

III. Affirmatively Furthering Fair Housing

As a condition of receiving federal program funds, states and localities must certify that they are affirmatively furthering fairness and equal opportunity in housing for individuals and groups protected by Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) and its amendments. In Pennsylvania, Commonwealth grantees must also adhere to the regulations set forth in the Pennsylvania Human Relations Act and how they pertain to housing. Jurisdictions that receive CDBG, CDBG-DR, HOME, and ESG funds must comply with affirmatively further the fair housing standards that are laid out in the Act.

To comply with the Act, DCED- federally funded recipients are required to:

- (1) examine and attempt to alleviate housing discrimination within their jurisdiction;
- (2) promote fair housing choice for all persons;
- (3) provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, or national origin;
- (4) promote housing that is accessible to and usable by persons with disabilities;
- (5) and comply with the non-discrimination requirements of the Fair Housing Act.

The Pennsylvania Human Relation Act adds three additional protected classes to number three above; Age, 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.

There are specific steps that a DCED grantee is expected to take to adhere to these requirements. These steps are outlined below and in the appendices of this section. Chief among the actions that a grantee is expected to carry out are:

- Identify and publish a Notice of the Fair Housing Officer.
- Adopt and publish a Fair Housing Resolution that demonstrates its ongoing dedication to Furthering Fair Housing practices within their municipality.
- Implement at least one activity annually that demonstrates affirmatively furthering fair housing. It can come from recommendations laid out in the Fair Housing Analysis of Impediments or Assessments of Fair Housing.
- Maintain a record of all complaints filed, and dates forwarded to appropriate agencies.

- Submit a Fair Housing Annual Report along with other required reports as outlined below.

These procedures, reports, templates, and forms can be found on DCED's website at: <http://dced.pa.gov/library>. Once there, click on the Federal Program Resource Library link, and then click on the Fair Housing link. All these materials are included as appendices to this section of the Manual.

A. Regulatory Basis

The Fair Housing Act of 1968 stipulates that it is illegal to discriminate in the sale, rental and financing of housing based on race, color, religion, sex, or national origin. The Fair Housing Act was amended in 1988 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 a 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 U.S. Department of Justice jurisdiction to bring suit on behalf of victims in Federal district courts.¹

The provisions of the Fair Housing Act are reinforced by Section 109 of Title I of the Housing and Community Development Act of 1974 which states that no person in the United States “shall on the ground of race, color, national origin, religion, 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 Federal financial assistance.”²

Housing in the Commonwealth of Pennsylvania is also governed by the Pennsylvania Human Relations Act (PHRA).³ The PHRA reiterates the importance of adhering to non-discriminatory practices and law, and explicitly defines actions that are unlawful under the Commonwealth's law and underscores the importance of the Fair Housing Act. In addition, the PHRA adds three more protected classes. They are:

¹ Department of Housing and Urban Development website, Programs Administered by FHEO, Fair Housing Act

² Department of Housing and Urban Development website, Section 109

³ <http://www.phrc.pa.gov/Resources/Law-and-Legal/Pages/The-Pennsylvania-Human-Relations-Act>

- Ancestry,
- Age, 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.

All applicable Fair Housing laws and regulations listed above are presented in detail in the Table of Laws in this Manual. They are also contained in the **Statement of Assurances** that grantees submit to DCED. Grantees are encouraged to read through them carefully and thoroughly to fully understand the regulatory basis for the requirements.

In addition to adhering to Fair Housing Laws, it is a requirement that entities that receive federal funding carry out an analysis of the status of fair housing in their jurisdictions. The Commonwealth of Pennsylvania recently carried out its analysis of fair housing issues across the Commonwealth. Included were recommendations that the Commonwealth can undertake to improve fair housing, and successful implementation of the recommendations will require partnership with and the assistance of local jurisdictions. Recommendations to improve efforts to affirmatively fair housing are to:

- **Increase Public Awareness of Fair Housing Rights:** *Strengthen efforts to make the public aware of fair housing rights and further emphasize how reporting fair housing violations can have positive outcomes.*
- **Improve and Better Utilize Financial Assistance for Housing:** *Improve design and targeting of federally-supported programs, and provide more information on the availability of home financing and rental subsidy programs.*
- **Increase Access to Special Needs Housing:** *Promote best practices for alternative types of special needs/elderly housing.*
- **Strengthen Linkages between Transportation and Jobs:** *Improve access to and from employment centers and the availability of job opportunities where people live.*
- **Strengthen Local Zoning Ordinances:** *Help identify and remove regulatory impediments to promote fair share principles articulated in the Municipalities Planning Code.*

Recently, HUD issued new guidance for documenting the efforts that communities are undertaking to meet the requirements of the Fair Housing Act. Under HUD's new Affirmatively Furthering Fair Housing (AFFH) rule, jurisdictions must submit an Assessment of Fair Housing (AFH) to HUD and link this assessment to their Consolidated Plans. This assessment is similar to the previously required Analysis of

Impediments to Fair Housing (AFH) in that it uses local data and identifies impediments to housing choice. The difference is in HUD's provision of new data tools to assist in the analysis, including templates and mapping, and its increased emphasis on public comment and participation. The stated goals of the AFH include: "improving integrated living patterns and overcoming historic patterns of segregation; reducing racial and ethnic concentrations of poverty; reducing disparities by race, color, religion, sex, familial status, national origin, or disability in access to community assets such as education, transit access, and employment, as well as exposure to environmental health hazards and other stressors that harm a person's quality of life; and responding to disproportionate housing needs by protected class."

B. Minimum Requirements

The minimum requirements of fair housing law ensure that people who fall under the protected classes are not discriminated against based on their status. Under the Fair Housing Act, the following actions are examples of discrimination - if based on race, color, religion, national origin, sex, disability, or familial status.

- 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, national origin, sex, disability, or familial status.
- 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
- 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.
- Refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.⁴

Grantees are required by Section 104(b)(2) to certify that they will administer their federal programs in a

⁴ U.S.C. § 3604(f)(3)(B)

manner to affirmatively further fair housing. In addition, 24 CFR Part 570.601(b) also requires that grantees take affirmative steps to further fair housing in the administration of their programs regardless of the types of activities being carried out under their program.

The items below explain the **required** actions that grantees must take to comply with the requirements described above. This section also provides further guidance and templates for implementing each of the required actions.

- **Publish a Fair Housing Advertisement.** Grantees must publish annually an advertisement re-designating a Fair Housing Officer within their community. This advertisement must also inform residents of their rights under the fair housing law and that cases of suspected discrimination are to be reported to the Fair Housing Officer. Communities that cannot identify a person qualified to serve as a Fair Housing Officer, must publish an alternate advertisement that identifies a third party or agency to be the Fair Housing Officer for the municipality. The template for these ads can be found in **Appendix 2** or on the DCED Resource Library at <http://dced.pa.gov/download/fair-housing-ad-employee> for identifying a Local Fair Housing Officer, or at <http://dced.pa.gov/download/fair-housing-ad-another-agency> for an ad identifying another agency as the Fair Housing Officer.
- **Adopt a Fair Housing Resolution.** Grantees must have a fair housing resolution adopted annually affirming its dedication to further Fair Housing Practices within its jurisdiction. This notice identifies typical discriminatory acts, informs residents of their rights under the fair housing law and that cases of suspected discrimination are to be reported to the Fair Housing Officer. This resolution must be approved by the local municipal officials and posted in prominent locations throughout the municipality and shared with interested parties to proclaim the actions of the municipality. The template for this resolution can be found in **Appendix 3** or on the DCED Resource Library at <http://dced.pa.gov/download/fair-housing-resolution>.
- **Maintain a Record of All Complaints Filed, Dates Forwarded to Appropriate Agencies.**
- **Undertake Actions to Affirmatively Further Fair Housing.** Grantees must follow the mandatory items listed below under *Fair Housing Analysis and Action Steps*.
- **Submit the Fair Housing Annual Report by the Third Tuesday in January.** This report can be found as Form DCED-CMT-160 in **Appendix 4** or at <http://dced.pa.gov/download/fair-housing-report-cmt-160-3>.

Fair Housing Analysis and Action Steps

All grantees whether they are conducting housing related activities or not with their federal funds, must follow some Action Steps that show that they are affirmatively furthering fair housing within their communities. These steps are either considered requirements of administration for the federal programs or annual reporting requirements to be in compliance with the Fair Housing regulations.

General Program Requirements for Fair Housing for All Grantees: The following actions are expected as general requirements for fair housing whether the jurisdiction is conducting a housing activity or not. They are not annual requirements, but they are generally required to be documented and included in the Master File and be available for remote monitoring or on-site review.

- Advertise and publicize that the agency adheres to Equal Housing Opportunities (Using the Equal Housing Opportunity Logo and the equal housing opportunity slogan). Documentation of this advertisement must be retained for monitoring purposes.
- Prominently post and maintain an approved Fair Housing poster in its and/or its administering agency's place of business.
- Lack of zoning ordinances can function as an exclusionary mechanism. Grantees must ensure that zoning is not inadvertently used as a mechanism to exclude certain types of land uses, including affordable housing.
- Upon applying for funding, a confirmation that the grantee has adopted an Anti-Displacement Policy, approved by the governing body within last 5 years. The policy must include the signature of the Chief Elected Official.

ACTION ALERT

-  Advertise grantee is an Equal Housing Opportunity agency
-  Ensure zoning ordinances are not exclusionary
-  Post and maintain Fair Housing poster

Mandatory Annual Actions:

Grantees must undertake certain action steps annually to comply with DCED's Fair Housing requirements even if they are not conducting a housing program with their funds. All grantees must **conduct all mandatory fair housing activities in the following list and at least one additional activity annually to demonstrate that they are affirmatively furthering fair housing.** Grantees must conduct a different activity each year. Successful activities may be repeated after five (5) years of different activities. A grantee must undertake the actions listed below.

General: As described above, a grantee must undertake the following actions annually:

- **Publish a Fair Housing Advertisement:**
Grantees must publish annually an advertisement re-designating a Fair Housing Officer within their community. This advertisement must also inform residents of their rights under the fair housing law and that cases of suspected discrimination are to be reported to the Fair Housing Officer. Communities that cannot identify a person qualified to serve as a Fair Housing Officer, must publish an alternate ad. See **Appendix 2a and Appendix 2b** or go to the DCED Library at <http://dced.pa.gov/library>, click on Federal Program Resource Library, then Fair Housing.
- **Adopt a Fair Housing Resolution by the Applicant/Grantee:**
Grantees must have a fair housing resolution adopted annually to demonstrate its dedication to further Fair Housing Practices within its jurisdiction. This notice identifies typical discriminatory acts, informs residents of their rights under the fair housing law and that cases of suspected discrimination are to be reported to the Fair Housing Officer. See **Appendix 3.**
- **Maintain a Record of All Complaints Filed, Dates Forwarded to Appropriate Agencies:**
A grantee must refer housing-related bias or discrimination complaints⁵ to the Fair Housing Officer (either local or PHRC/HUD) and assist in filing them with the designated local agency. The grantee must also track the number and type of complaint for their jurisdiction by requesting the information from the PHRC. It is the grantees responsibility to determine if there are any patterns of fair housing discrimination based on the number and type of complaint. An example of a written complaint and investigation process may be found in **Appendix 8.**

Housing: In addition, grantees undertaking housing activities must take the following actions depending on their program design.

⁵ Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur may file a complaint with the Fair Housing Officer of the grantee.

If a grantee is conducting any type of housing activity (housing rehab, homebuyer, rental or down payment assistance, including acquisition, demolition, or construction of units for purchase or rental units):

- Develop an Affirmative Marketing Plan that directs how the agency will advertise the availability of housing and related assistance to population groups that are less likely to apply, both minority- and non-minority groups, through various forms of media (i.e. radio stations, posters, newspapers) and using the variety of languages spoken by eligible families within the service area. This includes documentation of outreach to organizations and locations that have contact with protected classes.
- Maintain documentation of all publications, public service announcements, etc. that specifically targets the protected classes for each housing related activity.

Additional Actions: Grantees must undertake *at least one* additional activity each year, and the activity must be different each year and not repeated for 5 years. Below are examples, and the grantee may use other activities that meet the Fair Housing needs of the community.

- Providing training and/or educational programs about fair housing for financial, real estate, and property-management professionals at local firms, including their obligations to follow nondiscrimination laws.
- Developing mandatory employee acknowledgement that housing and lending professionals will adhere to affirmative-marketing plans and fair-housing laws.
- Conducting meetings with advocacy groups (i.e. disability-rights groups) on the availability of housing and determine housing needs to plan future projects.
- Establishing and/or funding fair housing organizations in areas where there are no such organizations, community-housing resource board or local human relations commission.
- Conducting fair housing testing to assure that local-housing providers and/or lenders do not discriminate. Note: Fair Housing testing must be conducted by a Qualified Fair Housing Enforcement Organization which has been certified by HUD.
- Assisting Housing Choice Voucher program participants to help them to find housing outside of minority and/or poverty concentrated areas.
- Conducting outreach to housing providers and housing developers to discuss housing needs in minority and poverty concentrated areas.

- Incorporating universal design as part of housing construction and/or providing accessible units at a level that is greater than that required by Section 504 or the Americans with Disabilities Act.



Specific Examples of Fair Housing Activity by Grantees in the Past

Various activities conducted by grantees to assist in overcoming impediments to fair housing choice and making the public aware of their Fair Housing rights include the following activities:

- Conducting a Community Forum on Housing and Health open to the public that included presentations on the close relationship between housing needs, health and wellbeing.
- Having the Fair Housing Officer provide more direct contact with its Latino Community Center to ensure the Hispanic population is aware of its rights under fair housing and non-discrimination. In addition, communication and notices about Fair Housing rights and housing grants are translated at the Community Service Building for dissemination within the community.
- Holding a countywide Affordable Housing Collaborative bringing together local non-profits, churches, citizens, planners, and business partners to discuss the creation of affordable housing for underserved populations, homelessness, and the need for re-entry programs.
- Adding a Fair Housing Informational tab to the City’s office of Economic and Community Development website under its Community Development main tab, which included general Fair Housing information, including a commitment statement to further fair housing in the city, FAQs with answers on Fair Housing, who to contact if a resident wants to register a complaint, identification of the actions of the city to further Fair Housing and a listing of website links for additional information on fair housing.
- Joining forces with adjacent municipalities to place an advertisement on regional radio stations

regarding fair housing, which was broadcast over areas covered by all of the municipalities. A total of 76 radio ads ran.

For additional ideas, a grantee can refer to the most recent fair housing studies to guide further actions. The latest DCED study can be found in **Appendix 1** or at <http://dced.pa.gov/download/pa-ai-for-fair-housing-final-draft-2015>.

C. Recordkeeping

Grantees must maintain records documenting compliance with applicable civil rights requirements related to fair housing. Records must enable DCED to determine whether federally-funded activities are being administered and conducted in conformance with grantees' certification regarding fair housing requirements, including:

- Title VI of the Civil Rights Act of 1964.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act).
- Pennsylvania Human Relations Act.
- All other applicable Civil Rights and Equal Opportunity Laws, Executive Orders, and Regulations.
- The extent to which racial and ethnic groups have benefited from federally-funded activities.

To comply with the recordkeeping requirements, grantees should maintain records of the following:

Population

Demographic data by census tract or smaller geographic area. The data should include prevailing population characteristics relating to race, ethnic group, sex, disability, and head of household. Grantees can refer to the American Community Survey Tables that DCED provides during application periods that document demographic data for all localities in the Commonwealth or gather this information while conducting an income survey as part of the planning process for area-wide benefit activities.

Program Applicants and Beneficiaries

Individual and site-specific data on the racial, ethnic, and gender characteristics of applicants and beneficiaries showing the extent to which minorities, non-minorities, women and disabled persons have applied for, participated in or benefited from programs and activities. Numerical data should be

maintained by project, program, and activity. The grantee must maintain this documentation for use when completing the Applicant Data for Direct Benefit Activities form which is Form DCED-CMT-179 (**Appendix 6**). It is a report that grantees are required to submit as part of their annual reporting due the third Tuesday in January.

Fair Housing

As stated above, the grantee is expected to demonstrate compliance with Fair Housing Law by undertaking a series of mandatory actions. As part of maintaining a record of those actions and demonstrating that the grantee is affirmatively furthering fair housing, the following documentation is expected to be maintained in the grantee's files and will be submitted to DCED upon notification of DCED conducting a FHEO remote monitoring.

- Documentation of the annual Fair Housing Activity as reported on their Annual report, submitted by the third Tuesday in January. This includes submitting copies of handouts, pamphlets, pictures, newspaper advertisements, public service announcements, etc.
- Copy of the Notice of Fair Housing Officer and documentation of publication (**Appendix 2**).
- Copy of the Fair Housing Resolution and documentation of advertisement or posting (**Appendix 3**).
- Documentation of the number and type of fair housing complaints received.
- Examples of how the public, staff, and program participants were made aware of the grantee's policy on Fair Housing. This includes submitting copies of Letter Head with EEO symbol, screenshot of website with fair housing material on it, applicant pamphlet with EEO symbol, and beneficiary documents that include fair housing information.

For grantees whose programs include rental housing or homeownership activities, even if providing only Acquisition, Demolition, Clearance or Direct Assistance, records must be kept demonstrating that they are *affirmatively marketing* those housing units and the beneficiaries by race, ethnicity, gender of head of household, disability and income during the affordability period. These records will document the actions included in the required Affirmative Marketing Plan described in the Reporting section below.

Records include:

- Supporting documentation for steps utilized by the grantee, administrator, developer, or management group to affirmatively market new units and ongoing vacant units for the project.

This includes advertisements, posters, pamphlets, project site signs, and other material that advertises the units. It is required to list where all these materials were posted, placed, and passed out as well as documentation that evidences the date advertising began.

- Copy of the written agreement with the developer and/or management group that includes all the required FHEO requirements for marketing units that have utilized federal funds.
- Evidence of periodic evaluation of any residency preference to ensure that it is in accordance with the non-discrimination and equal opportunity requirements in 24 CFR 5.105(a)

The above documents need to be kept in the grantee's files to provide to DCED during remote monitoring and onsite review, as requested. While the priority of the onsite review is to confirm compliance with program requirements, the parts of the FHEO remote monitoring will necessitate visual inspections of several of these documents. These visual inspections will be done by DCED staff at the time of the onsite reviews, and reported back to DCED FHEO remote monitoring staff for inclusion in the final monitoring letter to the grantee.

D. Reporting

In order to meet civil rights requirements, grantees must complete and submit to DCED, annually by the third Tuesday of January for the previous program year (Jan. 1 to Dec. 31) the following reports:

Fair Housing Annual Report (DCED-CMT-160) (Appendix 4) – This report is to be used by grantees to report on required annual fair housing activities, Notice of Fair Housing Officer and Complaint Process, annual adoption of the Fair Housing Resolution, affirmative marketing plans, and complaints received.

Entitlements that receive direct funding from HUD for their CDBG programs, but receive HOME and/or ESG funding from the state **are not required to complete the Fair Housing Annual Report**. Instead they must complete the Fair Housing – Direct Entitlement Form (DCED CMT – 161) (Appendix 5) annually that certifies that they are complying with their local fair housing activities.

ACTION ALERT



Submit a Fair Housing Annual Report along with other required reports as outlined below

Applicant Data for Direct Benefit Activities (DCED-CMT-179) (Appendix 6) - This report is to be used by grantees to report applicants requesting assistance through direct benefit programs. This information includes race, ethnicity, gender of head of household, income and disability.

In addition to the reports above, as part of the submissions to DCED for FHEO remote monitoring purposes, the grantee will need to submit a completed FHEO Submission Checklist with items marked or filled where applicable (**Appendix 7**). **This must be placed on top of the documentation to be submitted for remote monitoring.**

E. Appendices

1. Pennsylvania Analysis of Impediments to Fair Housing (See <http://dced.pa.gov/download/pa-ai-for-fair-housing-final-draft-2015/?wpdmdl=56387>)
2. Notice of Fair Housing Officer and Complaint Process
 - a. Own Agency
 - b. Other Agency
3. Notice of Fair Housing Resolution
4. Fair Housing Annual Report (DCED-CMT-160)
5. Fair Housing – Direct Entitlement Form (DCED CMT – 161)
6. Applicant Data for Direct Benefit Activities (DCED-CMT-179)
7. FHEO Checklist for Submissions for Remote Monitoring - Fair Housing & Affirmative Marketing Items
8. Example of Fair Housing Complaints and Investigations