Tennessee Housing Development Agency

Civil Rights & Non-Discrimination

THDA SUB- RECIPIENT/ GRANTEE COMPLIANCE REQUIREMENTS

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Purpose of Training

- To ensure THDA sub-recipients recognize discrimination; how to report and assist should discrimination be alleged to occur in THDA funded programs and activities.
- To be certain that all THDA sub-recipients are aware of the provisions of Key Civil Rights Laws, departmental enabling regulations, THDA contract assurances & what it takes to comply.

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Civil Rights

"The right to receive equal treatment and to be free from unfair treatment or "discrimination" based on certain legally-protected characteristics."

Image from equalrightscenter.org

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Key Civil Rights Laws

- **Title VI** of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d)
- **Title VIII** of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601-3631)- *Fair Housing Act*
- Executive Order 13166- *Limited English Proficiency*
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) - *Disability*
- Age Discrimination Act of 1975 (42 U.S.C. 6102)
- Civil Rights Restoration Act of 1987
- TN Human Rights & Disability Acts (TN Code § 4-21-101)- *"substantially equivalent" to the Fair Housing Act*

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Title VI

No person shall… on the basis of race, color or national origin be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Civil Rights Act of 1964

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Title VIII

Also known as the Fair Housing Act- prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, national origin, religion, disability and sex*.

Civil Rights Act of 1968

EQUAL HOUSING OPPORTUNITY

*EO 13988, issued in 2021, clarifies that sex protections include gender identity and sexual orientation.

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Enabling Regulations

Housing & Urban Development (HUD)
- 24 CFR § 1 -Non-discrimination in Federally Assisted Programs, Effectuation of Title VI…
- 24 CFR § 100 – Discriminatory Conduct, Fair Housing Act

Health & Human Services (DHHS)
- 45 CFR § 80 – Nondiscrimination under Programs Receiving Federal Financial Assistance, Effectuation of Title VI…

Energy (DOE)
- 10 CFR § 1040- Nondiscrimination in Federal Programs or Activities
- 10 CFR § 1041 – Enforcement of Nondiscrimination on the Basis of Handicap….

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THDA Contract Assurance

Every THDA grantee & contractor signs a contract with the following assurance:

"No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the Contractor on the grounds of race, color, national origin, religion, sex, disability, age, or any other classification protected by Federal, State or statutory law."

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Limited English Proficiency (LEP)

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

Title VI, the Fair Housing Act, Executive Order 13166 require equal access for LEP individuals based upon national origin protections.

Recipients (& sub-recipients) of Federal funds are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

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Language Access

- Meaningful access may include providing language assistance, including oral interpretation and written translation of vital documents.
- To determine what is reasonable, agencies must understand the language needs of their eligible service population (a four-factor analysis is recommended).

For More Information, view THDA's Language Access online training (www.thda.org) or visit www.LEP.gov & HUD FHEO website- LEP guidance

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Disability Rights

Discrimination based on disability status is prohibited by:

- ✓ Section 504 -against otherwise qualified individuals in any program or activity that is Federally funded.
- ✓ The Fair Housing Act- against otherwise qualified individuals during public & private housing activities, regardless of whether Federal funding is involved.
- ✓ The Americans with Disabilities Act -against individuals with disabilities in all public and private places that are open to the general public.

Note: Within housing developments, public accommodation areas include any areas that are open to the general public, such as leasing offices or community rooms.

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Disability Rights

All three federal civil rights laws define a person with a disability as one who:

- *Has a physical or mental impairment that substantially limits one or more major life activities*
- *Has a record of such impairment*
- *Is regarded as having such an impairment*

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Disability Rights

To ensure non-discrimination & equal access (under both Section 504 & Fair Housing), programs/activities must be readily accessible to and usable by persons with disabilities.

- Does not require that a person with a disability be accepted or assisted without regard to initial & ongoing eligibility requirements.
- Does require using the same objective criteria for persons with and without a disability, provided such criteria are nondiscriminatory and subject to reasonable accommodation & effective communication (i.e. auxiliary aids).

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Reasonable Accommo-dation

An adaptation or modification to a policy, program or service that allows a person with a disability to equally use or participate fully in a program/activity.

Examples: Allowing service/assistive animals in an area or housing unit where "pets" are not allowed; allowing a payment at a time other than the first of a month

- 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.
- Do not require support/verify docs for apparent disabilities; may require documentation for non-apparent disabilities.
- Recipients of Federal funds must pay for the accommodation unless it would cause an undue financial and administrative burden or fundamental alteration in the nature of the program.

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Effective Communi-cation

To ensure effective communication with 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

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Federal Guidance- Section 504

HUD Section 504 FAQ: https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq

DHHS Section 504 Fact Sheet: https://www.hhs.gov/sites/default/files/knowyourrights504adafactsheet.pdf

Joint Statement HUD/DOJ on Reasonable Accommodation under FHA
https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

HUD Guidance on Assistance Animals
https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf

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Sub-recipient Obligations

Recipients of Federal funds and their sub-recipients must implement a system of procedures and actions to ensure non-discrimination in the delivery of programs.

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Sub-recipient Obligations

1. Appoint an individual to coordinate non-discrimination activities (does not need to be FT position but should attend annual training & be subject matter expert).
2. Ensure all staff receive non-discrimination training & maintain documentation of training dates/materials.
   - Title VI/non-discrimination coordinator must attend annual THDA training.
   - New employees should receive training upon hire; all staff should attend annual training.

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Sub-recipient Obligations

3. Notify the public of the entities' commitment to non-discrimination & the individual's rights to include:
   - How to contact the employee who coordinates the agency's non-discrimination activities
   - The right to file a complaint with the sub-recipient, THDA, state & federal jurisdictional agency (with contact information).
   - Housing agencies should post the HUD Fair Housing Poster in prominent locations (office, website, etc).
4. Adopt written grievance/complaint procedures:
   - Log discrimination complaints: Date, complainant name & contact info, program or service, alleged discriminatory act(s), actions taken by agency, resolution.
   - Report each complaint in a THDA funded program to THDA at the time it is received.

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Sub-recipient Obligations

5. Ensure Nondiscrimination in the Award of Contracts
   - Include Non-discrimination Assurances in Contracts (Grantees of HUD programs must use the HUD assurance)
   - Outreach to Minority and Women Owned Businesses (use State of Tennessee, Diversity Enterprise Business Directory)
   - Track contractors' MWBE enterprise status where required.
6. Ensure Non-discrimination in the Public Participation Process & in all Advertisements
   - Planning boards and commissions should mirror the demographics of service area.
   - Be mindful of conducting outreach/placing ads in traditional & publications targeted to minority/ underserved populations (housing programs must use Equal Housing Opportunity logos).

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Sub-recipient Obligations

7. Ensure meaningful access to Limited English Proficient (LEP) Persons
   - Be familiar with the current LEP population & languages spoken in your service area
   - Establish written procedures for oral interpretation & document translation
   - Where more than 5% of service population is LEP- affirmative outreach/marketing is likely needed (particularly in HUD programs)

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Sub-recipient Obligations

8. Ensure meaningful access to individuals with disabilities through considering reasonable accommodation, modification/alterations & provision of auxiliary aids.
   - Notify applicants & participants of how to request an accommodation, modification or auxiliary aid.
   - Provide accommodations/modifications/auxiliary aids where determined reasonable.
   - Designate a responsible employee to coordinate efforts to comply with Fair Housing, ADA & Section 504 (mandatory for Fed. Funded organizations with 15+ employees)
   - Follow all applicable Design Standards for Physical Accessibility in New Construction & Rehab housing activities (discussed in greater detail later).

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Sub-recipient Obligations

9. Submit a timely Non-Discrimination in Services Self Survey to THDA each year by no later than July 31.
   - Provides information that allows THDA to report Title VI & other non-discrimination activities to jurisdictional agencies (TN Human Rights Commission & HUD).
   - All grantees must submit to be in compliance & remain in good standing for future grant rounds.

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Title VI Compliance

Under TN code, state agencies receiving Federal funds must complete a Title VI Compliance Plan each year: https://thda.org/about-thda/fair-housing-know-your-rights/title-vi-compliance.

Information on sub-recipient non-discrimination activities & compliance must be included in THDA's Title VI Plan.

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Jurisdictional Agencies & Complaints

HUD Fair Housing Enforcement Office (FHEO) enforces the Fair Housing Act
- Statute of limitations for filing complaint is 365 days.

DHHS Office of Civil Rights (OCR) enforces non-discrimination in DHHS programs (LIHEAP).

DOE Office of Civil Rights enforces non-discrimination in DOE programs (WAP).

Tennessee Human Rights Commission (THRC) enforces the TN Human Rights Act & is a HUD FHAP.
- Statute of limitations for filing complaint is 180 days.
- If a housing-related complaint is >180 days but within 365 days, THRC will forward the complaint to HUD FHEO.

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Non-Compliance & Sanctions

Failure or refusal to comply with applicable Civil Rights Laws, and non-discrimination provisions/regulations may result in THDA:

- Withholding payments under the contract or award until the non-compliance is corrected;
- Cancellation, termination or suspension of the contract or award in whole or part;
- Future temporary or permanent disbarment.

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Online Resources

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

DHHS Office of Civil Rights
https://www.hhs.gov/civil-rights/for-individuals/special-topics/needy-families/civil-rights-requirements/index.html

DOE Office of Civil Rights
https://www.energy.gov/diversity/civil-rights

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

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https://thda.org/about-thda/fair-housing-title-vi-compliance

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PRESENTATION CONTINUES for
Grantees with HUD Funding Only

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Fair Housing *Covered Entities*

The Fair Housing Act covers most housing, both public & privately funded. In *very limited circumstances*, the FHA exempts a dwelling.

Visit the HUD Website: *https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview or seek guidance from a legal professional to determine if a property qualifies for an exemption.*

EQUAL HOUSING OPPORTUNITY

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Fair Housing *Prohibited Activities*

Two types of conduct are prohibited (based on membership in a protected class):

1. Differential Treatment:
   - Refusing to rent or sell to someone
   - Having different terms or conditions
   - "Steering" people toward or away from housing
   - Advertising in a discriminatory way or otherwise making discriminatory statements.
   - Refusing to make reasonable accommodations or to make reasonable modifications for an individual with a disability.
2. Disparate Impact (or differential effect):
   Neutral rule which has a greater impact on people in the protected classes.

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Fair Housing & Accessibility

Most units built with Federal funding are covered by multiple federal accessibility laws. Compliance with all applicable laws is necessary.

- ✓ Section 504
- ✓ Fair Housing Act
- ✓ Title II of the Americans with Disabilities Act
- ✓ HUD Regulations (24 CFR Parts 8 and 100)

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Fair Housing & Accessibility

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

- Uniform Federal Accessibility Standards (UFAS)- www.access-board.gov/aba/ufas.html or equivalent/higher standard

For more information on specific requirements: https://www.hud.gov/program_offices/fair_housing_equal_opp/physical_accessibility

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Reasonable Modification

A structural change made to a dwelling, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Ex: Ramp, grab bar, roll-in shower, widening of doorway, flashing doorbells, handrails.

- Housing provider must approve before modification is made.
- Housing provider cannot deny the request if the requirements for a reasonable modification are met and the relevant documents provided by disabled occupant.
- If the property was developed, even in part, with certain types of federal funds, the housing provider must pay for the modifications unless doing so would impose an undue financial or administrative burden (under Section 504).

Joint Statement HUD/DOJ on Reasonable Modifications under FHA: https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf

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Additional Considerations- Fair Housing

Domestic violence not specifically a protected class under the Fair Housing Act, but the FHA has repeatedly been used to protect survivors of domestic violence.

Violence Against Women Reauthorization Act of 2013 significantly expanded housing protections to victims of domestic violence, dating violence, sexual assault, and stalking across HUD's core housing and homelessness programs

For more information, see HUD's guidance: https://www.hud.gov/sites/documents/17-08PIHN.PDF

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Additional Considerations- Fair Housing

Ex Offenders & Disparate Impact

Due to widespread racial/ethnic disparities in the U.S. criminal justice system, criminal history-based housing restrictions are likely to disproportionately burden Black & Hispanic HH.

Denial of housing based on criminal record should be necessary to serve a "substantial, legitimate, non-discriminatory interest."

- Blanket prohibitions for any prior conviction &/or arrest typically will not meet this standard.
- Any policy should consider the nature & severity of an individual's conviction; ongoing risk to resident safety/property & the amount of time that has passed since the criminal conduct occurred.

See HUD's guidance on FHA & the use of Criminal Records: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

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Affirmatively Furthering Fair Housing

Fair Housing Act requires all federally funded housing programs to be administered in a manner that affirmatively furthers fair housing.

- HOME, NHTF and ESG grantees must engage in meaningful, proactive actions to address disparities in housing access and opportunity… so individuals of similar income levels in the same housing market area have a like range of housing choices regardless of their race, color, religion, sex, disability, familial status or national origin.

EQUAL HOUSING OPPORTUNITY

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Affirmatively Furthering Fair Housing

All HUD grantees should:

- ✓ Instruct employees and agents about the organization's policy of nondiscrimination and fair housing.
- ✓ Notify applicants & beneficiaries of the rights and remedies available under applicable federal, state, and local fair housing and civil rights laws.
  - Prominently display HUD's Fair Housing Poster in visible locations, including the agency's website.
  - Distribute HUD booklet, Fair Housing and Equal Opportunity for All.

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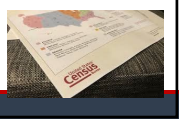
Affirmatively Furthering Fair Housing

All HUD grantees should:

- ✓ Determine the demographics of the eligible population within the service area & determine those least likely to apply for the program/activity.
  - U.S. Census American Community Survey, 5 year Tables
  - HUD Comprehensive Housing Affordability Survey
  - Review statistics for existing service populations (for entities with existing properties or service programs) & compare with the eligible service population data from Census.



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Affirmatively Furthering Fair Housing

All HUD grantees should:

- ✓ Affirmatively market housing and supportive services to eligible persons, regardless of protected class, who are least likely to apply without special outreach & maintain records of affirmative outreach.
  - Include HUD EHO logo in printed outreach materials/ads.
  - Identify specific media and community contacts that reach the groups designated as least likely to apply (i.e. minority or women's orgs, disability advocates, or other community based orgs, groups or individuals well known in the community that connect with the identified group(s)).
  - Consider translating marketing materials; utilizing media and partnering with organizations that serve LEP populations.

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Affirmatively Furthering Fair Housing

All HUD grantees should:

- ✓ Routinely self assess service data & record the results of affirmative marketing efforts
  - Are beneficiaries representative of the eligible population in service area; have you reached the populations you identified as least likely to apply; are there underserved populations?
- ✓ Take corrective action where needed to reach underserved populations or those least likely to apply
  - Create a method of annually assessing outreach success among those least likely to apply.
  - If data analysis shows that certain groups are under-represented, determine the reasons causing the under-representation and take actions to address them.

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Affirmatively Furthering Fair Housing

- ✓ All HUD grantees should inform THDA if grantee encounters a condition or action that impedes fair housing choice for current or prospective program participants.
- ✓ HOME & NHTF grantees are required to develop a written Affirmative Fair Housing Marketing Plan for single and multifamily housing with 5 or more units.
  - Plan must be updated at least every 5 years
  - HUD Form 935-2A

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Affirmatively Furthering Fair Housing

Executive Order 13985 (2021) - "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government"

- As a result, HUD created a Department-wide Equity Action Plan (April 2022)-*https://www.hud.gov/equity* -includes actions to reduce the racial homeownership gap and center equity in the delivery of services to people experiencing homelessness.

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