

# CHAPTER 19: FAIR HOUSING, ACCESSIBILITY, AND EQUAL EMPLOYMENT



## CHAPTER PURPOSE & CONTENTS

This chapter summarizes the key regulations and requirements of fair housing, accessibility, and equal opportunity laws applicable to CDBG projects.

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### 19.1 Introduction and Overview

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	<ul style="list-style-type: none"><li>✓ Basic Overview</li><li>✓ Consolidated Plan/Analysis of Impediments</li><li>✓ List of Applicable Laws</li></ul>
Regulatory/Statutory Citations	Section 109 §570.602
Other Reference Materials on This Topic	<ul style="list-style-type: none"><li>✓ Fair Housing Planning Guide website: <a href="http://www.hud.gov/offices/fheo/images/fhpg.pdf">http://www.hud.gov/offices/fheo/images/fhpg.pdf</a></li></ul>

#### 19.1.1 Basic Overview

This chapter summarizes the key regulations and requirements of fair housing and equal opportunity laws applicable to CDBG projects. To be in compliance, the grantee must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, grantees must endorse in attitude and deed all regulations for fairness in the provision of CDBG funded programs and projects.

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by CDBG projects.



### **19.1.2 Consolidated Plan Requirements**

Grantees are required to complete an analysis of impediments to fair housing choice within one year of the effective date of the Consolidated Plan Rule (February 6, 1995). The analysis is not required to be submitted as part of the consolidated plan, but the jurisdiction must certify that it completed the analysis, is taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintains records reflecting the analysis and related actions.

#### **Analysis of Impediments to Fair Housing Choice**

In accordance with the Fair Housing Act, the Secretary requires that CDBG grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. As part of the certification to affirmatively further fair housing that grantees are required to submit with their consolidated plan, grantees must complete an analysis of impediments to fair housing choice and to take actions to overcome the effects of any impediments identified through that analysis.

In summary, requirements for the analysis of impediments include:

- ✓ Grantees are to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within their jurisdictions;
- ✓ Grantees are strongly encouraged to annually update their analysis of impediments; and
- ✓ Grantees are to take appropriate actions to overcome the effects of any impediments identified through their analyses, and maintaining records reflecting the analyses and related actions.

### **19.1.3 List of Applicable Laws**

This chapter is broken down into three broad areas for the applicable requirements: Fair Housing; Handicap Accessibility; and Equal Opportunity. The fourth section of this chapter is dedicated toward appropriate record keeping and monitoring. Exhibit 19.1 provides the grantee with references to the major regulations and requirements covering fair housing and equal opportunity.

**Exhibit 19.1**

Federal and State Laws and Regulations (included amendments)	Fair Housing and Nondiscrimination	Accessibility	Equal Employment and Contracting
Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.	X		
Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.	X	X	



<p><b>Restoration Act of 1987.</b> This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance.</p>	X		
<p><b>Section 109 of Title 1 of the Housing and Community Development Act of 1974:</b> This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.</p>	X		X
<p><b>The Fair Housing Amendment Act of 1988:</b> This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.</p>	X		
<p><b>The Housing for Older Persons Act of 1995 (HOPA):</b> Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.</p>	X		
<p><b>The Age Discrimination Act of 1975:</b> This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws.</p>	X		
<p><b>Section 504 of the Rehabilitation Act of 1973:</b> It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.</p>	X	X	X



The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.	X	X	X
Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.	X		
Executive Order 11259: This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.	X		
Section 109 of Title I of the Housing and Community Development Act of 1974: Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex.	X		X
The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.			X
The Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).			X



The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.			X
Section 3 of the Housing and Urban Development Act of 1968, as amended: Requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area, to the greatest extent feasible and consistent with Federal, State and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.			X
The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.			X
Executive Order 11246: This Executive Order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.			X
24 CFR Part 85 (the Common Rule): This rule provides that the grantee shall take affirmative steps to encourage contracting with small minority and female owned business enterprises when possible as sources of supplies, equipment, construction, and services.			X



## 19.2 Fair Housing

This section of the chapter reviews the requirements grantees must follow to be in compliance with the Fair Housing Act when using CDBG funds.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	<ul style="list-style-type: none"> <li>✓ Prohibited Discrimination</li> <li>✓ Fair Housing Activities</li> </ul>
Regulatory/Statutory Citations	Section 109 §570.602
Other Reference Materials on This Topic	<ul style="list-style-type: none"> <li>✓ CPD Notice 05-09 and 00-09</li> <li>✓ Fair Housing and Equal Opportunity Website: <a href="http://www.hud.gov/offices/fheo/index.cfm">http://www.hud.gov/offices/fheo/index.cfm</a></li> <li>✓ Uniform Federal Accessibility Standards website: <a href="http://www.access-board.gov/ufas/ufas-html/ufas.htm">http://www.access-board.gov/ufas/ufas-html/ufas.htm</a></li> <li>✓ The <i>Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of The Fair Housing Act</i></li> </ul>

### 19.2.1 Prohibited Discrimination

Grantees should be aware that fair housing provisions apply to the locality as a whole and not just those activities that are CDBG funded; and that implementing fair housing activities is an essential part of the CDBG responsibilities. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, age, familial status, or national origin.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the grantee or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The grantee is expected to take progressive actions to further fair housing with each CDBG project.

The grantee must assure that all CDBG-funded activities undertaken as part of the project are conducted in a manner which will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Segregated facilities, services, or benefits and different treatment are prohibited.

The grantee should take care to ensure the following:

- ✓ Access to any advantage arising out of the project is not:
  - Denied solely on the basis of race, color, religion, sex, disability, familial status, or national origin; or
  - Offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.
- ✓ Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.



- ✓ Evaluation criteria and administrative practices do not have a discriminatory effect.
- ✓ Affirmative action is used to overcome the effects of past discrimination.
- ✓ A Fair Housing Poster is displayed in a prominent place at the office of the grantee where applications for assistance are being taken.

## **19.2.2 Fair Housing Activities**

The Fair Housing Act provides that, in connection with the design and construction of multi-family housing, the public use and common areas must be accessible and usable by persons with handicaps, all doors must be designed to be wide enough for wheelchair accessible, and all premises should be of adaptive design (e.g., reinforcements within a bathroom to allow installation of grab bars).

Grantees undertaking housing projects and activities must ensure fair housing rules are followed in the provision of housing services and assistance. Opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services should not discriminate.

Some examples of possible actions to ensure fair housing are listed below.

- ✓ Developing and implementing a fair housing resolution;
- ✓ Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups;
- ✓ Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory effect;
- ✓ Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect; and
- ✓ Legal documents used by grantees and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

It is important for grantees to understand both the Fair Housing Amendment and Section 504. The Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit paid for by the tenant. Section 504 provides that the landlord is responsible for making reasonable accommodations. Finally, the accessibility logo should be used in housing projects where units are available for the disabled.

## **19.2.3 Affirmative Marketing**

- ✓ Grantees must adopt affirmative marketing procedures and requirements for all CDBG-assisted housing with five or more units.
- ✓ Requirements and procedures must include:
  - Methods for informing the public, owners and potential tenants about fair housing laws and the grantee's policies (for example, use of the Fair Housing logo or equal opportunity language);
  - A description of what owners and/or the grantee will do to affirmatively market housing assisted with CDBG funds;



- A description of what owners and/or the grantee will do to inform persons not likely to apply for housing without special outreach;
- Maintenance of records to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness; and
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

## 19.3 Handicapped Accessibility and Section 504

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	<ul style="list-style-type: none"> <li>✓ Programs</li> <li>✓ Housing</li> <li>✓ Facilities</li> <li>✓ Other Accessibility Rules</li> <li>✓ Self Evaluation and Transition Plan</li> </ul>
Regulatory/Statutory Citations	Section 109 §570.614
Other Reference Materials on This Topic	<ul style="list-style-type: none"> <li>✓ CPD Notice 00-10</li> <li>✓ Fair Housing and Equal Opportunity Website: <a href="http://www.hud.gov/offices/fheo/index.cfm">http://www.hud.gov/offices/fheo/index.cfm</a></li> <li>✓ CPD Notice 05-10</li> </ul>

### 19.3.1 Program Accessibility

Communication is an important component of program accessibility. Disabilities involving impairments to hearing, vision, speech or mobility may affect communication. Members of the community who have disabilities must be able to access and enjoy the benefits of a program or activity receiving CDBG funds; therefore, varied approaches may be required to assure effective communication and information dissemination.

Specifically, the grantee must be receptive to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care. Grantees must furnish auxiliary aids and services, as necessary, which may include:

- ✓ For persons with hearing impairments:
  - Qualified sign language interpreters;
  - Note takers;
  - Telecommunication devices for deaf persons (TDDs);
  - Telephone handset amplifiers;



- Assertive listening devices (devices that increase the sound in large group settings);
  - Flashing lights (where aural communication is used, such as warning bells);
  - Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
  - Transcription services; and
  - Closed and open captioning.
- ✓ For persons with vision impairments:
- Qualified readers;
  - Written materials translated into alternative formats (e.g., Braille, audio tape, large print);
  - Aural communication (e.g., Bells or other sounds used where visual cues are necessary); and
  - Audio description services (i.e., through a headset, a narrator describes what the visually impaired person cannot see).

The grantee must ensure effective communication with persons with all types of disabilities in all activities. Where the grantee communicates with applicants and beneficiaries by phone, a TDD is required or an equivalent system must be available.

Please note that grantees are not required to take any action that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

### **19.3.2 Housing**

Section 504 also includes accessibility requirements for new construction and substantial rehabilitation of multi-family rental housing. Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for certain new multi-family dwellings developed for first occupancy on or after March 13, 1991.

For the purposes of compliance with Section 504, “accessible” means ensuring that program and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities. For housing purposes, accessible means a dwelling is on an accessible route and adaptable inside.

- ✓ The following requirements apply to both Federally assisted newly constructed multifamily rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with fifteen (15) or more units. A rehabilitation project is considered substantial when the rehab costs will be 75% or more of the replacement cost of the complete facility:
- A minimum of five percent of total dwelling units (but not less than one unit) accessible for individuals with mobility impairments;
  - An additional 2% of dwelling units (but not less than one) accessible for persons with hearing or vision impairments; and



- All units made adaptable that are on the ground level or can be reached by an elevator.

### **19.3.3 Facilities**

“Facility” is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. “Accessible” for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps.

Non-housing programs, as well as existing facilities in which they are situated, must be readily accessible to and usable by persons with disabilities. Accessibility programs will be determined once again under self-evaluation. The focus of program access is providing programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.

Methods of improving program access in existing facilities can include the following:

- ✓ Relocating programs to accessible facilities or accessible portions of facilities;
- ✓ Acquiring or building new facilities;
- ✓ Selectively altering facilities;
- ✓ Changing operating policies and procedures;
- ✓ Assigning aides to assist beneficiaries;
- ✓ Adding or redesigning equipment or furnishings; and
- ✓ Conducting home visits.

### **19.3.4 Special Requirements for Grantees with 15 or More Employees**

There are two additional requirements for Section 504 compliance for grantees (called “recipients” under 504 to include public agencies, instrumentalities, and public and private entities including nonprofits) with fifteen (15) or more full or part-time employees:

- ✓ Designation of responsible employee and adoption of grievance procedures:
  - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
  - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.
  - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age, disability, religion and familial status may file a complaint. The complaint may be filed with the grantee or HUD.
- ✓ Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. In summary, the grantee must provide notice regarding the following:



- Grantees must publish in a newspaper of general circulation the notice “Policy of Non-Discrimination on the Basis of Disability Status.”
- Grantees must include the same language found in their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
- Grantees must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered.
- Methods for ensuring participation may include qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

### **19.3.5 Other Accessibility Rules**

#### **Americans with Disabilities Act of 1990 (ADA)**

The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given. Title II of ADA prohibits discrimination based on disability by State and local governments.

✓ Facilities

- Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. Facilities constructed or altered in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained in Section 4.1.3(5) and Section 4.1.6(1)(j) of ADAAG shall not apply.

✓ Roads and Pedestrian Walkways

- Title II specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections . Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

#### **Architectural Barriers Act of 1968**

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards



(UFAS). In practice, buildings built to meet the requirements of Section 504 and the ADA, will conform to the requirements of the ABA.

### **19.3.6 Self Evaluation Plan and Transition Plan**

#### **Self Evaluation Plan**

Self evaluation is required by both Section 504 and the Americans with Disabilities Act. Self evaluation promotes inclusion of the programmatic and project-specific alterations that are necessary to ensure long term compliance with the requirements.

If a grantee has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to person with disabilities, they must conduct such evaluation and document all needs. Note: If a grantee has already performed a self-evaluation, a new one is not required.

Grantees should also involve persons with disabilities in these evaluations. While performing the self-evaluation, a careful inspection of the following should be performed to determine if they are free from discriminatory effects and practices:

- ✓ Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities, and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.
- ✓ Modify any policies and practices that are not or may not be in compliance with Section 504 or Title II and Title III of the ADA regulations. (See 24 CFR Part 8 and 28 CFR Parts 35, 36.)
- ✓ Take appropriate corrective steps to remedy those policies and practices that either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- ✓ Document the self-evaluation process and activities. HUD recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.

An approach many grantees have used to examine service and program accessibility is to do a walk-through of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility criteria, and application procedures.

Any policies and practices that are found to be discriminatory or contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

#### **Transition Plan**

If structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a Transition Plan must be completed and made available for public review and comment.



The plan must address the following items:

- ✓ Identification of physical obstacles in the facilities that limit program accessibility;
- ✓ Description of the method that will be used to make facilities accessible;
- ✓ Specify a schedule to achieve full program compliance and, if the plan is longer than one year, identify steps to be taken during each year;
- ✓ Indicate the person responsible for implementing the plan; and
- ✓ Identify the person or groups with whose assistance the plan was prepared.

The grantee is not necessarily required to make each existing facility or every part of an existing facility accessible. The Transition Plan must involve persons with disabilities and/or representative organizations.

## 19.4 Employment and Contracting

Employment and contracting activities also trigger employment and contracting rules related to equal employment practices.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	<ul style="list-style-type: none"> <li>✓ Employment</li> <li>✓ Procurement (MBE/WBE)</li> <li>✓ Section 3</li> </ul>
Regulatory/Statutory Citations	Section 109 §570.607
Other Reference Materials on This Topic	<ul style="list-style-type: none"> <li>✓ Fair Housing and Equal Opportunity Website: <a href="http://www.hud.gov/offices/fheo/index.cfm">http://www.hud.gov/offices/fheo/index.cfm</a></li> <li>✓ The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978</li> </ul>

### 19.4.1 Employment

Nondiscrimination is a requirement of employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Affirmative action and equal employment opportunity policies are fundamental aspects of CDBG funded activities.

The Americans with Disabilities Act modifies and expands the Section 504 Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

The Equal Employment Opportunity Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after



the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.

Steps that can be taken to prevent discrimination in employment include the following:

- ✓ Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review;
- ✓ Advertise employment opportunities and/or to recruit employees for project-related positions;
- ✓ Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin; and
- ✓ An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the grantee.

Specifically, Section 504 has a number of general prohibitions against employment discrimination. Grantees must ensure that the following items are adhered to:

- ✓ No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives Federal assistance.
- ✓ Any grantee cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.
- ✓ In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the grantee. HUD regulations specify that an employer is prohibited from discrimination in the following instances:
  - ✓ Recruiting, advertising, and processing of applications;
    - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring;
    - Rates of pay and any other forms of compensation;
    - Job assignments, classifications and descriptions, organizational structures, lines, progression, and seniority lists;
    - Leaves of absence, sick leave, or any other leave;
    - Fringe benefits available by virtue of employment;
    - Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
    - Employer sponsored activities (including social or recreation programs); and
    - Any other term, condition, or privilege of employment.
  - ✓ Grantees may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.



Reasonable accommodation, under Section 504, in employment is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

## 19.4.2 Procurement

All procurements made in whole or in part with CDBG funds must comply with the applicable Federal requirements found in 24 CFR Part 85.36 (referred to as the “Common Rule”). The goal in using these procurement procedures is to achieve maximum open and free competition.

Each grantee is required to adopt written procurement procedures for CDBG projects, as required in 24 CFR Part 85.36(b). If local procurement procedures are more stringent than those described in this chapter, the more stringent of the two should be followed.

Important elements that are required to comply with Federal requirements, but that are often missing in local procurement codes, include:

- ✓ A code of conduct to govern the performance of the grantee’s officers, employees, or agents in contracting with CDBG funds; and
- ✓ A requirement that positive efforts be made to use small, minority, female, low-income and/or locally-owned businesses.

Part 85 provides that the grantee shall take affirmative steps to encourage contracting with small minority and female owned business enterprises when possible as sources of supplies, equipment, construction, and services.

At the very least, the grantee must also include minority business enterprises (MBEs) and women business enterprises (WBEs) on solicitation lists and send them an Invitation to Bid. Other outreach efforts that grantees should consider are:

- ✓ Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources;
- ✓ When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs;
- ✓ Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs;
- ✓ Using the services and assistance of the Small Business Administration;
- ✓ If any subcontracts are to be executed, requiring the prime contractor to take the above affirmative steps; and
- ✓ When economically feasible, including MBE/WBE criteria with additional points in selection criteria for professional services procurements.

The Vietnam Era Veterans Readjustment Act, as amended, includes the obligation to refrain from discrimination in employment against protected veterans. The regulations also require all covered contractors and subcontractors to include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts.



### **19.4.3      Section 3**

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of training, employment and other economic opportunities that arise through HUD-financed housing and community development assistance to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

Section 3 applies when a housing construction, housing rehabilitation or other public construction project or activity exceeds certain thresholds. Contractors and subcontractors providing services on projects for which the total amount of the housing and community development assistance exceeds \$200,000 and the amount of the contract or subcontract exceeds \$100,000 are required to comply with Section 3. If a grantee receives housing or community development assistance for a covered project that is funded in part with CDBG funds, Section 3 requirements apply to the entire project or activity.

It is important to document efforts made to comply with Section 3 through recordkeeping. Files should contain memoranda, correspondence, advertisements, etc., illustrating contractor and subcontractor attempts to hire low income residents and business concerns.

## **19.5 Recordkeeping and Monitoring**

Effective recordkeeping procedures and monitoring are tools that grantees use to ensure short term and long term compliance.

The following is a summary of the topics in this section, applicable statutory and regulatory cites, and other reference materials available from HUD.

Key Topics in This Section	<ul style="list-style-type: none"> <li>✓ Fair Housing Records</li> <li>✓ Direct Benefit Records</li> <li>✓ 504 Records</li> <li>✓ Employment and Contracting</li> <li>✓ Monitoring</li> <li>✓ FHEO Compliance and Monitoring</li> </ul>
Regulatory/Statutory Citations	Section 109 §570.506
Other Reference Materials on This Topic	<ul style="list-style-type: none"> <li>✓ CDBG Guide to Eligible Activities and National Objectives, Chapters 2 &amp; 3</li> <li>✓ <i>Managing CDBG: A Guidebook for CDBG Grantees on Subrecipient Oversight</i></li> </ul>



### **19.5.1 Fair Housing Records**

The following records must be maintained by the grantee in a separate equal opportunity and fair housing file:

- ✓ Documentation of the action(s) the grantee has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions; and
- ✓ Demographic data (actual survey or latest census data) depending on the project undertaken may include:
  - The population of the jurisdiction of the unit of general local government receiving CDBG funds;
  - The minority population of the locality (number and percentage);
  - The target area population;
  - The minority population of the target area (number and percentage);
  - The number of disabled, elderly households, and female-headed households in the target area; and
  - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of LMI, and the target area.

### **19.5.2 Direct Benefit Records**

It is important that grantees maintain statistical information on the persons benefiting from the project be maintained and updated throughout the implementation of the project. Even if the project activities meet the “presumptive benefit” test for proving LMI benefits and surveys have not been conducted or statistical data on beneficiaries has not been collected, benefit data for fair housing and equal opportunity purposes must be maintained.

Grantees should note that those benefiting from the project must be determined. A Project Benefit Profile must be maintained for each activity except administration, planning, and contingency.

- ✓ For direct benefit activities, provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with CDBG funds. Records must be kept by race, ethnicity, and gender of heads of households.

### **19.5.3 Section 504 Records**

The following records must be maintained by the grantee in a separate 504 file:

- ✓ A copy of the self-evaluation;
- ✓ A copy of the transition plan;
- ✓ A list of interested persons who were consulted;
- ✓ A description of areas and buildings examined and any problems identified;
- ✓ A description of modifications made and remedial steps taken to comply with the regulations; and



- ✓ Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

#### **19.5.4 Employment and Contracting**

Data on employment of the local government that is carrying out an activity funded in whole or in part with CDBG funds. The data to be maintained in the files includes:

- ✓ A description of the local government work force in percentage by race, gender, job title, salary, and hire date;
- ✓ The percentage of minorities in the jurisdiction of the unit of general local government that is receiving CDBG funds and the percentage of minorities working for that unit of general local government;
- ✓ The number of project area residents employed with CDBG funds;
  - Data should show the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff.
  - For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department.
- ✓ Government hiring practices and policies;
- ✓ Affirmative Action Plan (if applicable);
- ✓ Documentation of the affirmative actions the grantee has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the grantee has previously discriminated against persons on the grounds of race, color, national origin, or sex in administering a program or activity funded in whole or in part with CDBG funds.
- ✓ Procurement procedures and implementation plan;
- ✓ Minority and Women Business Enterprise (MBE/WBE) outreach and networking;
- ✓ MBE and WBE reporting;
- ✓ Section 3 Plan;
- ✓ Section 3 Summary Report (CAPER); and
- ✓ Section 3 reporting by contractors.

#### **19.5.5 Monitoring**

The designated fair housing and equal opportunity coordinator and/or officers should review compliance requirements on an annual basis.

Grantees will be monitored by HUD on a periodic basis. Proper notification of a monitoring visit will be provided. However, it is important for grantees to keep all records and files in "monitoring readiness" condition at all times. Some of the areas HUD staff will review to determine if grantees meet compliance with all fair housing and equal opportunity requirements and laws are listed below:



- ✓ A check of the availability and adequacy of employment records;
- ✓ Identification of programs and activities assisted through CDBG funding and assessment of program impact on protected groups;
- ✓ An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
- ✓ A review of voluntary efforts to promote fair housing; and
- ✓ An examination of the extent to which various protected groups have been impacted by relocation activities.

### **19.5.6     HUD FHEO Compliance and Monitoring**

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to grantees regarding compliance. FHEO may perform periodic reviews of grantees or require reports or other information to measure compliance including records of program participation by individuals with handicaps.

It is important for grantees to keep organized records and document their Section 504 activities.

A complaint can be made by any individual or authorized representative of that individual who believes they have been denied opportunities or treated differently, due to their race, ethnicity, gender, disability, or age.

This complaint would be filed with FHEO under the Housing Discrimination Form 903.1. The complainant's identity will be held in confidence unless written authorization is given. The time period for filing complaints is within one hundred eighty (180) days of the alleged act. Grantees should have copies of this form available to the public.

Person who believes his/her rights have been violated may file in Federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance may result ultimately in the termination of or refusal to grant Federal assistance.