

A collection of historical artifacts is displayed on a light-colored surface. On the left, a portion of a chessboard with a checkered pattern and several chess pieces is visible. Below the chessboard, there are several medals and ribbons. One prominent medal is a white Maltese cross with a central emblem, surrounded by a decorative border. Another medal is blue with a circular emblem. A red ribbon with a circular emblem is also visible. In the bottom left corner, there is a circular compass with a white face and black markings. A pair of gold-rimmed glasses with thin temples is positioned diagonally across the lower half of the image.

Affirmative Fair Housing Marketing Plans and Other Fair Housing Issues

**Department of Housing
& Urban Development
SDHDA Conference**

October 14, 2020



Agenda

- ◆ Fair Housing Laws
- ◆ AFHMPs
- ◆ Residency Preferences
- ◆ Tenant Selection Plan
- ◆ Accessibility Requirements



FAIR HOUSING LAWS

- ◆ TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (recipients of federal financial assistance)
- ◆ FAIR HOUSING ACT (FHA) OF 1968, AS AMENDED IN 1988
- ◆ SECTION 504 OF THE REHABILITATION ACT OF 1973 (recipients of federal financial assistance)
- ◆ AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)



Discrimination

- ◆ **Who is protected under the Fair Housing Act?**
- ◆ What are the 7 protected classes under the Federal Fair Housing Law?
- ◆ What are the protected classes under South Dakota Housing Law?



Protected Classes

- ◆ Race
- ◆ Color
- ◆ Religion
- ◆ National Origin
- ◆ Sex (Gender)
- ◆ Familial Status
- ◆ Disability

South Dakota(2)

*Ancestry

*Creed

Section 504

Discrimination Prohibited

- ◆ No qualified person with a disability shall, solely on the basis of disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal Financial assistance.



DISABILITY

- ◆ A Person with a physical or mental impairment that substantially limits one or more major life activities.
- ◆ A person with a record of such impairment.
- ◆ Is regarded as having an impairment.



Persons with Disabilities

Major Life Activities:

- ❖ Seeing
- ❖ Walking
- ❖ Learning
- ❖ Performing Manual Tasks

Hearing

Breathing

Speaking

Taking Care
of one's Self





Affirmative Fair Housing Marketing Plans (AFHMP)

- ◆ AFHMP HUD Form - 935.2a
- ◆ Regulation: 24 CFR 200.620–Requirements
- ◆ All applicants for participation in FHA subsidized and unsubsidized multifamily housing programs with five or more units must complete an AFHMP.



AFHMPs Cont.

- ◆ Purpose of the AFHMP help housing providers offer equal housing opportunities regardless of race, color, national origin, religion, sex, familial status, or disability.
- ◆ AFHMP helps housing providers effectively market the availability of housing to individuals that are least likely to apply.
- ◆ AFHMPs should be part of all new construction, substantial rehab, and existing project marketing and advertising activities.



AFHMP Cont.

- ◆ Instructions pp. 6-8 very helpful.
- ◆ Census tract – need to ensure you find the correct census tract for the property.
- ◆ Complete both Housing Market area and Expanded Housing Market Area.
- ◆ Need to mark type of plan – Initial or Updated.
- ◆ Ensure entire form is completed.



AFHMP Cont.

- ◆ 3a. page 2 – Must complete Worksheet 1 before complete 3b.
- ◆ Worksheet 1 – demographics from the census data. Data found at: data.census.gov
- ◆ Initial vs. Updated plan.
- ◆ Determining least likely to apply.
- ◆ Completing 3b with least likely to apply.



AFHMP Cont.

- ◆ 3b. Determines your marketing plan.
- ◆ Worksheet 3 – Proposed marketing activities. Community Contacts – used to market the project to those least likely to apply.
- ◆ Worksheet 4 – Methods of Advertising. How marketing to least likely apply.
- ◆ Implement Plan and Evaluate Marketing Activities.



Types of Housing

- ◆ Families with Children (18 and under).
- ◆ Housing for Older Persons (55+ & 62+).
Designations.
- ◆ 811 programs for Persons with Disabilities.
- ◆ Other types – statutory and regulatory– i.e. HOPWA.
- ◆ Homeless programs & Homeless Youth programs
- ◆ Domestic Violence Victims



Residency Preferences

- ◆ Residency requirements or preferences.
- ◆ Approved by HUD.
- ◆ Included in Tenant Selection Plan (TSP) and AFHMP.
- ◆ Residency preference should not be based on how long worked or resided in area.
- ◆ Preferences for homeless, persons with disabilities, and Domestic Violence Victims, Homeless and Veterans.
- ◆ Use of Partnering Organizations.
- ◆ Must not exclude other eligible families from program based on protected classes or create or perpetuate segregation.



Tenant Selection Plan

Process without Discrimination



Tenant Selection & Assignment

- ◆ Tenant Selection Plan – Eligibility & Screening Criteria.
- ◆ Review eligibility requirements to ensure not discriminatory.
- ◆ Screening Criteria – determine eligible household has the ability to pay rent on time and meet requirements of the lease and do not include discriminatory criteria.

Prohibited Screening Criteria

- ◆ Criteria that could be discriminatory.
- ◆ Medical Evaluation or Treatment information.
- ◆ Inquiries about Disability status.
- ◆ Requirements by housing provider of capacity for Independent Living.





Criminal Activity Admin Policies

- ◆ Allowable to conduct background checks.
- ◆ HUD criteria not allowed: sex offenders, etc.
- ◆ Need to ensure not denying housing on arrests alone. Discriminatory effect.
- ◆ Shouldn't have blanket restrictions.
- ◆ Convictions case by case and mitigating circumstances.
- ◆ Housing first.



Reasonable Accommodation Policy

- ◆ Tenant Selection Plan
- ◆ Stand Alone
- ◆ Contents of Policy



Maintaining Housing

- ◆ Communication
- ◆ Reasonable Accommodations
- ◆ Evictions – what can you do?



Accessibility Standards



Federal Accessibility Laws and Standards

- ◆ Architectural Barriers Act - 1968
- ◆ Fair Housing Amendments Act - 1988
- ◆ Americans with Disabilities Act – 1990
 - *2010 ADA Standards with HUD’s Deeming Notice
- ◆ Section 504 of the Rehabilitation Act of 1973
 - *UFAS



FHA Accessibility Standards

- ◆ Design standards apply to buildings constructed for first occupancy on or after March 13, 1991.
- ◆ Requires all ground floor units to be accessible provided there are 4 or more units in the building and the unit is not multistory.
- ◆ If the building has an elevator; all units must be accessible.



Seven Design Requirements

- ◆ Accessible building entrances on an accessible route.
- ◆ Accessible public and common areas.
- ◆ Usable Doors.
- ◆ Accessible Route into and through dwelling unit.
- ◆ Environmental controls in accessible locations.
- ◆ Reinforced walls for Grab Bars.
- ◆ Usable kitchens and bathrooms.

Note: Either covers all ground floor or all units not just a percent of the units.



SECTION 504

**OF THE
REHABILITATION ACT OF
1973**



Accessibility Standards

- ◆ As of July 11, 1988, design, construction, or alteration of buildings must be in conformance with the Uniform Federal Accessibility Standards (UFAS).
- ◆ Accessible route, parking, public areas and dwelling units.
- ◆ UFAS Survey

Importance of Attention to Access





New Construction

- ◆ At least 5% of units must be fully accessible to people with mobility impairments
- ◆ An additional 2% of units must be accessible to people with vision and hearing impairments



Americans with Disabilities Act of 1990

- ◆ ADA is the first comprehensive civil rights law for people with disabilities. The Act affects employment practices, transportation, communications, government services, and public accommodations.
- ◆ How does it apply to housing?



ADA and Housing

- ◆ As of May 23, 2014, HUD is permitting recipients of federal financial assistants to use an alternative accessibility standard for purposes of complying with Section 504 of the Rehabilitation Act of 1973.
- ◆ Use is until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard.



ADA Standard

- ◆ 2010 ADA Standards for Accessible Design is an acceptable standard to UFAS.
- ◆ Option using 2010 Standards under Title II of the ADA, except for certain specific provisions identified in the HUD Deeming notice.
- ◆ HUD identified certain provisions in the 2010 ADA Standards that provide less accessibility than is currently required by UFAS and/or Section 504 regulation.



ADA Standard Continued

- ◆ As a result, HUD is not deeming use of those specific provisions of the 2010 Standards as a means of providing accessibility under Section 504 because HUD cannot decrease the level of accessibility currently required by its Section 504 regulation.

Exceptions

Provisions in 2010 standards not deemed as equivalent alternatives to UFAS

1. Section 35.151(a)(2) Exception for structural impracticability
2. Section 35.151(b) Alterations
3. Section 202.2 Additions
4. Exception to Section 202.4 Alterations Affecting Primary Function Areas
5. Section 203.8 General Exceptions—Residential Facilities
6. Employee Work Areas: Sections 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas)
7. Exception 2 to Section 206.2.1 Site Arrival Points
8. Exception to Section 206.2.2 Within a Site
9. Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities
10. Section 214—Scoping of Washing Machines and Clothes Dryers
11. Exception to Section 215.1 Visible Alarms

Provisions HUD recipients must comply with for purposes of section 504 compliance

2010 Standards at Section 35.151 without Section 35.151(a)(2) and (b) (see below) and HUD's Section 504 regulation at 24 CFR § 8.4(b)(5).

HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.6.

HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.5.

2010 Standards at Section 202.4 without the Exception and HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.

2010 Standards without Section 203.8 and HUD's Section 504 regulation at 24 CFR § 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.

2010 Standards without these provisions; Note that HUD is permitting use of Section 215.3 (Fire Alarm Systems in Employee Work Areas).

2010 Standards at Section 206.2.1 without Exception 2.

2010 Standards at Section 206.2.2 without the Exception.

2010 Standards at Section 206.2.3 without Exception 1.

HUD's Section 504 regulation and UFAS 4.34.7 Laundry Facilities. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.

2010 Standards at Section 215 without the Exception to Section 215.1 and HUD's Section 504 regulation at [24 CFR 8.20](#), 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.



QUESTIONS

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