

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

760 CMR 47.00: NON-DISCRIMINATION, EQUAL OPPORTUNITY, AND AFFIRMATIVE FURTHERANCE OF FAIR HOUSING REGULATIONS GOVERNING RECIPIENTS OF DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FINANCIAL ASSISTANCE

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47.01: Declaration of Policy

(1) Non-discrimination, affirmatively furthering fair housing and equal opportunity are the policy of the Department of Housing and Community Development in all of its decisions, policies, programs and activities. To that end, the Department shall rigorously take affirmative steps to ensure equality of opportunity in the internal affairs of the Department, as well as in its relations with the public. The Department, in performing its statutory responsibilities, shall consider the likely effects which its decisions, policies, programs and activities shall have in meeting the goal of equality of opportunity.

(2) Equal opportunity and Affirmatively Furthering Fair Housing requires more than vigilance in the elimination of discriminatory barriers on the grounds of race, color, religion, national origin, ancestry, disability, sex, age, familial status, veteran status or military service, sexual orientation, gender identity or expression, public assistance reciprocity (housing), and other bases prohibited by law. It also entails positive and aggressive measures to ensure equal opportunity in internal personnel practices and in those policies and programs which affect persons and political subdivisions throughout the Commonwealth.

(3) The Department shall initiate, where appropriate, affirmative policies and programs designed to remedy the lingering effects of any past and present discriminatory patterns and practices and to affirmatively further fair housing to the extent that such policies and programs are consistent with the purposes and provisions of law, as amended, including M.G.L. c. 151B, Executive Orders 526, 559, and 565, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, to the extent applicable.

47.02: Purpose and Scope

(1) 760 CMR 47.00 is designed to provide a framework within which the Department can design and implement policies and programs to ensure equal opportunity and full participation for all citizens of the Commonwealth. The Department may issue further policies and guidance to clarify the framework under 760 CMR 47.00.

(2) 760 CMR 47.00 is also intended to define the equal employment opportunity, fair housing, and business utilization obligations of any applicant for state, state-assisted, federal or federally-assisted funds administered by the Undersecretary of the Department.

47.03: Definitions

Affirmatively Furthering Fair Housing. Has the meaning given by the U.S. Department of Housing and Urban Development under the Affirmatively Furthering Fair Housing Final Rule at 24 CFR 5.152.

Applicant. Any person, private for-profit or non-profit organization, or political subdivision of the Commonwealth which submits to the Department any application, contract, request, or plan for Financial Assistance from the Department which the Undersecretary is not obliged by law to fund.

47.03: continued

Clearinghouse. Any individual, organization, or agency established for, among other reasons, the purpose of furthering fair housing opportunities.

Commission. The Massachusetts Commission Against Discrimination (MCAD).

Department. The Department of Housing and Community Development.

Financial Assistance. Any of the following, to the extent such assistance is provided on a discretionary basis by or on behalf of DHCD:

- (a) Any grant, loan or advance of state or federal funds;
- (b) Any grant or donation of state or federal property or interest in property;
- (c) Any state or federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance, such as the allocation of federal or state tax credits, tax-exempt bond authority, or loan guarantees; and/or
- (d) The sale, lease, or licensing of state or federal property, both real and personal, or any interest in such property, at a price below the current market value of such property interest.

LHA. A Local Housing Authority as established under M.G.L. c. 121B or comparable legislation.

Racial/Ethnic Minority Group Member.

(1) A person who is of one or more of the following groups, as defined by the U.S. Census Bureau:

- (a) American Indian or Alaska Native;
- (b) Asian;
- (c) Black or African American;
- (d) Hispanic or Latino;
- (e) Native Hawaiian or Other Pacific Islander; or

(2) Cape Verdean, Eskimo, Aleut, or any other racial/ethnic minority designation pursuant to applicable executive order or law.

Political Subdivisions. Any unit of local government, city, town, county, or subdivision thereof; instrumentality of the Commonwealth; or any other government entity, including authorities.

Supplier Diversity Business Enterprise. A business enterprise defined under current state law or by policy of the Operational Services Division for purposes of the Supplier Diversity Program, including Minority Business Enterprises, Women Business Enterprises, Service-disabled Veteran-owned Business Enterprises, Veteran-owned Business Enterprises, Disability-owned Business Enterprises, and LGBT-owned Business Enterprises.

Undersecretary. The Undersecretary of the Department of Housing and Community Development.

47.04: Role of the Department of Housing and Community Development

The Department is the Commonwealth's lead housing and community development agency. In this capacity, it is charged with addressing the management, housing, and community development needs of the Commonwealth's 351 cities and towns. The Department is also charged with coordinating the Commonwealth's overall long-term housing and community development strategy.

(1) In deciding whether to award Financial Assistance to an Applicant, the Undersecretary shall consider whether the Applicant is in compliance with applicable civil rights obligations in the areas of housing, employment, public accommodation, and Supplier Diversity Business Enterprise utilization as applicable. To facilitate the Undersecretary's review of the Applicant's civil rights record, the Undersecretary shall implement the following procedures:

- (a) Seek information from the Commission and the Office of the Attorney General regarding civil rights compliance of Applicants for Financial Assistance and conduct related searches of judicial decisions regarding discrimination claims against Applicant.
- (b) Inform Applicants of the requirements of 760 CMR 47.00.

47.04: continued

(c) Other factors that the Department may consider in deciding whether to award Financial Assistance to an Applicant include, but are not limited to, the following:

1. Efforts in Affirmatively Furthering Fair Housing by the Applicant generally, and as proposed for a project or activity for which the Applicants seeks funding;
2. Efforts to overcome barriers to multi-family and affordable housing growth, such as exclusionary zoning and land use and permitting denials;
3. Efforts to provide a diversity of housing types;
4. Availability of, and efforts to provide, subsidized housing for a range of income levels and family types and sizes consistent with regional need;
5. Efforts to provide housing that increases access and community integration for persons with disabilities;
6. Application for, and use of, funds to improve access to opportunity and community assets in furtherance of diversity and fair housing goals;
7. Progress in planning for and achieving greater accessibility in housing and in the community;
8. Civic engagement and affirmative outreach in providing affordable housing and civil rights related education and resources; and
9. Other criteria the Department determines to be consistent with affirmative furtherance of fair housing and equal opportunity goals.

(d) Upon information from the Commission, the Office of the Attorney General, or other relevant enforcement authority showing that an Applicant is in apparent violation of its civil rights obligations, the Department may direct the Applicant to make a sincere and concerted effort to reach agreement with the Commission, Office of the Attorney General, or other relevant enforcement authority, or to take other action to the extent necessary to bring the Applicant into compliance.

(e) The Department may conditionally award funds to an Applicant that is in apparent violation of its civil rights obligations in accordance with 760 CMR 47.04(1) where the Undersecretary determines, including after consultation with the Commission, the Office of the Attorney General, or other relevant enforcement agency, that the imposition of certain conditions on such award will further the Applicant's ability and willingness to comply with applicable civil rights requirements. If an Applicant fails to comply with these conditions during the period of such award, the Department may conclude that such failure warrants a determination that the Applicant is in non-compliance.

(f) The Department will not award funds to an Applicant that is finally determined to be in violation of its civil rights obligations after a formal finding by the Commission or other relevant enforcement authority unless the Undersecretary finds that the proposal or project is necessary for the protection of the public health, safety or welfare and the Applicant has made a sincere and concerted effort to reach agreement with the Commission or other relevant enforcement authority.

(g) The Undersecretary shall appoint a Diversity Officer who shall have, among other things, the following authority and responsibilities:

1. Establish reporting requirements for all successful Applicants relative to their compliance with the obligations under 760 CMR 47.00;
2. Gather information, and report such information regularly to the Undersecretary, relative to successful Applicants' compliance with the obligations under 760 CMR 47.00;
3. Track and advise the Undersecretary relative to program compliance with the equal opportunity obligations of Executive Order 526;
4. Recommend approval or disapproval of all Department appointments and Department funded construction contracts;
5. Supervise monitoring and enforcement of the Department's affirmative action plan as described in 760 CMR 47.05;
6. Inform and otherwise assist Department program managers regarding the substance of any civil rights comments provided by the Commission or the Office of the Attorney General, as well as of any compliance conditions imposed by the Department on the award of Financial Assistance.
7. In concert with the Department's Chief Counsel, inform Department program managers of any changes in applicable civil rights laws and policies; and
8. In concert with the Department's Chief Counsel, provide instruction to Department program staff on civil rights compliance and procedures for tracking compliance.

47.05: Employment Policies

- (1) All Department officials and supervisory employees shall appoint, assign, train, evaluate, compensate, and promote agency personnel on the basis of merit and fitness, without discrimination on the basis of race, color, religion, national origin, disability, ancestry, sex, age, status as a veteran, military service, sexual orientation, gender identity, or any other basis prohibited by law.
- (2) The following standards and procedures shall govern the preparation and adoption of affirmative action and diversity plans by the Department:
 - (a) Set forth goals and timetables and employ all reasonable measures to eliminate the lingering effects of any present or past discriminatory employment practices;
 - (b) Review its existing staffing patterns, and to the extent that such patterns indicate a pattern of staffing of Racial/Ethnic Minority group members and women, persons with disabilities, and veterans that is not fairly reflective of the percentage of Racial/Ethnic Minority Group members, women, persons with disabilities, and veterans in the Boston Metropolitan Statistical Area (MSA), take appropriate remedial measures to resolve and eliminate such patterns in future hiring and promotion decisions;
 - (c) Conduct an ongoing review of its affirmative action and diversity plan to ensure compliance with such plan, and with the intent of 760 CMR 47.00 in accordance with applicable executive orders; and
 - (d) Appoint a Diversity Officer to supervise monitoring and enforcement of the affirmative action and diversity plan. In addition, the Diversity Officer shall have the authority to recommend approval or disapproval of all appointments and Department funded construction contracts.
- (3) The Undersecretary shall, in conjunction with the Commission, periodically review the above standards and procedures and shall propose modifications and amendments where appropriate, provided however, that any such modifications and amendments shall include without limitation, the provisions of 760 CMR 47.05(2)(a) through (d).

47.06: Non-discrimination in State Services

All Department services shall be provided without discrimination in accordance with 760 CMR 47.01. No Department facility shall be used in furtherance of any discriminatory pattern or practice nor shall the Department become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices. 760 CMR 47.06 shall apply to any public, quasi-public, or private non-profit entity which provides such services pursuant to a contract with the Department. Any such contract shall include language implementing 760 CMR 47.06.

47.07: Contracting and Supplier Diversity Business Enterprise Utilization

- (1) Each successful Applicant shall ensure that every construction contract or contract for goods or services utilizing Financial Assistance from the Department shall contain a provision prohibiting discriminatory employment practices by contractors, sub-contractors, and suppliers of goods or services based on race, color, religion, national origin, ancestry, age, sex, disability, status as a veteran, military service, sexual orientation, gender identity or expression, or any other basis prohibited by law. The non-discrimination provision shall require contractors and suppliers of goods or services to give written notice of their commitments under 760 CMR 47.07 to any labor union, association, or brotherhood with which they have a collective bargaining or other agreement. Such notice shall also be given to the Commission, Supplier Diversity Office, and the Department's Diversity Officer.
- (2) Each successful Applicant shall take affirmative steps to increase the participation of Supplier Diversity Business Enterprises in all construction, consultant, goods, and service contracts, including identifying any practical impediments to such participation. Each such Applicant shall also take such further steps as the Department may from time-to-time conclude will further compliance with this requirement, including the establishment of annual goals for Supplier Diversity Business Enterprise participation.

47.08: Responsibility of the Applicant

(1) It is the responsibility of each Applicant for Financial Assistance from the Department to ensure that in the administration of its policies, programs, and projects, it is in compliance with 760 CMR 47.00 and all applicable civil rights laws, and is pursuing all reasonable measures designed to foster equal opportunity and participation in such policies and programs. To the extent that the Applicant identifies policies and programs which may have had and/or may continue to have a discriminatory impact on individuals, businesses, or organizations relative to housing, employment or Supplier Diversity Business Enterprise utilization, the Applicant must take appropriate affirmative measures to remedy the effects of such discrimination. The obligations of the Applicant apply not only to an initial determination of eligibility for Financial Assistance but also to the administration of any such assistance.

(2) Relative to an application for Financial Assistance for a residential project, it is the responsibility of each Applicant to do the following:

(a) If developing, operating, or managing housing:

1. Submit an affirmative fair housing marketing and resident selection plan to the Department consistent with applicable Department regulations, guidelines, or directives. No Financial Assistance shall be provided by the Department to such an Applicant until such plan is approved in writing by the Department, as applicable;

2. List the availability of units in the development with any Clearinghouse in accordance with applicable guidelines or directives issued by the Department; and

3. Report data requested by the Department pursuant to 760 CMR 61.00: *Data Collection for Government Assisted Housing in Massachusetts*.

(b) Adopt other measures to affirmatively further fair housing opportunities, such as the Applicant's participation in a region-wide strategy or plan.

The requirements of 760 CMR 47.08(2)(b) shall not apply to any application for Financial Assistance for housing to be constructed or renovated pursuant to the Department's Chapter 689 (Special Needs) Program.

47.09: Severability, Compliance and Sanctions

The provisions of 760 CMR 47.00 are severable, and if any of these provisions shall be held illegal by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Any person who has evidence of non-compliance with 760 CMR 47.00 may submit a written complaint to the Undersecretary for appropriate action.

(1) If any complaint indicates that:

(a) Department action is not warranted; or

(b) that further investigation by a civil rights enforcement agency is necessary or appropriate to determine whether a violation has occurred, the Undersecretary shall so inform the complainant in writing. The Department shall also refer the complainant to the Commission, the Office of the Attorney General, or other applicable agency as appropriate.

(2) The Undersecretary may notify the Commission or the Office of the Attorney General with a recommendation that appropriate proceedings be brought to enforce any rights of the Commonwealth under any law of the United States or the Commonwealth.

(3) The Department may also require the Applicant to develop, implement, or update a fair housing or equal employment opportunity plan in furtherance of the objectives of 760 CMR 47.00.

The Undersecretary, in determining compliance with 760 CMR 47.00, shall request the assistance of the Commission or the Office of the Attorney General where appropriate.

REGULATORY AUTHORITY

760 CMR 47.00: M.G.L. c. 6A, § 16G; c. 23B; c. 121B; and c. 151B, § 4; Title VIII of the 1968 Civil Rights Act, 42 U.S.C. § 3601 *et seq.*; Executive Orders 526, 559, and 565.