

Fair Housing Laws, Regulations and Executive Orders

There are federal and state rules, regulations and executive orders that inform municipalities and developers of their fair housing obligations and the rights of protected classes. Many of these statutes were successful in generating specialized resources, such as data, to aid organizations, government entities and individuals in affirmatively furthering fair housing. [Click here to print this section in its entirety.](#)

FEDERAL

[Title VIII of the Civil Rights Act of 1968 \(Fair Housing Act\) \(42 § U.S.C. § 3601, et. seq.\)](#), as amended in 1988. The Fair Housing Act prohibits discrimination in the sale, rental, financing and insuring of dwellings on the basis of color, race, religion, sex, national origin, disability and familial status. The Fair Housing Act also includes scoping and technical requirements for newly constructed, multi-family dwellings, containing four or more units that were first occupied after March 13, 1991. On April 30, 2013, HUD and the Department of Justice released a [Joint Statement](#) that provides guidance regarding the persons, entities, and types of housing and related facilities that are subject to the accessible design and construction requirements of the Act.

Prohibited behavior

It is illegal to:

- refuse to rent, sell, or negotiate for housing; or
- make housing unavailable or deny that housing is available; or
- set different terms, conditions or privileges for the sale or rental of housing;
- deny or make different terms or conditions for a mortgage, home loan, homeowners insurance or other real estate related transaction.

It is illegal to:

- advertise housing for rent or sale in a way that is discriminatory;
- “block bust for profit”; persuading owners to sell their homes by telling them minority groups are moving into the neighborhood;
- threaten, coerce or intimidate anyone attempting to exercise their fair housing rights.

What are violations of the Fair Housing Act?

1. Making any representations, directly or by implication, that the presence in a neighborhood/or apartment complex of any persons in any protected class will or may have the effect of:

- lowering property values,
- making the area less safe,
- contributing to the decline of the quality of the neighborhood an/or schools,
- changing the character or the composition of the block and/or neighborhood, or
- making neighborhood listing easier or more difficult to sell.

2. Providing inconsistent, lesser or unequal service to customers or clients who are members of a protected class. For example:
 - failing to return calls from a buyer agent to avoid presenting a contract from a protected class member to your seller,
 - avoiding or delaying an appointment for showing a listing because the applicant is a member of a protected class,
 - without adequate reason, making keys unavailable or failing to keep appointments for showing an apartment to a protected class applicant, or
 - refusing maintenance or repairs to apartment of protected class
3. Requiring higher standards for member of protected class
 - asking for more references
 - demanding higher credit rating
4. Requiring employees to make distinctions on applications, or in the application process, among protected classes
 - marking applications to indicate race, sex, etc. of applicant
 - misrepresenting availability for particular protected classes
5. Advertising in a manner that indicates a preference for a particular class and thereby excluding protected class members

Exceptions to the law:

- Developments or buildings for the elderly can exclude families with children.
- Single-family homes being sold by the owner of an owner-occupied 2 family home may be exempt. They are not exempt if
 - a real estate agency is involved or
 - if they have advertised in a discriminatory way or
 - if they have made discriminatory statements.
- There are no exemptions for race discrimination because other civil rights laws also cover it.

HUD's Affirmatively Furthering Fair Housing Proposed Rule

HUD's proposed rule for AFFH, released July 19, 2013, is intended to provide direction, guidance and procedures for program participants to promote fair housing choice by:

- Replacing the current requirement that HUD grantees complete an Analysis of Impediments (AI) with an Assessment of Fair Housing, through which grantees will assess fair housing determinants, prioritize fair housing issues for response and take meaningful actions to affirmatively further fair housing.
- Improving fair housing assessment and planning process by providing uniform data on patterns of integration, racially and ethnically concentrated areas of poverty, access to community assets and disproportionate housing needs based on the classes protected by the Fair Housing Act.

- Incorporating fair housing planning into existing planning processes, the consolidated plan, and Public Housing Agency plans
- Encouraging regional approaches to addressing fair housing issues
- Emphasizing public participation in these planning processes

Comments are being accepted on the proposed rule through September 17, 2013. Additional resources on the Affirmatively Furthering Fair Housing Proposed Rule, including the prototype geospatial tool released by HUD can be found on [HUD's website](#).

Reasonable Accommodations and Reasonable Modifications. The Fair Housing Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and Massachusetts General Law Chapter 151B, all have provisions for reasonable accommodation and/or reasonable modification. These provisions are key to customizing housing situations to enable greater accessibility for individuals with disabilities. The concept of “reasonable accommodations” and “reasonable modifications” has been the subject of regulatory clarification in the recent past. The Department of Housing and Urban Development and the Department of Justice issued joint memos on [May 17, 2004](#) and [March 5, 2008](#) clarifying reasonable accommodations and reasonable modifications under the Fair Housing Act.

Definitions and examples

Reasonable accommodations are changes in rules, policies, practices or services so that a person with a disability can participate as fully in activities related to housing as a person without a disability. For example, a housing provider makes an exception to the "no pets" policy for a tenant who is hearing impaired and requires an assistance animal. Reasonable accommodation may also be requested by an individual or applicant requesting approval for a housing development. For example, a municipality may grant a reasonable accommodation from restrictions on the number of unrelated individuals living together, for a group home application.

A *reasonable modification* is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

Assumption of cost

No costs associated with the *reasonable accommodation* can be assigned to the person making the request.

The Fair Housing Act provides that while the housing provider must permit the *reasonable modification*, the tenant is responsible for paying the cost of the modification. However, public entities under the Americans with Disabilities Act, and recipients/sub-recipients of federal financial assistance under Section 504, may also have to assume the cost of reasonable modifications. Under [Massachusetts General Law Chapter 151B](#), in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located

housing consisting of ten or more units, reasonable modification shall be at the expense of the owner or other person having the right of ownership.

Exceptions

The *reasonable accommodation* requirements of the Act do not apply to

- owner-occupied buildings that have four or fewer dwelling units;
- a private individual owner who sells his own home so long as he
 - does not own more than three single-family homes;
 - does not use a real estate agent and does not employ any discriminatory advertising or notices;
 - has not engaged in a similar sale of a home within a 24-month period; and
 - is not in the business of selling or renting dwellings.

Conditions for approval and denial

A request for a reasonable accommodation or reasonable modification must establish a nexus between the person's disability and the reasonable accommodation/modification request. If no such nexus exists, then the housing provider may refuse to allow the requested accommodation/modification.

In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable, that is, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations.

[Section 109 of Title I of the Housing and Community Development Act of 1974](#) (24 CFR 6).

Section 109 prohibits discrimination on the grounds of race, color, national origin, religion, or sex in any program or activity funded in whole or in part from HUD's Community Development and Block Grant Program. All recipients of CDBG funds are required by HUD to conduct a Fair Housing Assessment to show how these funds will be used in accordance with the Fair Housing Act.

[Executive Order 11063 \(Equal Opportunity in Housing\)](#). Executive Order 11063, which was signed by the President Kennedy on November 20, 1962, prohibits discrimination on the basis of race, color, religion, creed, sex or national origin in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds. EO 11063 also prohibits discrimination in lending practices that involve loans insured or guaranteed by the federal government for residential properties and related facilities.

[Executive Order 12892](#). Executive Order 12892, which was signed by President Clinton on January 11, 1994, requires federal agencies to affirmatively further fair housing in their programs and activities, and provides that the Secretary of HUD will be responsible for

coordinating the effort. The order also establishes the President's Fair Housing Council, which will be chaired by the Secretary of HUD.

[Executive Order 12898](#). Executive Order 12898, which was signed by the President Clinton on February 11, 1994, requires that each federal agency practice environmental justice in its programs, policies, and activities. Environmental justice, is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the implementation, and enforcement of environmental laws, regulations, and policies.

Environmental Justice and Housing Development

Developers and municipalities utilizing federal funds for housing development have an obligation to consider environmental justice in the project siting process. Specifically these parties need to evaluate whether or not the project is located in

- a neighborhood with a concentration of minority and low-income residents
- a neighborhood that suffers disproportionate adverse environmental effects (i.e. poor air or water quality, proximity to natural/built hazards) on minority and low-income populations relative to the community-at-large.

If either of these conditions are met the developer and municipalities should collaborate to consider viable mitigation measures or alternative project sites.

[Executive Order 13166](#). Executive Order 13166, which was signed by President Clinton on August 11, 2000, eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally conducted programs and activities. The Executive Order requires federal agencies and recipients of federal funds 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. The U.S. Department of Justice has issued a Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency" ([2002 LEP Guidance](#)) to assist Federal agencies in carrying out these responsibilities. This LEP Guidance sets forth the compliance standards that recipients of Federal financial assistance must follow to ensure that their programs and activities normally provided in English are accessible to LEP persons. The ability of federal agencies and recipients of federal funds to ensure accessibility of programs to LEP persons prevents discrimination on the basis of national origin.

Covered entities - HUD recipients

State and local governments

Public housing agencies

Assisted housing providers

Fair housing assistance programs

Other entities receiving funds directly or indirectly from HUD

Limited English Proficiency

Limited English Proficient (LEP) persons are individuals that do not speak English as their primary language and have a limited ability to read, write, speak, or understand English.

Providing "meaningful access" to programs and activities by LEP persons

HUD has developed a four factor analysis to evaluate compliance: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/ recipient and costs.

A Language Assistance Plan (LAP) is a written document, commonly developed by federally funded organizations, state and local governments, that details language assistance services, and how staff and Limited English Proficiency (LEP) persons can access those services. The results of the four factor analysis are often used by these entities as building blocks for the LAP.

[Executive Order 13217](#). Executive Order 13217, which was signed by President Bush on June 18, 2001, requires federal agencies to evaluate their policies and programs to determine if any of these programs or policies can be revised or modified to improve the availability of community-based living arrangements for persons with disabilities. The Executive Order stated that isolating or segregating individuals with disabilities in institutions is a form of disability-based discrimination prohibited by Title II of the ADA.

The direction provided in Executive Order 13217 rests on the precedent set in [Olmstead, Commissioner, Georgia Department of Human Resources, et al. v. L.C.: 1999](#). In this case the court's ruling required states to eliminate unnecessary segregation of persons with disabilities and established the principle that people with disabilities should receive benefits, services, and housing in the most integrated community setting appropriate to their individual needs.

Local Impact and Municipal Obligations

The requirements set forth in Executive Order 13217 and the subsequent movement of deinstitutionalization of people with disabilities means that municipal zoning must support opportunities for community based housing for people with disabilities, such as group homes. Federal, state, and local funding (i.e. housing trust funds) are potential sources for subsidizing this type of affordable housing. Recipients of these funding sources can incorporate flexibility into their guidelines governing these programs to further facilitate opportunities for housing for people with disabilities.

[Title VI of the Civil Rights Act of 1964 \(42 U.S.C. § 2000d\)](#). Title VI prohibits discrimination in federally assisted programs on the basis of race, color, or national origin. Title VI states that no person should be excluded from participation in, denied the benefit of, or subjected to discrimination in any program or activity receiving federal financial assistance.

Prohibited activities:

Federal funding recipients may not use race, color or national origin to:

- Deny assistance;

- Offer unequal aid, benefit, or service;
- Aid or perpetuate discrimination by funding agencies that discriminate;
- Deny participation as a member of a planning or advisory board;
- Use discriminatory selection or screening criteria;
- Perpetuate the discrimination of another recipient.

[The Age Discrimination Act of 1975 \(42 U.S.C. § 6101-07\)](#). The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. Age distinctions contained in a federal, state or local statute or ordinance which provides benefits or assistance to individuals based on age are exempt from the Age Discrimination Act. In addition, a grantee of federal funds is allowed to take into account age as a factor if it is necessary to the normal operation or statutory objective of any program. HUD has established [regulations](#) which implement the Age Discrimination Act for HUD programs.

[Community Reinvestment Act \(CRA\) \(12 U.S.C. § 2901\)](#). The CRA, which was enacted by Congress in 1977, establishes a foundation for financial institutions, state and local governments and community organizations to work together to promote banking services equally to all members of the community. The Act prohibits redlining and encourages financial institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods.

Evaluations

The CRA requires the periodic evaluation of each insured depository institution's record in helping meet the credit needs of its entire community. CRA examinations are conducted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

Public Data

The Federal Financial Institutions Examination Council (FFIEC) publishes [nationwide census data](#) that is used as input to HMDA/CRA reporting. [CRA data](#) indicates the number and dollar amounts of lending, cross-tabulated by loan, applicant, and geographic characteristics. This data is available on the nationwide, metropolitan statistical area and institutional level. HUD grantees may choose to incorporate CRA data into their Assessment of Fair Housing to determine if there are patterns of discrimination in local financial institutions. CRA data may also be a potential tool for municipal officials and developers to identify high quality financial institution partners for development.

[The Equal Credit Opportunity Act \(ECOA\) \(15 U.S.C. § 1691\)](#). The ECOA prohibits discrimination based on race, color, religion, national origin, sex, marital status or age in the granting of credit. It prevents lenders from discriminating against recipients of public assistance programs, such as food stamps and Social Security.

[Home Mortgage Disclosure Act of 1975 \(HMDA\) \(12 U.S.C. § 2801\)](#). The HMDA applies to depository institutions with total assets of \$10 million or more that operate a branch or home

office in a metropolitan area. These institutions must regularly submit data to federal agencies (including HUD) on the number, total dollar amounts and location of loans used for home purchase or home improvement. The HMDA was primarily passed with the goal of monitoring the allocation of government resources, the incidences of discriminatory and predatory lending practices and the allocation of government resources. HUD recommends consulting [HMDA data](#) to determine if there are patterns of discrimination in local mortgage lending.

Implementation of the Fair Housing Act's Discriminatory Effects Standard (24 CFR Part 100).

The Implementation of the Fair Housing Act's Discriminatory Effects Standard formally establishes the three-part burden-shifting test for determining when a practice with a discriminatory effect violates the Fair Housing Act. Under this test, the charging party or plaintiff first bears the burden of proving that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff proves this fact, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

Local Impact, Municipal and Developer Obligations

Municipalities have the obligation to analyze and modify rules, policies, and practices that have potential discriminatory effects/disparate impact. Case law has established instances of disparate impact by applying the disparate impact test to local preference policy [Langlois v. Abington Housing Authority: 2002](#), municipal zoning powers ([Dews vs. Town of Sunnydale, TX: 2000](#)) and project siting ([Inclusive Communities Project v. Texas Dept. of Housing and Community Affairs: 2010, 2012](#)).

In terms of state and federally funded residential development projects, both funding entities and developers are charged with ensuring that marketing and resident selection policies do not create a disparate impact by excluding, denying, or delaying participation of groups of persons protected under fair housing laws.

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

(24 CFR Parts 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982). The Equal Access to Housing in HUD Programs rule establishes that (1) individuals will have equal HUD-assisted or insured housing without regard to actual or perceived sexual orientation, gender identity, or marital status. (2) No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD assisted housing, for the purpose of determining eligibility for the housing.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Section 504 states that no person can be excluded because of their disability from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal

financial assistance. In terms of building accessibility, Section 504 covers new construction and rehabilitation in housing, public buildings and public accommodation buildings that directly receive federal funding. The [Uniform Federal Accessibility Standards](#) provide the scoping and technical requirements for new construction and rehabilitation under Section 504.

The Americans with Disabilities Act (ADA), as amended (42 U.S.C. 12101) The ADA extends civil rights similar to those previously available on the basis of race, color, religion, sex, and national origin, to people with disabilities. [Title II](#) of the ADA protects individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by public entities. [Title III](#) of the ADA prohibits discrimination on the basis of disability in places of public accommodations. Both the Department of Justice and HUD enforce the ADA. The ADA has created scoping and technical requirements for new construction or rehabilitation of projects that fall under Title II and Title III. Buildings that are constructed or rehabilitated prior March, 2012 must follow either the [Uniform Federal Accessibility Standards](#) or the [ADA Accessibility Guidelines](#) (ADAAG) of 1991. Buildings that are constructed or rehabilitated after March, 2012 must use the [2010 Standards for Accessible Design](#).

[The Architectural Barriers Act of 1968 \(ABA\), as amended, \(42 U.S.C. 4151\)](#). The ABA requires that specific buildings financed with federal funds be designed and constructed to be accessible to persons with disabilities. The Architectural Barriers Act (ABA) covers any building that is constructed or altered by or on behalf of the United States that is leased by the federal government or which is financed in whole or in part by a grant or a loan made by the United States. In 1989 the U.S. Secretary of Housing and Urban Development (HUD) made a policy decision that the ABA would apply to programs and activities funded under the CDBG program. Under the ABA, buildings that are constructed or rehabilitated must follow the scoping and technical requirements established in the [Uniform Federal Accessibility Standards](#).

MASSACHUSETTS

[Massachusetts General Law Chapter 151B](#). MGL 151B is the state's fair housing law that was passed in 1946 which outlaws discrimination in housing based on race, color, national origin, ancestry, religious creed, age, sex, marital status, disability, familial status, sexual orientation, genetic information, veteran history/military status, source of income. The protection afforded to familial status under Chapter 151B does not apply to dwellings containing three units or less, *if* one unit is occupied by an elderly or infirmed person for whom children would be a hardship. Owner-occupied dwellings that contain two or less units may also be exempt from Chapter 151B.¹ MGLA 151B mandates accessibility in new construction of housing with three units or more, first occupied after March 13, 1991. It incorporates the seven design and construction requirements of the federal Fair Housing Act of 1991.

¹ These units are not exempt if: (1) a real estate agency is involved (2) if they have advertised in a discriminatory way or (3) if they have made discriminatory statements.

Massachusetts Lead Law (105 CMR 460.000): The Massachusetts Lead Law (Lead Law) requires owners to de-lead any property where there are children under the age of six residing there. Familial status is protected under the Lead Law, which makes it illegal for a landlord or real estate agent to refuse to rent to (or to evict) a family with children under six or a pregnant woman because of the presence of lead paint.

Massachusetts Architectural Access Board (MAAB) Regulations (521 CMR). The regulations promulgated and enforced by the MAAB to establish scoping and technical requirements for accessibility in residential and public accommodation buildings. These requirements cover the new construction and rehabilitation of buildings in Massachusetts.

Data Collection Act (Chapter 334 of the Acts of 2006) (Massachusetts enabling regulation: 760 CMR 61) requires state agencies, like the Department of Housing and Community Development (DHCD), to submit an annual report to the State Legislature providing detailed information on the number, location, and residents of assisted housing units and recipients of state or federal rental assistance in the state. DHCD analyzes the data to ensure that housing choice, equitable housing opportunities, and inclusive patterns of housing are available across the Commonwealth.

Municipal/Developer Applicability

All rental projects that have received state or federal funding administered by the state are required to report on the affordable units using the web-based system. State and federal funding administered by the state is funding received through the Department of Housing and Community Development, Massachusetts Housing Partnership Fund, MassHousing, or MassDevelopment. This collection of this data is managed by the state or local government but is commonly required by the project sponsors/developers as part of the contractual obligations of the project. The specific requirements concerning the type and timing of the data are included in the User Guide for DHCD's Web-Based Data Reporting System.