

## II. Laws and Regulations Relating to Fair Housing and Equal Opportunity

### A. Overview

This section describes the specific civil rights laws, regulations, executive orders and directives – both federal and state – related to fair housing and equal opportunity as well as guidance on how these laws are applicable to DCED’s administration of activities under the CDBG, CDBG-DR, HOME, or ESG programs.

All DCED grantees who receive federal funds must ensure that they administer these programs in a manner that will not violate civil rights and will not cause discrimination on the bases of race, color, national origin, religion, sex, disability, familial status, age, ancestry, or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals. Congress and the Commonwealth have enacted a series of laws providing civil rights protections for these classes of persons (protected classes) to ensure that the use of program funds results in fair housing and equal opportunity for all persons.

These laws, which apply to DCED federal programs, are further implemented through regulations that explain actions grantees may and may not take in complying with the requirements of the laws. Further, the President of the United States sometimes executes executive orders to establish how laws should be implemented, and HUD’s Office of General Counsel occasionally issues guidance to describe HUD’s expectations for recipients of the funds it administers. For FHEO compliance, all of these different avenues must be adhered to.

It is important to understand how certain aspects of these requirements are differentiated from others under the federal programs administered by DCED. The following information provides background on the authority that establishes these requirements.

- **Constitutional Base:** The guarantee of civil rights has a constitutional as well as a statutory base. Civil rights laws are an extension and interpretation of the equal protection and due process requirements of the United States Constitution.

- **Variety of Covered Groups:** Civil rights laws prohibit discrimination against groups of people – or protected classes. Federal protected classes include **race, color, national origin, religion, sex, disability, familial status, and age**. **Pennsylvania law adds the protected classes of ancestry and use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.**
- **Overlapping Coverage of Activities:** More than one civil rights law may apply to a single type of activity. The table in this section provides a description of each law and its applicability to federal programs. For instance, disabilities are protected under Title VIII of the Civil Rights Act of 1968 as well as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, among others.
- **Nature of the Requirements:** Most civil rights laws are written in terms of prohibiting discrimination. Implementing regulations frequently describe the types of actions that are prohibited, but often do not prescribe specific actions that a grantee must take to conform with the civil rights obligations. However, the guidance in this Manual is designed to provide examples for complying with requirements as required of the Commonwealth of Pennsylvania’s grantees.
- **Authority for Compliance:** The authority for complaint investigations and compliance determinations remains with HUD and the Pennsylvania Human Relations Commission.
- **Commonwealth Laws:** Commonwealth laws can expand protections beyond those offered under federal law. For instance, federal law provides protections for race, color, national origin, religion, sex, disability, familial status, and age. Commonwealth law also provides protections for these classes and adds protections for ancestry and the use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

## B. Summary of Laws

As mentioned in the overview to this section, the objective of civil rights laws, which have been established through a series of legislative actions by Congress and the Commonwealth, is to protect

individuals from discrimination. Protected classes include the following groups. Groups marked with an asterisk are protected by the Commonwealth's laws only and are not covered by federal law.

- Race
- Color
- National Origin
- Religion
- Sex
- Disability
- Familial Status
- Age
- Ancestry\*
- Use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals\*

The primary laws and their purposes are listed below. The table in **Appendix 1** that follows includes additional information including which federally-funded programs and activities are affected and where to find more information in this Manual.

A listing of civil rights laws, regulations, executive orders and directives follows:

1. **Title VI of the Civil Rights Act of 1964**, as stated in Section 601, provides that no person shall, on the grounds 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. (Implementing regulations: 24 CFR Part 1.)
  
2. **Title VIII of the Civil Rights Act of 1968**, as amended, also known as the Fair Housing Act, prohibits discrimination in housing on the bases of race, color, religion, sex, national origin, disability, and familial status. This law also mandates that HUD administers its programs in a manner that affirmatively furthers fair housing. (Implementing regulations: 24 CFR Part 200, Subpart M; 24 CFR Parts 108, 109, 110, 115.)

- 3. Section 3 of the Housing and Urban Development Act of 1968**, as amended provides that, to the greatest extent feasible, opportunities for training and employment shall be given to lower income residents of the project area. Section 3 also provides that contracts for work related to such projects shall be awarded to business concerns that are located in, or which are owned in substantial part by persons residing in the project area. (Note: The Housing and Community Development Act of 1980 defined "project area" as the unit of local government or the metropolitan area or the non-metropolitan county in which the project is located). (Implementing regulations: 24 CFR Part 135.)
- 4. The Small Business Act** (Public Law 95-507) makes federal procurement contracting more readily accessible to all small businesses and stipulates that it is the policy of the Federal government to provide maximum practicable opportunities in its acquisitions of goods and services to small businesses, small disadvantaged businesses and women-owned businesses. (Implementing regulations: 24 CFR Part 85 Section 36(e)(i-vi).)
- 5. Section 281 of the National Affordable Housing Act** provides that recipients of HUD grant funds must establish and oversee a minority outreach program that includes minority- and women-owned businesses in all contracting activities entered into for the provision of federal housing programs.
- 6. Section 504 of the Rehabilitation Act of 1973**, as amended, provides that no otherwise qualified individuals with disability shall, solely because of his/her disability, be excluded from the participation in, be denied the benefits of, or be discriminated against under any program or activity receiving federal financial assistance. (Implementing regulations: 24 CFR Part 8.)
- 7. Section 109 of the Housing and Community Development Act of 1974**, as amended, provides that no person shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Title I of the Act. (Implementing regulations: 24 CFR Part 570.602.)

8. **Section 104(b)(2) of the Housing and Community Development Act of 1974** requires certain certifications by participants and their grantees funded under Title I of the Housing and Community Development Act of 1974. (Implementing regulations 24 CFR 570.487(b).)
9. **The Age Discrimination Act of 1975**, as amended, provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds. (Implementing regulations: 24 CFR Part 146.)
10. **Title II of the Americans with Disabilities Act of 1990**, as amended, prohibits disability discrimination by all public entities at the local level including by state and local public housing, housing assistance, and housing referral programs. (Implementing regulations: 28 CFR Part 35.)
11. **The Architectural Barriers Act of 1968** requires certain buildings and facilities that are designed, constructed, or altered with certain federal dollars, or leased by federal agencies, after September 1969, to comply with accessibility design standards.
12. **The Genetic Information Nondiscrimination Act of 2008** forbids employment discrimination because of family history and genetic information.
13. **The Vietnam Era Veterans Readjustment Assistance Act of 1974** forbids employment discrimination on the grounds of a worker's military history, including any effects that the battlefield might have had on the worker's psyche by contractors and subcontractors receiving \$25,000 or more in federal funds.
14. **Section 562 of the Housing and Community Development Act of 1987** requires that Participants and their subrecipients in all CPD programs collect and report specified data to assess the extent of compliance with nondiscrimination policies. (Implementing regulations 24 CFR Part 121.)
15. **Section 282 of the HOME Investment Partnerships Act at title II of the Cranston-Gonzales National Affordable Housing Act**, as amended, requires that HOME program fund recipients agree to post notices containing their policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees

shall state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, or sex.

- 16. Title IX of the Education Act Amendments of 1972** prohibits discrimination on the basis of sex in programs containing any training and/or education components. (Implementing regulations 20 USC 1681 et. seq.)
- 17. Equal Access Rule**, 24 CFR 5.105(a)(2), requires that assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- 18. Executive Order 11063**, as amended by Executive Order 12259, provides that no person shall, on the basis of race, color, religion, sex, or national origin, be discriminated against, in housing (and related facilities) provided with federal assistance, and in lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government. (Implementing regulations: 24 CFR Part 107.)
- 19. Executive Order 11246**, as amended by Executive Order 12086, provides that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin, in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$10,000. (Implementing regulations: 41 CFR Part 60.)
- 20. Executive Order 11375** prohibits discrimination on the basis of sex in hiring and employment in both the United States federal workforce and on the part of government contractors. (Implementing regulations: 41 CFR Part 60.)
- 21. Executive Order 12432**, also known as Minority Business Enterprise Development, directs each federal agency having substantial procurement or grant making authority to develop a minority business development plan and programs and to encourage recipients of federal grants and cooperative agreements to achieve reasonable minority business participation in contracts let as a result of its grants and agreements.

- 22. Executive Order 11625**, as amended, provides that affirmative steps be taken by grantees and their contractors to utilize minority and socially and economically disadvantaged businesses. (Implementing regulations: 41 CFR Part 60.)
- 23. Executive Order 12138**, also known as the National Women's Business Enterprise Policy, provides that affirmative steps be taken by grantees and their contractors to utilize women owned businesses. (Implementing regulations: 41 CFR Part 60.)
- 24. Executive Order 12898** addresses environmental justice requiring that recipients identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. (Implementing regulations 24 CFR Parts 50.4(l) and 58.5(j).)
- 25. Executive Order 13166** requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that federal agencies work to ensure that recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.
- 26. Pennsylvania Human Relations Act** provides that no individual or group shall on the grounds of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals be subjected to discrimination in the Commonwealth of Pennsylvania.

## C. Program Applicability

As described in Section I, DCED grantees certify that their programs will be conducted and their activities carried out in compliance with all applicable civil rights laws, regulations, executive orders and directives. Grantees certify to the following assurances for the administration of their programs:

- Grantees will assure that all DCED federally-funded activities are carried out in a manner that will not cause discriminatory effects;
- Grantees will take affirmative action, where discrimination has been found in the past, to overcome the effects of past discrimination.
- Grantees will provide for equal opportunity in employment and contracting opportunities connected with the federal programs.

Grantees certify in their approved application and again in their contract with the Commonwealth that they will comply with the civil rights laws, regulations, executive orders, and directives listed in Section II.B. By certifying its compliance with these requirements, the grantee is assuring that methods of administration will be adequate to meet the law's obligations.

### General Application to Program Administration

The civil rights laws cover non-discrimination, equal opportunity, and affirmative action to address past discrimination in any program activity that includes:

- Housing;
- Benefits and services;
- Employment;
- Business opportunities; or
- Relocation resulting in DCED federally-funded activities.

### Application of Non-discrimination Requirements in DCED Federally-Funded Activities

Grantees must assure that all aspects of DCED federally-funded activities from policy development through implementation are conducted in a manner that will not cause discrimination on the basis of

race, color, national origin, religion, sex, disability, familial status, age, ancestry,\* or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.\* (As noted previously, classes marked with an asterisk are protected by Commonwealth law only and are not covered by federal law.) Further, federal laws require grantees to evaluate and report on their civil rights compliance efforts.

Application of the laws prohibit the kinds of discrimination noted below for DCED's federally-funded activity types:

### **1. In Housing Programs and Activities**

- a. Grantees are required to ensure nondiscrimination in administering their housing programs. This includes the provision of relocation housing and services for persons displaced by grantee activities.

(Reference: Title VIII, Civil Rights Act of 1968.)

- b. Under the Fair Housing Act and its amendments, the following actions – if based on race, color, religion, sex, national origin, disability, or familial status – are considered discriminatory.
  - Refusing to sell or rent to, deal or negotiate with any person.
  - Discriminating on terms or conditions for buying or renting housing.
  - Discriminating by advertising that housing is available only to persons of a certain race, color, religion, sex, or national origin.
  - Denying that housing is available for inspection, sale or rent when it really is available.
  - "Blockbusting" - for profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
  - Denying or making different terms or conditions for home loans by commercial lenders such as banks, savings and loan associations, and insurance companies.
  - Denying to anyone the use of or participation in any real estate services, multiple-listing services, or other facilities related to the selling and renting of housing.

- Refusing to make reasonable accommodations to assist persons with disabilities, including but not limited to allowing service animals in rental units that would otherwise prohibit pets.

(Reference: Title VIII Civil Rights Act of 1968, as amended; Section 804-806)

- c. Grantees may not, directly or through contractual or other arrangements, discriminate against anyone on the grounds of race, color, national origin, sex, disability, religion, age, ancestry or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

(Reference: Title VI and Section 109 and the Pennsylvania Human Relations Act)

- d. Grantees may not select sites or locations of housing and housing-related facilities that have an exclusionary or discriminatory effect.

(Reference: Title VI and Section 109)

- e. Grantees may not discriminate against a person on the basis of race, color, national origin, religion, sex, disability, familial status, age, ancestry or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals in housing and related facilities provided with federal assistance or in housing for which loans are insured or guaranteed by the federal government.

(Reference: Executive Order 11063 and the Pennsylvania Human Relations Act)

## **2. In Public Services, Facilities, and Improvements**

- a. Grantees may not, directly or through contractual or other arrangements, discriminate against anyone on the basis of their protected class by:
  - Denying facilities, services, or benefits.
  - Providing different facilities, services or benefits.
  - Providing segregated or different treatment.
  - Restricting access to any advantage or privilege enjoyed by others.
- b. Grantees may not select sites or locations of facilities that have an exclusionary discriminatory effect.

- c. Grantees may not use criteria or methods of program administration that have a discriminatory effect.

(Reference: Section 109 of the Housing and Community Development Act of 1974, Title VI, and the Pennsylvania Human Relations Act.)

### **3. In Employment**

- a. Grantees may not deny – on the basis of race, color, national origin, religion, sex, disability, familial status, age, ancestry or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals – the opportunity for employment in any federally funded program or activity.

(Reference: Section 109 of the Housing and Community Development Act of 1974 and the Pennsylvania Human Relations Act.)

- b. Contractors may not deny – on the basis of race, color, national origin, religion, sex, disability, familial status, age, ancestry or use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals – the opportunity for employment on federally funded contracts.

(Reference: Executive Order 11246, Pennsylvania Human Relations Act.)

### **4. In Contracting**

Grantees must ensure nondiscrimination in the solicitation and awarding of contracts generated from federal funds, including:

- Nondiscriminatory advertising and distribution of solicitations.
- Nondiscriminatory bid specifications or evaluation criteria.
- Nondiscriminatory award of contracts.

(Reference: Section 109 of the Housing and Community Development of 1974.)

### **5. In General**

The following are extensions of nondiscrimination provisions that grantees must take into account:

- a. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(Reference: Age Discrimination Act of 1975.)

- b. No otherwise qualified handicapped individual in the United States shall, solely because of his/her disability, be denied the benefits of, or be discriminated against under any program or activity receiving federal financial assistance.

(Reference: Section 504 of the Rehabilitation Act of 1973.)

#### Application of Affirmative Action Requirements in DCED Federally-Funded Activities

Grantees must take affirmative action to overcome the effects of past discrimination in the administration of DCED-funded activities. Grantees may wish to establish criteria that will include any instance of past discrimination as a factor to be considered when planning, selecting, and implementing DCED federally-funded projects and activities; give priority consideration to activities specifically designed to overcome the effects of past discriminatory actions; facilitate participation by persons of protected classes.

(Reference: Title VI and 24 CFR Part 1.)

#### D. Appendices

1. Table of Civil Rights Laws and Regulations