Tennessee Housing Development Agency

EQUAL HOUSING OPPORTUNITY

Non-Discrimination in Federally Funded Activities

FOR SUB-RECIPIENTS OF THDA'S FEDERAL FUNDING

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Purpose of Non-Discrimination Laws

To protect certain classes of people who have historically faced discrimination in:

- The sale, rental, advertising and financing of dwellings and in other housing-related activities
- Programs and activities receiving **Federal financial assistance**

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Applicable Civil Rights Laws

Sub-recipients/grantees of THDA's Federal financial assistance are subject to a variety of civil rights laws and regulations. This presentation focuses on:

- ✓ Title VI of the Civil Rights Act of 1964 (24 CFR Part 1)
- ✓ Section 504 of the Rehabilitation Act (24 CFR Part 8)
- ✓ Executive Order 13166 & HUD's Final Limited English Proficiency Guidance
- ✓ Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)

The Fair Housing Act is covered in more detail in a separate presentation.

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Sub-recipients of THDA's Federal Financial Assistance

THDA's Federally funded programs with Sub-recipients:

- ✓ HOME Investment (HOME)
- ✓ National Housing Trust Fund (NHTF)
- ✓ Emergency Solutions Grant (ESG)
- ✓ Low Income Energy Assistance (LIHEAP)
- ✓ Weatherization Assistance (WAP)
- ✓ Hardest Hit Fund (HHF) Downpayment Assistance, Blight Elimination (BEP) & Keep My Tennessee Home (KMTH)
- ✓ Principal Reduction Recast Program with Lien Extinguishment (PRRPLE)
- ✓ Appalachian Renovation Loan (ARLP)

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Title VI of the Civil Rights Act of 1964

Prohibits discrimination in the following activities on the basis of race, color, and national origin in programs with Federal financial assistance.

- Denying a person any program services, financial aid or benefits;
- Providing a different service, financial aid or benefit or providing them in a different manner than they are provided to others;
- Segregating or treating an individual separately in any matter related to receiving a service, aid or benefit.

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Limited English Proficiency (LEP) & Non-Discrimination

Limited English Proficiency (LEP) individuals do not speak English as their primary language; and/or have a limited ability to read, speak, write, or understand English.

- In certain situations, failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.
- The Fair Housing Act also prohibits restricting access to housing based on LEP; use of LEP as a pretext for unequal treatment based on race/national origin & selective application of a language-related policy.

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LEP & Meaningful Access

Recipients (& sub-recipients) of Federal funds are required to avoid discrimination on the basis of national origin by taking reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

- Meaningful access may include providing language assistance, including oral interpretation and potentially written translation.
- Agencies should budget for language services.

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LEP Four Factor Analysis

HUD recommends a **Four Factor Analysis** to determine the actions necessary to ensure meaningful access to LEP persons.

1. Number/proportion of LEP persons in eligible or target population
   - 5% (or > 1,000 persons) of the eligible population is HUD's safe harbor for written translation of vital documents.
   - THDA has completed a county level analysis using Census data that may be accessed by sub-recipients.
2. Frequency of encounters with LEP individuals
   - Agencies should develop a protocol for tracking LEP encounters.
   - The more frequent the contact with a particular language group, the more likely that enhanced language services are needed.

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LEP Four Factor Analysis

3. The nature and importance of the program, activity or service provided by the recipient to its beneficiaries

4. The resources available to the grantee/recipient and the costs of interpretation/translation services.
   - Agencies with smaller budgets/less resources are not expected to offer the same level of language assistance as larger agencies with greater resources.

For More Information: *www.LEP.gov; Executive Order 13166 & HUD's Final Limited English Proficiency Guidance*

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Language Access Plan

Where the Census shows more than 5% (>1,000) of the eligible population in the agency's geographic service area speak a language other than English "less than very well," a written Language Access Plan should be considered.

- The most common non-English languages spoken in Tennessee are Spanish, Arabic, Asian (Chinese, Korean and Vietnamese) and African languages. Almost 4% of Tennesseans speak Spanish.
- Some counties have far more than 5% (or 1,000 persons) of the population who speak a language other than English, particularly Spanish.

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Language Access Plan Components

- When & how Oral Interpretation services will be provided to applicants & beneficiaries.
  - Except in emergencies, family members or friends should not be asked to provide interpretation.
  - THDA contracts with a "language service," which includes a language identification guide to assist staff with identifying the language spoken, and a phone interpretation service.
- If Written Translation of "vital documents" in languages other than English will be provided.
  - Consider % of eligible population with LEP; cost & resources available (Four Factor Analysis)
  - HUD has already translated some "vital" program documents into languages other than English that are readily accessible at no cost.

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Obligation to Ensure Meaningful Access

If the Four Factor Analysis does not support a written plan for services, it does not remove the obligation to ensure meaningful access by LEP persons to programs/activities.

- Taglines on websites, public notices & vital documents explaining how to receive free language services may help ensure meaningful access when the sub-recipient agency has a plan for providing individual language services (interpretation or translation). *For example:*

English: Language assistance services are available to you or someone you're helping, free of charge.
Spanish: Los servicios gratuitos de asistencia en idiomas están disponibles para usted o para otra persona que usted está ayudando.
Vietnamese: Dịch vụ hỗ trợ ngôn ngữ được cung cấp miễn phí cho quý vị hoặc người mà quý vị đang trợ giúp.

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Section 504 of the Rehabilitation Act of 1973

Section 504 -no qualified individual with a disability should, only by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Compliance Areas:

(1) Program Accessiblity; (2) Effective Communication;

(3) Reasonable Accommodation; (4) Physical Accessiblity

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Section 504: Program Accessiblity

A program or activity, when viewed in its entirety, must be readily accessible to and usable by persons with disabilities.

- Section 504 does not require that a person with a disability be accepted without regard to eligibility requirements.
- Section 504 requires that a person with a disability be evaluated using the same objective criteria that are applied to persons without disabilities, provided such criteria are non-discriminatory and subject to reasonable accommodations and the provision of appropriate auxiliary aids and services necessary to ensure effective communication.

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Section 504: Reasonable Accommodation

Sub-recipients of Federal funds must ensure that persons with disabilities are able to successfully use or participate in a program, service or activity.

To ensure equal access, a reasonable accommodation may be necessary, which is an adaptation or modification to a policy, program, service, or workplace that allows a person with a disability to use or participate fully in a program. An accommodation may include:

- Adjustments or modifications to buildings, facilities, dwellings;
- Modification of a policy or service

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Section 504: Reasonable Accommodation

Reasonable modifications to a dwelling unit examples:

- Grab bars, ramp, roll-in shower, widening of doorway, flashing doorbells, handrails.

Reasonable modification of a policy or service example:

- Allowing a service or emotional support animal to live with or accompany a disabled individual where “pets” or animals are not usually allowed.

Recipients (& sub-recipients) of Federal funds must pay for a reasonable accommodation needed by a disabled individual (e.g., a ramp to a unit) unless providing that accommodation would cause an undue financial and administrative burden or a fundamental alteration of the program.

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Section 504: Effective Communication

Sub-recipients of Federal funds must ensure effective communication that is accessible to persons with disabilities.

- Auxiliary aids and services may be necessary:
  - Interpreters, transcription or captioning services, accessible electronic materials & websites, large print, Braille, & other alternate format materials
  - Not required to provide individually prescribed devices or personalized devices
- Actions that would result in a fundamental alteration in the nature of the program or activity or undue administrative and financial burden are not required.

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Section 504: Physical Accessibility

Section 504 requires accessibility for new construction and substantial alteration of housing in Federally funded programs.

- Alterations are substantial when a project has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility.

Section 504 design requirements are satisfied when the development meets the technical criteria in the Uniform Federal Accessibility Standards or HUD's Deeming Notice.

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Section 504: Physical Accessibility

An accessible dwelling unit is located on an accessible route and can be approached, entered, and used by individuals with physical disabilities.

- A minimum of 5% of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities
- An additional 2% of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.
- Housing provided to persons with disabilities also should not be separate nor unnecessarily segregated from housing provided to individuals without disabilities (i.e. “integrated settings”).

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Section 504: Placement in Accessible Units

Suitable efforts must be made to assure that information on the availability of accessible units reaches otherwise qualified individuals with disabilities who need the features of those units.

- Offer accessible units to qualified individuals with disabilities before allowing a non-disabled household to occupy the unit.
- Applicants without disabilities on a waiting list for a property may be skipped to offer the unit to the next qualified individual who requires the unit's accessibility features.
- Include clauses in leases requiring a non-disabled family who does not need accessible features to agree to move to a non-accessible unit as soon as one becomes available that otherwise meets the family's needs.

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Other Physical Accessibility Standards

Most units built with Federal financial assistance are covered by multiple federal accessibility laws.

- Fair Housing Act (covered in separate module)
- Title II of the Americans with Disabilities Act
- Architectural Barriers Act
- HUD's implementation Regulations (24 CFR Parts 8 and 100)

Compliance with all applicable accessibility laws is necessary.

Where multiple non-discrimination laws apply, the standard that provides the greatest accessibility must be met.

For more information on accessibility standards, visit the U.S. Access Board website: *https://www.access-board.gov/*

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Other Statutes and Requirements

Section 3 of the Housing and Urban Development Act of 1968

- Applies to recipients of more than $200,000 from housing and community development programs.
- Requires that employment and other economic opportunities arising in connection with housing rehab, construction or other public construction projects shall be given to low- and very low-income persons (residing in the service area), to greatest extent feasible

Additional Information on Section 3 requirements may be found here: *https://www.hud.gov/sites/documents/11SECFAQS.PDF*

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THDA Sub-Recipient Compliance Requirements

Recipients of Federal funds and their sub-recipients must implement a system of procedures and actions to administer federally funded activities without discriminating against protected classes. The following activities help ensure non-discrimination in the provision of services & benefits:

1. Appoint a Non-Discrimination Coordinator
   - This may be an existing staff member who oversees Title VI, Section 504 & Fair Housing activities & reporting. FT position is not required.
2. Ensure Staff & Volunteers receive Annual Non-discrimination Training
   - THDA online training may be used for this purpose
   - Other training from attorney or Fair Housing Professional

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THDA Sub-Recipient Compliance Requirements

3. Develop a Non-discrimination Policy Statement & post in a public space (including agency website).

   THDA's statement: *No staff person or partner of THDA shall engage in discriminatory practices. A discriminatory practice occurs anytime a recipient of or applicant for services is denied services or has some other negative action taken toward that recipient or applicant because of membership in a protected class. Protected classes include: Race, Color, National Origin, Religion/Creed, Sex/Gender, Disability, Familial Status.*

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THDA Sub-Recipient Compliance Requirements

4. Ensure Nondiscrimination in the Award of Contracts
   - Include Non-discrimination Assurances in Contracts (Grantees of HUD programs must use the HUD assurance language)
   - Include Minority and Women Owned Businesses in outreach
   - Use the State of Tennessee, Department of General Services, Diversity Enterprise Business Directory
   - Track contractors minority and women's business enterprise status

5. Ensure Non-discrimination in the Public Participation Process & in all Advertisements
   - Include minorities and women on planning boards and commissions to ensure equal access
   - Be mindful of conducting outreach in traditional & minority publications and use Fair Housing logos

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THDA Sub-Recipient Compliance Requirements

6. Engage in & Track efforts to Affirmatively Further Fair Housing
7. Develop procedures for providing meaningful access to Limited English Proficient (LEP) Persons
8. Develop a reasonable accommodation process that ensures meaningful access to individuals with disabilities.
9. Follow all applicable Design Standards for Physical Accessibility in New Construction & Rehab activities.

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THDA Sub-Recipient Title VI Compliance Requirements

10. Develop written discrimination complaint procedures.
    - Notify applicants & beneficiaries of their right to file a complaint with the sub-recipient, THDA, the state or federal jurisdictional agency. Include contact information for each agency in written procedures.
    - Maintain a discrimination complaint log with the complainant name & address, program or service, alleged discriminatory act(s), date of alleged discriminatory act(s), whether the agency determined the alleged discriminatory act(s) occurred, resolution (closed no action or action taken).
    - Submit discrimination complaint information to THDA annually.

Sub-recipients may access sample discrimination complaint procedures & forms on THDA's website.

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THDA Sub-Recipient Compliance Requirements

11. Submit a Non-Discrimination in Service Self Survey Form to THDA annually by June 30 to report:
    - Title VI/Fair Housing/Section 504 Coordinator information
    - Non-Discrimination Statement/Policies
    - Non-Discrimination Training Practices
    - Public Notice Practices
    - Beneficiary Demographics
    - Minority Representation on Boards (race, ethnicity and gender), include explanation of the process to recruit & select Board Members
    - Actions to Affirmatively Further Fair Housing
    - Discrimination Complaint Process with Log
    - Limited English Proficiency Policies & Practices

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Responsible Agency &Complaints

U.S. Department of Housing & Urban Development is the federal agency responsible for enforcing the Fair Housing Act.

- Federal statute of limitations for filing a Fair Housing complaint is 365 days.

Tennessee Human Rights Commission (THRC) is the state jurisdictional agency who investigates complaints of discrimination under the TN Human Rights Act.

- Statute of limitations for filing a complaint with the THRC is 180 days.
- If the complaint is beyond the 180 days but within 365 days, THRC will intake and forward the complaint to the appropriate HUD office for investigation.

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Non-Compliance & Sanctions

Non-Compliance is the failure or refusal to comply with applicable Civil Rights Laws, and implementing departmental regulations.

Sanctions for Non-Compliance may include:

- Withholding of payments (federal funds) under the Contract or Award until the non-compliance is corrected;
- Cancellation, termination or suspension of the contract or award in whole or part.

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For More Information….

Visit these websites:

HUD Fair Housing & Equal Opportunity
https://www.hud.gov/program_offices/fair_housing_equal_opp

Tennessee Human Rights Commission
https://www.tn.gov/humanrights/

Tennessee Fair Housing Council
http://www.tennfairhousing.org/

Tennessee Housing Development Agency
https://thda.org/about-thda/fair-housing-title-vi-compliance

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For More Information….

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