

(Programs Administered by FHEO)

The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) administers and enforces major legislation that ensures equal access to housing, guarantees equal opportunity in all HUD programs and prohibits, to a limited extent, discrimination in employment with respect to HUD programs.

Basic components of the Office of Fair Housing and Equal Opportunity are as follows:

The FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, which:

- expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status (presence of child under age of 18, and pregnant women);
- established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination; and
- revised and expanded Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts.

In connection with prohibitions on discrimination against individuals with disabilities, the Act contains design and construction accessibility provisions for certain new multifamily dwellings developed for first occupancy on or after March 13, 1991.

HUD has had a lead role in the administering the Fair Housing Act since its adoption in 1968. The 1988 amendments, however, have greatly increased the Department's enforcement role. First, the newly protected

classes have proven significant sources of new complaints. Second, HUD's expanded enforcement role took the Department beyond investigation and conciliation into the mandatory enforcement area. Complaints filed with HUD are investigated by the Office of Fair Housing and Equal Opportunity (FHEO). If the complaint is not successfully conciliated then FHEO determines whether reasonable cause exists to believe that a discriminatory housing practice has occurred. Where reasonable cause is found, the parties to the complaint are notified by HUD's issuance of a Determination, as well as a Charge of Discrimination, and a hearing is scheduled before a HUD administrative law judge. Either party -- complainant or respondent -- may cause the HUD-scheduled administrative proceeding to be terminated by electing instead to have the matter litigated in Federal court. Whenever a party has so elected, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of aggrieved persons, and the matter proceeds as a civil action. Either form of action -- the ALJ proceeding or the civil action in Federal district court -- is subject to review in the U. S. Court of Appeals.

Significant Recent Changes

1. In addition to expanding the number of protected classes and creating new enforcement procedures, the 1988 amendments to the Fair Housing Act also created an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualified as housing for persons age 55 or older. The Housing for Older Persons Act of 1995 (HOPA) makes several changes to the 55 and older exemption. First, it eliminates the requirement that 55 and older housing have "significant facilities and services" designed for the elderly. Second, HOPA establishes a "good faith reliance" immunity from damages for persons who in good faith believe that the 55 and older exemption applies to a particular property, if they do not actually know that the property is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the exemption.

HOPA retains the requirement that housing must have one person who is 55 years of age or older living in at least 80% of its occupied units. It also still requires that housing

publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older (rather than housing for adults or for singles, for example).

An exempt property will not violate the Fair Housing Act if it excludes families with children, but it does not have to do so. Of course, the property must meet the Act's requirements that at least 80% of its occupied units have at least one occupant who is 55 or older, and that it publish and follow policies and procedures which demonstrate an intent to be 55 and older housing.

On April 2, 1999, HUD published a final regulation implementing the HOPA. The **HOPA final regulation** became effective on May 3, 1999.

2. Changes were made to enhance law enforcement including amendments to criminal penalties in section 901 of the Civil Rights Act of 1968 for violations of the Fair Housing Act in Title VIII. See Section 320103(e) of the Violent Crime Control and Law Enforcement Act of 1994. P.L. 103-322 (9/13/94).

3. Changes were made to provide incentives for self-testing by lenders for discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. See Title II, subtitle D of the Omnibus Consolidated Appropriations Act, 1997, P.L. 104- 208 (9/30/96).

Legal Authority: Fair Housing Act, 42 U.S.C. 3601, et seq; 24 CFR Parts 100, 103, and 104.

Program Status: Fair Housing Enforcement (Title VIII), excludes grant programs, is covered by Salaries and Expense Account appropriations.

FAIR HOUSING INITIATIVES PROGRAM (FHIP)

The Fair Housing Initiatives Program (FHIP) was established by the HCD Act of 1987 and was amended by the HCD Act of 1992. FHIP provides funding to public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

Through four distinct categories of funding, FHIP supports projects and activities designed to enhance compliance with the Act and substantially equivalent State and local

laws prohibiting housing discrimination. These activities include programs of enforcement, voluntary compliance, and education and outreach. The program provides a coordinated approach to:

1. further the purposes of the Fair Housing Act;
2. guarantee the rights of all Americans to seek housing in an open market free of discrimination; and
3. inform the American citizenry of its rights and obligations under the Fair Housing Act.

Legal Authority: Section 561 of the HCD Act of 1987, (42 U.S.C. 3616 note; 24 CFR Part 125).

FAIR HOUSING ASSISTANCE PROGRAM (FHAP)

The Fair Housing Assistance Program (FHAP) grants are awarded annually on a noncompetitive basis to State and local fair housing enforcement agencies once they demonstrate a fair housing law that is

substantially equivalent to the federal Fair Housing Act.

At the beginning of an agency's participation in the FHAP, HUD provides a flat amount of funds for capacity building. Following the period of capacity building, the Department will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.

Legal Authority: Section 817 of the Civil Rights Act of 1968 (the Fair Housing Act) as amended (42 U.S.C. 3601). Program regulations are at 24 CFR Part 115.

TITLE VI of the CIVIL RIGHTS ACT of 1964

The Fair Housing and Equal Opportunity, Office of Program Compliance, investigates complaints pursuant to Title VI of the Civil Rights Act of 1964 (Title VI). Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance. Complaints must be filed within 180 days of the alleged act of discrimination.

Legal Authority: Title VI Civil Rights Act of 1964, 42 USC 2000d; 24 CFR Part 1.

Program Status: Active.

AGE DISCRIMINATION ACT of 1975

The Age of Discrimination Act of 1975, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age of:

- excluding individuals from denying them the benefits subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or
- denying or limiting individuals their opportunity to participate in any program or activity receiving Federal financial assistance.

Legal Authority: Age Discrimination Act of 1975, 42 USC 6101 et seq. and HUD Regulations at 24 CFR Part 146.

Program Status: Active.

EXECUTIVE ORDER 11063, NON-DISCRIMINATION

Executive Order 11063 (Non-Discrimination and Equal Opportunity in Housing) directs HUD and all other executive departments and agencies to take appropriate action to promote the abandonment of discriminatory practices with respect to property or facilities owned or operated by the Federal Government or provided with Federal financial assistance in the sale, leasing, rental, or other disposition of such property or facilities.

Legal Authority: E.O. 11063, Non-Discrimination, Issued Nov. 20, 1962, 27 FR 11527; 24 CFR Part 107.

EXECUTIVE ORDER 12892, EQUAL OPPORTUNITY in HOUSING

Executive Order 12892, as amended (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing), provides that programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) shall be administered in a manner affirmatively to further the purposes of the Act and shall cooperate with the Secretary of Housing and Urban Development, who shall be responsible for exercising leadership in furthering the design and delivery of Federal programs and activities.

Legal Authority: E.O. 12892, Equal Opportunity in Housing, Issued January 17, 1994, 59 FR 2939.

EXECUTIVE ORDER 12898, ENVIRONMENTAL JUSTICE

Executive Order 12898 provides that each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Legal Authority: E.O. 12898, Environmental Justice, Issued February 11, 1994; 59 FR 32.

SECTION 504 of the REHABILITATION ACT of 1973, as AMENDED

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in any program or activity receiving Federal financial assistance.

Legal Authority: Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794 and 24 CFR Parts 8 and 9

Program Status: Active.

TITLE II of the AMERICANS with DISABILITIES ACT of 1990 (ADA)

Title II of the ADA prohibits discrimination against persons with disabilities in all services, programs, and activities made available by State and local governments. The Department of Justice (DOJ) has coordination authority for the ADA in accordance with Executive Order 11250.

The DOJ regulations cover all State and local governments and extend the prohibition of discrimination in Federally- assisted programs established by Section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance.

HUD is the designated agency for all programs, services and regulatory activities relating to State and local public housing, and housing assistance and referrals. In addition, HUD has jurisdiction over a State or local government activity when HUD has jurisdiction under Section 504 of the Rehabilitation Act of 1973.

Legal Authority: Americans with Disabilities Act of 1990 42 USC 12131; DOJ regulation; 28 CFR Part 35.

Program Status: Active.

The ARCHITECTURAL BARRIERS ACT of 1968

The Architectural Barriers Act (ABA) requires buildings and facilities that are constructed by or on behalf of, or leased by the United States, or buildings financed, in whole or in part, by a grant or loan made by the United States to be accessible to persons with mobility impairments. The Architectural and Transportation Barriers Board (ATBCB) has coordination authority for the ABA.

Legal Authority: The Architectural Barriers Act, 42 USC 4151, et seq; 24 CFR Parts 40 and 41.

Program Status: Active.

ECONOMIC OPPORTUNITIES for LOW- and VERY LOW-INCOME PERSONS

(Section 3 of the Housing and Urban Development Act of 1968)

Employment. Under the section 3 program, HUD requires PHAs and their contractors and subcontractors to use their best efforts to give low- and very low-income persons the training and employment opportunities generated by public housing development, operating subsidies, and modernization assistance. For other programs that provide housing and community development (CD) assistance, HUD is required to ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with housing rehabilitation, housing construction, or other public construction are given to such persons in the metropolitan area or nonmetropolitan county. For both categories, the law establishes priorities among eligible persons.

Contracting. Section 3 also requires PHAs and their contractors and subcontractors to make their best efforts to award contracts to businesses that provide economic opportunities for low- and very low-income persons. In providing housing and CD assistance under other programs, HUD is required to ensure that contracts awarded for work in connection with housing rehabilitation, housing construction, or other public construction are given to businesses that provide economic opportunities for such persons in the metropolitan area or nonmetropolitan county. For both categories, the law establishes priorities among eligible families.

The objectives of Section 3 are: (1) to use HUD program funds to provide a springboard for residents to become economically empowered through direct participation in construction and other activities designed to physically improve and revitalize their neighborhoods, and (2) to anchor Departmental efforts to strengthen communities, promote individual responsibility and reduce dependency on Federal assistance such as welfare and housing subsidies.

Legal Authority: Section 3 of the HUD Act of 1968; 24 CFR Part 135.

Program Status: Current program requirements are in effect.

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