Fair Housing: National Origin and Immigration Status

Chester County

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Agenda

• Fair Housing Act Review
• National Origin Discrimination
• Case Examples
• Identification Alternatives
• Limited English Proficiency
• Resources
Fair Housing Act Review
The Civil Rights Act of 1968 was passed 7 days after the assassination of Martin Luther King, Jr. and prohibits discrimination in housing related transactions based on race, color, national origin, and religion.
Federal Fair Housing Act

Amended in 1974 to prohibit discrimination based on sex and again in 1988 to outlaw disability and familial status discrimination.

The 1988 amendments also added an administrative enforcement mechanism through HUD’s Office of Fair Housing and Equal Opportunity. Prior to 1988 the FHA was only enforceable through private lawsuits, making it very difficult and costly for individual consumers to assert their rights.
From its inception, the Fair Housing Act not only prohibited discrimination in housing related activities and transactions but also imposed a duty on the federal government to affirmatively further fair housing (AFFH).

Because in practice HUD programs have historically perpetuated patterns of racial and economic segregation AFFH seeks to begin to remedy the impact of historical segregation.

The AFFH obligation covers all activities, policies, and procedures of recipients and sub-recipients of federal housing funding including Community Development Block Grant entitlement jurisdictions and public housing authorities. These entities are responsible to hold staff accountable for complying with all Fair Housing Act requirements.
Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

- Race
- Color
- Religion
- National Origin
- Sex
- Disability
- Familial Status*

*Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.
Federal Fair Housing Act

It is against the law, because of a protected class, to:

• Refuse to rent or sell housing
• Refuse to negotiate for housing
• Make housing unavailable or deny housing is available
• Set different terms, conditions or privileges for the sale or rental of housing
• Advertise in a discriminatory way
• Threaten, coerce, or intimidate anyone exercising their fair housing rights or assisting others in exercising those rights
Federal Fair Housing Act

Covered Transactions:
- Rental
- Sales
- Lending
- Homeowners insurance
- Appraisals
- Zoning and land use
- Housing programs offering rental assistance, housing counseling, etc.

Covered Properties:
- Apartments and condos
- Public housing
- Private housing
- Dormitories
- Nursing homes
- Homeless shelters
- Transitional housing
- Group homes
- Addiction recovery homes
Federal Fair Housing Act

Who Must Abide by Fair Housing Laws?

Landlords
Property Managers
Nonprofit Housing
Subsidized Housing
Portfolio Managers
Maintenance Crews and Contractors
Housing Industry Trade Associations
Property Owners and Sellers

Sales Agents and Brokerage Offices
Listing Services
Builders and Developers
Architects
Condo and Homeowner Associations
Mortgage Lenders, Appraisers, and Servicers
Homeowners Insurance Companies

Long Term Care Facilities
Governmental Jurisdictions
Employees of Housing Providers
Other Residents or Neighbors Acting as Agents of Housing Providers
Housing Counselors
Basically Everyone!
Penalties for Violating the FHA

- Administrative complaint or federal lawsuit
- Economic and non-economic damages
- Punitive damages
- Civil penalties
- Government monitoring
- Attorneys fees
- Injunctions
- Loss of tax credits
National Origin
National Origin and Immigration Status

• Different treatment in housing because of a person’s ancestry, ethnicity, birthplace, culture, language, or lack of English proficiency is illegal.

• Cannot deny housing opportunities because they or their family are from another country, have a name or accent associated with their national origin, participate in certain customs associated with their national origin, are married to or associate with people of a certain national origin, or face challenges communicating in English.
National Origin and Immigration Status

- Immigration status does not affect fair housing rights
- Housing discrimination based on any protected class is illegal regardless of the victim’s immigration status
- It has been HUD’s practice not to ask about immigration status when people file fair housing complaints
- It is illegal to coerce, intimidate, threaten, or interfere with a person’s exercise of rights protected by the Fair Housing Act. This includes threats to report a person to U.S. Immigration and Customs Enforcement if they report housing discrimination to HUD.
National Origin and Immigration Status

Examples of national origin discrimination:
• Refusing to rent to persons whose primary language is other than English or because their English is difficult to understand
• Steering prospective buyers or renters to or away from certain neighborhoods because of their ancestry
Examples of national origin discrimination:

- Offering different rent rates based on ethnicity
- Selectively screening potential and existing tenants for citizenship and immigration status
- Refusing to rent to refugees
- Failing to provide the same level of service or housing amenities because a tenant was born in another country
Examples of national origin discrimination:

• Making assumptions about a person’s immigration status because of their appearance, name, or accent and denying them housing

• A housing provider making comments about not wanting to rent to a particular ethnic group because they don’t like the smell of their cooking or something else associated with their culture
National Origin and Immigration Status

Identity Documents:

• Housing providers are allowed to request identity documentation and conduct inquiries to determine whether a potential resident meets the criteria for occupancy, so long as the same procedure is applied to ALL potential residents.
National Origin and Immigration Status

• If social security cards or numbers are ordinarily used as part of the applicant screening process, alternative documents such as taxpayer ID numbers or benefit award letters should be accepted.

• Requiring that all applicants, or all adult applicants, have a social security number disproportionately excludes families who come from another country (recent case law that requiring a SSN has a disparate impact based on national origin. Consider ITN or benefit award letters.
CM Bucks Landing 120, LLC, Residential Management (NY), Inc., and Aspen Grove Apartment Homes

May 2019
Family had their application for tenancy rejected by Aspen Grove Apartment Homes due to the complex’s policy of requiring that all adults have a social security number.

The husband had a social security number, an outstanding credit score, and an income which qualified the family to rent the apartment.

His wife had lawfully arrived from Colombia and was lawfully residing in the United States, but was not yet a citizen and did not yet have a social security number.
Case Example

• Residential Management’s requirement of a social security number for all adult applicants has an unlawful discriminatory impact based on national origin and race. It is effectively a policy that excludes people who have lawfully immigrated to the U.S. from another country but have not yet received a social security number.

• Residential Management’s policies and procedures included a blanket ban on rentals to persons who have any type of criminal background which has an unlawful discriminatory impact based on race and national origin. This policy did not contain a process for an individualized assessment to determine whether or not an applicant posed a direct threat to other persons or property, or any other less discriminatory alternative.
Case Example

- Residential Management’s occupancy standards at some complexes had an unlawful and discriminatory impact on families which children. The Aspen Grove policy limited occupancy of a two bedroom apartment to three people and occupancy of a three bedroom apartment by four people. These stringent limitations were not justified by local property maintenance codes and limited the housing opportunities available to families in violation of the Fair Housing Act.
Case Example

CM Bucks Landing 120, LLC and Residential Management denied the allegations in this case but signed an agreement that will result in payments totaling $450,000 in damages to the complainants, to HECP to cover a portion of the costs incurred to bring about the agreement and to provide future consumer education regarding the fair housing rights of southeastern Pennsylvania residents, and legal fees.

The respondents also agreed to adopt:

• revised policies addressing the acceptance of alternative forms of documentation for applicants without social security numbers,

• a less discriminatory criminal background screening process,

• and less restrictive, more appropriate occupancy standards.
National Origin and Immigration Status

For identification purposes, the following are acceptable alternative forms of identification for adult applicants:

• Citizenship Card/Consulate Cards
• INS Form I-864 Sponsorship Verification
• Certificate of Naturalization INS I-550
• US Passport
• ITIN document
• Unexpired foreign passport
National Origin and Immigration Status

• Alien Registration Receipt Card with Photograph
• Unexpired temporary resident card (I-688)
• Unexpired employment authorization card (I-688A or I-688B)
• Unexpired Reentry permit
• Unexpired refugee travel document
• Government issued Driver’s License or ID card
• INS Form I-864 Sponsorship Declaration
• Federally recognized, tribal-issued photo ID
Q: How does a landlord perform a credit check on a person without a SSN?

The GOAL is a responsible paying tenant who takes care of the property and doesn’t cause problems.
National Origin and Immigration Status

Housing providers should show due diligence in exhausting other methods of determining the ability to pay rent and abide by the terms of a lease agreement.

- Housing Subsidy
- Pay stubs
- Bank statements
- Landlord references
- Employer references
- Car payments
- Student loan payments
- Utility payments
- Credit card payments
- Affidavit of Support (Form I-864)
Documents that can establish past rental history:

- Records from a School District
- Letter from Utility Company
- Letter from Former Landlord with phone number
- Copy of Leaser from Former Residence
Case Example

A landlord in Lancaster County told a refugee resettlement agency that he would no longer rent to their clients (refugees) because he found communication too challenging and didn’t like the smell of their cooking.

$12,000 settlement in the form of a donation to the nonprofit refugee resettlement agency
National Origin and Immigration Status

Harassment due to Immigration Status or National Origin Violates the Fair Housing Act

It is illegal to coerce, intimidate, threaten, or interfere with a person’s fair housing rights. Housing discrimination is illegal regardless of the victim’s immigration status.

Example:
Threatening to report a tenant to U.S. Immigration and Customs Enforcement (ICE) if they report housing discrimination to HUD could constitute intimidation and violate the Fair Housing Act.
Harassment due to Immigration Status or National Origin Violates the Fair Housing Act

Example:
If a neighbor or another program participant is harassing or threatening a person due to their immigration status or national origin, the tenant should notify the housing provider in writing with a description of the harassment. The housing provider is obligated to take prompt action to end the harassment.
National Origin and Immigration Status

A single incident of harassment because of national origin may constitute a discriminatory housing practice if the incident is severe enough to create a hostile environment.

A housing provider is liable for their own conduct, and they may also be held liable if they fail to take prompt action to correct and end a discriminatory housing practice by an employee, an agent, or a third party.
Limited English Proficiency
Limited English Proficiency


- Guidance seeks to ensure HUD funded agencies do not “leave some behind simply because they face challenges communicating in English.”
- Agencies may be required to provide translation of printed documents and/or interpretation of spoken English.
Limited English Proficiency

To determine the extent of an agency’s obligation to provide LEP services, agencies must conduct a four factor analysis:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.
2. The frequency with which LEP persons come in contact with the program.
3. The nature and importance of the program, activity or service to people’s lives.
4. The resources available to the grantee/recipient and the costs.
Limited English Proficiency

Proportion of LEP population:

• Determine your geographical service area.
• Look at census and other data to determine the language populations that may need translation.
• Consider the frequency with which a given population has historically needed service.
• Consider whether a lack of outreach to that community may be reducing the amount of people requesting service.
Limited English Proficiency

Frequency of contact:
• In considering the type of resources that need to be developed, programs should consider the nature of the service they provide.
  – If a program has contact on an almost daily basis with a given language group, they may need to hire bilingual staff or contract with interpreters.
  – A program with only occasional contact with LEP clients may be able to get by using a telephonic interpretation service.
Limited English Proficiency

Importance of service:

• If a given communication has more serious consequences, there is a greater obligation by the agency to provide translation.
• A program should consider whether denial or delay in services could have serious or life threatening consequences.
• “Decisions by HUD to make a form or activity compulsory in order to participate in the program should be considered as strong evidence of the activity’s importance.”
Resources Available:

• The final factor to consider is the resources available to the agency, and the cost.

• Smaller agencies with less resources have less obligation to provide the same level of language services, as compared to large agencies, with large budgets, serving many clients.

• “Reasonable steps” may cease to be reasonable if the cost of translation exceeds the value of the benefit.
Limited English Proficiency

- Agencies can reduce cost in several ways to maximize the level of language service they are able to provide:
  - Documents that are required by HUD may already be translated, particularly into common languages such as Spanish or Chinese.
  - Agencies can collaborate and share translated documents to reduce the cost to agencies.
Limited English Proficiency

• Competency of Interpreters
• To the degree possible work with trained, experienced or certified interpreters.
• When possible, work with interpreters who not only speak the same language but same dialect as the LEP individual.
• Bilingual staff may be one of the most economical options.
• Large agencies form agreements where staff from one program agree to translate for other programs for free, or at low cost.
Contracting Interpreters

- If you serve clients from a number of different languages, you may not be able to have someone on staff for each language.
- Contracting with an interpretation service or with trained bilingual individuals can be a good option.
- Typical rate might be $50.00 per hour, with some time for travel, though this rate may vary depending on region and how common the language is.
Limited English Proficiency

Telephonic Interpretation:

• Provides the widest array of languages available.
• May be available instantly on demand, or may require a scheduled appointment time, depending on how common the language is.
• Can be used with clients calling by phone, or with face to face appointments.
Limited English Proficiency

- Telephonic Interpretation:
  - www.languageline.com
  - http://propio-ls.com
  - www.voiance.com
  - www.certifiedlanguages.com
After opening an account, post directions at all sites. Make sure staff are trained, and know they are expected to use the service.

Cards can allow walk-in clients to choose their language even if they speak no English.

**Limited English Proficiency**

### Interpretation Service Available

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<th>Arabic</th>
<th>Korean</th>
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<td>أثر إلى لغتك. وسوف يتم جلب مترجم فوري لك. سيتم تأمين المترجم الفوري مجاني.</td>
<td>귀하께서 사용하는 언어를 지정하시면 해당 언어 통역 서비스를 무료로 제공해 드립니다.</td>
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<th>Armenian</th>
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<td>աշխորեն ազգային բանակցությունը կլինի մեր համար. Ախտանշանի որոշման համար, պահանջվում է ազգային բանակցությունը.</td>
<td>ខ្មែរ ភាសាមាន ចំណាស់ ជាមួយ ប្រជាជន។. អ្នកអាចទទួលបានការជំនួសជាមួយ ប្រជាជន តាមរយៈ ការជាមួយ ដែលមាន ប្រភេទ ជាមួយ ប្រជាជន.</td>
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<th>Cantonese</th>
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<td>請指您的語言，以便為您提供免費的傳譯服務。</td>
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Limited English Proficiency

- If the client chooses, the client has a right to use a friend or family member to provide interpretation.
- The agency should always make sure the client is aware that the agency can provide a free interpreter for him/her.
- These interpreters will likely not be trained.
- Their English may also not be very good.
- Confidentiality may be an issue, particularly when dealing with sensitive issues.
Limited English Proficiency

• In almost all cases, children under 18 are not a good option for interpretation, and their use should be discouraged:
  • It is bad for family dynamics.
  • They lack the knowledge to be effective interpreters on many topics.
  • Many topics that may be discussed parents may want to keep confidential from them.
In September 2016 HUD released Guidance on Application of Fair Housing Act Protections for **Persons with Limited English Proficiency**.

- LEP, race, and national origin are so intrinsically linked as to be almost indiscernible from each other, therefore discrimination based on LEP will be treated as national origin discrimination.

- Lack of English proficiency is often used as a proxy for national origin discrimination.

- Some courts have recognized as legitimate the needs of employers to require that employees speak English, however the new HUD guidance states that these reasons are inapplicable with regards to housing, lending, or other real estate related transactions covered by the Act.
Best Practices
Best Practices

Make sure you use due diligence to communicate with those who may have Limited English Proficiency.

Make sure you review your LEP policies to ensure that you are providing adequate translation and interpretation.

Establish a process for responding in a timely manner to translation and/or interpretation needs.

Be sure your language access plan is visible with quick access.
Best Practices

Housing providers should review their application process to see if applicants are being blocked from submitting an application if they do not have a social security number.

Housing providers should not reject an applicant who financially qualifies to rent solely because a household member does not have a SSN.
Review Policies, Procedures, and Training

• Review all rules, policies, procedures, and eligibility standards to ensure that they are not intentionally discriminatory and do not have a discriminatory effect on members of protected classes. Implement a nondiscrimination policy if one does not exist.

• Make sure all staff receive regular fair housing compliance training.

• Contact HECP for technical assistance as fair housing issues and questions arrive.
Clear and Consistent Application Process
• Develop consistent and transparent admissions criteria and application process and apply equally to all applicants.
• Qualify applicants based on factual, specific, objective, and verifiable criteria.
• Adopt standardized and written intake and application process and forms.
• Retain application, documentation, and reasons for rejection for at least two years.
• Permit reasonable accommodations during the application process when necessary.
Clear and Consistent Application Process

• Any prioritization of applicants must not discriminate against members of protected classes.

• Applicants should not be accepted or rejected for assumptions or subjective reasons, either positive or negative (for example, a perception of odd behavior or an intuitive sense about an applicant).
Nondiscriminatory Community and Program Rules

- Community rules should be standardized, written, and communicated to all residents.
- Rules should not single out or target protected class (for example, quiet times or curfews should apply to everyone, not just children).
- Rules should be enforced consistently. Avoid the appearance of discrimination by not showing favoritism among participants.
Procedures for Termination of Residents

• Evictions or terminations from a housing program or shelter should be based on documented violations of the occupancy or program agreement or the community rules (for example, nonpayment of rent, destruction of property, harassment of other residents, etc.).

• Process and reasons for termination should be standardized, written, and communicated to all residents and should be applied consistently.

• Retain documentation and reasons for terminations or evictions for at least two years.
Founded in 1956, before state or federal fair housing legislation, the Housing Equality Center of Pennsylvania is America’s oldest fair housing council.

The Housing Equality Center serves the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia.
The Housing Equality Center provides:

- Counseling, testing investigations, and enforcement services to assist victims of housing discrimination.

- Education, training programs, and technical assistance for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.

- Publications, fact sheets and resources to educate the public and housing professionals about fair housing.
Consumers, providers, and advocates should contact the Housing Equality Center of Pennsylvania to report discrimination. The Housing Equality Center accepts and investigates complaints from anonymous sources.

Fair housing complaints can be filed with HUD for up to one year from the incident, or with the Pennsylvania Human Relations Commission for up to 180 days from the incident. A lawsuit may be filed in Federal Court up to two years from the incident.
Resources

2012 HUD Guidance Immigration Status and Housing Discrimination Frequently Asked Questions

FACT SHEET: National Origin and Immigration Status also available in Spanish and Chinese
96 page comprehensive manual - available for FREE in print or digital format

Guidance on state and federal Fair Housing Law compliance

PA Landlord Tenant Law
equalhousing.org

Advancing Fair And Equal Access To Housing Opportunities

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✓ Download guides, resources, fact sheets and fair housing guidance
✓ Request fair housing training or publications for your clients, colleagues or offices
✓ Report discrimination online
Renters.equalhousing.org

- Learn about fair housing laws
- Learn about the rights of renters in PA
- Download sample letters to landlord
- Request assistance with requesting a reasonable accommodation or modification
- Report discrimination online
Know Your Responsibilities as a Landlord or Property Manager in Pennsylvania

I'm interested in...

It is our hope that this site will help to guide you through a successful experience as a landlord by providing general information and self-help resources regarding state and federal fair housing laws and Pennsylvania Landlord Tenant Law as it pertains to the rental of private residential property.

LEARN MORE
Fair Housing Questions?  
Technical Assistance?

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