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\*Information contained in this section may be out of date with more current requirements

On April 7, 2023, IHFA provided public comment to the proposed Affirmatively Furthering Fair Housing rule. To date, HUD has not issued a response to the proposed rule and comments received; nor has it provided a timeline of when to expect changes. As such, IHFA will issue further guidance on data collection and priorities once the final rule has been published by HUD.

IHFA and the HOME Department comply with requirements of Title VIII of the Civil Rights Act of 1968 which states, “no person shall be subjected to discrimination because of race, color, religion, sex (including sexual orientation and gender identity), age, handicap, familial status, or national origin, as amended in the sale,

rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

### **Exemptions**

Fair Housing Act exempts certain types of housing from the coverage of the law.

The act does not:

1. Prohibit a religious organization from limiting the sale, rental, or occupancy of dwellings, which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or origin.
2. Prohibit a private club, not open to the public, which it owned or operated for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members.
3. Prohibit conduct against a person because such person has been convicted of the illegal manufacture or distribution of a controlled substance as defined in 102 of the Controlled Substances Act.
5. Apply to federal programs, which give preference to the elderly and handicapped and those listed with a federal preference category.
6. Housing which consists of four units or less.

### **Protected Classes**

There are civil rights statutes on the state and federal level, as well as, additional classifications under local ordinances. The civil rights statutes prohibit discrimination in housing on the basis of what are protected classes. Protected classes have the protections of the civil rights statutes:

**Protected classes when federal funds are used, include:**

1. **Race**
2. **Color**
3. **Religion**
4. **Sex (including sexual orientation and gender identity)**
5. **National origin**
6. **Handicapped, physical and mental including alcohol and drug**
7. **Familial Status**

### **Further Protections**

The HOME Department ensures compliance with Affirmative Fair Housing Marketing Regulations (24 CFR 200.610) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin. Recipients shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining eligibility, and in concluding sales and rental transactions.

The act, pattern, or intent of discrimination also extends to classes or groups; designed to prompt greater opportunities to participate in housing programs.

### **Familial Status**

#### **DEFINITION**

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with:

1. A parent or another person having legal custody of such individual or individuals; or
2. The designee of such parent or other persons having such custody with the written permission of such parent or other person.
3. "Familial status" includes any individual, regardless of age or domicile who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

*An adult is any person age 18 and over.*

### **HOUSING FOR OLDER PERSONS**

Pursuant to 24 CFR 100, Subpart E, *Housing for Older Persons Act*, the Fair Housing Act specifically exempts three types of housing for older persons from liability for familial status discrimination. Such provisions regarding familial status in this part do not apply to housing only if they qualify for the exemption. To qualify for "housing for older persons" a facility or community must comply with all the requirements of the exemption:

1. Provided under any state or federal program the Secretary of HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the state or federal program);
2. Intended for, and solely (100%) occupied by persons 62 years of age or older; or
3. Intended and operated for occupancy where at least 80% are occupied by at least one person 55 years of age or older where there is the existence of "significant facilities and services specially designed to meet the physical or social needs of older persons". In order to qualify for the 55 or older housing exemption, a facility or community must satisfy *each* of the following:
  - a. At least 80% of the units must have one occupant who is 55 years of age or older; and
  - b. The facility or community must publish and adhere to policies and procedures demonstrating the intent to operate as 55 or older housing; and
  - c. The facility or community must comply with HUD's regulatory requirements for age verification of residents.

The "housing for older persons" exemption does not protect such housing facilities or communities from liability for housing discrimination because of race, color, religion, sex (including sexual orientation or gender identity), disability, or national origin.

The HOME department, as part of its Consolidated Plan, provides a preference for elderly persons (62 years of age).

**DISABLED FAIR HOUSING DEFINITIONS**

Federal nondiscrimination laws define a person with a disability to include any:

- 1) individual with a physical or mental impairment which substantially limits one or more major life activities\*;
- 2) individual with a record of such impairment\*\*; or
- 3) individual who is regarded as having such an impairment

*\*Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.*

*\*\*In general, the definition of a person with a disability does not include current users of illegal controlled substances, but does not provide protections for individuals with drug or alcohol addiction. Individuals would also be protected under Section 504 and the Americans with Disabilities Act if a purpose of the specific program or activity is to provide health or rehabilitation services to such individuals.*

The HOME department, as part of its Consolidated Plan, provides a preference for persons with a disabling condition.

**DISABILITY – HIV/AIDS**

Individuals with disabilities, including HIV/AIDS are protected from discrimination.

**RIGHTS OF PERSONS WITH DISABILITIES IN FEDERALLY-ASSISTED HOUSING PROGRAMS**

Federal law makes it illegal for an otherwise qualified individual with a disability, solely because of his or her disability, to be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. An individual with a disability, who is also otherwise qualified for the program, service or activity, is covered under Section 504. To be qualified means the individual meets the essential eligibility requirements, including, for example, income requirements for tenancy, if the program is a housing program, provided those eligibility requirements are not discriminatory and can be met with or without reasonable accommodations or auxiliary aids or services necessary for effective communication.

**ENFORCEMENT**

The Department of Housing and Urban Development (HUD) will investigate complaints filed within one year of the last date of the alleged discrimination under the Fair Housing Act.

Complaints and the process for filing a complaint can be found at:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint)

**TENANT SCREENING OR SELECTION PROCESSES**

Selective in screening practices for applicants for rental units are still appropriate, however, instead of placing the responsibility on property managers to quote policy and running the risk of quoting policy to one applicant and not to another. This especially applies to telephone conversations. **DO NOT QUOTE POLICY** - offer the ability to send an application or provide alternative accommodations for completion of an application.

There is a prohibition against "using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin".

Remember, if the affect is a pattern of rejection of families with children, etc., the policy is discriminatory.

**Note: Using an outside contractor for tenant screening will not relieve the liability from the owner or manager.**