

FAIR HOUSING OBLIGATIONS



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Today's Objectives

This presentation will:

- Provide a refresher on Fair Housing laws;
- Discuss Language Access Planning requirements;
- Discuss best practices for reasonable accommodations and accessible meeting sites; and
- Discuss recent litigation trends in fair housing complaints and settlements;
- Offer practical solutions to avoid allegations of fair housing discrimination

Fair Housing

"It is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States."

United States Constitution

42 U.S.C. §3601



Seven Protected Classes under the FHA

- **Race:** Black v White, Asian/Pacific Islander or American Indian/Alaskan Native
- **Color:** Light v Dark skinned persons
- **Religion:** Inclusion in a specific religious group
- **National Origin:** Hispanic
- **Sex:** Male or Female
- **Familial Status:** Presence of children under the age of 18 or pregnant women
- **Disability:** Has a physical or mental illness that substantially limits one or more major life activities;
Has a record of such a disability OR
Is regarded as having such a disability

What is Fair Housing and Equal Opportunity?



1. Ensuring **non-discriminatory treatment** of individuals within the protected classes.
2. Providing **equal access to all programs, services and activities with federal funds.**
3. Affirmatively Furthering Fair Housing.

What is Housing Discrimination?



Protected Person

+

Covered Dwelling

+

Prohibited Practice

=

Housing Discrimination

Covered Activities

- ❑ Sales
- ❑ Lending
- ❑ Insurance
- ❑ Rental
- ❑ Down-Payment Assistance
- ❑ All Areas Connected With Residential Housing
- ❑ Municipal Services
- ❑ Infrastructure improvements
- ❑ Public Facilities
- ❑ Neighborhood Revitalization
- ❑ Economic Development
- ❑ Section 8 Rental Assistance
- ❑ Any activity receiving federal funds

Covered Individuals/Entities

- Owners
- Managers
- Homeowner's Associations
- Lenders
- Real Estate Agents
- Brokers
- Governments
- Insurers
- Developers/Builders
- Architects
- Contractors
- Engineers
- Landscape Architects
- All Persons/Entities Involved with Residential Housing

Covered Dwellings

Private and Subsidized Property/ies

Examples:

- ❑ Single Family Dwellings
- ❑ Duplexes
- ❑ Multi-Family Buildings
- ❑ Migrant Housing
- ❑ Temporary Shelters
- ❑ Group Homes
- ❑ Assisted Living Housing
- ❑ Other Residential Housing
- ❑ Vacant Land offered for sale or lease for the construction or location of a residence

Examples of Prohibited Practices

- ❑ Refusal to sell/rent after making a bona fide offer based to one or more of the protected classes, otherwise make unavailable or deny
- ❑ Discrimination in the terms, conditions or privileges of sale or rental of a dwelling
- ❑ Make, print or publish a notice or statement that indicates a discriminatory preference
- ❑ Falsely tell someone a dwelling is not for sale or rent based upon membership in one of the protected classes
- ❑ Steering people toward or away from particular neighborhoods based upon a protected class, Redlining, Reverse Redlining
- ❑ Coercion, intimidation, threats or interference with anyone asserting a Fair Housing right or assisting others who are exercising that right.

National Origin Protected Class and LEP

□ Legal Obligation:

- **Title VI of the Civil Rights Act of 1964:** Protects individuals from discrimination on the basis of their race, color, or national origin
 - **Executive Order (EO) 13166 signed on August 11, 2000:** Programs receiving federal financial assistance must provide meaningful access to Limited English Proficient (LEP) persons
- If a person believes that an entity receiving HUD funds is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD.

Meaningful Access Best Practices

The best practice is to ensure that persons with disabilities and language barriers have an *equal opportunity* to participate in and benefit from the program, service or activity and have the same range of choices as those offered to non-disabled individuals.

LEP Compliance Obligations

- Title VI of the Civil Rights Act of 1964 and Executive Order (EO) 13166 are already effective.
- In accordance with its agreement with HUD, DCA will be:
 - Providing training and guidance as necessary to help Subrecipients meet their LEP obligations
 - Updating its own Language Assistance Plan which will include monitoring of its subrecipients for compliance with LEP obligations
 - Providing notice to its subrecipients regarding their LEP obligations

Who are Limited English Proficient (LEP) persons?

- Persons who:
 - Do not speak English as their primary language as a result of national origin
 - Have a limited ability to speak, read, write, or understand English
- LEP obligations apply to every LEP person who meets the program requirements, regardless of citizenship status.

Who Must Comply?

- ❑ All direct recipients of federal funds must provide services to ensure that LEP persons have meaningful access to these federally funded programs.
- ❑ Subrecipients—those who operate programs with federal funds passed through a direct recipient—must also comply.



What are the Compliance Requirements?

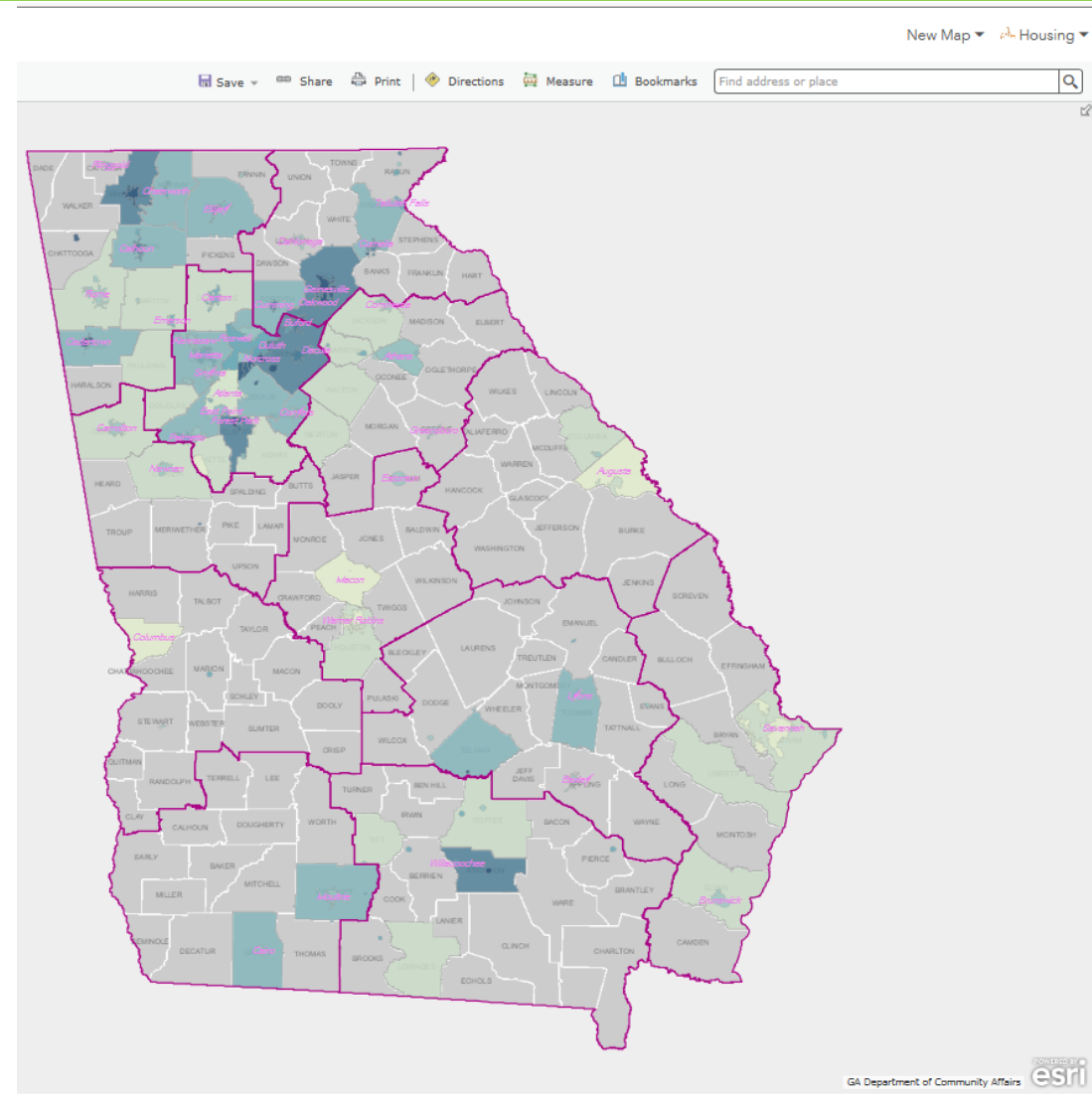
- ❑ Conduct an analysis to determine what **REASONABLE** action is required to ensure meaningful access to all programs and activities assisted with federal funds
- ❑ Develop an implantation plan such as a **Language Access Plan (LAP)** to provide appropriate language assistance
- ❑ The actions you must take to meet your LEP obligations depend upon the program benefits being offered, the community being served, the resources available and the costs of the language services.

LAP Four-Factor Analysis

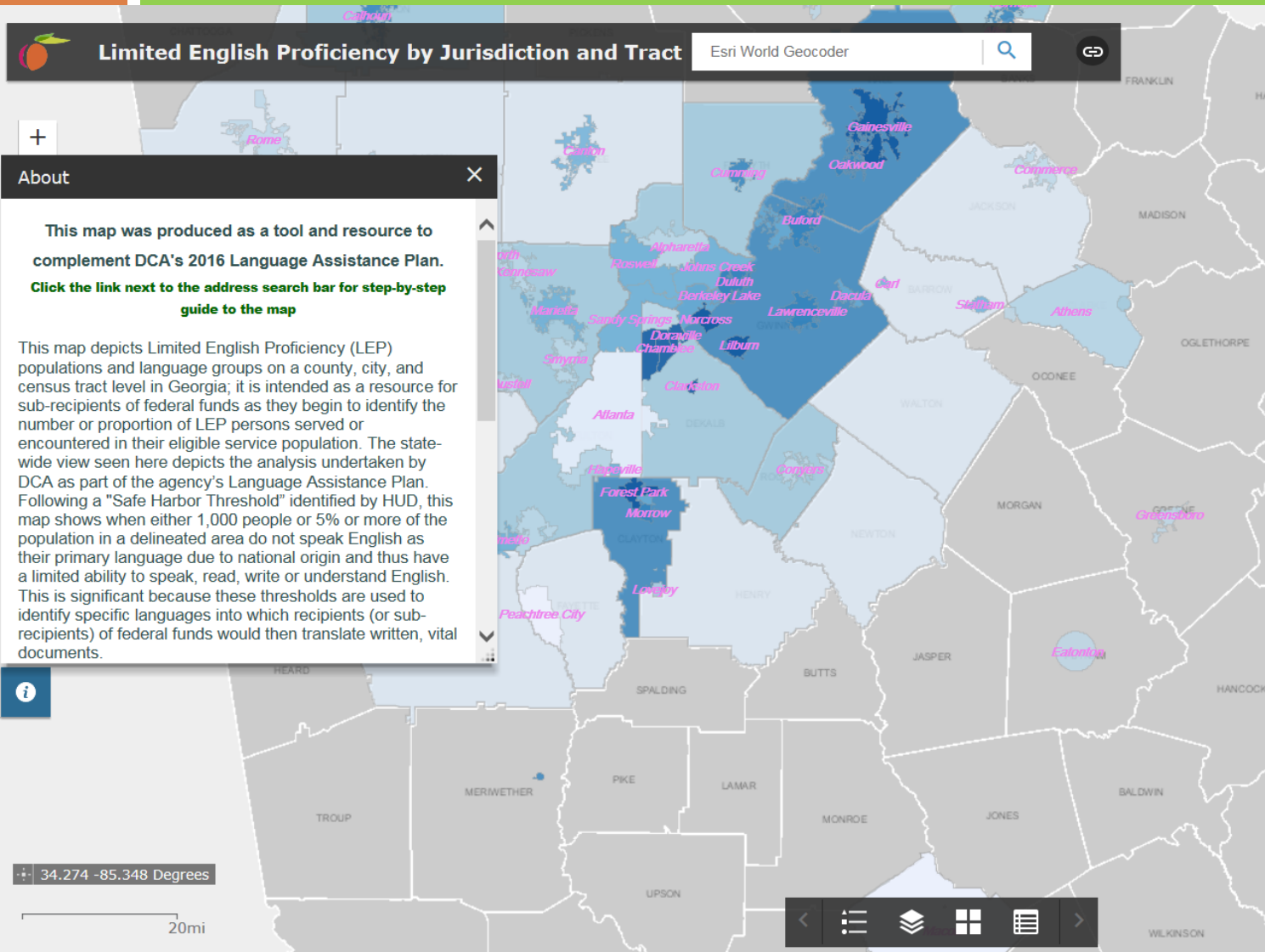
1. The number or proportion of LEP persons served or encountered in the eligible service population
2. The frequency with which LEP persons come into contact with the program
3. The nature and importance of the program, activity, or service
4. The resources available to execute the program and costs of providing LEP services

LEP Map Tool: Visualizing Language Data

- Map available to support research component of the Four-Factor Analysis
- Map contains U.S. Census data for LEP population and prevalent languages
 - Spanish, Korean, Vietnamese, and Chinese
- Not a substitute for local knowledge of LEP need



Using the LEP Map Tool



- Initial view shows county- and city-level data used in DCA's Four-Factor Analysis
- Subrecipients are able to zoom into their specific area and see the U.S. Census language data mapped by census tract
- Instructions are available for using this tool

LEP Map: Where to Find It

□ georgia-dca.maps.arcgis.com/

Georgia[®] Department of
Community Affairs

Interactive Maps Home Page

2014
Keep Georgia Beautiful

**Disability, Limited English,
Low Education, Minorities, &**

Georgia Department of Community Affairs
Planning and Environmental Management
Planning Map

**Limited English Proficiency
(LEP)**

Triggers of Discriminatory Conduct

- ❑ **Overt Discrimination** - Discrimination that is intentionally and blatantly inflicted on a protected class.
- ❑ **Disparate Treatment** - Occurs when a protected class is treated in a less favorable manner.
- ❑ **Disparate Impact** - Equally applied treatment that appears neutral but has a harsher effect on a protected class (unintentional).
- ❑ **Failure to Provide Reasonable Accommodations**
- ❑ **Failure to Allow Reasonable Modifications**

What Is A Reasonable Accommodation Under Section 504?

- A reasonable accommodation is a change, adaptation or modification to a policy, program, service, or workplace which will allow an otherwise qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.
- In order to show that a requested accommodation is necessary, there must be an identifiable relationship or *nexus*, between the requested accommodation and the individual's disability.

Determining Whether A Request For An Accommodation Is Reasonable

- ❑ Determining reasonableness of a request for an accommodation must be done on a **case by case basis**.
- ❑ Reasonableness is determined based on the answers to two questions:
 1. Does the request impose an *undue financial and administrative burden*?
 2. Would making the accommodation require a *fundamental alteration* in the nature of the provider/recipient's operations?
- ❑ If the answer to either question is yes, the requested accommodation is considered **not reasonable**.
- ❑ An alternate, comparable accommodation or other accommodations that qualify as reasonable should be offered to the requester.

What Is Meant By Program Accessibility?

□ Section 504 of the Rehabilitation Act of 1973:

Requires that recipients take steps to ensure effective communication with applicants, beneficiaries, and members of the public (24 CFR 8.6.)

- The best practice is to ensure that persons with disabilities have an **equal opportunity to participate in and benefit from** the program, service or activity and have the same range of choices as those offered to non-disabled individuals.

Recommendations To Address Accessibility Mandates

- ❑ *CREATE* accessibility policies and procedures.
- ❑ Provide *NOTICE* of the accessibility protocols and practices to employees, applicants, recipients and program participants.
- ❑ Provide *TRAINING* to staff.
- ❑ *AUDIT* all federally financed programs and services and actual buildings to evaluate compliance.
- ❑ *REVIEW* internal and external requests for Reasonable Accommodations and/or Modifications.
- ❑ *INVESTIGATE* discrimination or lack of accessibility complaints.
- ❑ *RECORD* requests, complaints and determinations.
- ❑ Develop *GRIEVANCE* procedures for both external and internal (staff) requests and complaints.
- ❑ Routinely track *UPDATES* to laws and regulations related to accessibility and non-discrimination.

Develop An Effective Communication Policy

An effective communications policy should include:

1. Language Access Plan
2. Reasonable Accommodation Policy/Forms.
3. Grievance Procedures
4. Recording/Documentation
5. HUD and GCEO Fair Housing Complaint forms.

Services Provided under an Effective Communication Policy

- 1. Reasonable Accommodation or Modification
- 2. Oral Interpreters
- 3. Written Translation Services
- 4. Assistance Animals
- 5. Accessible Public Meeting Sites

Ensuring Equal Opportunity for All



States must certify that they are Affirmatively Furthering Fair Housing (AFFH) as a condition of receiving federal funds from HUD.

Recent Fair Housing Litigation and Updates Impacting Housing Programs

- Litigation Trends show:
- Focus on Housing Choice
 - Disabled population and Olmstead Decision
 - Recent Texas decision of improper steering between Housing Authority and Sherriff's office
- Discrimination is not just intentional; We must consider the impact as well
- Reasonable Accommodation processes

L.A. County Fair Housing Case – What Happened?

□ Allegations

Between 2004 and 2011, the cities initiated and teamed with the housing authorities and sheriff's department in a targeted campaign of discriminatory enforcement against African-American voucher holders to *discourage and exclude* them and other African Americans from living in the cities.

L.A. County Fair Housing Case – What Happened?

- ❑ What Happened/ What did they do?
 - ❑ Contracted with the housing authority for *additional investigative services and devoted substantial financial resources* to voucher program enforcement efforts,
 - ❑ *Directed and encouraged* deputies to become involved in the enforcement effort,
 - ❑ Fueled public opposition to the voucher program by making *disparaging statements about voucher program participants*, and,
 - ❑ *Discouraged landlords* from renting to voucher holders.
 - ❑ There was no legitimate law enforcement or programmatic justification for these types of extraordinary enforcement efforts, according to the Justice Department.

L.A. County Fair Housing Case – What Was the Fine?

- The public housing agency, which administers the Section 8 voucher program in Los Angeles County, has agreed to:
 - Pay **\$1,975,000** in monetary damages on behalf of itself and the cities, and,
 - Pay a **\$25,000** civil penalty to the United States.
- When combined with a previous settlement with the Los Angeles County Sheriff's Department for related conduct, there will be a total of **\$2.6 million** available to compensate individuals harmed by the alleged discrimination.

Texas Stand to Landlords – You Will Not Discriminate Against Our HCV/Section 8 participants

- Texas Mandatory inclusion of Section 8 participants to all landlords
- Texas overturned this mandate.
- Good intentions? Good result?

Fair Housing and Sexual Orientation

□ **Sexual Orientation and Gender Identity:**

In general, “sexual orientation” means heterosexuality, homosexuality, or bisexuality; while gender identity or expression is defined as “a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.”

Sometimes, the term “transgender” is used to refer to gender identity and gender expression.

□ **Marital Status:** No housing discrimination based on marital status

□ This means being single, married, divorced, or widowed.

□ Examples include showing a preference for married people, refusing to rent to applicants who are divorced or separated, or requiring single applicants to pay higher rent payments than married applicants.

□ **Double Discrimination issues for Discriminatory Practices for Same-Sex couples.**

Affirmatively Furthering Fair Housing

- ❑ As an administrator of Federal Funds, you must affirmatively further fair housing.
- ❑ This includes:
 - ❑ Investigating fair housing concerns and making the process of submitting fair housing complaints available to everyone;
 - ❑ Knowing How to File Grievances;
 - ❑ Offering to assist with filing grievances; and,
 - ❑ Directing persons to the appropriate resources to file complaints.

Disparate Impact and Fair Housing Law

- ❑ Split Supreme Court decision supports that Disparate Impact is still Discrimination.
- ❑ The court affirmed a Court of Appeals decision in a case in which a nonprofit group, the Inclusive Communities Project, said that the Texas Department of Housing and Community Affairs had contributed to "segregated housing patterns by allocating too many tax credits to housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods."
- ❑ The 5-4 ruling endorses the notion of citing disparate impact in housing cases, meaning that **statistics and other evidence can be used to show decisions and practices have discriminatory effects** — without proving that they're the result of discriminatory intentions.

7 Things You Should Know to Prevent Fair Housing Discrimination Complaints

1. It's Illegal to Exclude Anyone Based on a Protected Class/Characteristic.
2. Subtle Discrimination is Just as Bad.
3. Don't make it more burdensome for a protected class. Apply your standards to everyone.
4. Remember that Fair Housing Rules apply to any statements, pictures or actions.
5. Don't allow your personal beliefs or political opinions to affect how you treat participants or applicants.
6. Don't Pick on Anybody—Especially the Kids.
7. Maintain Good Records.

RESOURCES

www.hud.gov or call 800-669-9777

www.gceo.state.ga.us or call 404-463-3812

www.metrofairhousing.com or call 404-524-0000

www.consumerfinance.gov

www.nationalfairhousing.org

www.justice.gov

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