

# CHAPTER SIX

## FAIR HOUSING AND EQUAL OPPORTUNITY

### 1. OVERVIEW

Each Grantee funded under Tennessee Housing Development Agency's (THDA) NHTF Program must comply with both state and federal laws with regard to fair housing and equal opportunity (FHEO). FHEO laws and requirements have been developed to protect individuals and groups against discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability and to provide equal opportunities in housing, employment and contracting assisted with federal funds.

### 2. FAIR HOUSING AND AFFIRMATIVE MARKETING

- A. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000D)** – States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 1.
  
- B. **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED (42 U.C.A. 2000E)** – Prohibits discrimination in employment against any individual on the basis of race, color, national origin, religion, sex, familial status or disability, and allows victims of intentional discrimination to seek punitive and compensatory damages through jury trials.
  
- C. **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED "THE FAIR HOUSING ACT" (42 U.C.A.. 3601)** – Prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, national origin, religion, sex, familial status or disability. Its implementing regulations may be found in 24 CFR Part 100-115.
  - 1. The Fair Housing Act does not pre-empt local zoning laws. The Act does, however, apply to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The Fair Housing Act makes the following unlawful:
    - a. To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
    - b. To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

- c. To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

D. **2.4 EQUAL OPPORTUNITY IN HOUSING (EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259)** – Prohibits discrimination in housing or residential property financing related to any federally-assisted activity against individuals on the basis of race, color, national origin, religion, sex, familial status or disability. Implementing regulations may be found in 24 CFR Part 107.

E. **2.5 AGE DISCRIMINATION ACT OF 1975, AS AMENDED (42 U.S.C. 6101-07)** – Prohibits age discrimination in programs receiving federal financial assistance. Its implementing regulations may be found in 24 CFR Part 146.

### 3. HOUSING FOR PERSONS WITH DISABILITIES

A. **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED (29 U.S.C. 794)** – States that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving NHTF funds. The implementing regulations may be found in 24 CFR Part 8.

- 1. For new construction of all multi-family units and for rehabilitation projects with 15 or more units for which the rehabilitation cost will equal at least 75% of the replacement cost:
  - a. Five percent of the units in the project must be accessible to individuals with mobility impairments; and
  - b. An additional two percent must be accessible to individuals with sight and hearing impairments.

2. Section 504 standards apply to all units in a project and not just the NHTF-assisted units.

B. **FAIR HOUSING ACT**: Multifamily dwellings must meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).

C. **AMERICANS WITH DISABILITIES ACT (42 U.S.C 12131; 47 U.S.C. 155, 201, 218 AND 225)** – Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

## 4. EMPLOYMENT AND CONTRACTING

A. **EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED** – Prohibits discrimination against any employee or applicant for employment because of race, color, national origin, religion, sex, familial status or disability. Provisions to effectuate the prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60.

1. The NHTF assistance will likely generate employment through professional service and/or construction contracts. Those responsible for contracting and hiring must be aware of the Equal Opportunity requirements, including:
  - a. Construction contracts must have the proper equal opportunity language and correct goals for minority and female employment. Goals will need to be inserted for contracts other than homeowner rehabilitation. (Refer to EO-7 for Minority goals.)
  - b. Document efforts to solicit minority/female-owned businesses (see also 4.2 below).
  - c. Any subcontractor working with the prime contractor must also provide documentation where they also attempted to use minority/female-owned businesses.

B. **MINORITY AND WOMEN BUSINESS OPPORTUNITIES (EXECUTIVE ORDERS 11625, 12138, AND 12432)** – To ensure that all federal agencies with substantial procurement or grant making authority adopt minority and woman business development plans (See EO-1). The implementing regulations may be found in 24 CFR Section 511.13(c).

1. Every effort must be made to assure minority/female owned businesses are offered opportunities to bid on service, material and construction contracts. To meet this requirement the following steps should be taken:
  - a. The grantee should notify minority and female owned businesses of contracts and bid deadlines.
  - b. A list of minority and female contractors and businesses can be found at <https://tn.diversitysoftware.com/?TN=tn> The Diversity Business Enterprise Directory and Disadvantaged Business Enterprise Directory are frequently updated and should be checked each time a project is ready to bid.
  - c. Grantees must also notify the Governor’s Office of Diversity Business Enterprise when they have projects ready to bid.
  - d. Grantees must maintain documentation to demonstrate their efforts to contact minority and female contractors, both in the county in which the project is located and in the surrounding counties.
  - e. A contract/subcontract activity report (EO-4) must be completed on all contracts awarded.

C. **SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED, 12 U.S.C. 1701u.** – The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low-income persons residing in the project area.

1. Section 3 applies to Grantees that receive \$200,000 or more in NHTF assistance for certain types of projects. The types of projects that are covered by Section 3 are housing construction (including any demolition and/or rehabilitation) or other public improvements such as infrastructure.
2. Further, contractors or subcontractors that receive contracts in excess of \$100,000 for housing construction, demolition, rehabilitation or other public construction are required to comply with the Section 3 regulations in the same manner as the grantee that provided the funding to them. In cases where a grantee receives NHTF funds of over \$200,000 for a project or activity, but no housing or other construction contracts exceeds \$100,000, the Section 3 requirement applies only to the grantee.
3. If the Section 3 threshold is met, the Grantee and, if applicable, its contractors/subcontractors must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:
  - a. Awarding 10% of the total dollar amount of covered construction contracts to Section 3 businesses; and
  - b. Hiring Section 3 residents for 30% of new employment opportunities.
4. Grantees must document efforts made to comply with Section 3. Files should contain memoranda, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation should show the steps taken to implement the Section 3 requirements, and should cross-reference information in other files, such as procurement and construction contracting. Grantees and contractors may want to utilize HUD's Section 3 Business Registry, which is located at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>. Finally, grantees are required to report on Section 3 annually. More information on this report is included in Section 7 below.

## **5. SITE AND NEIGHBORHOOD STANDARDS**

- A. **SITE AND NEIGHBORHOOD STANDARDS FOR NEW CONSTRUCTION (24 CFR 882.709)** – NHTF requires new construction of rental projects to meet site and neighborhood standards from 24 CFR 983.57(e)(2) and (3), which places limiting conditions on building in certain areas. Specifically, proposed sites for rental new construction units must meet the following site and neighborhood standards:
1. Site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with applicable provisions of Title VI of the Civil Rights Act of 1964. The Fair Housing Act, Executive Order 11063 and implementing HUD regulations including NHTF.
  2. The site must be adequate in size to accommodate the number of units proposed and have

adequate utilities and streets to service the site.

3. The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
4. The site may be located in an area of minority concentration ONLY if:
  - a. Sufficient comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
  - b. the project is necessary to meet overriding housing needs that cannot be met in that housing market area.

## 6. GENERAL RESPONSIBILITIES

- A. NHTF-funded grantees and other program partners must adhere to all the laws, executive orders and regulations discussed previously in this chapter as outlined. Additional general responsibilities are outlined below.
- B. **POLICY OF NONDISCRIMINATION** – A written policy of nondiscrimination (EO-6) must be posted conspicuously so all recipients, job applicants, contractors, subcontractors and interested parties may see it.
- C. **FAIR HOUSING & EQUAL OPPORTUNITY BROCHURE** – A copy of the brochure “*Fair Housing and Equal Opportunity for All*” (EO-8) must be distributed to each program applicant. Each grantee will need to maintain records to demonstrate that this requirement has been met.
- D. The Grantee must take actions to ensure that no protected person or group is denied benefits such as employment, training, housing, access to information, or contracts generated by THDA funded projects on the basis of minority status. As the project progresses, the Grantee:
  1. Must exercise non-discrimination in the decision-making process for all elements of the project;
  2. Must take any necessary actions to ensure that members of the protected groups have equal access to any information, related services, and job opportunities associated with THDA-funded projects;
  3. Must make reasonable accommodations (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity participate in the program.
    - a. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government’s land use and zoning scheme, it is not to be deemed a “reasonable” accommodation;
  4. Must monitor the extent to which protected groups are participating and receiving benefits from the project.

5. Must maintain records of all tenants who initially occupy units that have been rehabilitated with NHTF funds, by race, ethnicity, and sex and include this information in the Project Completion Report; and
6. Must ensure that all sub recipients and contractors are taking all required actions.
7. Must ensure compliance with Section 3 requirements by verifying that recipients and contractors are making efforts to utilize low income residents in the Section 3 area for training and employment opportunities.
8. Construction contracts will probably generate the employment of local residents. Those responsible for hiring must be aware of the requirements of Equal Opportunity.
9. Must ensure that every effort is being made to notify minority/female owned businesses as well as document efforts, the following documents have been developed:
  - a. Policy and Procedures for Outreach to Minority and Women Business Enterprises (EO-1); and
  - b. Directory of Minority and Female Business Contractors and Suppliers in Tennessee (EO-2).

## **7. KEY RECORD KEEPING AND REPORTING REQUIREMENTS**

- A. Grantees must maintain careful records of their actions for FHEO monitoring purposes. This documentation must include all items already specific previously in this chapter including: all advertisements for employment and documentation regarding the subsequent applications and individuals hired. Advertisements should contain the required equal opportunity language.
- B. Other records that must be maintained include:
  1. Policy of Non-Discrimination.
  2. Complaints, if any. Notify THDA who will address the Grantee as proper procedures to follow.
  3. City/County/nonprofit hiring policies.
  4. Documentation of Fair Housing activity (e.g., signed copies of Fair Housing and Equal Opportunity for All brochure).
  5. Beneficiary data by race, ethnicity, sex and disability status.
  6. For NHTF-funded homeownership projects, documentation that the units were affirmatively marketed to attract eligible homebuyers without regard to race, color, national origin, sex, religion, familial status or disability.
    - a. Copies of advertisements and announcements in the local media that include the Equal Opportunity logo or slogan;

- b. Copies of brochures, pamphlets or flyers soliciting applications from persons in the housing market who are not likely to apply for housing without special outreach; and
  - c. A list of community organizations, places of worship, employment centers; fair housing groups, human resource agencies and housing counseling agencies contacted for potential applicants.
7. **CONTRACTOR/SUBCONTRACTOR ACTIVITY REPORT** – This form (EO-4) is to report on contract and subcontract activity. The report must be maintained by the Grantee and copies sent to THDA by *August 31st of every year*. This report should include only contracts and subcontracts of more than \$10,000 unless contracts/subcontracts of less than \$10,000 represent a significant portion of contracting activity. The report should reflect all executed contracts and subcontracts between October 1st and September 30th of each year. The report also requires information to demonstrate compliance with Section 3.
- a. Documentation to solicit minority/female businesses participation (copy of letters or bid packages sent, copy of bid advertisement specifically encouraging participation, etc.).
8. Documentation of Section 3 activities and beneficiaries including outreach, employment and training records, bid and contract documents, etc.
9. **SECTION 3 REPORT (EO-5 and EO-5A) (HUD 60002)** – This form is to report Section 3 activity and efforts for the period of October 1<sup>st</sup> through September 30<sup>th</sup> of every year. This form must be maintained by the Grantee and copies sent to THDA by August 31<sup>st</sup> of every year.

