

Fair Housing Webinar Series
April 4, 2017 from 1:30-3:00 pm

Fair Housing Webinar Series:
Fair Housing Overview Training

Presented by
TDHCA and TWC

1 SUZANNE HEMPHILL: Good afternoon, we're just doing a little test on our audio to double
2 check if you can hear us. If you can respond to the chat box or question box and let us know if it's
3 coming through. All right. It looks like our audio is working. You're joining the Fair Housing
4 Overview Webinar presented by Texas Department of Housing and Community Affairs in
5 collaboration with the Texas Workforce Commission Civil Rights Division. We're going to give it
6 just about two more minutes and then we'll get started.

7 Thank you for joining our webinar series today. My name is Suzanne Hemphill, Fair Housing
8 Projects Manager. TDHCA is hosting a two-part webinar series. We're so excited that so many of
9 you have joined us today. We're going to be doing the fair housing overview presented by the Texas
10 Workforce Commission Civil Rights Division. This is the first presentation in our series and we'll
11 provide a foundation for next week's presentation on reasonable accommodation and accessibility.
12 So the webinar series is as follows. Next week we'll be meeting same time, 1:30 to 3:00 p.m. and
13 discussing reasonable accommodations and accessibility. Today's webinar is recorded and will be
14 available on TDHCA's website under the fair housing section and presentation. When the
15 presentation is posted on TDHCA's website, we'll send a link out to all of the participants. Please
16 give us a little bit of time to make it accessible and post the transcript online before we post it. But
17 we will let you know when it's available. We'll take a limited amount of questions throughout the
18 webinar. You can submit those via the chat box. Feel free to type in questions and we'll answer them
19 as we go. Attendees are all on mute throughout the presentation. We have set aside some time at the
20 end to also go over your questions. And my contact information as well as Vickie, our co-presenter,
21 her contact information is available on the next slide. Included as a handout are the presentation
22 slides. If you click on your go to webinar software you'll see a little box that says handouts. And
23 there is actually four different handouts. There's a copy of the slides, a joint statement from HUD
24 and the Department of Justice on reasonable accommodations, a joint statement on reasonable

25 modifications, and then information on service animals and assistance animals. If you're having
26 trouble finding those, we'll post those all on our website afterwards. If you're having trouble
27 grabbing it from go to webinar, we'll make it all available. You can also Google it and get it pretty
28 easily. Don't get caught up in technical difficulties. We can straighten all that out afterwards. This
29 session is going to last a little over an hour and will be co-presented by Vickie Covington, senior
30 investigator and outreach coordinator for the Texas Workforce Commission, Civil Rights Division.
31 Vickie is responsible for investigating fair housing cases and coordinating and conducting fair
32 housing outreach. Last January, Vickie earned the certified fair housing professional designation, a
33 professional credential for investigators to successfully complete a five-week fair housing core
34 curriculum, meet specific professional requirements, and pass a comprehensive examination. Vickie
35 has served more than 16 years with the commission on human rights and Texas Workforce
36 Commission in roles of policy reviewer, employment investigations manager of special projects,
37 acting director of enforcement for housing and employment investigations, interim executive
38 director and a division director and a fair housing manager. With that, I'll hand it over to Vickie.

39 VICKIE COVINGTON: Good afternoon. I too am excited to have you guys join us for today's fair
40 housing training. And I too would like to welcome you to the training. Here's our agenda for today
41 (slide #4). The topics include training objectives, purpose of the Federal Fair Housing Act and the
42 Texas Fair Housing Act, mission of the Civil Rights Division, cover and protected classes, issues or
43 discriminatory practices, HUD disparate impact guidance. I'm going to go over some exemptions. I
44 am going to talk about fair housing testing. Talk about our mediation process and share some
45 resources with you. Here are the objectives or goals of today's training (slide #5). At the end of the
46 training we expect you to be able to identify the purpose of the Federal Fair Housing Act and the
47 Texas Fair Housing Act, recognize covered or protected classes, recognize issues or discriminatory
48 practices, identify exemptions under the Acts, and an introduction to the fair housing testing. The

49 mission and vision of the Civil Rights Division is to reduce discrimination in employment and
50 housing through education and enforcement of state and federal laws (slide #6). Our vision is to
51 help create an environment in which citizens of the State of Texas may pursue and enjoy the
52 benefits of employment and housing that are free from discrimination. Fair housing is not best
53 practice, it is the law. The purpose of the Federal Fair Housing Act is within constitutional
54 limitations, provide for fair housing throughout the United States. According to Texas property
55 code Chapter 301, the purpose of the act is to provide for fair housing practices in the State of
56 Texas, create a procedure for investigating and settling complaints of discriminatory housing
57 practices, and to provide rights and remedies substantially equivalent to those granted under federal
58 law. The Texas Fair Housing Act mirrors the Federal Fair Housing Act and both contain procedures
59 for investigating and settling complaints. The whole point of fair housing is to avoid and prevent
60 discrimination. Discrimination is defined as a difference in treatment because of membership in one
61 or more protected classes. However, not every difference in treatment is discrimination. Despite the
62 fact that fair housing laws have been around for many years, housing discrimination still happens.
63 So, just who is protected (slide #8)? There are seven covered or protected classes under the federal
64 and state laws. And they are race, color, national origin, familial status, religion, sex, and disability.
65 What specifically do fair housing laws prohibit providers and landlords from doing? It prohibits
66 them from basing housing decisions on a person's protected class. Also, you cannot apply different
67 standards or apply standards differently to anyone because of their protected class. In addition, state
68 and federal laws prohibit harassing anyone based on a protected characteristic. Finally, the law says
69 you cannot retaliate against any applicant, tenant, buyer, or consumer for engaging in protected
70 activity such as complaining about alleged discrimination, filing discrimination complaints against
71 the housing provider, or testifying in hearing and court proceedings concerning discrimination
72 complaints. Race is the classification system used to categorize people into large and distinct

73 populations or groups by inherited appearance, ethnicity, and social status (slide #9). For fair
74 housing purposes, Asian is defined as a person having origins in any of the original peoples of the
75 far east, southeast Asia, or the Indian subcontinent, including Cambodia, China, Japan, Korea,
76 Malaysia, Pakistan, the Philippine islands, Thailand and Vietnam. African American or black is
77 defined as a person having origins in any of the black racial groups of Africa. Terms such as Haitian
78 or Negro can be used in addition to black or African American. Native American Indian or Alaska
79 Native is defined as a person having origins in any of the original peoples of North and South
80 America, including Central America and who maintain tribal affiliation or community attachment.
81 Native Hawaiian or other Pacific Islander is a person having origins in any of the original peoples of
82 Hawaii, Guam, Samoa, or other Pacific islands. White is the person having origins in any of the
83 original peoples of Europe, the Middle East, or north Africa. Some will identify themselves as
84 having more than one race. As you already know, it's illegal to discriminate against any housing
85 applicant or tenant based on stereotypes or assumptions. It's illegal to discriminate against an
86 applicant or tenant because that person is married to someone of a different race or associates with
87 people of certain racial groups. Racial slurs, derogatory comments, threats, or other verbal or
88 physical conduct based on a person's race are illegal. Harassment based on race also violates fair
89 housing laws. In addition, state and federal housing laws prohibit discrimination based on
90 characteristic associated with race such as hair texture or facial features. Color refers to a person's
91 skin color (slide #10). Color is separate from race because people can discriminate solely based on
92 color. For example, someone can discriminate against another person whose skin is lighter or darker.
93 Those discriminated based on color may make assumptions about a person's intelligence, their social
94 status, their education, income, or other characteristics. An example of color discrimination would
95 be making housing decisions that favor individuals with lighter complexions over those individuals
96 with darker complexions, even if the individuals are of the same race or national origin. As a result

97 of increased diversity in Texas, national origin discrimination is an issue (slide #11). No one can be
98 denied housing or housing opportunities because of his or her birthplace, ancestry, or cultural, or
99 because of a housing provider's perception that a person belongs to a certain ethnic group. Unfair or
100 illegal housing-related services directed toward limited English proficiency, or LEP individuals or
101 those who speak a particular language may also constitute intentional discrimination. Advertisements
102 containing blanket statements such as all tenants must speak English, turning away applicants who
103 are not fluent in English, or making statements disparaging tenants for speaking non-English
104 languages may be discrimination. If a housing provider is provided to provide language assistant
105 services to limited English proficiency persons under federal, state, or local law or by contract, and
106 the housing provider fails to comply with that requirement, this too may constitute intentional
107 discrimination. By failing to comply with the requirement to provide language assistance, the
108 housing provider may be denying individuals based on their national origin an equal opportunity to
109 enjoy the housing benefits to which that requirement entitles them. Familial status means the
110 makeup of your family unit (slide#12). Familial status includes persons who have children under the
111 age of 18 who are living with their parents or legal custodians, pregnant women, and people who are
112 seeking to secure custody of children under the age of 18. Housing providers cannot refuse to rent
113 or sell to a woman because she is pregnant. Nor can they refuse to rent or sell to a pregnant woman
114 because of prejudices against pregnant applicants. Here's an example of a landlord or housing
115 provider's statement that indicate unlawful discrimination. We need to increase your security deposit
116 to cover all of your kids. Another statement could be, sorry, we only allow one child per bedroom.
117 It's illegal to segregate families and/or pregnant women by assigning them to specific geographic
118 areas. For example, it's illegal for housing providers to deny or limit families or pregnant women
119 from purchasing or occupying certain properties or a building. For example, you can't rent that unit.
120 Families aren't allowed in that building because older residents don't want children there is a

121 statement that indicates unlawful discrimination. Religious discrimination is an important issue today
122 and it is an issue that has long gotten housing providers into trouble in the past (slide #13). Simply
123 put, the laws say you cannot discriminate against a person because of his or her religion. Religion
124 refers to all aspects of religious beliefs, observances or practices. It includes overt discrimination
125 against members of a particular religion or indirect discrimination such as a homeowner's
126 association's restrictions of symbols or decor regarding religious practices. Examples of
127 discrimination based on religion could exist if people hear a landlord or a real estate agent or a
128 lender say I will show you neighborhoods with synagogues, or we specialize in lending to Christians.
129 Discrimination based on sex is also prohibited (slide #14). State and federal laws are very clear that
130 any type of discrimination in housing based on a person's gender is prohibited. State and federal
131 laws also prohibit discrimination based on stereotypes and assumptions about a person's gender. In
132 other words, you cannot take gender into account in rental and sale of real estate or any other
133 housing decision. This includes sexual harassment and discriminatory pricing because of pregnancy.
134 Here are some statements you could hear that could indicate discrimination. We do not rent to
135 single men. Or I can take the price down if you go out on a date with me, which would be
136 considered sexual harassment. State and federal laws prohibit discrimination on the basis of
137 disability (slide #15). In 2016, more than 75% of the Civil Rights Division cases were based on the
138 protected class of disability. That means three out of four people filed a complaint alleging that they
139 were being treated differently because of disability. State and federal laws ensure that people with
140 disabilities have freedom to choose where they will live and the ability to visit friends and relatives.
141 Proactively address the needs of an evolving population, look ahead at future needs, and allow
142 people to remain in and safely use their dwellings longer. A person has a disability if he or she first
143 has a mental or physical impairment that substantially limits at least one major life activity. Second,
144 has a record of an impairment. Or, third, is regarded as having an impairment. In addition to the

145 laws covering a buyer or renter with a disability, the following persons are also covered. A person
146 residing in or intending to reside in the dwelling after it is sold, rented, or made available. Any
147 person associated with the buyer or the renter. Please note that tenants and applicants currently
148 engaging in the illegal use of drugs are not covered when a housing provider acts on this basis of
149 such use. Housing providers may hold drug users to the same standard as other tenants. So what are
150 some major life activities (slide #16)? Major life activities include seeing, hearing, breathing, walking,
151 performing manual tasks, caring for one's self, learning, speaking, and working a broad class of jobs.
152 Please remember these are not all the major life activities. This is just a snapshot of some of the
153 most common ones. What are some examples of impairments which may result in a disability (slide
154 #17)? Impairments such as visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy,
155 muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency
156 virus or HIV, drug addiction, other than addiction caused by current illegal use of a controlled
157 substance, and alcoholism. As discussed before, the laws protect persons who are recovering from
158 substance abuse but they do not protect persons who are currently engaging in the current illegal use
159 of controlled substances. Additionally, the laws do not protect an individual with a disability whose
160 tendency would constitute a direct threat to the health or safety of other individuals or result in
161 substantial physical damage to the property of others unless the threat can be eliminated or
162 significantly reduced by reasonable accommodation. If a question arises regarding direct threat, a
163 determination that an individual poses a direct threat must rely on an individualized assessment
164 based on reliable, objective evidence. The assessment must consider the nature, duration and
165 severity of the risk of injury, the probability that injury will actually occur, and whether there are any
166 reasonable accommodations that would eliminate the direct threat. So when evaluating a recent
167 history of overt acts, a housing provider must take into account whether the individual has received
168 intervening treatment or medication that has eliminated the direct threat. In such a situation, the

169 provider may request that the individual document how the circumstances have changed so that he
170 no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual
171 will not pose a direct threat during the tenancy. The housing provider must have reliable and
172 objective evidence that a person with a disability poses a direct threat before excluding him from
173 housing on that basis.

174 SUZANNE HEMPHILL: Vickie, I'm going to pause here. We have a couple questions coming in.
175 One of the questions is what did you say about drug users? They are not considered a disability?
176 And so just going back to that slide. So, the question is, are drug users protected? So the laws
177 protect persons who are recovering from substance abuse but they do not protect persons who are
178 currently engaging in the illegal use of controlled substances.

179 VICKIE COVINGTON: That is correct.

180 SUZANNE HEMPHILL: So we also have a question. If a prospect does not speak English, how
181 should we assist them? Do we have to provide an interpreter?

182 VICKIE COVINGTON: So we're going to talk later on about HUD's new limited English
183 proficiency rules and hopefully we will answer that question when we get to that particular slide.

184 SUZANNE HEMPHILL: Okay. Sounds great. Feel free to keep asking questions. A lot of this
185 information is really specific to the facts in your particular situation. We'll do our best to answer
186 some of them, but you are welcome to e-mail us with your specific situation if you participate in
187 TDHCA programs or if you're market rate housing.

188 VICKIE COVINGTON: Now we're going to talk about some specific issues or discriminatory
189 practices and break them down into major categories (slide #18). The first category we are going to
190 look at deals specifically with people who are disabled and we'll cover reasonable modification,
191 reasonable accommodation, and design and construction. We're also going to look at practices that
192 involve the sale or rental of property, terms and conditions, the making of discriminatory

193 statements, inspection, entry into a neighborhood, discriminatory lending practices, prohibited
194 conduct relating to brokerage services and retaliation. The first specific prohibition if a person is
195 disabled is reasonable modification (slide #19). What this means is that if a person is disabled, a
196 landlord cannot refuse to let that person make reasonable modifications to the person's dwelling or
197 to the common use areas if it is necessary for that person to use the housing and if the modifications
198 are done at the person's own expense. For example, a tenant who is a wheelchair user requests a
199 modification to build a ramp for the entry steps to his unit. It would be illegal to deny the request if
200 the tenant is going to do it at his own expense and will remove it when he moves. In the case of a
201 rental, the landlord may, where it is reasonable to do so, conditionally permit a modification if the
202 renter agrees to restore the interior of the premises to the condition that existed before the
203 modification. The landlord may not, however, increase a customarily required security deposit for
204 individuals with disabilities. Where it's necessary to ensure with reasonable certainty that funds are
205 available to pay for the restoration at the end of the tenancy, the landlord may negotiate as part of
206 such a restoration an agreement with the provision that requires the tenant to pay into an
207 interest-bearing account. As a condition for granting a renter permission for a modification, a
208 landlord may also require a reasonable description of the proposed modification, may require
209 reasonable assurances that the work will be done in a workman-like manner. And may require
210 assurances that require building permits will be obtained. The second specific prohibition has to do
211 with reasonable accommodation (slide #20). If a person is disabled, a landlord cannot refuse to
212 make a reasonable accommodation in the landlord's rules, policies, practices, or services if the
213 accommodation is necessary for the person with the disability to use the housing. Comments that
214 people with disabilities have heard include, we have to charge you \$200 for your service dog. We
215 cannot talk to people who call us over the relay service. The only accommodation we offer is
216 disabled parking. We can't waive the breed of the animal, even if it is a service animal. No, your

217 sister's animal is not allowed in the pool area. We have to charge you a transfer fee and deposit for
218 the first-floor unit.

219 SUZANNE HEMPHILL: Okay. So we're going to get into a few scenarios. And we've got the
220 questions still coming in. We're going to come back to those but we wanted to ask what you think
221 the housing provider should do this in situation? So a housing provider has a policy of providing
222 unassigned parking spaces to residents. There's a resident with a mobility impairment who is
223 substantially limited in her ability to walk and is requesting an assigned accessible parking space close
224 to the entrance to her unit as a reasonable accommodation. There are available parking spaces near
225 the entrance to her unit that are accessible but those are available to all residents on a first-come,
226 first-served basis. So what should the housing provider do? Please type your answers into the chat
227 box and we'll read through those. So here's what we're seeing. Oh, my goodness! So many
228 responses. I love it. It's flying. Accommodate, make a space for her. We must comply. Give her
229 space with her unit number on it. Have the resident fill out a reasonable accommodation form and
230 process within seven days. The landlord should provide a space. All right, Vickie. We have so many
231 answers coming in. What do you say?

232 VICKIE COVINGTON: I say that we have a great group of people attending the training.

233 SUZANNE HEMPHILL: I love these recommendations.

234 VICKIE COVINGTON: That recognize this is a request for a reasonable accommodation. I would
235 like to comment as far as the request for the reasonable accommodation. There is no requirement in
236 state or federal law that indicates the request has to be in writing. So the landlord or the housing
237 provider should accept an oral request as well as a written request. So you guys did a good job of
238 recognizing what the housing provider should do. The housing provider should make an exception
239 to its policy of not providing assigned parking spaces to accommodate this resident. And you can
240 find more information about this in the HUD DOJ memorandum on reasonable accommodations

241 item No. 6, as well as the HUD DOJ reasonable modification memo item No. 11.

242 SUZANNE HEMPHILL: Great. So we're having so much fun. Let's do another scenario. Okay.

243 The complainant uses a wheelchair and at times a walker. She alleges she was denied a reasonable
244 accommodation. The complainant was issued a disabled parking space without a curb cut and was
245 told she would be charged for the installation of the curb cut. The complex then charged her for it.

246 The complainant was also given a unit that required negotiation of a step. So we have a couple of
247 questions. What is the protected class in this complaint? Vickie went over the seven protected

248 classes earlier. So we're looking for the protected class. And, second, what is the issue or the
249 discriminatory practices in this complaint? All right. Let's see. Protected class is physical disability.

250 Seeing some stories that properties have seen things like this. The discriminatory practice is she
251 should not have to pay for the curb cut. She's a person with a disability. Reasonable accommodation

252 would be the discriminatory practice. All right. Across the board. Those are the answers. Let's see.

253 Physical disability, the complex may charge her a reasonable cost. Vickie, do you have an answer for
254 us?

255 VICKIE COVINGTON: All right. So this is a real case that was filed with the Texas Workforce
256 Commission Civil Rights Division. And great job of identifying the protected class as being

257 disability. And you also identified the issue, a reasonable accommodation. And also there was

258 another issue in this one, a reasonable modification where the step is concerned. So just to let you

259 know, the outcome of this case was that before we concluded the investigation, the respondent and

260 the complainant entered into a conciliation agreement where the respondents agreed to monetary

261 relief and to provide an access aisle next to the complainant's disabled parking space that met the

262 American National Standard Institute requirements. And the respondents agreed to provide the Civil

263 Rights Division with proof of both actions when they were completed. So the thing to remember

264 here is that when someone files a complaint with the Civil Rights Division, it is merely an allegation

265 to determine whether discrimination happened or did not happen, we would have to go through and
266 conduct a complete investigation of the allegations. And many of our cases do not result in a
267 complete investigation because the parties decide to resolve their differences and we're able to close
268 it out with a conciliation agreement. So were there any questions that we needed to respond to?

269 SUZANNE HEMPHILL: So here's one that we see, that I have seen at TDHCA. We have a large
270 number of residents requesting reasonable accommodation spaces now that we have started issuing
271 them, especially in certain areas. It's not impacting the parking to residents in open parking. What do
272 we do in these cases?

273 VICKIE COVINGTON: Okay. So the handouts that were provided with today's training are going
274 to be very helpful to housing providers when trying to make a decision regarding what the next step
275 should be. According to the reasonable accommodations memorandum that HUD and the DOJ put
276 out, you can have people provide you with information or documentation to show that they really
277 do need a parking space if the disability is not obvious. You have to remember, if the disability is
278 obvious you cannot ask for additional documentation or support to show that the person really
279 needs a parking space. So when it comes to the number of people who are asking and the number of
280 parking spaces that you actually have, you are going to have to address that on a case-by-case basis.

281 SUZANNE HEMPHILL: Okay. And there was another question here. So, Vickie, does simply filing
282 a complaint, does that mean someone is guilty of discrimination?

283 VICKIE COVINGTON: No. That does not mean someone is guilty of discrimination. When
284 someone files the complaint, the complainant only needs to believe that he or she has suffered some
285 sort of harm and that the harm that they suffer is in violation of state or federal fair housing law.
286 Once we get the complaint, we conduct an in-depth complete, thorough, unbiased investigation to
287 determine whether discrimination happened. And part of that investigation includes getting the
288 respondent or the housing provider's side of the story. The complainant tells us his or her side of

289 the story, then we get the housing provider's side of the story. And we may conduct interviews. We
290 may ask for documents. We may identify independent witnesses that we can speak with as well
291 during the conduct of the investigation. And so because we are unbiased, we don't take sides with
292 either party. We don't say the complainant is right. We don't say the respondent is right. We basically
293 just follow the facts as they arise during the investigation.

294 SUZANNE HEMPHILL: All right. We will keep moving.

295 VICKIE COVINGTON: Can we back up for a second? I think I saw a question about the
296 time-frame when someone is requesting a reasonable accommodation. I will tell you that the Federal
297 Fair Housing Act and the Texas Fair Housing Act do not contain a time-frame. However, Suzanne
298 already talked about next week's training. And there are certain properties that have federal or state
299 funds attached to them and now there is a time-frame for the housing provider to respond. So I
300 would ask those folks to tune in next week for the reasonable accommodations training.

301 SUZANNE HEMPHILL: Sounds good. It's a good plug. Okay. Because of his disability, an
302 applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable
303 accommodation. The housing provider may not require the applicant to pay a fee, pet rent, or pet
304 security deposit as a condition of allowing the applicant to keep the assistance animal. However, if
305 the tenant's assistance animal causes damage to the unit or the common areas, the housing provider
306 may charge the tenant for the cost of repairing the damage. If it is the provider's practice to assess
307 tenants for any damage they cause to the premises.

308 VICKIE COVINGTON: And more information can be found regarding this in the HUD DOJ
309 memorandum on reasonable accommodations item No. 8.

310 SUZANNE HEMPHILL: Okay. Case scenario number two. Complainant Organization, Inc. tested
311 the ABC Apartments. The tester identified herself as a person with disabilities who needed a service
312 animal so that she would be afforded an equal opportunity to use and enjoy a dwelling. Tester stated

313 that she had a prescription from her doctor showing the need for the service animal. Respondents
314 would not accept the prescription and stated that the animal exceeded their weight limits.
315 Respondents required the tester to present documentation that her 60-pound pit bull service animal
316 was registered. The tester requested that the requirement be waived for her service animal and the
317 respondent stated the requirements could not be waived. Complainant Organization, Inc. allege the
318 tester was denied the reasonable accommodation request to waive the discriminatory process. So,
319 again, this is a scenario. It's a real case investigated by Texas Workforce Commission Civil Rights
320 Division. If you could type in and let us know what you think the protected class is in this complaint
321 and what the issue or discriminatory practice is. We'll read off a few of those. Okay. I'm seeing
322 disability. The weight-limit and breed restrictions. Not allowing the service animal due to the size.
323 Denying the service animal was discriminatory. Vickie, what do you have to say here?

324 VICKIE COVINGTON: So, in this particular scenario, again, the complainant and the respondent
325 entered into a conciliation agreement where the respondents agreed to take fair housing training so
326 that its staff would know how to process a request for reasonable accommodation. So when we get a
327 complaint that is filed by an organization, in order for us to proceed with the investigation, we have
328 to determine whether or not the organization has standing to file a complaint. And what that means
329 is that we look to see if the organization has a diversion of resources or frustration omission. And
330 we look at things like did they have a recorded diversion of time and money from assisting in equal
331 access through housing through counseling and other referral services? Did they have to put specific
332 previously scheduled projects on hold or cancel them altogether to correct the discrimination? Or
333 did they redouble their efforts in the community to combat discrimination? In this particular
334 scenario, I think a lot of people in the audience pointed out that the weight of the service animal has
335 to be waived. Also the prescription that the person presented to the housing provider should have
336 been sufficient to show that the animal was needed. So we're going to talk a little bit more about the

337 testing process later on in the presentation. But I think everyone did a fairly good job of picking out
338 what the protected class was, disability, and what was the issue in this particular complaint, which
339 was reasonable accommodation. I just want to encourage everyone that if we do not get to your
340 question today, I'll leave my contact information so you can e-mail me your questions directly. We
341 have a lot of people attending the training today and it's possible that we may not get to your
342 question. The third specific prohibition if a person is disabled is design and construction (slide #26).
343 The failure to design and construct a covered multi-family dwelling in a way that makes them
344 accessible and/or usable by people with disabilities is also discrimination. Accessible means a place
345 that can be used, entered or reached. And usable means available or convenient for use. In practice,
346 we use these two terms interchangeably. So, covered buildings should have at least one building
347 entrance on an accessible route unless it is impracticable because of unusual characteristics to the
348 site (slide #27). Unusual characteristics have to be determined and documented before and not after
349 the property is built. Accessible public and common use areas include the laundry room, the fitness
350 center, theater facilities, the playground, fire alarms, mailboxes, storage areas, the pool, the activity
351 center, dumpsters or trash cans.

352 SUZANNE HEMPHILL: This is Suzanne with TDHCA, dumpsters and trash cans are a common
353 finding that they are inaccessible. When we talk about public and common areas, that is included.
354 And it's something to be on the lookout for and to make sure that that is accessible.

355 VICKIE COVINGTON: Also, doors have to be wide enough to allow wheelchair passage into and
356 within all the rooms. There has to be accessible routes into and through each covered unit. Light
357 switches, electrical outlets, thermostats, and other environmental controls have to be in accessible
358 locations so that a person in a wheelchair would be able to operate them. The bathroom walls need
359 to be reinforced so that grab bars can be added later if they are needed. Kitchens and bathrooms
360 have to be wide enough so that a person in a wheelchair will be able to maneuver about the space.

361 We're going to move on now to the issue of rent, sell, terms, and conditions (slide #28). When it
362 comes to a protected class, someone may not refuse to negotiate for housing, refuse to rent or sell
363 housing, or set different terms, conditions, or privileges for sale or rental of housing. Here's some
364 discriminatory statements that a person in a protected class might hear when negotiating to rent a
365 unit. Sir, we're sorry but we are not able to rent to people who have mental illnesses. Or this unit
366 cannot be rented to you because you are of the wiccan religion. This could be a statement a person
367 could hear when negotiating to rent a unit as well. We just rented the last vacant unit.

368 SUZANNE HEMPHILL: I wanted to share a scenario with you. Please do type your answers and
369 comments into the chat box and we'll read some of those out loud. So here's a scenario. When it
370 comes to setting terms and conditions, let's say that there is a single working mom living in an
371 apartment with four children. She's working two jobs. She doesn't have time to clean the unit in a
372 manner that is required to be kept according to lease agreement. Can she be evicted because of her
373 poor housekeeping? I'm seeing some yes. No. Be careful with that familial status. No, yes. She
374 possibly could but I would try to work with her first. Okay. Vickie?

375 VICKIE COVINGTON: So we have a lot of people saying yes. A few people saying no. And I
376 think a few people are trying to say maybe. So I'm going to say that all of you are correct. Just
377 remember, when it comes to fair housing or discriminatory treatment in housing, it hinges on a
378 difference in treatment. So if the housing provider has a policy where the person has to upkeep the
379 unit in a certain way and the tenant is not keeping the housing in that manner, then the housing
380 provider may evict that person as long as they are consistent in following that policy. Now, there are
381 other properties that receive federal, state, and local funding that may have different policies and
382 procedures as far as the eviction process or even housekeeping. And so depending on the
383 circumstances, this may or may not be a good idea to evict this person.

384 SUZANNE HEMPHILL: Vickie, we received a question. Can a landlord deny rental of a housing

385 unit if a mother of four children wants to rent a two-bedroom apartment. So you have a mother and
386 four children wanting to rent a two-bedroom apartment. And Vickie just said that you need to apply
387 policies and practices uniformly.

388 VICKIE COVINGTON: Right. And so this type of case may boil down to an occupancy standard.
389 And really there's no yes or no question because when we get a complaint alleging the housing
390 provider's occupancy standards are unreasonable, then we have to look at all the circumstances
391 surrounding the case. In most cases, two persons per bedroom is going to be a reasonable standard.
392 However, it depends on the size of the bedrooms. If the bedrooms are huge, then it might be
393 reasonable to allow a family of five in a two-bedroom unit. We also look to see if there are additional
394 rooms that could be used as a bedroom. And there's actually HUD guidance that walks us through
395 how to investigate a case where occupancy is alleged as well as familial status.

396 SUZANNE HEMPHILL: Great. So as you can see, there's a lot of specifics involved in HUD
397 guidance with a lot of these questions. We'll keep moving. We're happy to see your questions but
398 we're probably not going to get to all of them today.

399 VICKIE COVINGTON: When it comes to publication, persons may not make, print, or publish a
400 notice, statement, or an advertisement about the sale or rental of a unit that may indicate any
401 discrimination against a protected class (slide #29). Landlords and other housing providers need to
402 be careful regarding advertising. It may sound very inviting to attract a certain group of people.
403 However, it may discriminate against a protected class. According to state and federal law,
404 remember, verbal statements may constitute discrimination as well if someone is not absolved from
405 liability by blaming another person for a discriminatory statement repeated on their behalf. For
406 example, a leasing agent tells someone that no unit is available to inspect or rent when in fact a unit
407 is actually available. If another person from a different protected class comes in afterwards and gets
408 the opportunity to see a unit, this conduct may violate fair housing laws. So when it comes to

409 inspection, a person may not represent to another that a unit is not available for inspection, for sale,
410 or for rental when the unit is actually available for inspection. And there's an example down at the
411 bottom right-hand corner that says I can't show you this home because the owner does not want to
412 sell to someone not of the owner's race. For entry into a neighborhood, a person may not for profit
413 persuade someone to sell or rent real estate by predicting an influx of a protected population (slide
414 #30). This practice is known as blockbusting. And there are a couple of examples on the slide. The
415 racial demographics of the neighborhood are undergoing changes in race, so sell now. Or property
416 taxes will go up when this national origin changes, so you better sell now. Brokerage services, loans,
417 and other financial assistance are covered under the Federal Fair Housing Act as well as the Texas
418 Fair Housing Act (slide #31). When it comes to brokerage services you cannot set different fees for
419 access to or membership in a multiple listing service, or MLS. You can't deny or limit benefits
420 accruing to members in a real estate broker's organization. You can't impose different standards or
421 criteria for membership in a real estate sales or rental organization. Nor can you establish geographic
422 boundaries for access, membership, or participation in any MLS when it is based on a protected
423 service. Protected class. When it comes to lending and other financial assistance, you cannot refuse
424 to provide a person with loan or financial assistance availability or the application requirements. You
425 cannot refuse to provide information that can inaccurate or different. You can't determine the type
426 of loan or financial assistance. You can't fix the amount, the interest rate, or the duration of the loan.
427 And you cannot use different practices in determining credit worthiness when it is based on a
428 protected class. There's an example on your slide that says you have to pay a higher interest rate
429 because people of your national origin are a higher credit risk. Loan officers may turn down an
430 applicant because the applicant does not have steady income if all applicants are required to have a
431 steady income.

432 SUZANNE HEMPHILL: So some examples of discriminatory statements could be things like we

433 cannot approve your loan because you are on maternity leave. You have to go back to work before
434 we can proceed with the paperwork. Or we cannot count your disability income unless we get a
435 letter from your doctor confirming you will continue to receive these payments for the next five
436 years. Texas Workforce Commission Civil Rights Division has found such cases to be
437 discriminatory. It does not prevent consideration used in normal transactions, as long as there are no
438 reliance on factors that relate to the seven protected classes.

439 VICKIE COVINGTON: The next issue we're going to talk about is retaliation, interference,
440 coercion, and intimidation (slide #32). So here's some prohibited conduct under this particular area.
441 You cannot coerce a person either orally or in writing or by any other means. You can't deny or limit
442 the benefits provided to that person in connection with the sale or rental of a dwelling if it is based
443 on one of the protected classes. You can't threaten, intimidate, or interfere with the individual's
444 enjoyment of a dwelling based on their protected class. Or the protected class of their associates or
445 the protected class of their visitors. You cannot threaten an employee or agent with dismissal or an
446 adverse employment action or take such adverse employment action if the employee is trying to
447 assist the person seeking access to the sale or rental of a dwelling or seeking access to the residential
448 real estate transaction because of race, color, disability, religion, sex, national origin, or familial status
449 of any person that is associated with that individual. You cannot intimidate or threaten any person
450 because that person is engaging in activity designed to make other individuals aware of or
451 encouraging such individuals to exercise their rights granted or protected by the law. And finally, you
452 cannot retaliate against any person because that person has made a complaint, testified, assisted, or
453 participated in any manner in a proceeding under the Federal Fair Housing Act or Texas Fair
454 Housing Act. What I want you to take away from this slide, is that not only can you not take these
455 type of actions against a tenant or potential tenant, you also cannot take action against one of the
456 housing providers, such as the assistant manager for refusing to rent, for example, as the slide says,

457 only to Americans. Should that happen, then the housing provider or the assistant manager may
458 now file a complaint under the Federal Fair Housing Act as well as the Texas Fair Housing Act. So
459 in September of 2016, HUD published guidance on quid pro quo and hostile environment
460 harassment (slide #33). So what exactly is quid pro quo harassment? Quid pro quo harassment is an
461 unwelcome request or demand to engage in conduct where submission to the request or demand
462 either explicitly or implicitly is made as a condition related to the sale, rental, or availability of a
463 dwelling. The terms, conditions, or privileges of the sale or rental, or the provisions of services or
464 facilities in connection with, or the availability, terms, or conditions of a residential real estate-related
465 transaction. And what exactly is a hostile environment harassment? Hostile environment harassment
466 is unwelcome conduct that is sufficiently severe or pervasive as to interfere with all of the issues that
467 we outlined above in quid pro quo harassment. According to HUD's quid pro quo and Hostile
468 Environment Harassment Rule, liability for discriminatory housing practices includes direct and
469 indirect liability (slide #34). For direct liability, that means you are liable for your own conduct. You
470 could be liable for failing to take prompt action on an employee or an agent. Or you could be liable
471 for failing to take prompt action on a third party. When it comes to vicarious liability, a person is
472 vicariously liable for discriminatory housing practice by the person's agent or employee, regardless of
473 whether the person knew or should have known of the conduct that resulted in a discriminatory
474 housing practice. And there's a note at the bottom of your slide. And it talks about the difference
475 between Title VIII and Title VII. The Title VII affirmative defense does not apply to housing cases
476 and for the purposes of determining liability, prompt action to correct and end the discriminatory
477 housing practice may not include any action that penalizes or harms the aggrieved person, such as
478 eviction of the aggrieved person. All right. So now we're going to move on to HUD's fair housing
479 act discriminatory effects or disparate impact rule. Let's define discriminatory effect or disparate
480 impact. That is a facially neutral practice that actually or predictably results in a discriminatory effect

481 on a group of persons protected by the Act. That is, it has a disparate impact. Or on the community
482 as a whole on the basis of a protected characteristic. For example, perpetuation of segregation. So if
483 we get a case where the person is alleging discriminatory effects of disparate impact, then here is
484 how we would investigate that case. First of all, the complainant or the charging party or the plaintiff
485 first has the burden of proving its prima facie case that a practice results in or would predictably
486 result in a discriminatory effect on the basis of a protected characteristic. Then the burden would
487 shift to the respondent or the defendant to prove that the practice is necessary to achieve a
488 substantial, legitimate non-discriminatory interest. And the standard for justifying a practice is not to
489 be interpreted more leniently than a business necessity standard. So if the respondent or the
490 defendant satisfies this burden, then it shifts back to the complainant or the charging party. And
491 they may still establish liability by proving that the substantial, legitimate, non-discriminatory interest
492 could be served by a practice that has the less discriminatory effect.

493 SUZANNE HEMPHILL: And I wanted to make a note here that the Supreme Court appears to
494 have articulated a somewhat different standard in the Texas Department of Housing and
495 Community Affairs, versus Inclusive Communities Project. This is an evolving area of law.

496 VICKIE COVINGTON: So under HUD's fair housing act discriminatory effect or disparate impact
497 standards, here's some policies and practices that may have discriminatory effects or disparate
498 impact (slide #36). An action or implementing land use rules, ordinances, policies, or procedures
499 that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings,
500 provisions of loans or other financial assistance, community's occupancy limit of X persons per
501 dwelling, criminal history, limited English proficiency, and disturbance policies.

502 SUZANNE HEMPHILL: So a question came in, Vickie. What does a facially neutral practice mean?

503 VICKIE COVINGTON: A facial neutral practice means that the policy is just that. It doesn't point
504 out any protected class. And when we were talking about limited English proficiency, all tenants

505 must speak English, that could be one of the practices that we're looking at that could have disparate
506 impact on a certain group of people that do not speak English.

507 SUZANNE HEMPHILL: So it's a policy or practice that you are applying uniformly that doesn't
508 target a protected class but the impact could be to have a disparate impact on a protected class.

509 VICKIE COVINGTON: Exactly. Okay.

510 SUZANNE HEMPHILL: Evolving complicated legal area of rules and laws. All right.

511 VICKIE COVINGTON: And everyone should remember this is fairly new guidance. And so at the
512 Civil Rights Division, when we investigate our cases, we will be basically using this guidance to walk
513 us through the investigative process.

514 SUZANNE HEMPHILL: Speaking of new guidance, this was released a year ago today. April 4,
515 2016, HUD released guidelines on the application of fair housing act standards to the use of criminal
516 records by providers of housing and real estate-related transactions. So we're going to briefly discuss
517 that guidance and the fair housing concerns. On the bottom of this slide there's a link to that. If you
518 are not familiar with it, please take this opportunity to become familiar with it. As many as
519 100 million U.S. adults, or nearly one-third of the population have a criminal record of some sort. In
520 the United States, African Americans and Hispanics are arrested, convicted, and incarcerated at rates
521 disproportionate to their share of the general population. Since 2004, over 650,000 individuals have
522 been released annually from federal and state prisons and over 95% of current inmates will be
523 released at some point. And when individuals are released from prisons and jails, their ability to
524 access safe, secure, and affordable housing is critical to their successful reentry to society. While
525 having a criminal record is not a protected characteristic, under the fair housing act, criminal based
526 restrictions on housing opportunities violates the act if without justification their burden falls more
527 often on renters or other housing market participants of one race or national origin over another.
528 Additionally, intentional discrimination and violation of the act occurs if a housing provider treats

529 individuals with comparable criminal history differently because of their race, national origin or
530 another protected characteristic. Okay.

531 VICKIE COVINGTON: So as the Supreme Court has recognized the mere fact that a man has
532 been arrested has very little, if any, probative value in showing he has engaged in any misconduct.
533 An arrest shows nothing more than that the person probably suspected the person apprehended of
534 an offense. Because arrest records do not constitute proof of past unlawful conduct and are often
535 incomplete, the fact of an arrest is not a reliable basis upon which to assess the potential risk to
536 resident's safety or property posed by a particular individual.

537 For that reason, a housing provider who denies housing to persons on the basis of arrests not
538 resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety
539 and/or property. A housing provider must show that its policy accurately distinguishes between
540 criminal conduct that indicates a demonstrable risk to resident safety on the property and the
541 criminal conduct that does not. Housing providers may want to consider the nature, severity, and
542 recency of criminal conduct and make a case-by-case decision. Reviewing criminal records and
543 making the decision for rental applications on a case-by-case basis is the guidance of the federal
544 government (slide #40). This slide has a link to the HUD guidance. We covered this briefly today to
545 make you aware of this, so please utilize the link, download, and read this guidance in depth. So to
546 sum it all up, when using the fair housing guidance on the use of criminal records, housing providers
547 should evaluate whether the challenged policy or practice is necessary to achieve a substantial,
548 legitimate, and non-discriminatory interest. Housing providers should remember that when using
549 prior arrests, instead of conviction, or using prior convictions, the housing provider must show that
550 its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to
551 resident safety and/or property and criminal conduct that does not. Policy should take into account
552 the nature and severity of the conviction and the amount of time that has passed. Other factors to

553 consider include looking at the facts or circumstances surrounding the current criminal conduct, the
554 age of the individual at the time of the conduct, evidence that the individual has maintained a good
555 tenant history before and after the conviction or conduct. And evidence of rehabilitation. So if you
556 have blanket bans, most likely you will not be able to meet this burden. An example would be a
557 property that allows no convicted persons on the property.

558 SUZANNE HEMPHILL: So, again, blanket bans on arrests. Blanket bans on misdemeanors and
559 felonies are all called out in HUD's guidance that they do not meet this burden. So if your policy
560 includes blanket bans, please read the HUD guidance and reevaluate that.

561 VICKIE COVINGTON: So HUD was pretty busy in the last year. They also published guidance on
562 limited English proficiency (slide #41). We talked a little bit about it earlier. Limited English
563 proficiency is a person's limited ability to read, write, speak, or understand English. And
564 discrimination in this area could include discrimination because the individual has the physical,
565 cultural, or linguistic characteristics of a person from a foreign geographic area. A housing provider
566 violates the Fair Housing Act if the provider uses a person's LEP to discriminate intentionally
567 because of race, national origin, or another protected characteristic. A housing provider also violates
568 the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect,
569 even when the provider had no intent to discriminate. HUD also published guidelines on local noise
570 and crime-free housing ordinances. There's a link you can visit those as well. And these are local
571 government policies and procedures that these municipalities and cities have come up with to
572 address nuisances and the enactment or enforcement of nuisance of crime-free housing ordinances
573 may violate the Fair Housing Act when they have an unjustified discriminatory effect even when the
574 local government had no intent to discriminate. So under this standard, a facially neutral policy or
575 practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient
576 justification. Where a policy or practice restricts the availability of housing on the basis of nuisance

577 conduct, has a disproportionate impact on individuals of a particular protected class, the policy or
578 the practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial,
579 legitimate, non-discriminatory interest of the local government or if such interest could be served by
580 another practice that has a less discriminatory effect. And so we have listed some various types of
581 conduct associated with the property that could fall into this category. These could be victims of
582 domestic violence, victims of other crimes, and those who require, on a regular basis, police or
583 emergency services. All right. So we've talked in depth about the protected classes and about specific
584 discriminatory practices. Now we're going to look at some exemptions that fall under both the
585 Federal Fair Housing Act as well as the Texas Fair Housing Act. So there's a three or less properties
586 exemption. That includes the sale or rental of a single-family home being exempt from the
587 application of the Fair Housing Act or the Texas Fair Housing Act when the owner does not own
588 three or more properties. The owner does not own any interest in the proceeds from the sale or
589 rental of more than three single-family houses at any one time. The owner does not use the sale or
590 rental facilities or services of a licensed broker, agent, or salesperson. Or the owner has only one sale
591 or rental in a 24-month period and the owner was not the most recent resident of the house at the
592 time of the sale or rental. Also, the sale or rental of rooms or units in a dwelling occupied or
593 intended to be occupied by not more than four families living independently of each other if the
594 owner maintains or occupies one of the living quarters as his or her living quarters. And just picture
595 in your mind a four-plex and there are four families living in the four-plex. And one of the families
596 is the owner. In most circumstances, the owner will be exempt from the Fair Housing Act as well as
597 the Texas Fair Housing Act. So at the bottom of your slide, there's a little note that says these
598 exemptions are not available if an owner makes a discriminatory statement, notice, or advertisement
599 or they engage in intimidation, interference, coercion, retaliation, or harassment. So there are some
600 circumstances where an otherwise exempt property owner would lose the exemption. Religious

601 organizations are exempt if it is a non-commercial housing or has non-commercial housing that is
602 operated by the religious organization (slide #43). The organization can reserve it for persons of that
603 same religion unless the religion itself is restricted because of race, color, or national origin. A
604 private club that is not open to the public but incidentally provides lodging may also be exempt. It
605 can actually limit the rental or occupancy of the lodging to its members or give them preference. A
606 property appraiser is not prohibited from considering factors other than the protected classes when
607 he or she is putting together his appraisal of property. Both religious organizations and private clubs
608 have many different variants in their properties. And so we have to look at those type of cases on a
609 case-by-case basis and it involves usually quite a bit of in-depth investigating. Housing for the elderly
610 is exempt from familial status discrimination if the Civil Rights Division determines the property is
611 specifically designed and operated to assist elderly individuals under a federal or state program, is
612 intended for and solely occupied by individuals 62 years old or older (slide #44). Or intended for an
613 80% of the units are occupied by at least one individual who is 55 years of age or older. Just
614 remember that when it comes to housing for the elderly, the only exemption is for familial status.

615 SUZANNE HEMPHILL: Okay. So we're going to move on to fair housing testing. Fair housing
616 testing is an investigative tool of using individuals who without any bona fide intent to rent or
617 purchase a home, apartment, or other dwelling poses perspective buyers or renters of real estate for
618 the purpose of gathering information. The information may indicate whether a housing provider is
619 complying with fair housing laws. Why is testing done (slide #36)? To gather information regarding
620 the manner in which housing providers do business regarding things like availability, so are the units
621 available, qualification standards, design and construction compliance, treatment of home seekers,
622 discriminatory statements, Or patterns or behaviors to corroborate or refute the experience of a
623 complainant. So if a fair housing testing agency hears a complaint from someone they might send
624 out testers to see if they are able to get that different treatment and find that in the field. So

625 investigations often provide the evidence that is needed by victims of housing discrimination to
626 meaningfully pursue a complaint, suit, or administrative hearing. It can be used to uncover or
627 support systemic forms of housing discrimination that persist in harming individuals and
628 communities.

629 VICKIE COVINGTON: Testing evidence can oftentimes show that a respondent's defense is
630 pretextual or the reason for the landlord's unlawful motivation in refusing to deal with the minority
631 complainant was actually discrimination. It can show there was a discriminatory basis for actions
632 that were taken. Testing can show that false statements have been made or that a unit was available
633 on a particular date. Testing may also show that steering or red lining is taking place or that people
634 of protected groups have been treated differently than others. Testing could reveal that a requested
635 accommodation or modification has been denied, although it was reasonable. Testing could show
636 that a property does not comply with the accessibility requirements of the Fair Housing Act or the
637 Texas Fair Housing Act or local law. And testing could also show that loans or insurance are
638 available to people of protected groups on different and unfavorable terms than made available to
639 people in other groups. So knowing that discrimination and housing lending and insurance exists
640 and obtaining evidence with respect to discrimination in a specific case are two completely different
641 things. In order for a complainant to prevail in a court case or administrative agency proceeding,
642 competent evidence must be presented that shows a violation of the law. So testing is often done by
643 pairing together two individuals that are similar as stated. And these individuals are as similar as
644 possible in all characteristics to include similar financial profiles. But they differ when it comes to the
645 protected class that is involved. For example, one member of a pair might use a wheelchair while the
646 other person has no noticeable mobility impairment. Another example is one member of the pair
647 might have light skin tone while the other person has a darker skin tone. They will each separately
648 visit or call or e-mail the site of a housing provider within an appointed time period and inquire

649 about the availability of housing. So the methods of testing could be via telephone, e-mail, website,
650 in person, or a combination of all of the above. Here's how testing works. After the test, the testers
651 objectively record in detail everything that happened during the test. What was said, what was
652 offered, what price was quoted for an available apartment, and the name of the person and a
653 description of the person that they actually met with. A test coordinator takes a look at the recorded
654 information from the testers and they compare each of the reports to determine whether a
655 difference in treatment happened based on protected class. So when it comes to testing settings they
656 can vary as well. Testing can be applied in settings other than rental activities, including real estate
657 services, home insurance, mortgage lending offices, and appraisal of housing. A specific test is
658 designed based upon specific bases or protected classes, race or color, national origin, religion, sex,
659 familial status, and disability. I will let you know that there were several testing organizations that
660 developed disability tests during fiscal year 2016 which resulted in our having an abnormally high
661 percentage of disability complaints being filed.

662 SUZANNE HEMPHILL: So disparities could manifest in a variety of ways. Showing units in less
663 desirable parts of the property, if property management staff is unavailable to assist, if they provide
664 different information than when the unit is available, what is required to apply terms and conditions,
665 the number and type of units shown, if you give one individual lots of information about specials
666 offered and then don't offer it to the other individual, or in the amount of rent.

667 VICKIE COVINGTON: So the most common testing models are disability status, families with
668 children, and color and there are also periodically when HUD does nationwide testing for other
669 protected classes such as national origin or race.

670 SUZANNE HEMPHILL: So HUD funds, fair housing organizations and other nonprofits through
671 the fair housing initiatives programs assist people who believe they have been victims of housing
672 discrimination (slide #54). FHIP partners with HUD to help people identify government agencies

673 that handle complaints of housing discrimination and they also conduct preliminary investigation of
674 claims including sending testers to properties. What can properties do to prepare for testing (slide
675 #55)? I feel like that's such a useful question for that. So what do they do, Vickie?

676 VICKIE COVINGTON: Here's what properties can do. Testers don't identify themselves. So
677 properties should presume any contact is a tester. The best strategy is to be informed and to have
678 staff well trained on fair housing laws and to be sure to reflect this careful outlook on the way you
679 interact with all prospects. If all prospects are treated equally as if they may be testers, you'll help
680 ensure you don't violate fair housing law, which is a risk with real prospects as well as testers. I also
681 want to remind people that when folks are looking for a place to call home, many of the people that
682 are looking for a new place are people with disabilities. And so they may request a reasonable
683 accommodation or a reasonable modification when they're either making an inquiry or they're
684 actually completing the application process. So that's the only time you can treat people differently
685 when they are requesting a reasonable accommodation or reasonable modification. So don't forget
686 when you are trying to attract people into your properties that some of those people may need you
687 to modify a policy or rule or a procedure so that they can enjoy the benefits of living in your
688 housing.

689 SUZANNE HEMPHILL: So just a really quick time check. We're coming up on 3:00 p.m. We have
690 just a couple more slides to get through. So if you can stick with us, we'll keep going. Just a couple
691 more minutes and finish the presentation. And then we'll circle back to some of your questions. If
692 you have a question you haven't sent to us, feel free to type it in and we'll do our best to hang out
693 with you just a little bit longer.

694 VICKIE COVINGTON: So if you have a complaint filed against you here's what you can expect
695 (slide #56). You will be notified of the allegations in writing. You will likely be invited to mediate
696 and if you decide not to mediate, you may file an answer that is in writing, under penalty of perjury

697 and you can amend the answer at any time. And because everyone in America lives somewhere,
698 there may come a time when you need to file a complaint of housing discrimination. So you can go
699 to our website and fill out our electronic form. You can also submit a complaint by e-mail, fax, or
700 mail. The complaint has to be filed under penalty of perjury. And it too may be amended at any
701 time. So if you decide that you want to participate in our mediation program, then here are the
702 benefits of saying yes to mediation (slide #57). The mediation program is provided as a free service
703 to the party. It eliminates lengthy investigations and expensive litigation because most of the
704 complaints that are resolved in mediation resolve very quickly. And because they resolve so quickly,
705 they save the parties time and money. Oftentimes with our complaints, the parties have had a
706 complete shutdown in communications. So sometimes mediation will open the lines of
707 communication and get the parties talking to each other again and allow the parties to understand
708 the position of the opposing party. When there's a resolution it is documented into what we call a
709 conciliation agreement and it is binding upon the complainant and the respondent. A lot of people
710 believe that the Civil Rights Division is only there to investigate fair housing complaints (slide #58).
711 Actually, we are also available to provide training and technical assistance to housing providers as
712 well as the general public. So, if you have a question regarding fair housing and you're not quite sure
713 of what the answer is, you can contact us at any time and if you don't have a complaint pending
714 before us at that time, we will try to assist you as best we can. So here's the contact information.
715 There's a phone number as well as an e-mail that you can send your question to as well.

716 SUZANNE HEMPHILL: Okay. So, questions. I'm going to circle back to a few that came in. So if
717 someone has a deferred adjudication it's not a conviction, should you lease to them? There's also a
718 question -- it's a statement. Policies should take into account the nature and severity of a crime. Is
719 this a requirement or guidance? That is HUD's guidance on individuals with criminal background
720 records. I'm not a lawyer. I'm not super familiar with what exactly is involved in Texas for

721 adjudication. I think it would fall back on the nature and severity of the crime.

722 VICKIE COVINGTON: Right. And because the guidance is so new, there's probably going to be a
723 lot of different questions. I believe if you're a member of the Texas Apartment Association, they are
724 working on getting some guidance out to their members that will help them in this particular area.
725 And, like I said, because it's so new, I don't believe we have investigated any of those cases to date.
726 And so we're just going to have to wait and see when a complaint is filed how this guidance is
727 actually going to work. I would say go back to the guidance and when it talks about having the
728 requirement for your policies and procedures and how do you measure whether or not they make
729 sense and they're going to pass the test that HUD has outlined in that rule, work with your
730 apartment associations. And if you have an attorney that helps you write your policies and
731 procedures, what you may want to do is talk with your attorney to make sure that your policies and
732 procedures are going to comply with the rules.

733 SUZANNE HEMPHILL: Okay. There was a question earlier we touched on and now we went over
734 some of the LEP stuff of limited English proficiency. So if a prospective tenant does not speak
735 English, how should we assist them? Do we have to provide an interpreter? So my response to you
736 from TDHCA would be do you participate in federal or state housing programs? Are you using
737 those funding streams? Are you a tax credit property? What is specifically involved in this? This
738 question is about how to assist someone that doesn't speak English. It doesn't include a ban based
739 on a language someone speaks.

740 VICKIE COVINGTON: Right. And there again the limited English proficiency guidance that was
741 published by HUD seems to indicate that as far as limited English proficiency, that is going to apply
742 across the board. And it's a new area. And so at the Civil Rights Division we have not run into any
743 of those cases yet. So you just have to go back to the limited English proficiency rules. It outlines
744 some types of actions that may be discriminatory. But I cannot answer whether or not it requires

745 you to translate for that person.

746 SUZANNE HEMPHILL: And if you want to e-mail us this question, feel free to and we'll dig into
747 your property and funding sources and try to answer that. Will we receive any form or certificate for
748 attending this webinar? You will get a poll that you can fill out once we end this. That's fun. You'll
749 get an e-mail. There will not be a certificate.

750 VICKIE COVINGTON: Unless you are attending this training as a result of a conciliation
751 agreement. And if you are attending as a result of a conciliation agreement then you should have
752 received instructions from the Civil Rights Division regarding how to receive a certificate.

753 SUZANNE HEMPHILL: Here's another question. A landlord must abide with federal guidelines.
754 30 days to respond to a request. I assume this is a reasonable accommodation question regarding fair
755 housing if federal funds are used to build the complex. I am going to rephrase this, if I get these
756 wrong, apologies. Vickie, does someone have 30 days to respond to a reasonable accommodation
757 request if they are using federal funds?

758 VICKIE COVINGTON: I am unaware of any timelines other than the TDHCA timeline.

759 SUZANNE HEMPHILL: Which we're going to touch base on next Tuesday at 1:30 p.m. It's a
760 14-day calendar response period to get the ball rolling to respond to the request, ask for more
761 information, deny the request. There might be a fourth option. It's engaging in an interactive process
762 within the process within 14 days and if you can do that quickly and easily like changing when
763 someone pays their rent because someone asks for a reasonable accommodation because their
764 disability check comes in on the 4th of the month, we might ask you why it takes 14 days to
765 accommodate that request. Or if they are installing grab bars and you don't even respond to them in
766 14 days that doesn't seem to be engaging in an interactive process to help that household get what
767 they need live in their unit.

768 VICKIE COVINGTON: Typically, what we see at the Civil Rights Division, if the property is not

769 receiving any type of federal funds or state funds or local funds that have different requirements, it's
770 on a case-by-case basis. There are some requests for reasonable accommodations that take longer
771 than others because of logistical reasons. So we just look at it on a case-by-case basis. What we
772 typically see, though, is there's some dispute regarding the actual date the request for a reasonable
773 accommodation was made and that all gets sorted out during the investigative process.

774 SUZANNE HEMPHILL: So there are numerous questions about HUD's guidance on criminal
775 background checks. There are many apartment complexes that say they won't rent to convicted
776 felons. Is this allowable?

777 VICKIE COVINGTON: I would say based on the HUD guidance of blanket policy, it's probably
778 not going to make it past the HUD guidance.

779 SUZANNE HEMPHILL: Okay. How do I request a copy of the transcript? Great question. We are
780 going to be working on posting this webinar and the transcript and the slides and the handouts on
781 our website. You'll need to give us some time to get that up. Making a transcript takes some time,
782 but we will e-mail everyone who registered for this when it is available. We're checking for a couple
783 more questions here. There's a lot of stuff on reasonable accommodations and modifications and
784 we're going to get into that complex subject next week at 1:30 p.m. You can sign up on our web
785 page or through TDHCA's calendar. It's posted there. I think that's it for today. If you have specific
786 questions you can send them to us.

787 VICKIE COVINGTON: I just want to remind folks that if you are attending this training as a result
788 of a conciliation agreement with the Texas Workforce Commission Civil Rights Division and you
789 are unsure about how to get your certificate, go back to slide 3 and it has my e-mail address on it. So
790 just shoot me a quick e-mail.

791 SUZANNE HEMPHILL: There's Vickie's e-mail address. Thank you so much for attending today.
792 We had great participation, really thoughtful questions. This concludes today's presentation. I would

793 like to thank TDHCA staff. In the room we have Chad and Julie on the fair housing data
794 management reporting team. Thanks for your help making this possible. And thank you to everyone
795 who attended. You're helping to work to promote fair housing choice and opportunity in Texas. We
796 hope to see you next week.