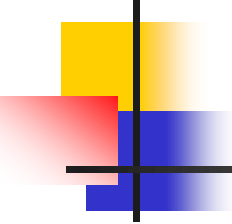


Fair Housing 101

for Shelters



Fair Housing Project
Legal Aid of North Carolina
(855) 797-3247
www.fairhousingnc.org



The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and finding of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.

The material in this presentation is for information and educational purposes only and does not constitute legal advice.

Fair Housing Laws Prohibit Housing Discrimination

- Fair Housing Act
 - 42 U.S.C. § 3601, et seq.
- State Fair Housing Act
 - N.C. Gen. Stat. § 41A-1, et seq.
- Title VI of Civil Rights Act of 1964
 - 42 U.S.C. § 2000d, et seq.
- Sec. 504, Rehabilitation Act of 1973
 - 29 U.S.C. § 794
- Americans with Disabilities Act (ADA)
 - 42 U.S.C. § 1201, et seq.





Fair Housing Act Goals

- Non-discrimination
 - Based on 7 federally-protected classes
- Ending segregation
 - “Affirmatively Furthering Fair Housing”

FHA Makes Housing Discrimination Illegal



The poster features a red silhouette of the Statue of Liberty on the left side. The text is in Vietnamese and reads: "GIA CƯ CÔNG BẰNG KHÔNG PHẢI LÀ SỰ CHỌN LỰA MÀ LÀ LUẬT". Below the text is the website "www.hud.gov" and the logo for "TOTAL HOUSING OPPORTUNITY 2007". At the bottom, it mentions "BỘ GIA CƯ VÀ PHÁT TRIỂN ĐÔ THỊ HOA KỲ" and "KỶ NIỆM 39 NĂM ĐẠO LUẬT GIA CƯ CÔNG BẰNG".

GIA CƯ CÔNG BẰNG
KHÔNG PHẢI LÀ
SỰ CHỌN LỰA
MÀ LÀ
LUẬT

www.hud.gov

TOTAL HOUSING OPPORTUNITY
2007

BỘ GIA CƯ VÀ PHÁT TRIỂN ĐÔ THỊ HOA KỲ
ALPHONSO JACKSON, BỘ TRƯỞNG
KIM KENDRICK, THỦ TRƯỞNG, FHEO

KỶ NIỆM 39 NĂM ĐẠO LUẬT GIA CƯ CÔNG BẰNG
ĐƯƠNG DÂY KHAN VE KỶ THỊ GIA CƯ
1.800.669.9777 (NÓI) 1.800.927.9275 (TTY)

- Race
- Color
- National Origin
- Religion
- **Sex / Gender**
- **Familial Status**
- **Disability**
- Affordable Housing (NC only)

“Affirmatively Furthering Fair Housing” (AFFH)

- HUD required to administer programs “in a manner affirmatively to further the policies” of the Fair Housing Act
 - 42 U.S.C. § 3608(e)(5)
- HUD has obligation “to do more than simply refrain from discriminating;” must also “assist in ending discrimination & segregation”
 - NAACP v. Sec. of HUD, 817 F.2d 149 (1st Cir. 1987)

AFFH Requirements for Recipients of HUD Funds

- HUD grants (CDBG, HOME, ESG, etc) “shall be made only if the grantee certifies” that
 - the grant will be “conducted and administered in conformity with” the FHA
 - “the grantee will affirmatively further fair housing.”
 - 42 U.S.C. § 5304(b)(2)
- Applies to subgrantees/subrecipients



AFFH Requirements for Recipients of HUD Funds

- *Every* jurisdiction/entity
- receiving federal housing and community development funds
- must take *affirmative steps*
- to expand fair housing choice
- for members of the FHA's seven protected classes

AFFH Mandate for Homeless Shelters includes...

- Affirmatively market housing/services to eligible persons (including protected classes) who are least likely to apply w/o special outreach, and maintain records of marketing activities;
- Notify NCDHHS (or jurisdiction that provided certificate of consistency w/ ConPlan) of all impediments found;
- Provide program participants w/ info on rights and remedies under the fair housing and civil rights laws.
 - 24 C.F.R. § 578.93(c)

Fair Housing Act (FHA) Covers “Dwellings”

EQUIDAD DE VIVIENDA
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EQUAL HOUSING
OPPORTUNITY
2007

DEPARTAMENTO DE VIVIENDA Y DESARROLLO URBANO DE EE.UU.
ALPHONSO JACKSON, SECRETARIO
KIM KENDRICK, SECRETARIA ASISTENTE, FHEO

39TH ANIVERSARIO DE LA LEY DE EQUIDAD DE VIVIENDA

LÍNEA DIRECTA PARA QUEJAS DE DISCRIMINACIÓN EN ASUNTOS DE VIVIENDA
1.800.669.9777 (VOICE) 1.800.927.9275 (TTY)

FHA applies to:

- Shelters
- Other short term and transitional housing programs
- Group homes
- Apartments, condos & houses



FAMILIAL STATUS

Families with Children

- It is illegal to discriminate against families w/ children, including:
 - <18 living w/ parent, legal custodian, or designee, *or*
 - In process of securing legal custody of person <18 (includes foster parenting and adoptions), *or*
 - Women who are pregnant





Familial Status: Exemptions

- State or federal elderly housing program recognized by HUD
- 62 and over housing
 - All residents are 62 and over
- 55 and over housing
 - 80% units have at least 1 resident over 55 & policy / procedures
- HUD verification rules

Familial Status: Health & Safety Rules

Shelters may adopt and enforce certain rules regarding children if:

- Necessary to protect health and safety; *and*
- Does not unreasonably discourage a family with children from residency, or unreasonably restrict their use of the facilities.
- Rules cannot be designed primarily to allow adults to avoid the presence of children.

HEARTH Rule for Homeless Programs

- Single sex housing only allowed where housing consists of single structure w/shared bedrooms or bathing facilities.
- Housing may be limited to families w/ children.
- Age/gender of a child may not be basis for denying family's admission to project.
- Sex offenders/violent offenders may be excluded from housing where at least one family w/ minor child resides.
 - 24 C.F.R. § 578.93

HEARTH Rule for Homeless Programs (con't)

- May limit housing to specific subpopulation so long as do not discriminate against any protected classes
 - Homeless veterans; victims of DV & their kids; chronically homeless persons & families
- Sober housing may exclude people who refuse to sign agreement re possession, use, or being under influence of drugs & alcohol.
- May limit admission/provide preference to subpopulations who need specialized supportive services provided in the housing
 - Substance abuse addiction treatment; DV services; etc.
 - But cannot exclude otherwise eligible people w/ disabilities



Can Shelters Do That?

- “We won’t allow mothers with male children age 13 and older at this family shelter.”
- “This is a single sex shelter. We won’t accept persons of the opposite sex even though we have separate bathrooms and both dorm and single room housing.”



Can Shelters Do That?

- “We won’t allow mothers with male children age 13 and older at this family shelter.”
Probably no.
- “This is a single sex shelter. We won’t accept persons of the opposite sex even though we have separate bathrooms and both dorm and single room housing.” **NO**



SEXUAL ORIENTATION & GENDER IDENTITY

Studies Reveal Discrimination Against LGBT Individuals

- Kaiser Family Foundation Survey (2001)
 - 11% lesbian & gay respondents reported experiencing housing discrimination
- MI Fair Housing Testing Report (2007)
 - 27% of lesbian/gay testers reported unfavorable treatment
- HUD National Study (2013)
 - Same-sex couples experienced more discrimination
- Equal Rights Center Study (2014)
 - 48% lesbian/gay testers reported adverse treatment

Housing Needs of LGBT Individuals

- 20-35% of homeless youth are LGBT
- 2011 survey of transgender individuals found:
 - 19% denied home or apartment b/c transgender
 - 11% evicted b/c transgender
 - 19% became homeless at some point b/c transgender
 - Current homeless rate 2 times US population
 - For those who tried to access homeless shelters:
 - 29% turned away; 42% forced to stay in facility designated for wrong gender
 - 55% harassed by residents or staff
 - 25% assaulted by residents or staff

HUD Initiatives re LGBT Discrimination

- Clarification of what constitutes “sex” discrimination under FH Act
- 2012 Equal Access Rule
- 2015 CPD Notice re Placement of Transgender Individuals
- 2016 CPD Equal Access Rule

HUD Interpretation of Sex Discrimination

- Includes “non-conformity with gender stereotypes”
 - If man does not act/dress “masculine enough”
 - If woman does not act/dress “feminine enough”
 - Virtually same as “gender identity”
- Applies to all dwellings
 - Public and private
 - Single-family, apartments, condos, shelters, transitional housing, etc.



2012 HUD Equal Access Rule

- Effective March 5, 2012
- Applies to HUD-assisted or HUD-insured housing
 - Includes Public Housing Authorities, HUD-assisted shelters, FHA lenders, etc.
- Housing “shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status”
 - 24 CFR 5.105(a)(2)

No Exception for Religious Organizations

“It is HUD’s hope that faith-based organizations will continue to actively participate in HUD programs. However, the exclusion of an individual or family from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD’s mission to ensure decent housing and a suitable living environment for all... [and] such arbitrary exclusion will not be tolerated.”

- Federal Register, Vol. 77, No. 23 (2/3/12), p. 5673

2015 CPD Notice on Placement of Transgender Individuals

- Covers ESG, CoC & HOPWA recipients & subs
- Place person in a shelter or facility that corresponds to the gender with which the person identifies, taking health and safety concerns into consideration.
 - Give “serious consideration” to person’s own views re health & safety
- Do not make an assignment or reassignment based on complaints of another person if only reason for complaint is person’s non-conformance with gender stereotypes.

2015 CPD Notice on Placement of Transgender Individuals

■ Privacy

- Must take “reasonable steps” to address the privacy concerns by
 - adding privacy partitions/curtains;
 - providing a nearby private restroom or office; or
 - utilizing a separate changing schedule.
- ESG and HOPWA recipients are permitted to use those funds to renovate emergency shelters to maximize privacy and safety



2016 CPD Equal Access Rule

- Effective 10/21/16
- Addresses placement in temporary, emergency shelters and other single-sex facilities
- Covers those who administer programs & services and provide temporary, emergency shelter funded by CPD programs
- Covers recipients & sub-recipients of
 - HOME, CDBG, ESG, HOPWA, CoC, Housing Trust Fund, Rural Housing Stability Assistance Program



2016 CPD Equal Access Rule

- Must establish admissions, occupancy, and operating policies & procedures to ensure
 - Equal access provided in accordance w/ person's gender ID & to afford equal access to person's family
 - Individual is placed, served, and accommodated in accordance w/ his/her gender ID
 - Individual not subjected to intrusive questioning or asked to provide anatomical info or documentary, physical, or medical evidence of his/her gender ID
 - ID card or other document not dispositive of person's gender ID
 - Eligibility determinations are made & housing is made available w/o regard to sexual orientation or gender ID
- HUD has sample antidiscrimination policy on website
- Document & maintain records of compliance for 5 yrs
 - Covers policies/procedures & that individuals are accommodated

Placement in Temporary, Emergency Shelters

- “Shall be made in accordance with individual’s gender identity”
 - Use person’s “self-identified gender ID”
 - Cannot use person’s perceived gender ID
 - Cannot condition placement on medical treatment, ID documents, appearance, or expression
 - Where documentation shows different gender than what person identified, must serve person in accordance w/ self-identified gender ID
 - No case by case exceptions for health/safety
- Public & staff perceptions are not basis for denial or limitation of access
- Providers are “strongly encouraged” to post notice of rights under 2012 & 2016 Equal Access Rules
 - HUD has published proposed sample notice



Post-Admission Accommodations in Temporary, Emergency Shelters

- Must “take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants”
- Applies to all individuals, regardless of gender ID
- If person requests accommodation b/c of privacy, may offer but not require the accommodation
 - Example: schedules that provide equal access to bathing facilities
- Nondiscriminatory = cannot place burden on transgender resident of shelter
 - If person requests accommodation of referral to alternate project, that can be granted.
 - But cannot only have transgender person go to motel, e.g.



PEOPLE WITH DISABILITIES



Disability: Definition

- Physical and / or mental impairment which substantially limits 1 or more major life activities (e.g., walking, talking, caring for oneself, learning, social interaction), *or*
- History of having such impairment, or
- Being regarded as having such impairment
- Includes people associated with or residing with person meeting definition

Disability: Examples

الإسكان المنصف
ليس
خياراً
إنه
القانون

www.hud.gov

الوزارة الأمريكية للإسكان والإقامة الحضري
الوزير، ALPHONSO JACKSON
ممساعدة الوزير، KIM KENDRICK
FHEO

الدأرى التاسعة والثلاثون لصدور قانون الإسكان المنصف

خط الطوارئ للتبليغ عن حالات التمييز في الإسكان
(الهاتف) 800.927.9275 (الطابعة البعيدة) 1.800.669.9777

- Mobility impairments
- Sensory impairments
- Mental illness
- HIV+ or AIDS
- Former drug abuse
- Other physical / mental impairments



Disability: Protections

- Can't discriminate
 - Cannot exclude or segregate; must treat applicants with disabilities the same as those without disabilities
- No inquiry into the existence or nature of disability
 - Exception for questions asked of all applicants to determine eligibility for specific disability program (e.g. HOPWA)



Disability: Protections (cont'd)

- Shelters must ensure housing/support services provided in the “**most integrated setting** appropriate to the needs of persons w/ disabilities.”
 - HEARTH Rule, 24 C.F.R. § 578.93(d)
- “Most integrated setting” means...
 - “... a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”
 - 28 C.F.R. 35, App. A, p. 450

Shelter Admissions & HMIS Data Collection

- Homeless Management Information System (HMIS) governs data collection re persons accessing homeless services in a Continuum of Care (CoC)
- Data collection requirement includes collecting disability info from persons accessing shelter services
- Data collection only occurs *after* client has been admitted into program (unless disability required for program eligibility or special units)
- Can't use disability status to determine eligibility and/or deny admission/services to disabled



Can Shelters Do That?

- “You must tell us now about your disability as part of our intake/admissions process.”
- “We can’t accept you into our shelter because our facility is not wheelchair accessible.”
- “We’ll accept you into the shelter, but we have an absolute ‘no pets’ policy and you can’t bring your emotional support animal with you.”



Can Shelters Do That?

- “You must tell us now about your disability as part of our intake/admissions process.” **NO**
- “We can’t accept you into our shelter because our facility is not wheelchair accessible.” **NO**
- “We’ll accept you into the shelter, but we have an absolute ‘no pets’ policy and you can’t bring your emotional support animal with you.” **NO**



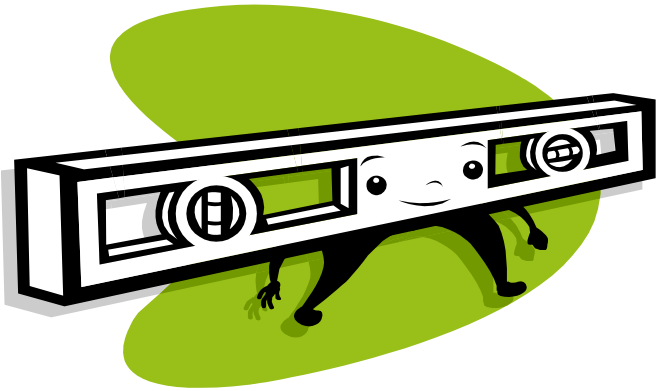
Disability: Protections, cont.

- Shelter providers are required to take affirmative steps to allow persons with disabilities an equal opportunity to reside in the shelter:
 - Reasonable accommodations
 - Reasonable modifications
 - Follow post-1991 Building Reqmts.



Reasonable Accommodations

If requested, shelter providers must provide reasonable accommodations for disabled applicants/residents.



This is the law's way of leveling the playing field



Reasonable Accommodations

- Changes in “rules, policies, practices, or services when... necessary to afford... equal opportunity to use & enjoy dwelling”
- Can require proof of covered disability
- Change must be related to disability
- Can request at any time
- Not “reasonable” if “undue burden” on provider (shelter/LL) or “fundamental alteration” of provision of housing

Reasonable Accommodations: Examples

- Allow service/assistance animal despite “no pet” policy
- Allow use/storage of wheelchair
- Provide extra assistance for applicant with disability to complete intake

Requests for Assistance Animals



- Pet rules are for use with pets
- Service and assistance animals are not “pets”
- An assistance animal is not necessarily a dog. It may be a cat, bird, rabbit, monkey, or a guinea pig, to name a few
- An assistance animal may be a trained service animal or untrained therapy or companion animal
- Both types are “assistance animals” and can be a reasonable accommodation to a person with a disability



Requests for Assistance Animals (cont'd)

- When the shelter applicant makes the request for the animal, if his/her disability and need for the animal is not obvious, can ask for verification of the disability and the need for the animal.
- Some existing shelter policies may need to be waived due to the need to reasonably accommodate an applicant with an assistance animal.
 - E.g., size and weight restrictions on pets
 - But may still require residents w/ assistance animals clean up after the animal, require use of leashes, keep the animal quiet and under control at all times, etc.



Reasonable Modifications

- Physical changes to the property to allow a person full enjoyment of premises
 - Interior of own unit *and*
 - Common areas
- Housing provider must pay if Sec. 504 applies
- Person can request at any time
- Provider can require proof of covered disability
- Modification must be related to disability

Requirements for New Construction

- The FHA design and construction requirements apply to housing that:
 - Has 4 or more units
 - Was built for first occupancy after March 13, 1991
- The requirements apply to:
 - Ground level units in buildings without an elevator
 - All units in buildings with an elevator

7 Design & Construction Req'ts

1. All covered units on accessible route
2. Public & common use areas easily accessible and usable by people w/ disabilities
3. Doorways wide enough to allow entry by wheelchairs
4. Accessible routes into & through units
5. Light switches, thermostats & outlets in accessible locations
6. Reinforced bathroom walls
7. Kitchens and bathrooms designed so that wheelchairs are easily maneuverable



Section 504 of the Rehabilitation Act of 1973

- Applies to “recipients of federal funds”
- Prohibits discrimination on basis of disability
- Covers the availability and delivery of services, accessibility, and organization's administrative responsibilities
- Requires covered entities to change rules, policies and practices if necessary to benefit people with disabilities
- Generally requires provider to pay for modifications

Americans With Disabilities Act of 1990 (ADA)

- Covers “public accommodations” and “public services” operated by private entities
 - “Public services” = programs and activities carried out by gov’t or through contract with private entities
 - Shelters are “public accommodations” covered by ADA
- Prohibits discrimination based on disability
- Requires facilities that are open to the public to address the needs of persons with disabilities

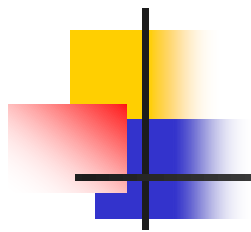


ADA (cont'd)

- People with disabilities who visit the facility must have access to all services and amenities
 - Includes admissions/leasing office, parking, public drinking fountains, restrooms, public telephones, and all other public areas
 - Must allow “service animals”
- Requires covered entities to change rules, policies and practices if necessary to benefit people with disabilities
- Requires that covered entities provide service in the “most integrated setting” appropriate to the needs of people with disabilities

ADA Req'ts for New & Remodeled Shelters

- ADA reg. imposes more extensive accessibility requirements (2010 Standards) on new and remodeled shelters. The regs. call them “social service center establishments.”
 - 28 CFR 35.151(e)
- US DOJ Final Rule regarding ADA accessibility standards. 75 Fed. Reg. 56164 (9-15-10).

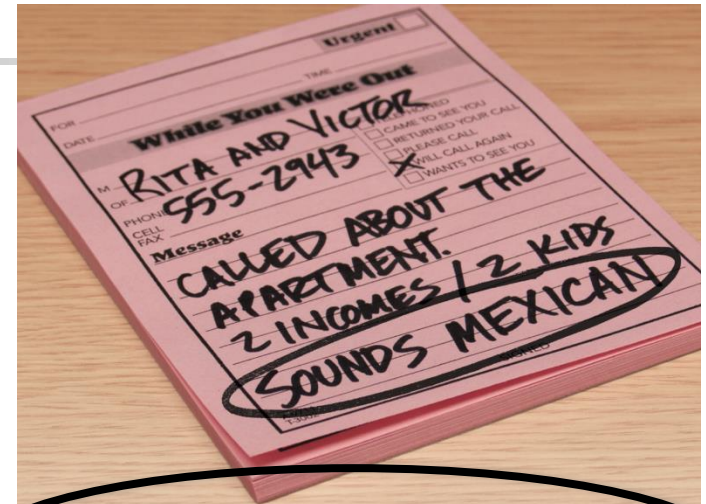


NATIONAL ORIGIN & LIMITED ENGLISH PROFICIENCY UNDER THE FH ACT

National Origin Discrimination

It is illegal to discriminate because of a person's birthplace, ancestry, culture or language

- Excluding or treating people differently because their family is from another country or because of the language they speak is likely national origin discrimination



SOUNDS LIKE DISCRIMINATION.

What matters is how you look on paper – not how you sound over the phone. Judging you by your race or national origin instead of your qualifications is discrimination. It's unfair, it's painful, and it's against the law. The best way to stop housing discrimination is to report it.

If you believe you may be a victim of housing discrimination, contact HUD or your local Fair Housing Center:

Visit www.hud.gov/fairhousing or call the HUD Hotline
1-800-669-9777 (voice) 1-800-927-9275 (TTY)

Your Choice. Your Right. Your Home.



A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit www.hud.gov/fairhousing.

NFHA
National Fair Housing Alliance

Fair Housing, National Origin & Immigration Status

- Landlords Cannot:
 - Refuse to rent because of where a Tenant is originally from
 - Refuse to rent because of Tenant's accent
 - Charge a Tenant higher rent or offer less services because of where Tenant is from



“WILL THE APARTMENT STILL BE AVAILABLE WHEN THEY HEAR MY ACCENT?”

“I called five different numbers about apartments for rent. They all said they had been rented. I started to get suspicious so I had a white friend call. Suddenly these apartments were available.”

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Limited English Proficiency (LEP)

- Definition = limited ability to read, write, speak, or understand English well
- 9% U.S. population (>25 million) = LEP
- LEP status is not *directly* protected class under FHA, however...

LEP Discrimination May Violate FH Act

- Intentional Discrimination because of race, N.O., or other protected characteristic
 - Selectively enforce language-related restriction
 - Use LEP as pretext
 - Can establish w/ direct or circumstantial evidence
 - Does not require animus
 - Favoring or targeting b/c of protected class = violation
- Discriminatory Effect/Disparate Impact
 - Neutral rule/policy has effect of discriminating based on protected class

Suspect Practices for Intentional Discrimination

- Turn away, refuse to deal with non-English speakers
- Ban tenants from speaking non-English language on property
- Disparage tenants who speak non-English language on property
- Advertise/state: “All tenants must speak English”
- Treat tenant diff’tly b/c of accent
- Target LEP individuals (“reverse redlining”)
- Fail to provide req’d language assistance to LEP (if mandated by other law, e.g. Title VI)
- Also applies if favor/disfavor certain languages



What is Title VI?

- Part of Civil Rights Act of 1964
- Applies to programs & activities receiving federal financial assistance, including
 - Housing Authorities
 - HUD Assisted Housing Providers
 - Recipients (and “subs”) of Community Development Block Grants (CDBG), HOME, ESP, HOPWA
- Prohibits discrimination based on:
 - Race
 - Color
 - National origin

Title VI and Limited English Proficiency

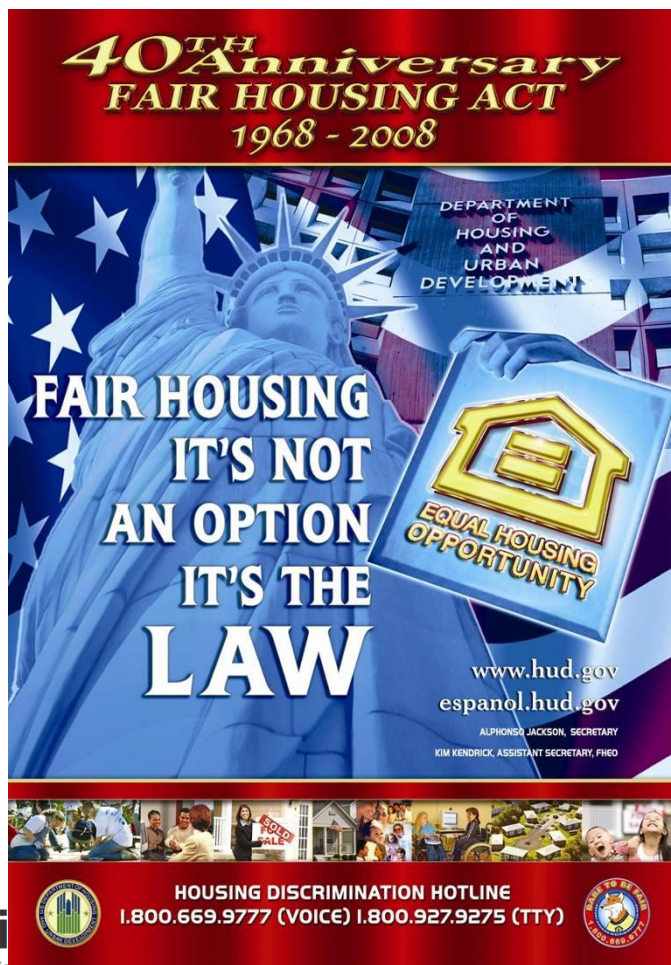
- Failure to ensure LEP persons can effectively participate in or benefit from federally-funded activities and programs may constitute N.O. discrimination under Title VI.



HUD's Title VI LEP Guidance

- Four Factor Analysis:
 - Number or proportion of LEP population
 - Frequency of contact with LEP persons
 - Importance of Service/Benefit
 - Resources Available

Questions?



**40TH Anniversary
FAIR HOUSING ACT
1968 - 2008**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**FAIR HOUSING
IT'S NOT
AN OPTION
IT'S THE
LAW**

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Fair Housing Project

Legal Aid of NC

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This seminar provides general information. For legal advice, please consult an attorney.