on the accessibility obligations is located at <http://www.hud.gov/offices/fheo/disabilities/index.cfm>.

Additionally, grantees must comply with Office of Housing and Community Partnerships (OHCP)-Policy #03-01: Housing Construction Activities Funded with OHCP-Administered Funds and Subject to Section 504. This policy clarifies the provisions of *24 Code of Federal Regulations (CFR) Part 8 --Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the U.S. Department of Housing and Urban Development* when implementing a single site or scattered site housing activity with OHCP-administered funds. The policy is available at <http://development.ohio.gov/cdd/ohcp/PolicyNotices.htm>

### **Section 3**

Grantees must certify compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures and certain HUD-funded Housing and Community Development projects that complete housing rehabilitation; housing construction, and other public construction. The threshold for covered contracts and subcontracts for OHCP grantees is \$10,000. HUD guidance on Section 3 is available at <http://www.hud.gov/offices/fheo/section3/section3.cfm>.

### **Title VI of the Civil Rights Act of 1964**

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of race, color or national origin in programs that receive federal financial assistance.

In certain situations, failure to ensure that persons who have Limited English Proficiency (LEP) can effectively participate in or benefit from federally-assisted programs may violate the Title VI prohibition against national origin discrimination. LEP persons are those who, as a result of their national origin, do not speak English as their primary language and who have a limited ability to speak, write, read or understand English. Recipients of federal funds are required to make reasonable efforts to provide assistance to ensure meaningful access for LEP persons in the participation of programs and activities. Grantees should review HUD's LEP Guidance on how to provide assistance to LEP persons located at the following web link: <http://www/hud.gov/offices/fheo/promotingfh/lep.cfm>.

### **Collecting and Maintaining Racial and Ethnic Data**

HUD Title VI regulations (24 CFR 1) requires recipients of federal financial assistance to maintain information on the race, ethnicity, gender and disability status of persons who are applicants for, participant in, or beneficiaries of assisted programs including CDBG and NSP. This information should be included on all performance reports submitted to OHCP.

For more information contact: Joyce Hill, OHCP Civil Rights Specialist, by telephone at (614) 466-6831 or by e-mail at [Joyce.Hill@development.ohio.gov](mailto:Joyce.Hill@development.ohio.gov).

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