**CHAPTER IX. FAIR HOUSING**

**Introduction**

The purpose of this chapter is to provide information and guidance to Idaho Community Development Block Grant (CDBG) grantees (cities or counties) in understanding practices and their obligations to Affirmatively Furthering Fair Housing in their community per 24 CFR 570.487(b).

**Background**

Affirmatively Furthering Fair Housing is based upon the federal Fair Housing Act. Congress passed The Fair Housing Act on April 11, 1968. The Act prohibits discrimination in all housing transactions on the basis of race, national origin, sex, color, religion, person with disabilities (handicap), and familial status (i.e., households with/without children). The Fair Housing Act also requires HUD to administer the CDBG program in a manner to affirmatively further fair housing (AFFH). Therefore, CDBG grantees (cities and counties) are required to certify that they will affirmatively further fair housing. Action to AFFH should promote wider housing opportunities for all persons while maintaining a nondiscriminatory environment in all aspects of the public and private housing markets.

**Grantee’s Fair Housing Responsibilities**

When grantees receive CDBG funding, they certify they will take actions to Affirmatively Further Fair Housing. To comply with this certification, the local jurisdiction, at a minimum must complete the following five Steps to Affirmatively Furthering Fair Housing in your community.

**Step 1: Designate a Fair Housing Resource Person.**

The grantee is required to appoint a fair housing resource person to coordinate all fair housing efforts and then assure all activities are recorded.

The fair housing resource person will be responsible for:

1. Assuring that the five requirements in the fair housing resolution are complied with;
2. Review Fair Housing Information (Exhibit F).
3. Acquiring and displaying information on fair housing rights and programs. This would include posters and brochures available through HUD, and other sources. The posters and brochures should be displayed in the city or county building. Posters can be found at [www.hud.gov/offices/fheo/promotingfh.cfm](http://www.hud.gov/offices/fheo/promotingfh.cfm).
4. Assisting citizens with identifying fair housing resources;
5. Promote and possibly assist in the coordination of local fair housing activities; and
6. Establishing a record keeping system for AFFH activities.

**Step 2: Ensure Fair Housing Resolution has been adopted and that the City / County is complying with the resolution.**

The publication of the Resolution must occur (at least one year) prior to the CDBG contract execution, see Exhibit A. The Resolution must be published at least once and then posted the duration that the project is open.

**Step 3: Complete the Fair Housing Assessment Form.**

The grantee’s designated fair housing person and grant administrator need to complete the Fair Housing Assessment Form, see Exhibit B. The form requires the city or county to research and answer questions regarding possible impediments to fair housing, identifying the impediments, and establishing an action plan to overcome or mitigate the impediment or its affects.

The review form is not meant to merely be a checklist but that the questions will be researched and answered appropriately.

Also, documentation and records reflecting the actions taken must be kept on file and maintained.

**Step 4: Proclaim April as Fair Housing Month.**

The city or county will need to proclaim April as fair housing month. The proclamation should be proclaimed by the first April after execution of the grant contract. The city or county will need to proclaim April as fair housing month at least once prior to the project closeout; however, it is recommended to proclaim fair housing month on an annual basis. See Fair Housing Proclamation, Exhibit C.

**Step 5: Display Fair Housing Information.**

The city or county will display for public viewing, at a minimum, the following posters and brochure at their city hall and county administrative building.

* Equal Housing Opportunities Posters (both English and Spanish version), see Exhibits D and E.
* Good Neighbors & Fair Housing = Strong Communities / 211 Poster

**Fair Housing Resolution**

LET IT BE KNOWN TO ALL PERSONS OF the City/County of that discrimination on the basis of race, color, religion, gender or national origin in the sale, rental, leasing or financing of housing or land to be used for construction of housing or in the provision of brokerage services is prohibited by Title VIII of the 1968 Civil Rights Act (Federal Fair Housing Law).

It is the policy of the City/County of to encourage equal opportunity in housing for all persons regardless of race, color, religion, gender or national origin. The Fair Housing Amendments Act of 1988 expands coverage to include disabled persons and families with children. Therefore, the city/county does hereby pass the following Resolution.

BE IT RESOLVED that within available resources the City/County will assist all persons who feel they have been discriminated against because of race, color, religion, gender, national origin, disability or familial status to seek equity under federal and state laws by referring them to the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Compliance Division.

BE IT FURTHER RESOLVED that the City/County shall publicize this Resolution and through this publicity shall encourage owners of real estate, developers, and builders to become aware of their respective responsibilities and rights under the Federal Fair Housing Law and amendments and any applicable state or local laws or ordinances.

SAID PROGRAM will at a minimum include: 1) publicizing this resolution; 2) posting applicable fair housing information in prominent public areas; 3) providing fair housing information to the public; 4) preparing a fair housing assessment; and 5) declaring April as Fair Housing Month.

EFFECTIVE DATE

This Resolution shall take effect

Attest Chief Elected Official

**Fair Housing Assessment**

Typical impediments to fair housing that Cities / Counties directly confront include local zoning restrictions, inadequate transportation, and employment centralization. In your communities' efforts to Affirmatively Further Fair Housing, you will need to review the communities' land use tools, tax policies, and educational efforts to identify if there is an impediment. If any impediments are identified, it is the expectation that the City / County will address this issue in an effective and timely manner. Review the following background information and respond to the following questions regarding your City / County.

**Background – Court Cases and 2011 Analysis of Impediments:**

Fair housing issues are not just between a landlord and tenant read the following two examples where Idaho local governments violated the fair housing act.

**United States v. City of Payette, Idaho (Disability).** In the summer and fall of 2001, Ms. \*Smith sought to open and operate a group residence called Harbor House in Payette, Idaho. The purpose of Harbor House was to house and counsel persons recovering from alcohol and drug dependency. Harbor House was to be operated from a single-family residence owned by Ms. Smith and her husband Mr. Smith. City officials told Ms. Smith that she would need a conditional use permit (CUP) before she could open Harbor House, so she applied for one. The Payette Planning and Zoning Commission denied Ms. Smith's application for a CUP.

In August 2001, the Payette City Council held a public hearing on Ms. Smith's application to operate Harbor House. At the hearing, Ms. Smith explained that Harbor House would forbid drug or alcohol use, and its residents would be former alcoholics or drug addicts who were recovering from their addiction. Area residents who attended the hearing, as well as the earlier Planning and Zoning Commission meeting, made numerous comments indicating opposition to the proposed group home based on the fact that the prospective residents of the home would be persons with disabilities. The city claimed that the group home was a “commercial” entity that didn’t belong in a residential neighborhood, although the city had previously allowed other commercial businesses to open in residential neighborhoods. In August 2001, Ms. Smith filed a timely complaint with HUD. Upon finding reasonable cause for discrimination based on disability, the case was referred to the DOJ.

In September 2003, the court entered a consent decree requiring the city to: allow the group home to open at its originally requested location; comply with the provisions of the FHA; notify the United States of any applications for permits and zoning requests relating to group homes; and train city employees and officials on the requirements of the FHA. The defendant also paid $15,000 to the owner/operators of the facility, and a civil penalty of $5,000 to the United States. The consent decree remained in effect for three years. \*(name was changed)

**Alamar Ranch LLC v. Boise County (Disability).** In November 2009 plaintiffs, Alamar Ranch, LLC (Alamar Ranch) filed a lawsuit alleging that Boise County (defendant) violated the FHA by changing a conditional use permit (CUP) to mandate unfeasible design elements in order to construct a residential treatment center for troubled youth and youth with substance abuse problems. The CUP approved by the defendants stated that Alamar Ranch could have no more than 24 beds (the original permit was for 72 beds), must keep a fire truck on site and build a helicopter landing pad. Based on these elements, which made the development prohibitively expensive, Alamar Ranch alleged that the defendant denied reasonable accommodation to handicapped persons.

In April 2010, the court ruled on motions calling for summary judgment on whether the plaintiffs were aggrieved persons, whether the future residents of Alamar Ranch were actually handicapped and therefore denied reasonable accommodation, whether disparate impacts and treatment exist, and whether punitive damages may be assessed. The court found that Alamar Ranch is an aggrieved person; there was sufficient material evidence to prove future residents would classify as handicapped and therefore may have been denied reasonable accommodation as well as sufficient evidence to prove disparate impacts and treatment. The court ruled that the taxpayers did not share in the responsibility for the augmented CUP and there was no basis to find an exception to the public policy against punitive damages awards against municipalities. In other words, no punitive damages could be awarded in this case, however compensatory damages could result. Although the court identified that sufficient evidence existed to argue the claims of the plaintiff (except for the issue of punitive damages), the court deferred the final ruling to a jury trial.

Throughout 2010, the plaintiffs and defendants filed numerous pretrial motions establishing what evidence and testimony would be allowed in the upcoming trial. In late December 2010 a trial was held to resolve the FHA issues. The jury trial commenced, alleging three separate violations of the FHA: (1) failure to make reasonable accommodations, (2) disparate treatment of the handicapped (3) and intentional interference with the construction of handicapped housing. The jury ruled in favor of Alamar Ranch on all counts and returned a verdict awarding $4 million in damages. Many feel the outcome might have been different with a more complete understanding of fair housing law at the outset. In November, 2011, Judge Lynn Winmill ordered Boise County to levy a tax on its property owners to repay the estimated $5.4M resulting from the court case.

**State of Idaho’s 2011 Analysis of Impediments to Fair Housing Choice**

The 2011 Analysis of Impediments (2011 AI) examined policies and practices among Idaho’s counties and housing industry to determine potential barriers to fair and equal access to housing for all Idahoans. This process was coordinated by the Idaho Housing and Finance Association (IHFA) and the Department of Commerce (Commerce), with active involvement of Idaho’s entitlement cities and other housing and community stakeholders. The goals of this process was to provide practical strategies that increase compliance with fair housing law, reduce discrimination and liability, and make efficient use of scarce resources.

The full document is available for your review at [www.commerce.idaho](http://www.commerce.idaho). A summary overview related to local government considerations for fair housing compliance is available at Exhibit F.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Fair Housing Resource Person** |  |  |  |  |
| Has the City / County appointed their fair housing resource person? | Yes | \_\_\_ | No | \_\_\_ |
| Who is the person? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  What is the person’s job title? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
| Has the fair housing resource person read the Fair housing compliance:  Local government considerations overview, see Exhibit F. | Yes | \_\_\_ | No | \_\_\_ |
| Has the fair housing resource person toured the Idaho Fair Housing Forum website? The website is located at [www.fairhousingforum.org](http://www.fairhousingforum.org). | Yes | \_\_\_ | No | \_\_\_ |
| Has the fair housing resources person toured the HUD fair housing website at [www.hud.gov/offices/fheo/index.cfm](http://www.hud.gov/offices/fheo/index.cfm)? | Yes | \_\_\_ | No | \_\_\_ |
| Has the person signed up for the fair housing news feeds? | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County provide for fair housing training to this individual? | Yes | \_\_\_ | No | \_\_\_ |
| **Comprehensive Plan** |  |  |  |  |
| In accordance with Idaho’s Local Land Use Planning Act, has the City / County completed a comprehensive plan?  When was the plan last updated? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Yes | \_\_\_ | No | \_\_\_ |
| Has the comprehensive plan been updated in the last ten (10) years | Yes | \_\_\_ | No | \_\_\_ |
| Does the housing component of the plan cover the following? |  |  |  |  |
| An analysis of housing conditions and needs. | Yes | \_\_\_ | No | \_\_\_ |
| Plans for the provision of safe, sanitary, and adequate housing, including provision for low-cost conventional housing. | Yes | \_\_\_ | No | \_\_\_ |
| Siting of manufactured housing in subdivisions, parks, and individual lots. | Yes | \_\_\_ | No | \_\_\_ |
| Does the transportation component of the plan cover existing or a proposed system of public transportation or other transit lines? | Yes | \_\_\_ | No | \_\_\_ |
| **Zoning** |  |  |  |  |
| Does the City / County zoning allow for the development of row houses  and / or attached townhouses in single family zones, as a means to  encourage the development of affordable housing? | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County zoning allow for single room occupancy units (SROs), residential motels, or rooming houses? | Yes | \_\_\_ | No | \_\_\_ |
| Does the ordinance identify zoning for mobile homes? | Yes | \_\_\_ | No | \_\_\_ |
| Is the ordinance in compliance with the Idaho’s Local Land Use Planning Act (1995), thereby, treating manufactured homes the same as stick built homes for the purposes of land use regulations? | Yes | \_\_\_ | No | \_\_\_ |
| Does the zoning allow for group homes in a residential district or district(s) as per Idaho Statute Title 67 Chapter 65?  *Group housing*. The zoning code should clarify that housing for groups protected by the Fair Housing Act Amendments of 1988 are treated as residential uses, and should generally allow those group housing uses in at least one residential district. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking. Failure to provide for these uses in the code could subject the city and county to a developer’s request for “reasonable accommodation” under the Act, and failure to provide “reasonable accommodation” could be a violation of federal law. In light of the aging of the American population, the code should also provide areas where congregate care, nursing home, and assisted living facilities may be constructed. | Yes | \_\_\_ | No | \_\_\_ |
| Does the City/ County zoning allow for Accessory Dwelling Units?  *Accessory Dwelling Units*. The zoning code should allow accessory dwelling units in at least one zone district – either as an additional unit within an existing home structure or in an accessory building on the same lot. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking. | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County have a single family home provision that encourages that newly construction homes meet certain accessibility standards such as:   * Zero-step entry at least one entrance * Reinforced walls in bathrooms so it’s easy to install grab bars * Hallways 36 inches wide throughout the main floor * Switches no higher than 48 inches | Yes | \_\_\_ | No | \_\_\_ |
| If no provision, is it a standard the City / County would consider in the future? | Yes | \_\_\_ | No | \_\_\_ |
| Has the City /County considered creating a density bonus for affordable housing in single-unit zones as a means to encourage the development of affordable housing?  (Such as provision could address the number of allowed units, additional floor area ratio, site arrangement / set back standards and / or height increase). | Yes | \_\_\_ | No | \_\_\_ |
| Is public notice required for ordinance adoption or amendments for zoning, subdivision, or variances? | Yes | \_\_\_ | No | \_\_\_ |
| If 5% of the City / County residents speak a given language other than English as their primary language, are public notices provided or translated in the applicable given language? | Yes | \_\_\_ | No | \_\_\_ |
| If the City / County has a planning and zoning board, does the board make-up match the diversity of the community? | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County provide fair housing training to the planning and zoning board and city council or county commissioners? | Yes | \_\_\_ | No | \_\_\_ |
| **Public Transportation** |  |  |  |  |
| Are there public transportation options available for individuals within the community? | Yes | \_\_\_ | No | \_\_\_ |
| If not, are there any future plans to add public transportation? | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County have representation on public transportation associations such as the Community Mobility Advocacy Association or public transportation advisory council? | Yes | \_\_\_ | No | \_\_\_ |
| Does your community have a transportation plan? | Yes | \_\_\_ | No | \_\_\_ |
| **Property Tax Policies** |  |  |  |  |
| Does the County have in place procedures and personnel to advise the public of property tax reductions available to property owners and to assist the property owners in receiving the benefit of these programs? |  |  |  |  |
| Residential Property Tax Exemption (Homeowner’s Exemption) – this program allows a percentage or amount reduction off a property owner's assessed value, thereby reducing the amount of tax paid? | Yes | \_\_\_ | No | \_\_\_ |
| Circuit Breaker Exemption – property tax reduction for individuals who meet certain income and other qualifications? | Yes | \_\_\_ | No | \_\_\_ |
| **Fair Housing Education and Outreach** |  |  |  |  |
| Has the City / County adopted and published a Fair Housing Resolution? | Yes | \_\_\_ | No | \_\_\_ |
| Has the City / County accomplished (or will accomplish) the activities identified in the resolution? | Yes | \_\_\_ | No | \_\_\_ |
| Has the City / County adopted the Fair Housing Proclamation proclaiming April as Fair Housing Month? | Yes | \_\_\_ | No | \_\_\_ |
| Has the City / County adopted either their own or the state’s Anti-Displacement and Relocation Plan? | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County have available for public view the English and Spanish version of the Equal Housing Opportunity poster? See Exhibit D and E, or go to website [www.hud.gov/offices/fheo/promotingfh.cfm](http://www.hud.gov/offices/fheo/promotingfh.cfm).  Click on Fair Housing Poster. | Yes | \_\_\_ | No | \_\_\_ |
| Does the City / County have available for public view the 211 Poster? | Yes | \_\_\_ | No | \_\_\_ |
| Is there a Board or Association of Realtors who represent the City / County area? Check [www.idahorealtors.com](http://www.idahorealtors.com).  Note: This website may not list all boards or associations. | Yes | \_\_\_ | No | \_\_\_ |
| If yes, who is it? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
| Do they offer or market fair housing training opportunities to its members? | Yes | \_\_\_ | No | \_\_\_ |
| Does the board or associate monitor and review real estate publications to ensure nondiscriminatory advertising practices? | Yes | \_\_\_ | No | \_\_\_ |
| Does it educate and encourage it members to follow the National Association of Realtor Code of Ethics? | Yes | \_\_\_ | No | \_\_\_ |

If you’ve answered “No” on any of these questions, your community may have impediments that are not allowing it to affirmatively further fair housing. Determine if the “No” response is an actual impediment for the community. If you have determined the “No” response to be an impediment, identify how the City / County will overcome or mitigate the impediment.

**Action Items**

Impediment #1:

Planned action to overcome or mitigate:

Estimated Timeline to complete:

Impediment #2:

Planned action to overcome or mitigate:

Estimated Timeline to complete:

Impediment #3:

Planned action to overcome or mitigate:

Estimated Timeline to complete:

**Previous Actions or Mitigation Measures:**  Identify previous actions or mitigation measures the City / County has implemented to further fair housing. Examples: Completed fair housing outreach plan in 2014 and the Planning and Zoning commissioners attended fair housing training in 2015.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other than the fair housing resource person and grant administrator, identify individuals or agencies that provided information or assisted in completing this fair housing assessment.

This Fair Housing Assessment has been completed and developed by:

Signatures:

Fair Housing Resource Person Grant Administrator

Date Date

**Fair Housing Proclamation**

*WHEREAS, April 20\_\_\_ marks the\_\_\_\_ anniversary of the passage of Title VIII of the Civil Rights Act of 1968, commonly known as the Federal Fair Housing Act; and*

*WHEREAS, the Idaho Human Rights Commission Act has prohibited discrimination in housing since 1969; and*

*WHEREAS, equal opportunity for all – regardless of race, color, religion, sex, disability, familial status or national origin – is a fundamental goal of our nation, state and (city/county); and*

*WHEREAS, equal access to housing is an important component of this goal – as fundamental as the right to equal education and employment; and*

*WHEREAS, housing is a critical component of family and community health and stability; and*

*WHEREAS, housing choice impacts our children’s access to education, our ability to seek and retain employment options, the cultural benefits we enjoy, the extent of our exposure to crime and drugs, and the quality of health care we receive in emergencies; and*

*WHEREAS, the laws of this nation and our state seek to ensure such equality of choice for all transactions involving housing; and*

*WHEREAS, ongoing education, outreach and monitoring are key to raising awareness of fair housing principals, practices, rights and responsibilities; and*

*WHEREAS, only through continued cooperation, commitment and support of all Idahoans can barriers to fair housing be removed;*

*NOW, THEREFORE, I, (name of chief elected official), (mayor/county commissioner) of the (city/county), do hereby proclaim April 20\_\_, to be*

***F A I R H O U S I N G M O N T H***

*in the (city/county), State of Idaho.*

*IN WITNESS WHEREOF, I have hereunto set my hand at (city hall/county courthouse) in (city/county) on this (date written out) day of April in the year of our Lord two-thousand and five.*

*(Name of Chief Elected Official)*

*(Mayor/County Commissioner)*

*(name of city clerk/county clerk)*

*(Title)*



EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance with the Federal Fair

Housing Law

(The Fair Housing Amendments Act of 1988)

It is Illegal to Discriminate Against any Person Because of

Race, Color, Religion, Sex, Disability, Familial Status or

National Origin.

• In the sale or rental of housing or • In the provision of real estate

residential lots brokerage services

• In advertising the sale or rental of • In the appraisal of housing

housing

• In the financing of housing • Blockbusting is also illegal

Contacts:

Idaho Human Rights Commission -or- HUD Office of Fair Housing and Equal Opportunity

Phone: (208) 334-2873 Phone: (206) 442-0226

Toll Free: 1-800-424-8590

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Anyone who feels he or she has been discriminated U.S. Department of Housing and Urban Development

against may file a complaint of housing discrimination Assistant Secretary for Fair Housing and Equal

with the: Opportunity

Washington, D.C. 20410

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Previous editions are obsolete for HUD-928.1 (3-89)



IGUALDAD DE OPORTUNIDADES EN VIVIENDAS

Conducimos Nuestros Negocios de Acuerdo con la Ley

Federal de Viviendas Equitativas

(Título VII De La Ley De Derechos Civiles de 1968 según enmendado

por el Acto Nacional de Vivienda de 1974)

ES ILEGAL DISCRIMINAR CONTRA CUALAQUIERA

PERSONA POR RAZON DE SU RAZA, COLOR,

RELIGION, SEXO, O SU ORIGEN NACIONAL

FAMILIAS CON NIÑOS O PERSONAS CON IMPEDIMENTO MENTAL O FISICO

• En la venta o alquiler de viviendas o solares residenciales

• En anuncios para la venta o alquiler de viviendas

• En el financiamiento de viviendas

• En la provisión de servicios de agentes de bienes raíces

“BLOCKBUSTING” es tambíen ILEGAL

La persona ofendida puede someter una Queja (Querella) de discriminación en vivienda con:

U.S. Department of Housing and Urban Development

Assistant Secretary for Fair Housing and Equal Opportunity

Washington, D.C. 20410

Contacts:

Idaho Human Rights Commission -or- HUD Office of Fair Housing and Equal Opportunity

Phone: (208) 334-2873 Phone: (206) 442-0226

Toll Free: 1-800-424-8590

Previous editions are obsolete for HUD-928.1A (7-75)

**Fair Housing Compliance: Local Government Considerations Overview**

**Overview**

**Why should you read this?** Idaho cities and counties struggle to provide essential services in the face of shrinking budgets. The last thing any community or county needs is litigation stemming from a fair housing or false claims complaint. This overview should get you thinking about increased compliance with federal laws, thereby reducing costly liability (see *Legal implications and liability* below). Non-compliance can also make your jurisdiction (and local housing and service providers) ineligible to receive federal housing and community development funds. ***Note:*** *This document is not a substitute for expert legal guidance.*

**What is Fair Housing?** Fair Housing is defined as *the right of all people to be free from discrimination in the rental, sale or financing of housing.* The act covers everyone, since we all belong to one or more ‘protected classes’. Protected class refers to members of populations characterized by *race, national origin, sex, color, religion, familial status* and/or *disability.* One impediment in Idaho exists because state law does not include familial status (i.e., families with children) as a protected class. While this limits state enforcement independence and access to federal funds, familial status is still covered under federal law.

**What is an impediment?** According to HUD, impediments to fair housing choice are:

* Any actions, omissions, or decisions *taken because of* race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices.
* Any actions, omissions, or decisions *that have the effect of* restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin (see *disparate impact* below under ‘Legal implications and liability’).

**What is an Analysis of Impediments?** The 2011 Analysis of Impediments (2011 AI) examines policies and practices among Idaho’s cities, counties and housing industry to *determine potential barriers to fair and equal access to housing for all Idahoans.* This process was coordinated by the Idaho Housing and Finance Association (IHFA) and the Department of Commerce (Commerce), with active involvement of Idaho’s entitlement cities and other housing and community stakeholders. The goals of this process are to provide practical strategies that increase compliance with fair housing law, reduce discrimination and liability, and make efficient use of scarce resources.

To view and comment on the full report, visit [www.ihfa.org](http://www.ihfa.org) and type **2011 Analysis** in the Search field. This document contains excerpts from the full 2011 AI; it is strongly recommended that Idaho city and county officials refer to the full document or equivalent local AI to understand impediments and best practices. IHFA and Commerce can provide technical assistance and referral to additional resources on request. Visit [www.fairhousingforum.org](http://www.fairhousingforum.org) under ‘Info. for providers and communities’ for other options.

**Why fair housing matters.** Noncompliance is painful and costly for everyone. Everyone in America has the right to live where we choose and can afford. When this choice is denied due to discrimination, it can limit opportunities to obtain employment, quality education and essential services. Discrimination also limits community and economic development by limiting diversity. Finally, discrimination costs taxpayers, housing professionals and service providers money when complaints are filed. This money is better spent providing essential services and infrastructure or on more affordable housing choices for everyone.

**Who should consult the 2011 AI?** The 2011 AI examines all aspects of housing: rental, sale, marketing and lending; planning, zoning, and land-use policy; and other decisions affecting the location and type of housing constructed in Idaho. Clearly, everyone involved in Idaho’s housing industry should be familiar with fair housing rights and responsibilities. Beyond this, we strongly encourage the following groups to obtain a full copy of the 2011 AI and understand its impact on their decisions and liability:

* *Elected officials.* County commissioners, city councils, mayors and legislators.
* *Policy makers.* Those involved in formulating or implementing state or local government policy.
* *Legal Counsel.* City, county and state attorneys, as well as those representing housing and service providers. Fair housing law is very specialized and case law is always evolving; it is critical that attorneys for these groups understand the need for up-to-date and extensive knowledge to identify and address potential liability.
* *City, County, Special Districts, and non-profit staff.* Those involved in receiving, distributing, or otherwise administering federal funds originating from HUD and used to support housing or community development activities (including emergency shelter and transitional housing).
* *Housing professionals.* This includes lenders, REALTORS®, property managers, housing authorities, building officials, public housing authorities and landlords.

**Legal implications and liability.** Standard procedures and protocols are no protection from a fair housing complaint if those practices are alleged to have a ‘disparate impact’ on one or more protected classes as defined by the Fair Housing Act. In other words, an otherwise neutral action or policy—applied equally to all persons—may appear to have an unintended but *disparate* or unequal impact on members of a protected class and lead to a complaint. Fair Housing law is complex and dynamic; expert civil rights defense counsel is essential to determining liability and reviewing complaints before any action is taken. Once a complaint is filed—whatever its basis—legal and administrative fees start to add up.

In *Alamar Ranch LLC v. Boise County,* a 2010 court ruling involving a residential treatment facility resulted in a $4 million judgment (not counting legal costs) against Boise County, Idaho. County officials believed they were following standard procedures when reviewing the project application, responding to public testimony from constituents and ultimately granting permits. The plaintiff’s legal team persuaded the court that the net effect of the process constituted discrimination based on disability. Many feel the outcome might have been different with a more complete understanding of fair housing law at the outset. In November, 2011, Judge Lynn Winmill ordered Boise County to levy a tax on its property owners to repay the estimated $5.4M resulting from the court case.

In *U.S. ex. rel. Anti-discrimination Center v. Westchester County*, a U.S. District Court confirmed that local government eligibility for Federal Community Development Block Grant Funds requires certification that the city or county is in compliance with the Federal Fair Housing Act. This landmark case resulted in a $53 million dollar judgment against Westchester County under the \*False Claims Act; the court found county policies and practices had the effect of segregating protected classes through a pattern of housing investment that concentrated minorities in certain portions of the county. The Plaintiff successfully argued that the county *falsely claimed* to be ‘affirmatively furthering fair housing’ in order to administer federal funds for housing and community development.

Our ultimate aim is encourage Idaho counties and cities to take proactive steps to review and remedy potential barriers and reduce unintended violations and exposure before injuries or complaints occur.

**Public awareness**

Among other things, the recent AI recommends that cities and counties raise awareness of fair housing rights and responsibilities among staff, elected officials, housing professionals and the general public. This can be as simple as posting a link to available fair housing materials on official web sites, displaying posters and brochures with a referral to additional fair housing information, and/or creating opportunities for local stakeholders to participate in education and outreach activities. These are good first steps, and must be followed up with additional actions, some of which are referenced here and in the 2011 AI.

IHFA and Commerce make several resources available to cities and counties at no cost. These include the 2011 Fair Housing Campaign poster, video and radio public service announcements (PSAs), and a dedicated web site at [www.fairhousingforum.org](http://www.fairhousingforum.org). The campaign is a partnership with the 2-1-1 Idaho Care Line, which provides information and referral for any caller with a fair housing question. Idaho’s seven entitlement communities (Coeur d’Alene, Lewiston, Nampa, Meridian, Boise, Pocatello and Idaho Falls) are also a good source of information on local public awareness strategies.

**Idaho’s housing market – getting customers in the door**

Another recommendation of the 2011 AI would expand marketing opportunities for Idaho homebuilders and reduce Idaho’s Medicaid liability by encouraging more single-family homes accessible to Baby Boomers and their parents. The AI suggests adopting incentives for single-family construction that follows minimal access guidelines found in the International Building Code, or IBC. In practice, this adds a few hundred dollars to most homes and makes them attractive to a much wider customer base. It also creates an accessible residence that (by some estimates) can save the State of Idaho up to $32,000 per resident/recipient each year in Medicaid costs over institutional care.

With an aging population, more local accessible housing also means that aging or disabled family members can live at home longer. Most rural communities lack quality care facilities, so when mobility decreases, individuals leave rural Idaho for regional population centers. Over time, these resources can make a difference in local economies. Communities with accessible housing attract and retain retirees and their families—along with their incomes and skills—and create local jobs for home health professionals.

Examples of ordinances addressing access are found in the Arvada, Colorado, Municipal Code, (Chapter 18, Article XIV, ‘Visitability’) and the Pima County, Arizona, Inclusive Home Design Ordinance (both are based on the American National Standards Institute’s publication A117.1, ‘Accessible and Usable Buildings and Facilities’, published by the International Code Council). Pima County’s authority to adopt these types of building standards was upheld in *Washburn v. Pima County,* 81 P.3d 1030 (Az. Ct. Ap. 2003).

The Pima County ordinance simply requires that new homes in the unincorporated county around Tucson be built with at least one entrance with no step, and doors at least 32 inches wide. It also requires:

* Lever door handles;
* Reinforced walls in ground-floor bathrooms so it’s easy for an occupant to install grab bars;
* Switches no higher than 48 inches; and
* Hallways 36 inches wide throughout the main floor.

The Pima County ordinance was the first to require a zero-step entry in new single-family homes.

**County specific impediment and possible remedies**

Page 6 of the 2011 AI Executive Summary identifies the following county specific impediment:

*Idaho counties’ land use regulations and zoning policies may create barriers to fair housing.*

Section VI of 2011 AI contains a review of land use regulations for every county in Idaho in the context of creating or reducing barriers to fair housing choice. The review found that every county in the state has the opportunity to make changes to their land use regulations to expand housing options for existing and new residents. Most of the barriers to fair housing choice were found in group home regulations.

Specifically, some counties do not allow group housing in residential zones; others have very narrow definitions of the types of group homes allowed (e.g., nursing and rest homes). In addition, no counties have provisions in their code that encourage affordable or accessible housing development. Some counties lack land use regulations. In addition, the Intermountain Fair Housing Council (IFHC) estimates that there could be hundreds of Homeowner Association Organization (HOA) covenants that restrict group homes outright, or whose policies have the effect of discriminating.

**Why is this an impediment?** Regulations that *have the effect* of excluding certain protected classes can be found to be in violation of the Federal Fair Housing Act (see *Alamar Ranch LLC v. Boise County*). Exclusion can take the form of disallowing group homes in certain areas and/or not providing an adequate supply of accessible and affordable housing. Persons with disabilities, because of limitations on their ability to work, have a disproportionate need for affordable housing. In the same way, members of other protected classes whose incomes are consistently lower (elderly, single-parent households, certain minority populations) may experience a disparate impact from a lack of housing affordable to a range of income levels (see *U.S. ex. rel. Anti-discrimination Center v. Westchester County*). Lack of land-use regulations can also lead to inadvertent violations of fair housing law in land-use and zoning decisions.

**Land-use, zoning as economic development and compliance strategies**

*Excerpted from Section VII, p. 11 of the 2011 Analysis of Impediments*

The ability of private real estate markets to meet affordable housing needs is strongly affected by zoning, subdivision, and land development regulations adopted by local governments. Local regulations that are intentionally or unintentionally exclusionary can offset the impact of affordable housing subsidies or increase the amount of subsidies necessary for the market to meet affordable housing needs.

City County land use regulations that attempt to promote housing choice should include as many of the following tools as is consistent with future development plans. While it is not necessary that each city and county code include all of these types of provisions, including more of them will further reduce barriers to housing choice.

The recommendations below support a range of housing choice and price, essential to compliance with fair housing law. Housing that is affordable at different income levels also represents a *perpetual wage subsidy* for local employers. The resulting housing assets become part of a community’s permanent infrastructure and represent a recruitment and retention tool for employees and employers alike.

*Purpose statement.* The code should reflect the city and county’s purpose to provide housing choice for its residents and to comply with applicable federal and state law regarding housing choice.

*Small lots.* At least one zone district (or overlay district or permit system) that allows small lots for single-family detached housing in some locations. While the appropriate minimum lot size will vary with the character of the city or county, a zone allowing minimum lot sizes in the 3,000-6,000 square foot range would be appropriate for more urbanized areas of many counties. In addition, lot width requirements should be reasonable and consistent with minimum lot sizes; while some codes require minimum lot widths of 70 feet or more, small homes can be constructed on lots as narrow as 40 feet (or even less). Minimum lot size requirements are the type of regulation most responsible for increasing housing costs.

*Multifamily parcels.* At least one zone district (or overlay district or permit system) that allows the construction of multifamily housing, and mapping enough land into this district to allow a reasonable chance that some multifamily housing will be developed. In many rural cities and counties, these mapped areas may be close to incorporated or urbanized areas. Maximum heights should be reasonable and consistent with the maximum density permitted; avoid mapping areas for multifamily densities and then imposing height restrictions that prohibit efficient development at those densities. Failure to provide opportunities for multifamily development has been identified as one of the four leading regulatory causes of increased housing costs.

*Manufactured homes.* Manufactured housing meeting HUD safety standards should be allowed somewhere (per the federal Manufactured Housing Act of 1974). While restricting these homes to manufactured home parks is common, the better practice is to allow them in at least one residential zone where the size and configuration matches the scale and character of the area.

*Minimum house sizes.* The zoning and subdivision regulations should not establish minimum house or dwelling unit sizes (beyond those in the building code). Minimum house size requirements have also been identified as a significant cause of increased housing prices in those communities where they are in place.

*Group housing.* The code should clarify that housing for groups protected by the Fair Housing Act Amendments of 1988 are treated as residential uses, and should generally allow those group housing uses in at least one residential district. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking. Failure to provide for these uses in the code could subject the county to a developer’s request for “reasonable accommodation” under the Act, and failure to provide “reasonable accommodation” could be a violation of federal law. In light of the aging of the American population, the code should also provide areas where congregate care, nursing home, and assisted living facilities may be constructed.

*Accessory Dwelling Units.* The code should allow accessory dwelling units in at least one zone district—either as an additional unit within an existing home structure or in an accessory building on the same lot. While some communities require a special permit for these uses, others find that they can be allowed by right provided that they comply with standards limiting scale, character, and parking.

*Mixed Use*. In order to promote affordability, housing should be allowed near businesses that employ workers, particularly moderate- and lower-income employees. To do that the code should permit residential units in at least one commercial zone district or should map some lands for multifamily development in close proximity to commercial districts.

*Lower parking standards.* Although the traditional standard of two parking spaces per dwelling unit may be reasonable for many areas of a county, a lower standard can and generally should be used for affordable housing, multifamily housing, group housing and special needs housing.

*Flexibility on nonconforming structures.* Although zoning codes generally require that nonconforming structures damaged or destroyed through fire or natural causes can only be rebuilt in compliance with the zoning code, an increasing number of codes are exempting affordable housing from this requirement. Often the most affordable housing in a community is located on lots that are too small or narrow for the district where they are located, or in multifamily buildings that have too many units for the district where they are located. If forced to replat with larger lots or to reduce density following a disaster, those affordable units may be lost, and allowing rebuilding with the same number of units as before may be the most efficient way to preserve this these units in the housing stock.

*Incentives.* In order to encourage the development of affordable housing, the code should recognize the difficult economics involved and should offer incentives. Common incentives include smaller lots, increased density in multifamily areas, reduced parking requirements, or waivers or reductions of application fees or development impact fees. Some communities provide additional incentives for housing that is restricted for occupancy at lower percentages of the Area Median Income (AMI).

For example, developments restricted for households earning less than 50 percent of AMI could receive more generous incentives than those for households earning less than 80 percent of AMI. While zoning and subdivision incentives alone are often not enough to make development for lower levels of AMI economically feasible, they can be part of a broader package of incentives (i.e., including financial incentives or land contributions) that make those projects feasible. Any incentives offered should be updated as new housing studies are completed and new information about specific affordable housing needs is obtained.

*Growth management exemptions.* Most communities that operate a growth management system exempt affordable housing or allow it to compete for a separate pool of development rights in order to encourage this type of housing.

**Summary**

The above information and examples represent a starting point for local and regional discussions; it is critical that every Idaho city and county conduct an internal review of policies and procedures that could expose government officials and taxpayers to liability. Ignorance of the law or good intentions are not a defense if you are found in violation, and complaints—even those without a clear basis—require a diversion of scarce resources to review and defend. Since fair housing law is very specialized, it may be worthwhile for cities and counties to pool resources with other jurisdictions to seek expert civil rights counsel that can help all involved move toward compliance and resolve complaints more effectively.

**Resources**

*HUD’s Fair Housing Planning Guide* http://www.hud.gov/offices/fheo/images/fhpg.pdf

*Idaho Fair Housing Forum* www.fairhousingforum.org (general information on fair housing issues; see “Resources and Links” after reading and agreeing to the Waiver of Liability)

*2-1-1 Idaho Care Line* www.211.idaho.gov (Information and referral for fair housing questions)