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## Fair Housing and Civil Rights Laws

### Supportive Housing Programs

The Ohio Development Services Agency's Office of Community Development helps meet the needs of vulnerable Ohioans by providing federal and state grant funding to local governments and nonprofit organizations operating homeless outreach, emergency shelters, homelessness prevention, rapid re-housing, transitional housing and permanent supportive housing, as well as emergency home repair.

Supportive Housing Program grantees and partner agencies are subject to federal civil rights laws. This handout provides an overview of these laws, as well as highlights some of the major program issues that are affected by these laws. It also provides citation to additional resources with more extensive information about these laws. The laws discussed in this chapter include the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990.

Grantees and partner agencies are strongly encouraged to become familiar with the requirements of the laws, as well as any applicable state or local civil rights laws. By signing a grant agreement, recipients of the Supportive Housing Program funding certify that they will comply with these federal civil rights laws.

Note: This document focuses on the applicability of these laws to homeless assistance programs. It does not provide a comprehensive overview of the applicability of these laws in all circumstances. For general information about these laws, see [www.hud.gov/offices/fheo/FHLaws/index.cfm](http://www.hud.gov/offices/fheo/FHLaws/index.cfm).

### Nondiscrimination and Equal Opportunity Requirements

Grantees and partner agencies must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). In addition, grantees and partner agencies must make known that rental assistance and services are available to all on a nondiscriminatory basis and ensure that all citizens have equal access to information about the program and have equal access to the financial assistance and services provided under this program. Among other things, this means that each grantee and partner agency must take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency (LEP), pursuant to Title VI of the Civil Rights Act of 1964. This may mean providing language assistance or ensuring that program information is available in the appropriate languages for the geographic area served by the jurisdiction and that limited English proficient persons have meaningful access to assistance. This will be a particular issue for state grantees and partner agencies that may not be aware of LEP speaking populations in jurisdictions that are not normally served with Supportive Housing Program funds. To assist grantees and partner agencies, the U.S. Department of Housing and Urban Development (HUD) published the "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (72 Federal Register 2732; January 22, 2007). In addition, all notices and communications shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.6.

If the procedures that the grantee or partner agency intends to use to make known the availability of the rental assistance and services are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status or disability who may qualify for such rental assistance and services, the grantee or partner agency must establish additional procedures that will ensure that such persons are made aware of the rental assistance and services.

### Affirmatively Furthering Fair Housing

Under Section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. Grantees and partner agencies have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability and familial status. Examples of affirmatively furthering fair housing include: (1) marketing the program to all eligible persons, including

persons with disabilities and persons with limited English proficiency; (2) making buildings and communications that facilitate applications and service delivery accessible to persons with disabilities (see, for example, HUD's rule on effective communications at 24 CFR 8.6); (3) providing fair housing counseling services or referrals to fair housing agencies; (4) informing participants of how to file a housing discrimination complaint, including providing the toll-free number for the Housing Discrimination Hotline: 1- 800-669-9777; and (5) recruiting landlords and service providers in areas that expand housing choice to program participants.

### **Equal Access to Housing Final Rule**

On February 3, 2012, HUD published a final rule in the Federal Register entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" available at [http://hudhre.info/documents/EqualAccess\\_FinalRule\\_2.3.12.pdf](http://hudhre.info/documents/EqualAccess_FinalRule_2.3.12.pdf). This rule became effective March 5, 2012.

This rule applies to housing assisted or insured by HUD including homeless housing assistance programs. The rule creates a new regulatory provision that generally prohibits considering a person's marital status, sexual orientation or gender identity (a person's internal sense of being male or female) in making homeless housing assistance available. As the nation's housing agency, HUD's goal is to ensure that their programs are carried out free from discrimination and are models for equal housing opportunity. Effective March 5, 2012, lesbian, gay, bisexual and transgender people are guaranteed equal access to housing and shelters that receive HUD financial assistance.

The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability and familial status (i.e., presence of children in the household). Neither the Fair Housing Act nor Ohio's Fair Housing Law specifically include sexual orientation and gender identity as prohibited bases. However, a lesbian, gay, bisexual or transgender (LGBT) person's experience with sexual orientation or gender identity housing discrimination may still be covered by the federal and state fair housing laws.

### **Examples:**

- A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. That situation may constitute illegal disability discrimination under the Fair Housing Act because the man is perceived to have a disability, HIV/AIDS.
- A property manager refuses to rent an apartment to a prospective tenant who is transgender. If the housing denial is because of the prospective tenant's non-conformity with gender stereotypes, it may constitute illegal discrimination on the basis of sex under the Fair Housing Act.
- An underwriter for a Federal Housing Administration (FHA) insured loan is reviewing an application where two male incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and, as a result, denies the application despite the applicants' glowing credentials. This scenario may violate HUD regulations which prohibit FHA-insured lenders from taking actual or perceived sexual orientation into consideration in determining adequacy of an applicant's income.

In addition, housing providers that receive HUD funding, have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, may be subject to HUD program regulations intended to ensure equal access of LGBT persons.

HUD's regulations requiring equal access to LGBT persons include the following:

- A general equal access provision which requires housing that is funded by HUD or subject to a mortgage insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation;
- Clarification that the terms "family" and "household" as used in HUD programs include persons regardless of actual or perceived sexual orientation; gender identity or marital status;

- Prohibition on owners and operators of HUD-funded housing or housing insured by FHA from asking about an applicant's or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available; and,
- Prohibition on FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

HUD can withhold funding for those found to be discriminatory housing providers or can order housing providers to pay fines or restitution to victims of discrimination.

If you have a general question about LGBT fair housing issues or need information about HUD regulations intended to ensure equal access of LGBT persons, please email [LGBTFairhousing@hud.gov](mailto:LGBTFairhousing@hud.gov).

HUD LGBT webpage and resources:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

## THE FAIR HOUSING ACT

The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status and national origin. It applies to housing, regardless of the type of funding or ownership, including housing operated by private individuals or organizations that receive federal financial assistance, and housing owned or operated by state and local governments. The Fair Housing Act prohibits discrimination based on membership in a protected class in a broad range of housing-related activities, including refusing to lease a unit or otherwise denying use of a dwelling. It also prohibits discriminating in the terms, conditions, privileges or in the provision of services or facilities in connection with a dwelling. Other covered housing-related activities include, financing, zoning practices and new construction design. The Act covers all types of housing intended as a short- or long-term residence, including the following types of housing that may be funded under the Office of Community Development Supportive Housing Programs: shelters that house persons for more than a few days, transitional housing facilities and permanent housing facilities. The Fair Housing Act covers housing provided through dormitory-style sleeping units as well as apartments and single-room occupancy units. The Fair Housing Act regulations are found at 24 CFR Part 100. For additional technical information about the Fair Housing Act, see <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>.

### Nondiscrimination Requirements Related to Disability

HUD published new guidance on June 4, 2013 for HUD-assisted housing providers on how they can support state and local *Olmstead* efforts to increase the integrated housing opportunities for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions and other restrictive, segregated settings, encourage efforts to assist individuals with disabilities who are moving out of institutions and into housing within the community. This guidance will be helpful to individuals with disabilities and anyone engaged in the funding, development or operation of housing, the scope of this guidance is limited to HUD funding and programs. Recipients of HUD funds include, but are not limited, to: states, units of local government; public housing agencies; and developers of multifamily properties. Recipients do not include the individual beneficiaries of HUD-funded programs and activities. The guidance is located at <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>

### Definition of Persons with Disabilities

All three federal civil rights laws addressing disability discrimination (the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act) define a person with a disability as one who:

1. Has a physical or mental impairment which substantially limits one or more major life activities;
2. Has a record of such impairment; or

3. Is regarded as having such impairment.

The status of being a juvenile offender or a sex offender does not qualify an individual as a person with a disability under these civil rights laws. Similarly, while these laws protect persons who are recovering from substance abuse or have a history of substance abuse, they do not protect persons who are currently engaging in the illegal use of controlled substances. Additionally, these laws do not protect an individual with a disability whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

It is important to note that the above definition applies to the application of federal *civil rights laws*. Many HUD programs have different definitions of "disability," and those definitions should be used to determine program *eligibility*. As an example, while a current user of illegal drugs may not be protected under federal civil rights laws, he/she may be an eligible participant in programs that offer substance abuse services.

### **Applying Multiple Laws**

Certain entities will be subject to both the requirements of the Americans with Disabilities Act and the provisions of the Fair Housing Act and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws.

Compliance with the Fair Housing Act and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the Fair Housing Act or Section 504. For example, the preambles to the 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition of "service animal" as a justification for reducing their Fair Housing Act obligations.

### **Reasonable Accommodations**

The Fair Housing Act requires owners of housing facilities to provide reasonable accommodations to persons with disabilities. Under the Fair Housing Act, reasonable accommodations are changes, exceptions or adjustments to a program, service or procedure that will allow a person with a disability to have equal enjoyment of the housing program. There must be an identifiable relationship between the requested accommodation and the person's disability. Reasonable accommodations need not be provided if they would constitute an undue financial and administrative burden, or if they would be a fundamental alteration of the provider's program. For information about reasonable accommodations under the Fair Housing Act, see the resources listed below:

- Joint Statement of the U.S Department of Housing and Urban Development and the U.S. Department of Justice entitled "Reasonable Accommodations under the Fair Housing Act," issued May 14, 2004 located at <http://www.fairhousing.com/include/media/pdf/finaljointstatement051704.pdf> and
- ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 – [http://www.bazelon.org/LinkClick.aspx?fileticket=lhyaA\\_hRAoE%3D&tabid=268](http://www.bazelon.org/LinkClick.aspx?fileticket=lhyaA_hRAoE%3D&tabid=268)
- "Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs" issued April 25, 2013 located at [http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf&utm\\_source=17th-2013+HNN&utm\\_campaign=17th+HNN+Analytics&utm\\_medium=email](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf&utm_source=17th-2013+HNN&utm_campaign=17th+HNN+Analytics&utm_medium=email).

### **Reasonable Modifications**

The Fair Housing Act does not require owners and homeowner associations to make and pay for structural modifications to dwellings. Instead, it requires owners and homeowners to allow tenants with disabilities to make reasonable access-related modifications to their private living space and common use spaces. See 24 CFR §100.203. However, recipients of federal financial assistance such as Supportive Housing Program grantees and partner agencies should be mindful that they are subject to Section 504's more stringent requirements that they make and pay for structural modifications to dwellings and public and common use areas that are needed as a reasonable accommodation for persons with disabilities unless providing that accommodation would constitute a fundamental alteration of the program or an undue financial and administrative burden. (See Section 504 discussion below.) For information about reasonable modifications under the Fair Housing Act, see the Joint Statement of the U.S Department of Housing and Urban Development and the U.S. Department of Justice entitled *Reasonable Accommodations Under the Fair Housing Act*, issued on May 14, 2004 found at [www.hud.gov/offices/fheo/library/huddojstatement.pdf](http://www.hud.gov/offices/fheo/library/huddojstatement.pdf)

### **Affirmative Minimum Accessibility Requirements**

In addition to its general non-discrimination requirements, the Fair Housing Act requires that new multifamily housing (both rental and for sale) with four or more dwelling units built for first occupancy after March 13, 1991, be designed and built to contain minimum accessibility features for persons with disabilities. This includes accessible public and common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver and other adaptable features within the units. Sleeping rooms that share kitchen facilities and dormitory style housing are subject to these requirements. For more information about these the accessibility requirements see 24 CFR 100.205 and [www.fairhousingfirst.com](http://www.fairhousingfirst.com). Please note: These accessibility requirements are in addition to those required under Section 504 and the new Americans with Disabilities Act requirements.

### **Inquiries Related to Disability**

Although the Fair Housing Act places limitations on the ability of housing providers to inquire about the nature and severity of an applicant's disability, it is permissible for a housing provider that offers housing serving persons with disabilities to inquire whether an applicant meets the program's eligibility requirements. See 24 CFR 100.202(c). Thus, a Supportive Housing Program provider may inquire whether an applicant has a disability as defined in the program regulations. In addition, service providers connected with the housing program may make inquiries appropriately connected to determining the service needs of residents. Housing providers may also ask applicants and residents whether they need units with special features or if they have special needs related to communication, but they should make these inquiries of all program participants.

### **Fair Housing Act Prohibitions on Discrimination Based on Sex**

In general, the Fair Housing Act prohibits housing providers from limiting access to their housing program based upon sex. However, housing may be limited to one sex where, because of the physical limitations or configuration of the housing facility, considerations of personal privacy or personal safety would make it inappropriate for the facility to be made available to members of both sexes. Housing providers must also comply with "*Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity*" final rule. Through this rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. To read rule, go to <http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf>

### **Fair Housing Act Prohibitions on Discrimination Based on Familial Status**

The Fair Housing Act prohibits discrimination based upon familial status, defined as families and individuals with children under 18, as well as pregnancy, and families and individuals in the process of securing legal custody of individuals under 18. Discrimination against families with children is prohibited, regardless of the ages of the children, or the number of children in a household. Notwithstanding the prohibition against discrimination on the basis of familial status, state and local governments do have the right to apply reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

In general, absent special circumstances, it is HUD's position that a maximum of two persons in a bedroom is a reasonable occupancy standard. Bedroom size, unit size, age of children and other circumstances might affect the reasonableness of a two-person per bedroom occupancy rule. For a detailed discussion on establishing lawful occupancy standards, see "Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy," published in the Federal Register on December 18, 1998, Volume 63, Number 243.

### **Discrimination Based Upon Religion**

The Fair Housing Act prohibits discrimination based upon religion. Ohio grantees and partner agencies may not restrict housing or services to persons of a particular religion or religious denomination, nor may they require a particular religious belief or activity as a condition of receiving benefits or participating in Supportive Housing Program activities. If Supportive Housing Program providers allow tenants to use the public and common spaces for religious services, it must make those public and common spaces available for all types of religious services requested by the tenants.

In addition to the Fair Housing Act prohibitions on discrimination based upon religion, there are other HUD requirements relating to use of federal funds by faith-based organizations. These include considerations related to use of federal funds for acquisition, construction, or rehabilitation of real property, and separation of inherently religious activities from HUD-funded activities. For more information, see <http://www.hud.gov/offices/fbcil/>.

## **SECTION 504 OF THE REHABILITATION ACT OF 1973**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability in all programs or activities operated by recipients of federal financial assistance, regardless of whether the programs involve provision of housing or non-housing services or benefits. The Section 504 regulations are found at 24 CFR Part 8. While Section 504 overlaps with the disability discrimination prohibitions of the Fair Housing Act, (see above) it also imposes broad affirmative obligations on recipients to make their programs, as a whole, accessible to persons with disabilities. These obligations include the following:

### **Affirmative Accessibility Requirements**

Section 504 regulations establish affirmative physical accessibility requirements when federal financial assistance is used for new construction or rehabilitation of housing. The regulations require 5 percent of units to be made accessible to persons with mobility disabilities and an additional 2 percent to be made accessible to persons with communication disabilities. In addition, the regulations require accessible public and common use areas. See 24 CFR §§ 8.20, 8.22, 8.23. Units and public and common use areas that meet the requirements of the Uniform Federal Accessibility Standards (UFAS) are deemed to be fully accessible under Section 504. See 24 CFR § 8.32. The Section 504 accessibility requirements are in addition to the requirements imposed by the Fair Housing Act for newly constructed multifamily housing. Units that only meet the Fair Housing Act design and construction standards do not comply with UFAS. A copy of UFAS can be obtained at <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>. Services provided to participants in Supportive Housing Programs must also be provided in accessible settings.

### **Site Selection**

The Section 504 regulations require that recipients consider physical accessibility in determining the site or location of a federally-assisted facility. The regulations state that it is discriminatory for recipients to select sites which have the purpose or effect of excluding qualified persons with disabilities from participating in or denying the benefits of any program or activity that receives federal financial assistance. See 24 CFR §8.4(b)(5). For example, a Supportive Housing Program grant recipient should not lease a building that has steps at the entrance and cannot be ramped to allow persons with mobility impairments can access the building.

### Effective Communication

The Section 504 regulations require recipients to take appropriate steps to ensure effective communication with applicants, residents and the public with communication disabilities. Supportive Housing Program providers should ensure that their application and admissions process and the services offered are accessible and understandable by persons with disabilities. This may include providing necessary auxiliary aids and services such as sign language interpreters and written materials in alternative formats. See 24 CFR §8.6.

### Reasonable Accommodations

The requirements for reasonable accommodations related to policies, practices and procedures are the same under Section 504 and the Fair Housing Act. However, the Section 504 reasonable accommodation obligation is broader than the obligation under the Fair Housing Act with respect to requests for structural changes to facilities because Section 504 requires that recipients of federal financial assistance make and pay for physical changes to dwelling units and public and common use spaces if needed as a reasonable accommodation unless it is an undue financial and administrative burden or a fundamental alteration of the program. Recipients are allowed to verify the existence of the disability and the need for the requested accommodation.

On April 25, 2013, HUD issued notice FHEO-2013-01: ***Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs***. This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations' for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.

Examples of reasonable accommodations include:

- Making an exception to a rule that prohibits animals in a dwelling to accommodate a person with a disability who uses an assistance animal.
- Providing and paying for a ramp to the entrance of a unit which would allow a tenant in a wheelchair to access the unit.
- Providing accessible transportation for a trip for program participants where transportation is being provided for nondisabled residents.
- Providing a first floor unit to an applicant or a transfer to a first floor unit for a resident who cannot climb stairs to a second floor unit.
- Allowing a resident to have a personal refrigerator to store medications in a development that does not normally provide refrigerators in sleeping units.

For more extensive information on Section 504, see [www.hud.gov/offices/fheo/disabilities](http://www.hud.gov/offices/fheo/disabilities).

## **OTHER CIVIL RIGHTS LAWS**

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

Title VI prohibits all recipients of federal financial assistance from discriminating based on race, color or national origin. Title VI applies to any program or activity receiving federal financial assistance, not just housing. See 24 CFR Part 1. In housing, Title VI and the Fair Housing Act apply to many of the same types of activities. However, HUD has broader investigative authority in complaints related to violations of Title VI and the authority to impose different types of remedies than it does in cases involving violations of the Fair Housing Act.

Title VI regulations require that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjects individuals to discrimination based on race, color or national origin. The regulations also require that, even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions that results in limiting participation by persons of a particular race, color or national origin. Title VI regulations also require that owners maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federal financial assistance.

Under Title VI, recipients may be required to provide language assistance to persons who, as a result of their national origin, are limited in their English proficiency, in order to improve access to their programs and activities. For more information on this issue, see <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>.

### **Americans with Disabilities Act (ADA)**

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity (i.e., state or local government; or department, agency, special purpose district, or other instrumentality of a state or states, or local government). The prohibitions against discrimination under Title II of the ADA are essentially the same as those in Section 504, except they apply to all programs, activities, and services of the public entity, not just those funded with federal financial assistance.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and commercial facilities. Emergency overnight shelters and social service facilities may be covered by Title III. For more information about the ADA and its requirements, see the Department of Justice website at: [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm).

### **Age Discrimination Act of 1975**

The Age Discrimination Act prohibits discrimination based upon age in federally assisted and funded programs or activities, except in limited circumstances. It is not a violation of the Age Discrimination Act to use age as a screening criterion in a particular program if age distinctions are permitted by statute for that program or if age distinctions are a factor necessary for the normal operation of the program or the achievement of a statutory objective of the program or activity. See 24 CFR Part 146.

### **Enforcement and Compliance with Civil Rights Laws**

Supportive Housing Program providers should make sure that their staff is trained in the requirements of the civil rights laws and that all admissions and residential policies are applied equally regardless of membership in a protected class.

The Office of Community Development strongly recommends that providers have written, reasonable accommodation policies and that applicants and residents be advised of the existence of their right to reasonable accommodation at admission and during tenancy.

Titles VI, Section 504 and the Age Discrimination Act are enforced by routine monitoring as well as investigation of complaints of discrimination. Recipients are obligated to provide HUD and the Office of Community Development access to any records these agencies believe are necessary to determine compliance with these laws.



HUD has principal enforcement responsibility for the Fair Housing Act and will investigate complaints of discrimination. In addition, HUD has the authority to initiate complaints on behalf of the Secretary of HUD.

Careful record-keeping is very helpful for documenting compliance with civil rights laws, as well as to demonstrate that policies and procedures are being applied equally to all program applicants and participants.

## **RESOURCES**

**Fair Housing for People with Disabilities:** A guidance manual for emergency shelter and transitional housing providers – Mental Health Advocacy Services, Inc.

<http://www.mhas-la.org/FH%20Manual%20rev.4-07.pdf>

**2010 Between the Lines: A Question-and-Answer Guide on Legal Issues in Supportive Housing – National Corporation for Supportive Housing**

<http://www.csh.org/resources/between-the-lines-a-question-and-answer-guide-on-legal-issues-in-supportive-housing-national-edition/>

**Bazelon Center for Mental Health Law** – <http://www.bazelon.org> including fact sheets and what "Fair Housing" means for people with disabilities.

<http://www.bazelon.org/LinkClick.aspx?fileticket=bdk6FSfUBOQ%3d&tabid=104>

**Fair Housing Laws and Presidential Executive Orders**

<http://www.hud.gov/offices/fheo/FHLaws/index.cfm>

**Department of Justice Americans with Disabilities link** – <http://www.usdoj.gov/crt/ada/adahom1.htm>

### **When Working with Clients with Disabilities, Remember...**

- Not all disabilities are visible. The nature of the person's disability is a private matter. You are not entitled to inquire for details.
- In situations where the Americans with Disabilities Act and Fair Housing Act/Section 504 apply, housing providers must meet the broader Fair Housing Act/Section 504 standard in deciding whether to grant reasonable accommodation requests.
- Under ADA – when it is not obvious what service an animal provides, staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog or ask that the dog demonstrate its ability to perform the work or task.
- Service animals do not need to wear any special identifying gear such as tags, harnesses or capes. Service animal owners/handlers are not required to carry any paperwork documenting the animal as a service animal.
- A tenant may train his or her own service animal and is not required to provide any information about training or the specific tasks the animal performs.
- To qualify for an accommodation in under Fair Housing Act/Section 504, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program... AND there must be a relationship, or nexus, between the individual's disability and the assistance the animal provides.
- The tenant/handler is responsible for the care of his/her service animal.
- The animal must be supervised and the tenant/handler must retain full control of the animal at all times. Service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal or other effective controls.
- The tenant is responsible for the proper disposal of animal waste. If the tenant needs assistance with cleanup, they should make arrangements for such help through family, friends or advocates.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- If other tenants complain about the fact that they are not allowed to have a pet and want to know why you have made an exception, simply state that your agency complies with the fair housing laws. You can also refer your tenants to the fair housing laws or to a fair housing agency for further details.

For more information about fair housing and civil rights laws required for Supportive Housing Program providers, contact the Ohio Development Services Agency, Office of Community Development at (614) 466-2285.