

(Based on Policy from Cambridge, MA CoC)

DRAFT for Consideration by CoC Equity Committee, then CoC General Membership, after public comment & finally Homelessness Planning Council

Legal citations approved by MDHA General Counsel

Anti-discrimination Policy

The Continuum of Care (CoC) does not tolerate discrimination on the basis of race, color, national origin, ancestry, religion, age, familial status, veteran status, disability, sex, actual or perceived sexual orientation, gender identity or expression, marital status, source of income, **justice involvement, addiction, citizenship or immigration status,** or other reasons prohibited by law **regardless of their status as a protected class under local, state, or federal law.** The CoC and all subrecipient organizations receiving CoC or Emergency Solutions Grant (ESG) Program funds must comply with applicable equal access and nondiscrimination provisions of federal, state and local civil rights laws.

a. Applicable Laws & Regulations

CoC and ESG projects must operate in compliance with federal nondiscrimination and equal opportunity requirements, including the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. The requirements of the Equal Access in Accordance with an Individual's Gender Identity regulation, and the requirements of executive orders regarding equal employment opportunity and opportunities for minority and female owned businesses also apply. Please see [24 CFR 5.105](#) for a full list of applicable federal laws, regulations and Executive Orders. Additional guidance related to these laws and regulations is included in the following section of this document.

Subrecipient organizations administering CoC and ESG projects must also comply with the Tennessee Human Rights Act, Tenn. Code Ann. sec. 4-21-101 et seq., which prohibits discrimination related to housing, residential or commercial, including Advertisement, Financing, Negotiating, Rental, Real Estate Transaction and Sale. The law applies to Associations, Builders, Brokers, Developers, Insurance Agents, Financial Institutions, Landlords, Managers, Operators and Owners. Under the Tennessee Human Rights Act, it is illegal for housing providers to discriminate in housing based on Color, Creed, Disability, Familial Status, National Origin, Race, Religion and Sex.

b. How to File a Complaint

To submit a complaint or report discrimination, contact:

Nashville Human Rights Commission – Complaint Pre-Check

<https://www.nashville.gov/departments/human-relations/title-vi-metro-government/filing-inquiry-or-complaint/complaint-pre>

Tennessee Human Rights Commission

The Tennessee Human Rights Commission ("the Commission") is an independent state agency which investigates allegations of discrimination in housing, employment, places of public accommodations and Title VI for state agencies. If you feel that you have been discriminated against because of your race, color, gender, disability, national origin, religion, creed, familial status (housing only) or age (40 and over, employment only) then you may file a complaint of discrimination.

Complaints of discrimination must be filed with the Commission within 180 days of the alleged discriminatory act. The Commission does not accept anonymous complaints.

https://stateoftennessee.formstack.com/forms/2023_complaint_form

To file a complaint related to provision of housing or services funded by the Continuum of Care, contact: Suzie Tolmie, Homeless Coordinator, stolmie@nashville-mdha.org

To file a complaint related to provision of housing or services funded by the HUD Emergency Solutions Grants funding, contact:

Shelley Fugitt, sfugitt@nashville-mdha.org

US Department of Housing and Urban Development

[Knoxville Field Office](#)

John J. Duncan Federal Building

710 Locust Street, SW

3rd Floor

Knoxville, TN 37902-2526

Phone: [\(865\) 545-4370](tel:(865)545-4370)

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Federal Nondiscrimination Provisions applicable to CoC and ESG Programs

1. The Fair Housing Act¹

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. It applies to housing, regardless of the type of funding or ownership, including housing operated by private individuals or organizations that receive Federal financial assistance, and housing owned or operated by state and local governments. The Act prohibits discrimination based on membership in a protected class in a broad range of housing-related activities, including refusing to lease a unit or otherwise denying use of a dwelling. It also prohibits discriminating in the terms, conditions, privileges or in the provision of services or facilities in connection with a dwelling. Other covered housing-related activities include financing, zoning practices, and new construction design. The Act covers all types of housing intended as a short or long-term residence, including the following types of housing that may be funded under the CoC and ESG programs: shelters that house persons for more than a few days, transitional housing facilities, and permanent housing facilities. The Act covers housing provided through dormitory-style sleeping units as well as apartments and single room occupancy units.

a. Affirmatively Furthering Fair Housing

CoC and ESG recipients and subrecipients must implement projects in a manner that affirmatively furthers fair housing, which means that the project must:

- i. Affirmatively market housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or disability. Marketing should target those least likely to apply without special outreach, and records should be maintained of all marketing activities;

¹ 24 CFR Part 100

- ii. Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective project participants, provide such information to the Cambridge should it be Cambridge here or should it be our own HRC or this committee? Human Rights Commission; and iii. Provide project participants with information on rights and actions available under applicable federal, state, and local fair housing and civil rights laws.

CoC and ESG recipients and subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make information available regarding the services and facilities that are accessible to persons with disabilities. Projects are also required to take reasonable steps to ensure meaningful access to programs and activities for persons with limited English proficiency. Can we add something here to the effect of marketing strategically and purposefully to eligible persons? Affirmatively allows them to get away with the bare minimum. Strategically and purposefully forces them to make an actual effort to market to this community. Also, can we expand upon the individuals included in the Fair Housing Act to include all individuals we include in our anti-discrimination policy? For instance... In addition to the marketing required by the Fair Housing Act, the CoC and ESG require recipients and subrecipients to further strategically and purposefully market to members of the communities specified in the Fair Housing Act as well as those not specified in the act itself but included in the CoC Anti-discrimination Policy.

b. Minimum Accessibility Requirements²

In addition to its general non-discrimination requirements, the Fair Housing Act requires that new multifamily housing with four or more dwelling units built for first occupancy after March 13, 1991, be designed and built to contain minimum accessibility features for persons with disabilities. This includes accessible public and common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units. Sleeping rooms that share kitchen facilities and dormitory style housing are subject to these requirements.

c. Inquiries Related to Disability

Although the Fair Housing Act places limitations on the ability of housing providers to inquire about the nature and severity of an applicant's disability, it is permissible for a housing provider that offers housing serving persons with disabilities to inquire whether an applicant meets the program's eligibility requirements.³ Thus, a provider whose housing is limited to serving residents with disabilities may inquire whether an applicant has a qualifying disability. In addition, service providers connected with the housing program may make inquiries necessary to determine the service needs of residents. Housing providers may also ask applicants and residents whether they need units with special features or if they have special needs related to communication, but they should make these inquiries of all program participants.

d. Prohibitions on Discrimination Based on Sex

In general, the Fair Housing Act prohibits housing providers from limiting access to their housing program based upon sex. However, housing may be limited to one sex where, because of the physical limitations or configuration of the housing facility, considerations of personal privacy or personal safety would make it inappropriate for the facility to be made available to members of both sexes.

² 24 CFR 100.205

³ 24 CFR 100.202(c)

e. Prohibitions on Discrimination Based on Religion

The Fair Housing Act prohibits discrimination based upon religion. Recipients and subrecipients may not restrict housing or services to persons of a particular religion or religious denomination, nor may they require a particular religious belief or activity as a condition of receiving benefits or participating in program activities. If providers allow tenants to use the public and common spaces for religious services, it must make those public and common spaces available for all types of religious services requested by the tenants.

2. Equal Access in Accordance with an Individual's Gender Identity⁴

Housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. No recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

The admissions, occupancy, and operating policies and procedures of CoC and ESG projects must ensure compliance with the following Equal Access rules:

- a. Projects must provide equal access to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family;
- b. An individual must be placed, served, and accommodated in accordance with the gender identity of the individual;
- c. An individual shall not be subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity;
- d. Placement and accommodation of an individual in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with the individual's gender identity; and
- e. Projects must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants and, as needed, update its admissions, occupancy, and operating policies and procedures in accordance with Equal Access regulations.

From Launchpad—

Clients have the right to dress in accordance with the gender with which they self-identify. Clients should receive services/placement consistent with their self-identified gender. Maintain a welcoming environment in all facilities and ensure privacy, confidentiality, and sexuality-inclusive language during intakes, assessments, and services.

Conduct all case management interviews in a private area. Accept the client's self-identification of their gender irrespective of physical appearance, surgical status, or documentation of identity. Support transgender clients in their self-identified gender in the delivery of case management and supportive services.

- *Require LGBTQI+ sensitivity and awareness training*

⁴ 24 CFR §5.106

- *Zero or low tolerance thresholds for guests, staff, and volunteers for violence, bullying and/or harassment based on sexual orientation and gender identity and expression (including hostile use of a dead name - former name- or birth pronoun)*
- *Require that funded agencies:*
 - *honor sexual orientations beyond heterosexuality (ex: homosexual, asexual, lesbian, gay bisexual, etc.)*
 - *honor gender identities beyond the binary of male/female (ex: transgender, non-binary, two-spirit, etc.)*
 - *honor pronouns (ex: they, etc.)*
 - *honor chosen name (as opposed to legal/dead name)*
 - *provide gender neutral and/or gender affirming bathrooms, showers, changing rooms, and sleeping areas*
- *Earmark a threshold of funding for agencies providing for systems that follow these policies.*
Side note, we really need to start pushing for inclusivity in shelters and transitional housing for people who are not cis because they are almost all divided male/female including mine. I would also like to see about having discussions with trans, non-binary, and gender non-conforming staff and clients from Launchpad about how to negotiate issues related to individuals who may feel unsafe due to past trauma in spaces that are still divided male/female in a way that is respectful, not traumatizing or marginalizing or triggering for members of the community. My location has men's and women's rooms. I would place cis women and trans* women in the women's room. If I had a guest come who is gender non-conforming or gender fluid, I would ask them which room would make them feel most comfortable. A cis woman who was abused by a person who was male bodied may feel unsafe in a room with someone who is male bodied even if they do not identify as a man.*

3. Families & Equal Access

The Fair Housing Act prohibits discrimination based upon familial status, defined as families and individuals with children under 18, as well as pregnancy, and families and individuals in the process of securing legal custody of individuals under 18. Discrimination against families with children is prohibited, regardless of the ages of the children, or the number of children in a household. Notwithstanding the prohibition against discrimination on the basis of familial status, state and local governments do have the right to apply reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling. In general, absent special circumstances, HUD's position is that a maximum of two persons in a bedroom is a reasonable occupancy standard. Bedroom size, unit size, age of children, and other circumstances might affect the reasonableness of a two person per bedroom occupancy rule.

A family can include any group of persons presenting for assistance together with or without children regardless of marital status, actual or perceived sexual orientation, or gender identity. A child who is temporarily away from the home because of placement in foster care is considered a member of the family. What this means is that any group of people that present together for assistance and identify themselves as a family, regardless of age or relationship or other factors, is considered to be a family and must be served together as such. Further, a recipient or subrecipient receiving funds under the ESG or CoC programs cannot discriminate against a group of people presenting as a family based on the composition of the family (e.g., adults and children or just adults), the age of any family members, the disability status of any family members, marital status, actual or perceived sexual orientation, or gender identity.

- a. **Equal Access & Prohibition of Inquiries on Sexual Orientation or Gender Identity**
 Housing that is assisted by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. No owner or administrator of HUD-assisted housing, nor any recipient or subrecipient of HUD funds, may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of

determining eligibility for the housing. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

b. **Prohibition against Involuntary Family Separation**

The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a CoC or ESG funded project.

4. **Title VI of the Civil Rights Act of 1964**

Title VI prohibits all recipients of federal financial assistance from discriminating based on race, color, or national origin. Title VI applies to any program or activity receiving federal financial assistance, not just housing.⁵ In housing, Title VI and the Fair Housing Act apply to many of the same types of activities. However, HUD has broader investigative authority in complaints related to violations of Title VI and the authority to impose different types of remedies than it does in cases involving violations of the Fair Housing Act. Title VI regulations require that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjects individuals to discrimination based on race, color, or national origin. The regulations also require that, even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions that result in limiting participation by persons of a particular race, color, or national origin. Title VI regulations also require that owners maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federal financial assistance. Under Title VI, recipients may be required to provide language assistance to persons who, as a result of their national origin, are limited in their English proficiency, in order to improve access to their programs and activities.

5. **Americans with Disabilities Act**

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity (i.e., state or local government; or department, agency, special purpose district, or other instrumentality of a state, or states, or local government). The prohibitions against discrimination under Title II of the ADA are essentially the same as those in Section 504, except they apply to all programs, activities, and services of the public entity, not just those funded with federal financial assistance.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and commercial facilities. These do not include housing, but do include emergency overnight shelters or social service facilities. For more information about the ADA and its requirements, see the Department of Justice website at: www.ada.gov.

Recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.⁶

6. **Age Discrimination Act of 1975⁷**

The Age Discrimination Act prohibits discrimination based upon age in federally assisted and funded programs or activities, except in limited circumstances. It is not a violation of the Age Discrimination Act to

⁵ 24 CFR Part 1

⁶ 24 CFR 8.4(d)

⁷ 24 CFR Part 146

use age as a screening criterion in a particular program if age distinctions are permitted by statute for that program or if age distinctions are a factor necessary for the normal operation of the program or the achievement of a statutory objective of the program or activity.

7. Section 504 Requirements

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability in all programs or activities operated by recipients of Federal financial assistance, regardless of whether the programs involve provision of housing or nonhousing services or benefits. It covers all McKinney-Vento Act funded programs, including the CoC and ESG Programs.

a. Affirmative Accessibility Requirements

Section 504 regulations establish affirmative physical accessibility requirements when Federal financial assistance is used for new construction or rehabilitation of housing. The regulations require five percent of units to be made accessible to persons with mobility disabilities and an additional two percent to be made accessible to persons with communication disabilities. In addition, the regulations require accessible public and common use areas.⁸ Units and public and common use areas that meet the requirements of the Uniform Federal Accessibility Standards (UFAS) are deemed to be fully accessible under Section 504.⁹

b. Site Selection

The Section 504 regulations require that recipients consider physical accessibility in determining the site or location of a federally assisted facility. The regulations state that it is discriminatory for recipients to select sites which have the purpose or effect of excluding qualified persons with disabilities from participating in, or denying the benefits of, any program or activity, that receives federal financial assistance.¹⁰

c. Effective Communication

The Section 504 regulations require recipients to take appropriate steps to ensure effective communication with applicants, residents, and the public with communication disabilities. Providers should ensure that their application and admissions process and the services offered are accessible and understandable by persons with disabilities. This may include providing necessary auxiliary aids and services such as sign language interpreters and written materials in alternative formats.¹¹

8. Reasonable Accommodation & Reasonable Modification

The Fair Housing Act requires owners of housing facilities to provide reasonable accommodations to persons with disabilities. Under the Fair Housing Act, reasonable accommodations are changes, exceptions, or adjustments to a program, service, or procedure that will allow a person with a disability to have equal enjoyment of the housing program. There must be an identifiable relationship between the requested accommodation and the person's disability. Reasonable accommodations need not be provided if they would constitute an undue financial and administrative burden, or if they would be a fundamental alteration of the provider's program.

The Fair Housing Act and state law (Massachusetts General Law 151B) does not require owners and homeowner associations to make and pay for structural modifications to dwellings. Instead, it requires owners and homeowners to allow tenants with disabilities to make reasonable access-related

⁸ 24 CFR §§ 8.20, 8.22, 8.23

⁹ 24 CFR § 8.32

¹⁰ 24 CFR §8.4(b)(5)

¹¹ 24 CFR §8.6

modifications to their private living space and common use spaces.¹² However, recipients of federal financial assistance such as CoC grantees should be mindful that they are subject to Section 504's more stringent requirements that they make and pay for structural modifications to dwellings and public and common use areas that are needed as a reasonable accommodation for persons with disabilities unless providing that accommodation would constitute a fundamental alteration of the program or an undue financial and administrative burden.

Like the Fair Housing Act, Section 504 requires that recipients provide reasonable accommodations to persons with disabilities by making changes to policies, practices, procedures, and structures if needed to allow applicants or tenants with disabilities to have access to or participate in the program. A particular reasonable accommodation need not be provided if doing so would constitute an undue financial and administrative burden or a fundamental alteration of the program.¹³ The requirements for reasonable accommodations related to policies, practices, and procedures are the same under Section 504 and the Fair Housing Act. However, the Section 504 reasonable accommodation obligation is broader than the obligation under the Fair Housing Act with respect to requests for structural changes to facilities because Section 504 requires that recipients of federal financial assistance make and pay for physical changes to dwelling units and public and common use spaces if needed as a reasonable accommodation unless it is an undue financial and administrative burden or a fundamental alteration of the program.

Recipients are allowed to verify the existence of the disability and the need for the requested accommodation. Examples of reasonable accommodations under Section 504 include:

- a. Making an exception to a rule that prohibits animals in a dwelling to accommodate a person with a disability who uses an assistance animal
- b. Providing and paying for a ramp to the entrance of a unit which would allow a tenant in a wheelchair to access the unit
- c. Providing accessible transportation for a trip for program participants where transportation is being provided for nondisabled residents
- d. Providing a first-floor unit to an applicant or a transfer to a first floor unit for a resident who cannot climb stairs to a second floor unit
- e. Allowing a resident to have a personal refrigerator to store medications in a development that does not normally provide refrigerators in sleeping units

Providers should have written, reasonable accommodation policies, and program participants should be advised of their right to reasonable accommodation at admission and during tenancy.

¹² 24 CFR §100.203; M.G.L. c. 151B §4

¹³ 24 CFR §§ 8.20, 8.24, 8.33