

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of BHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and BHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of BHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the PHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD and DOJ's Notice of Guidance, published December 19, 2003 in the *Federal Register*, and HUD's 2007 "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Notice Jan, 22, 2007).

#### PART I: NONDISCRIMINATION

##### 2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. HUD regulations require equal access to HUD-funded housing regardless of ones' actual or perceived sexual orientation, gender identity, or marital status. BHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063

- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2013 (VAWA)
- The Equal Access Rule
- When more than one civil rights law applies to a situation, the laws will be read and applied together.
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted
- Notice of Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Notice Jan, 22, 2007)
- Executive Order 13166

#### BHA Policy

The following State nondiscrimination laws apply:

- Unruh Civil Rights Act
- Fair Employment and Housing Act
- BHA will not discriminate on the basis of marital status or sexual orientation.

### **2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as BHA policies, can prohibit discrimination against additional classes of people.

BHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called “protected classes”).

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

#### BHA Policy

BHA will not discriminate on the basis of marital status or sexual orientation (LGBT individuals), gender identity/expression and will engage in an interactive process in an attempt to identify and address any real or perceived barriers.

BHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program

- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services or subsidy
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

### **Providing Information to Families and Owners**

BHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, BHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

### **Discrimination Complaints**

If an applicant or participant believes that any family member has been discriminated against by BHA or an owner, the family should advise BHA. HUD requires the PHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, BHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

#### BHA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify BHA either orally or in writing.

BHA will attempt to remedy discrimination complaints made against BHA.

BHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

## **PART II: AFFIRMATIVELY FURTHER FAIR HOUSING**

BHA will take the following reasonable steps to affirmatively further fair housing, and expand housing choice in its Housing Choice Voucher Program:

1. Administer a unit listing service, free to owners and families, that is updated weekly. The report will be posted on the BHA website; posted at the BHA office such that it is visible from the common corridor (for access outside BHA office hours); and hard copies are provided upon request (free of charge)
2. Provide targeted outreach to owners of rental properties in various neighborhoods in the City
3. Direct contact (invitation) extended to owners of rental housing projects with City of Berkeley financial assistance (Housing Trust Fund; Community Development Block Grant and Below Market Rent (BMR) units)
4. Create and preserve affordable housing units via strategic award and renewal of Project based vouchers to projects of new construction, acquisition and rehabilitation
5. Regular dissemination of information to all participating Section 8 Landlords via a Section 8 Owners Newsletter.

BHA has 6 staff with the ability to speak a language other than English, and able to translate by phone and in person, or via email. For all languages other than those spoken by BHA staff, we have a contract with Language Line Services and can obtain translation services immediately upon request for all other languages not spoken by BHA staff.

## **PART III: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **2-III.A. OVERVIEW**

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

BHA must ensure that persons with disabilities have full access to BHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

#### BHA Policy

BHA will ask all applicants and participants if they require any type of accommodation, in writing, during the initial intake application, during the annual reexamination process, and as part of any adverse action proposed by BHA, by providing a written "NOTICE OF RIGHT TO REASONABLE ACCOMMODATION".

The notice will advise that assistance in completing the form is available for anyone unable or unwilling to complete the form.

BHA will engage in an interactive discussion, as appropriate, in response to any perceived accommodation that may be appropriate.

### **2-III.B. DEFINITION OF REASONABLE ACCOMMODATION**

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations BHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for BHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

#### **Types of Reasonable Accommodations**

When needed, BHA must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside BHA range) if BHA determines this is necessary to enable a person with disabilities to obtain an appropriate, modest housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with BHA staff
- Providing dual copies of all required notices/mailings to a person designated by the family
- Displaying posters and other housing information in locations throughout BHA's office in such a manner as to be easily readable from a wheelchair.

## **2-III.C. REQUEST FOR AN ACCOMMODATION**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that BHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to BHA's programs and services.

If the need for the accommodation is not readily apparent or known to BHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

### BHA Policy

BHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, BHA will consider the accommodation any time the family indicates that an accommodation is needed, or BHA staff has reliable information to believe an accommodation is appropriate, whether or not a formal written request is made or submitted.

When an accommodation involves suspension or reinstatement of assistance, BHA will allow a maximum of two years from the last date of assistance when considering the request.

## **2-III.D. VERIFICATION OF DISABILITY**

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, BHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to BHA's programs and services.

If a person's disability is obvious or otherwise known to BHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to BHA, BHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, BHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification highly preferred from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- BHA must request only information that is necessary to evaluate the disability-related need for the accommodation. BHA will not inquire about the nature or extent of any disability.
  - Medical records will not be accepted or retained in the participant file.
  - If the accommodation is for an additional bedroom (for storage of medical equipment), BHA may either (a) accept photos of bedroom in question or (b) perform a home visit to verify the use of the additional bedroom for the intended purpose, during the request period.
  - If the accommodation is for an additional bedroom (for a live-in aide), BHA may perform a home visit and will require reasonable documentation from the proposed live in aide including DMV issued driver's license or identification card showing the assisted address as the fixed and permanent domicile (90-days after approval and recertification), every 1-3 years, or when a concern arises about the need for the extra bedroom, to verify residency in the assisted unit as the sole place of residency, via request for identification.

**2-III.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

BHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a permanent disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on BHA, or fundamentally alter the nature of BHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation, the financial resources of BHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, BHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that BHA may verify the need for the requested accommodation.

BHA Policy

After a request for an accommodation is presented, BHA will respond, in writing, within 10 business days.

If BHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of BHA's operations), or there is no nexus between the disability and the requested accommodation, BHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If BHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, BHA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family.

If the accommodation is for an additional bedroom (e.g. for storage of medical equipment), BHA may either (a) accept photos of bedroom in question or (b) perform a home visit to verify the use of the additional bedroom for the intended purpose, during the request period and when the approval for the Reasonable Accommodation expires.

## **2-III.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

HUD regulations require BHA to ensure that persons with disabilities related to hearing and vision have reasonable access to BHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, BHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

### BHA Policy

BHA will ask all applicants and participants, in writing, if they require assistance for hearing impaired household members by including language in all applications inquiring if any member of the household is hearing impaired

To meet the needs of persons with hearing impairments, relay service is available by calling 711, then (510) 981-5485.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with BHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.



## **2-III.G. PHYSICAL ACCESSIBILITY**

BHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

BHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- This plan describes the key policies that govern BHA's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the HCV offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- BHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of BHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, BHA will include a current list of available accessible units known to BHA.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

## **2-III.H. DENIAL OR TERMINATION OF ASSISTANCE**

BHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of BHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of BHA's informal hearing process and their right to request a hearing and reasonable

accommodation. In addition, all such notices will include the name and contact information for one or more legal advocates serving low-income households in the City of Berkeley.

When reviewing reasonable accommodation requests, BHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to BHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, BHA must make the accommodation.

## **PART IV: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

### **2-IV.A. OVERVIEW**

Language for People with Limited English Proficiency (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that People with LEP can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the "Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons," published December 19, 2003 in the *Federal Register* and HUD's 2007 "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Notice Jan, 22, 2007)

BHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as People with Limited English Proficiency (LEP).

Those with LEP do not speak English as their primary language and have a limited ability to read, write, speak or understand English. For the purposes of this Administrative Plan, those with LEP are HCV applicants and participants, individuals who could potentially be served by BHA, and family members of applicants and participants.

In order to determine the level of access needed by those with LEP, BHA will balance the following four factors: (1) the number or proportion of those with LEP eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which those with LEP come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the PHA and costs. Balancing these four factors will ensure meaningful access by those with LEP to critical services while not imposing undue burdens on BHA.

### **2-IV.B. ORAL INTERPRETATION**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, BHA will generally offer, or ensure that the family is offered through other sources, competent services free of charge to those with LEP.

### BHA Policy

BHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. “Reasonable steps” may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, BHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, BHA will encourage the use of qualified community volunteers.

Where those with LEP desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend, if necessary. BHA’s interpretation assistance via Language Line Services is offered free of charge to applicants, potential applicants, and participants in BHA’s programs.

### **2-IV.C. WRITTEN TRANSLATION**

Translation is the replacement of a written text from one language into an equivalent written text in another language.

#### BHA Policy

In order to comply with written-translation obligations, BHA will take the following steps:

BHA will provide written translations of vital documents into Spanish, Chinese and Mandarin, as requested and as BHA’s budget allows. BHA will provide oral translation where reasonable for applicants with LEP and participants who speak other languages.

### **2-IV.D. IMPLEMENTATION PLAN**

After completing the four-factor analysis and deciding what language assistance services are appropriate, BHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the populations with LEP it serves.

If BHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by those with LEP to BHA’s Housing Choice Voucher program and services.

#### BHA Policy

BHA has developed a written Limited English Proficiency Plan (LEP), which addresses (1) Identifying those with LEP who need language assistance; (2) identifying language assistance measures; (3) outreach efforts; (4) staff training; and (5) complaint procedures.

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER  
FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]**

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as BHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.