Fair Housing Act, Section 3, and Section 504 Requirements

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Speakers and Q and A Format

• Speakers
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• How to ask questions
  – Change status in Live Meeting from green to purple
  – Press *1 to ask a question through Premiere Conference
    • Provide Name and Organization
  – After question is answered, press *2 to exit queue
  – Change status back to green after question answered
Today’s Agenda

• Overview of civil rights and related laws applicable to NSP
  – Fair Housing Act
  – Civil Rights and related statutes tied to receipt of Federal of HUD funding
  – Emphasis on:
    • Affirmatively furthering fair housing (AFFH)
    • Accessibility requirements under Section 504 and Fair Housing Act
    • Economic opportunity requirements (Section 3)
Applicable Civil Rights Laws

• Fair Housing Act (Title VIII of Civil Rights Act of 1968), as amended

• Nondiscrimination in the programs and activities of recipients receiving Federal/HUD funding
  – Title VI of the Civil Rights Act of 1964
  – Age Discrimination Act of 1975
  – Section 109 of the Housing and Community Development Act of 1974
  – Section 504 of the Rehabilitation Act of 1973
Other Statutes and Requirements

• Section 3 of the Housing and Urban Development Act of 1968

• Additional Requirements:
  – Executive Orders 11063, 12892, 12259, and 11246
  – Executive Order 13166 and HUD’s Final LEP Guidance
  – Applicable state and local laws
Intent of Fair Housing Act

• To prohibit discrimination in housing on basis of race, color, religion, sex, national origin, familial status or disability
  – Nondiscrimination in housing
  – Equal opportunity in provision of housing services, facilities & improvements (program benefit)
  – Equal opportunity in employment
Fair Housing Compliance

• Grantee’s obligations:
  – Do not discriminate in housing unlawfully
  – Administer NSP activities without discriminating against protected classes
  – Ensure that housing partners comply with fair housing laws
  – Affirmatively further fair housing
Fair Housing Compliance (cont.)

• Jurisdiction’s Affirmatively Furthering Fair Housing Certification

1. Conduct analysis of impediments to fair housing choice
2. Take actions to overcome the effects of the impediments identified
3. Maintain records reflecting the analysis and actions
Fair Housing Compliance (cont.)

• Analysis of Impediments (AI) to Fair Housing Choice
  – Comprehensive review of jurisdiction’s laws, regs & policies that impact, for each protected class:
    • Location of housing
    • Availability of housing
    • Accessibility of housing
  – Consider public and private sector barriers
  – Consider barriers that have the effect of limiting choice, regardless of intent
Fair Housing Compliance (cont.)

• Actions to overcome impediments
  – Actions should align with the impediments
  – Choose actions strategically
  – Describe actions in annual action plan of the Consolidated Plan

• Records to be maintained
  – Copy of AI, and updates
  – Records related to any actions taken to address impediments
  – Records related to the AI & impact of the actions on impediments
Fair Housing Compliance (cont.)

• Nonprofit Grantees’ Affirmatively Furthering Fair Housing Certification
  – Affirmatively market NSP-assisted housing
  – Provide information to, and otherwise attract, eligible persons in the housing market to the housing program without regard to protected class status
Fair Housing Compliance (cont.)

• Nonprofit Grantees’ AFFH Certification (cont.)
  – Further fair housing in NSP activities
    • Increase access for people with disabilities through housing design or construction
    • Provide language assistance services to LEP persons
    • Increase housing opportunity/choice for protected class members through location of new or rehabilitated housing
Fair Housing Compliance (cont.)

- Recordkeeping
  - Data on racial, ethnic & gender characteristics
    - Applicants for, participants in, and beneficiaries of NSP
    - Employment in NSP operating units funded by NSP/CDBG
    - Households displaced by NSP/CDBG
  - Efforts to AFFH and meet LEP requirements
For More Information

• www.hud.gov/offices/fheo
Questions on Fair Housing Act

To ask question:
• Press *1 to get in queue
• Change status in Live Meeting to purple

After question is answered:
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• Change status back to green
Accessibility – Applicable Laws

- Architectural Barriers Act of 1968
- Title II of the Americans with Disabilities Act (ADA) of 1990
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968), as amended
- Implementing regulations
  - FH Act: 24 CFR Part 100
  - Section 504: 24 CFR Part 8
  - ABA: 24 CFR Part 40
Intent of Accessibility Laws

• To ensure full use and enjoyment of all housing by persons with disabilities
  – Prohibit discrimination against people with disabilities in housing
  – Remove physical barriers in housing stock
  – Build new housing that is accessible
  – Ensure that grantee’s overall housing program is accessible to persons with disabilities
Accessibility Compliance – Removing Physical Barriers under Section 504

• For Federally-funded Rental Housing
  – New construction of MF housing, 5 or more units
  – Substantial alterations of MF housing, 15 or more units

• Substantial alterations – cost of alterations is 75% or more of replacement cost of completed facility
Accessibility Compliance – Removing Physical Barriers under Section 504 (cont.)

• Must make accessible:
  – Min. 5% of units (at least 1 unit) for mobility impairments
  – Additional min. 2% of units (or at least 1 unit) for hearing/vision impairment
  – Entrance/exit routes & public/common use areas

• Currently, must meet Uniform Federal Accessibility Standards (UFAS)
Accessibility Compliance – Removing Physical Barriers under 504 (cont.)

- Rental Housing (other alterations, not substantial)
  - Must make accessible to the max. extent feasible
  - Make entire unit accessible if
    - Kitchen renovated/cabinets replaced
    - Bathroom (replacing tub/shower or toilet)
    - Replacing entrance door jams
- Up to 5%/2% requirement
- Make routes and common areas accessible
- Use UFAS standard (rehabbed elements)
Accessibility Compliance – Removing Physical Barriers under 504 (cont.)

• Homeownership
  – Applies to new construction and rehabilitation
  – Make unit accessible when requested by prospective buyer
  – Must meet needs of buyer/occupant; entire unit need not meet full UFAS
  – Use UFAS standard for the needed features
Accessibility Compliance – Complying with Design & Construction Reqs of the FH Act

• Applies to covered multifamily dwellings
  – Newly constructed housing – whether or not Federal assistance is involved
  – Available for first occupancy after March 1991
  – Ground floor units in bldgs w/ 4 or more units
  – Buildings w/ 4 or more units with 1 or more elevator(s)

• Design and construction requirements at 24 CFR 100.205(c)
Accessibility Compliance – Program Accessibility

• Program accessibility = Grantee’s housing program, when viewed in its entirety, is accessible to and usable by, people with disabilities

• Examples:
  – Ensure effective communication w/ applicants, beneficiaries & members of public
  – Making reasonable accommodations
  – Wheelchair access to program in-take offices, public hearings, tenant meetings, etc.
For More Information

- www.hud.gov/offices/fheo/disabilities/index.cfm
- www.fairhousingfirst.org
Questions on **Accessibility Requirements**

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- Change status back to *green*
Economic Opportunity-
Applicable Law

• Section 3 of the Housing and Urban Development Act of 1968
  – Implementing regulations at 24 CFR Part 135
Intent of Section 3

• Purpose of Section 3 is to ensure that employment & other economic opportunities generated by certain types of HUD assistance, including NSP, shall, to the greatest extent feasible, be directed to low- and very low-income persons & to business concerns which provide economic opportunities to low- & very low-income persons
  – Regulation is race & gender neutral
  – Applies to new jobs & contracts only
Section 3 Applicability

- Recipients that receive $200,000 or more in NSP funds are required to comply with Section 3
  - Requirement “flows down” to subgrantees, subrecipients, developers, etc.
  - Includes jobs that directly support rehab/construction activities, incl. mgmt/admin

- If contract or subcontract for construction-related work (housing rehab & construction, other public construction) exceeds $100,000, responsibility for Section 3 compliance shared with that contractor/subcontractor
  - Does not include contracts for supplies or materials unless involving installation
Section 3 – Grantee Obligations

• Implement procedures to notify residents, businesses
• Notify contactors & include Section 3 clause verbatim in all solicitations and contracts
• Facilitate the training & employment of Section 3 residents & award of contracts to Section 3 businesses
• Do not use contractors with outstanding Section 3 violations
• Document actions taken to comply with Section 3
• Attempt to reach numerical goals (more later)
Section 3 Goals

• Section 3 regs contain minimum numeric goals
• Goals are:
  – **Hiring**: 30% of aggregate number of new hires be Section 3 residents
  – **Contracting**: 10% total dollar amount of covered construction contracts to Section 3 businesses
Section 3 Residents

- **Section 3 residents** defined as:
  - Residents of Public Housing
  - Individuals that reside in the metropolitan area or nonmetropolitan county in which the project is occurring and whose income do not exceed the local HUD income limits for low-income households

- Can use HUD sample certification form to document:
Section 3 Businesses

- **Section 3 business** defined as:
  - 51% or more owned by Section 3 residents or
  - Whose permanent, full-time employees:
    - At least 30% Section 3 residents, or
    - Within three years date of first employment with the firm were Section 3 residents; or
  - Evidence of a commitment to subcontract >25% awarded to businesses that meet the qualifications described above

“How To” Achieve Goals

- **Training & Hiring** examples:
  - Enter into 1st source hiring agreements with organizations representing Section 3 residents
  - Sponsor or refer to employment/training programs
  - Advertise in neighborhoods & other local media reaching Section 3 residents
  - Contact local organizations that represent Section 3 residents
  - Coordinate econ development/workforce planning with housing efforts
“How To” Achieve Goals

• Contracting examples:
  – Use registration lists/database (firms certify as Section 3 businesses)
  – Must adhere to Federal, state & local procurement requirements but may be able to:
    • Use preferences or award points if bidder is Section 3 business or will meet Section 3 hiring goals
Section 3 Report

• Submit HUD Form 60002 (Section 3 Annual Summary Report) annually
  – Due at same time as annual performance reports (e.g., CAPER)
  – Report must include quantitative info. as well as narrative explaining efforts
Section 3 Compliance

• Grantees that fail to meet the minimum numerical goals bear the burden of demonstrating why it was not possible to do so.

• Such justifications should describe the:
  – Efforts that were taken
  – Barriers encountered
  – Other relevant information that will enable HUD to make a compliance determination.
For More Information

• http://www.hud.gov/section3/
Questions on **Section 3 Requirements**

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Give us your Feedback

- Answer a few short questions
- Link: http://www.surveymonkey.com/s/FHEO_3_504