



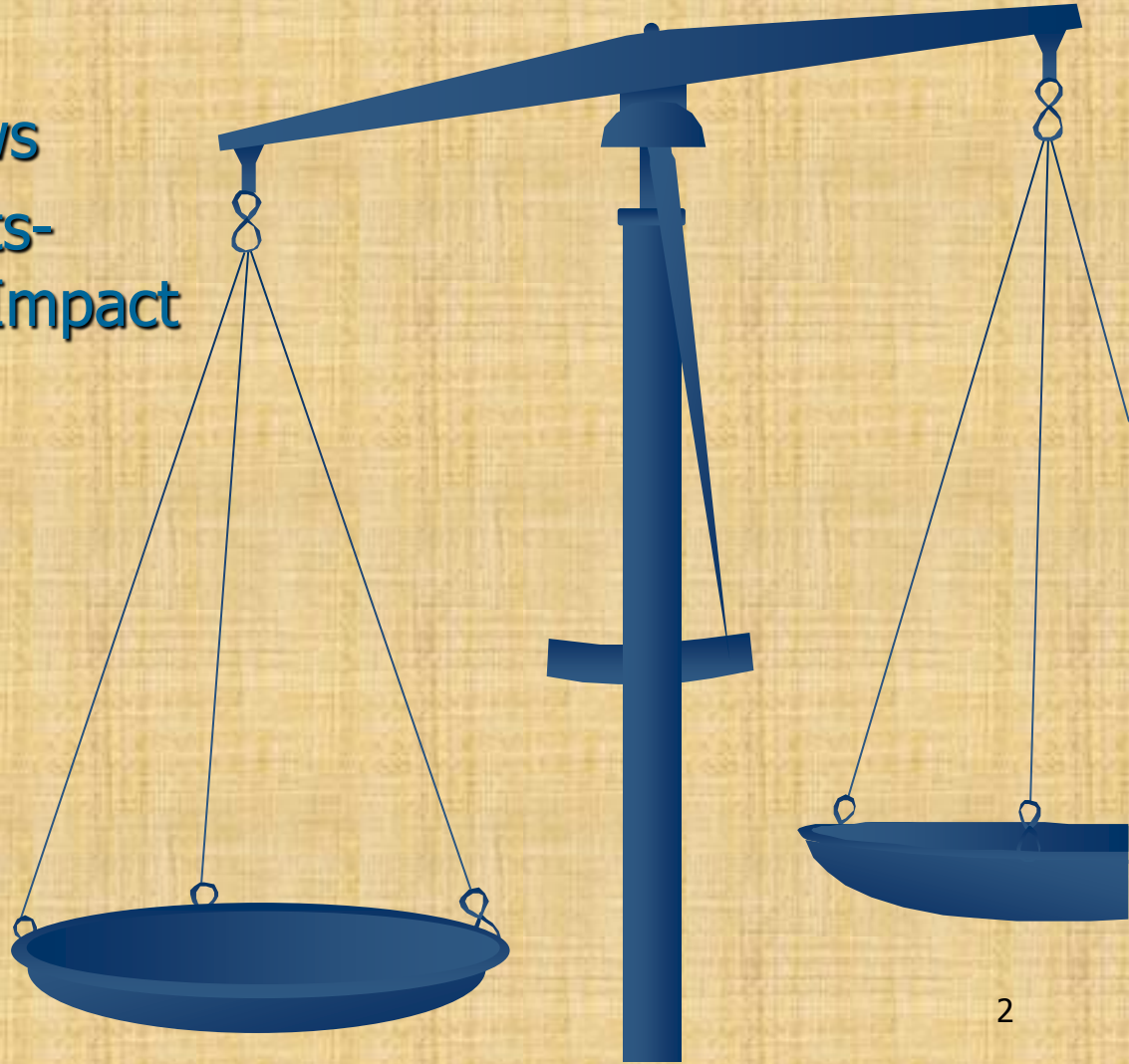
# Affirmative Fair Housing -

## Marketing and Resident Selection Plan Highlights

April 2015

# Affirmative Fair Housing Framework

- Key Fair Housing Laws
- Fair Housing Concepts- AFFH and Disparate Impact
- AFHMP Guidelines



# Classes of Persons Protected Under Fair Housing Laws

- Race
- Color
- National Origin
- Religion
- Sex
- Disability/Handicap
- Familial Status; Children
- Marital Status
- Age
- Sexual Orientation
- Gender Identity
- Military Status (veteran or member of the armed forces)
- Public Assistance/Housing Subsidy Reciprocity
- Genetic Information
- Ancestry

# Key Fair Housing Laws

## Key federal statutes:

- Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended)
- Title VI of the Civil Rights Act of 1964, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended
- Americans with Disabilities Act of 1990, as amended

## Key state statutes:

- Massachusetts fair housing law (M.G.L. Chapter 151B)
- Massachusetts public accommodation law (M.G.L. Chapter 272, section 98)
- Massachusetts lead paint law (Chapter 111, section 199A)

# Obligation to Affirmatively Further Fair Housing

- Summarized in HUD's "Affirmatively Furthering Fair Housing" proposed rule (July 18, 2013):

"[AFFH] means taking proactive steps beyond simply combating discrimination to foster more inclusive communities...More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws."

- Affirmatively fair marketing and resident selection is necessary and integral to affirmatively furthering fair housing efforts

# Disparate Impact/Discriminatory Effects

Key analysis:

- Is it likely that the policy or practice will negatively impact members of a protected class compared to the general population?
- Does the policy or practice have a necessary and manifest relationship to legitimate, non-discriminatory interests, and
- Could these interests be served by another policy or practice that has a less discriminatory effect?

Note: further described in HUD's "Implementation of the Fair Housing Act's Discriminatory Effects Standard" Final Rule (2013)

# AFHMP Guidelines

- AFHMP must be consistent with the DHCD Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines (AFHMP guidelines):

<http://www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf>

(May 2013); see also:

<http://www.mass.gov/hed/docs/dhcd/legal/comprehensivepermitguidelines.pdf> (section III of the Comprehensive Permit Guidelines)

- AFHMP must be approved by the subsidizing agency and updated in accordance with program requirements and the AFHMP guidelines
  - Note: AFHMPs for projects located in Boston must also be approved by the Boston Fair Housing Commission

# Applying the Affirmative Fair Housing Framework

- **AFHMP Guidelines**  
Highlights: Affirmative Fair Marketing
- **AFHMP Guidelines**  
highlights: Resident Selection
- **Other AFHMP**  
Considerations
- **Examples of AFHMP Issues**



# Affirmative Fair Marketing Highlights

- Marketing must attract persons protected under fair housing laws that are less likely to apply
- Marketing must comply with state and federal fair housing laws
  - Marketing must not indicate any preference or limitation, or otherwise discriminate, based on protected class status (unless meets a housing for older persons exemption)
- Required marketing under the AFHMP guidelines includes listing with:
  - The Boston Fair Housing Commission Metrolist (units located in Boston MSA)
  - CHAPA's MassAccess Housing Registry (affordable units; accessible units)
  - MAHA lottery website (ownership units)

# Affirmative Fair Marketing Highlights

- In attracting persons less likely to apply, marketing must include non-English publications considering the prevalence of particular language groups in the regional area (note: many publications will provide translations free or at little cost)
- Marketing must indicate that applications can be requested and submitted by mail and include a telephone number for application requests

# Resident Selection Highlights

- AFHMP guidelines intended to incorporate fairness into the application and selection process, e.g.,:

Required information for applicants:

- Non-discrimination statement
- Reasonable accommodation and modification statement
- Language access

# Resident Selection Highlights

- Resident selection for affordable units must generally be based on a lottery and marketed as such, not based on a “first come, first served” procedure
  - Re-opening and re-marketing of wait lists are also subject to a lottery or other random selection procedure after a minimum application period of 10 business days or more in accordance with the AFHMP guidelines

# Additional Resident Selection Considerations

- Does the AFHMP apply criteria or targeting that may result in discrimination against protected classes?
- Does the AFHMP apply criteria or targeting that is inconsistent with the AFHMP guidelines and/or applicable program rules, plans, and policies?
- Is there a justifiable nexus between the type of housing offered and the proposed limitation on who will be selected?

# Other AFHMP Considerations

- Program requirements - AFMHP must be consistent with applicable state and federal program requirements and policies
  - Includes federal and state regulations and housing agency plans (e.g., Section 8 Admin Plan; also consider QAP, Consolidated Plan, etc.)
- Comprehensive permits - not determinative of AFHMP
  - Matters beyond Board authority such as marketing, resident selection, etc. are to be determined and approved by the Subsidizing Agency (see *Zoning Board of Appeals of Amesbury v. Attitash* case (SJC 2010))
  - Local preference must be approved by the subsidizing agency and allowable categories are listed in the AFHMP guidelines<sup>14</sup>

# AFHMP Issues

- Lottery/random selection procedure not incorporated
  
- Problematic advertisements
  - Discriminatory preference indicated, e.g., “empty-nesters,” “young professionals”
  - Local preference advertised
  - Limited access to applications (indicates in-person application pick-up and/or submission required or excludes mail option)
  
- Marketing and application materials do not address limited English proficiency
  - Examples: marketing only planned to be in English and in English publications; application materials do not notify applicants (including through other languages) of free language assistance from the owner/management

# AFHMP Issues

- Preference criteria that is inconsistent with AFHMP guidelines, program requirements, and/or fair housing law requirements
  - Examples: local preference includes former local residents or family members of local residents; local preference conditioned on durational requirements; disability preference based on a type or class of disability; preference or priority for other class of persons not specifically identified or approved by the subsidizing agency for the applicable subsidy program or project
- Insufficient marketing and application periods (including upon marketing efforts to re-open or expand wait list)
  - Examples: initial application period less than 60 days (unless Boston exception); advertisements indicate a wait list will be open for only a few days and “first come, first served”



# AFHMP Issues

- Inapplicable or inconsistent AFHMP language
  - Examples: AFHMP for a LIHTC project with project-based MRVP excerpts language from a plan created for project-based Section 8 units; inconsistent use of terms (e.g., definition of homeless)
- Eligibility or selection criteria inconsistent with program requirements and/or AFHMP guidelines
  - Examples: misstating or confusing preferences with eligibility criteria; “scoring” based on subjective criteria; applying other requirements or inquiries, such as immigration status, that are inapplicable to state programs associated with the project

# Concluding Thoughts

- Recall the affirmative fair housing framework and the goal of inclusive housing
- Read the AFHMP guidelines carefully prior to drafting an AFHMP
- Appropriately tailor the AFHMP to the project
- Review for consistency with all applicable program requirements prior to submitting an AFHMP
- Make the AFHMP consistent and clear so that it can be applied appropriately by staff/agents and interpreted correctly by potential applicants or other interested parties