

CHAPTER X: CIVIL RIGHTS, EQUAL OPPORTUNITY, FAIR HOUSING

OVERVIEW

Federal and state civil rights, equal opportunity, and fair housing laws associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the Nevada CDBG Program. This chapter provides guidelines to follow to ensure compliance. A Civil Rights/Equal Opportunity/Fair Housing (FHEO) Checklist is found at the end of the chapter.

Community Development Block Grant (CDBG) activities are administered in a manner that ensures nondiscrimination on the basis of race, national origin, religion, color, sex, age, familial status, handicap/disability (mental or physical) and citizenship status. Nevada state laws add ancestry, sexual orientation, gender identity/expression, genetic information, lawful use of any product when not at work, use of service animal, and opposing unlawful employment practices. These laws protect individuals from discrimination in the areas of housing, benefits created by the CDBG project, employment, contracting, and other business opportunities.

For purposes of the CDBG program, the groups listed and commonly referred to as protected groups, are specifically protected from discrimination in the following areas:

- **Participation in or Benefits Derived from CDBG funded Activities:** This means that no one who is eligible may be excluded from participating in any CDBG-funded activity, nor may they be denied any benefits resulting from activities funded in whole or in part with CDBG money;
- **Employment:** This applies to government employment, employment by government contractors or subcontractors, and employment under all construction contracts funded in whole or in part with federal money. These provisions are referred to as equal employment opportunity; and
- **Housing:** Generally this includes the sale or rental of housing and the financing, advertising or provision of brokerage services. There are other specific acts of discrimination that are equally illegal. Nondiscrimination requirements in this area are referred to as fair housing.

Applicable laws require all individuals be given an equal opportunity to participate in benefits and employment generated by the project, and in some cases, require that affirmative action be taken to redress past discrimination. In addition, HUD has a legislative mandate to carry out all programs in a manner that affirmatively furthers fair housing choice. This mandate applies to projects funded at the local level and requires local governments to undertake efforts to affirmatively further fair housing choice.

Several federal and state statutes, portions of the CDBG regulations, and Presidential Executive Orders contain civil rights and affirmative action provisions that apply to all programs funded with federal monies. Following is the summary of federal and state laws, Executive Orders, and program regulations frequently referred to in the CDBG program. The laws impact each stage of a CDBG project. Some laws are specific to a particular stage of a CDBG project; others apply across all stages. Due to the changing nature of legislation, the summary of State and Federal laws included in this chapter is not necessarily conclusive.

LAWS AND REGULATIONS

FEDERAL LAWS

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1. The Hatch Act, 5 USC 1501, et seq; 5 CFR, Part 151: restricts the political activities of certain public employees who may be connected with federally funded programs. In passing the Hatch Act in 1939, Congress declared that the partisan political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments must be limited in order for public institutions to function fairly and effectively.

2. Title VII of the Civil Rights Act of 1964 as amended (24 CFR Part 1): Title VII provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. <http://eeoc.gov/policy/vii.html>

3. The Cranston-Gonzalez National Affordable Housing Act of 1990, Title II, Section 282 [42 USC 12832]. The nondiscrimination clause of the Act states that:

“No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 (Labor) shall also apply to any such program or activity.”

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794; 45 CFR Part 84): Section 504 is explicitly incorporated into Title II, Subtitle F 282 of the National Affordable Housing Act of 1990; Section 504 states that:

“No person in the United States, as defined in section (7) shall, solely by reason of his (her) handicap, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal assistance funds.”

Although similar in wording to Title VII and other laws, Section 504 differs conceptually from Title VII and 282 of the National Affordable Housing Act.

The premise of Title VIII and 282 is: there are no inherent differences or inequalities between the general public and the persons protected by these provisions; therefore, there should be no differential treatment in the administration of federal programs.

The premise of Section 504 is that affirmative steps must be taken to ensure that persons who are inherently unequal (persons who have a handicap) are not discriminated against as a result of administrative procedures or CDBG project activities. Persons who have a handicap may need different treatment in order to be afforded equal access to federally assisted programs and activities; thus identical treatment may constitute discrimination.

Section 504 provisions are explicitly incorporated in federal Housing and Urban Development (HUD) implementing regulations at 24 CFR, Part 8, Nondiscrimination Based on Handicap in Federally-assisted Programs and Activities of the Department of Housing and Urban Development.

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5. The Americans with Disabilities Act (ADA) of 1990. The Americans with Disabilities Act (ADA) of 1990 guarantees equal opportunity in employment, public accommodations, transportation, state and local government services, and telecommunications, for individuals with disabilities. The ADA became law on July 26, 1990 and became fully effective on January 26, 1992.

The ADA borrows much of its substantive framework and language from Section 504 of the Rehabilitation Act of 1973. Therefore, if a CDBG grantee works toward compliance, or is in compliance with Section 504, it will generally be in compliance with ADA and vice versa.

6. Architectural Barriers Act of 1968 (42 USC 4151-4157). HUD regulations at 24 CFR, Part 40, prescribe standards for the design, construction, and alteration of publicly owned residential structures to ensure that persons with physical handicaps will have ready access to, and use of, such structures.

7. Fire Administration Authorization Act of 1992 [as implemented under provisions of 24 CFR 8.4 (b)(1)(iii) and (iv); 24 CFR 8.32, Uniform Federal Accessibility Standards (UFAS) and UFAS 4.28, Alarms]. These regulations state the conditions under which fire alarm systems must be equipped with visual and/or sensory alarm systems (or appropriate wiring for later installation of same), as a reasonable accommodation to persons with disabilities.

<http://www.hud.gov/offices/cpd/lawsregs/notices/priorto95/cpd9405.pdf>

8. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.; 45 CFR Part 91): The Age Discrimination Act provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The law is explicitly incorporated into Title II, Subtitle F, Section 282 of the national Affordable Housing Act of 1990.

9. Equal Employment Opportunities under HUD Assisted Contracts: Executive Order 11246, as amended by Executive Order 11375 (41 CFR, Chapter 60): Executive Order 11246 provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts.

<http://www.eeoc.gov/facts/qanda.html>

10. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (24 CFR Part 200, Subpart M; 24 CFR Parts 14, 100, 103, 104, 105, 108, 109, 110, 115 and 120): The Fair Housing Law states that it is the policy of the United States to provide for fair housing throughout the United States, and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provisions of brokerage services, including in any way making unavailable or denying dwelling to any person, because of race, color, religion, sex, national origin, familial status, or handicap. The grantee is required to meet the state laws as well as the federal.

As of March 12, 1989, Title VII provisions also include, as a protected groups (for the purposes of furthering fair housing), families with children. Title VII requires that affirmative actions be taken by CDBG grantees to further fair housing opportunities within their jurisdictions.

CDBG grantees must comply with Title VIII of the Civil Rights Act of 1968, as amended, by administering all programs and activities related to housing and community development in a manner that affirmatively

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furthering fair housing choice in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

<http://www.hud.gov/offices/fheo/progdesc/title8.cfm>

11. Fair Housing Act, Executive Order 11063 (24 CFR Part 107): Executive Order 11063 states that no person shall on the basis of race, color, religion, sex or national origin be discriminated against in housing (and related facilities) provided with federal assistance or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

The Fair Housing Act requires HUD (and therefore CDBG grantees) to take all actions necessary and appropriate to prevent discrimination in housing and related facilities that are funded in whole or in part with federal financial assistance. Federally funded activities that fall under these provisions include:

- Mortgage insurance;
- Guaranty programs, and
- Grants used to acquire, clear, relocate or otherwise prepare a housing site.

<http://www.archives.gov/federal-register/codification/executive-order/12259.html>

12. Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR Part 135): Section 3 provides that to the greatest extent feasible training and employment opportunities shall be made available to lower income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.

<http://www.hud.gov/offices/fheo/section3/section3.cfm>

13. Women's Business Enterprises and minority Business Enterprises: Executive Orders 11625, 12138 and 12432. These regulations establish the development of Women's and Minority Business Enterprises (DBEs) as a national priority.

<http://hud.gov/offices/cpd/affordablehousing/training/web/crosscutting/employment/eeominority.cfm>

14. HUD Administrative Requirements for Grants (Basis Federal Regulations) or the "Common Rule" (24 CFR Part 85): The Common Rule states that it is a national policy to award a fair share of contracts to small, and minority and women-owned business firms. Affirmative steps must be taken to assure that such businesses are utilized when possible as sources of supplies, equipment, construction and services.

<http://www.hud.gov/offices/cpo/grantees/24cfr84.doc>

15. EEOC Compliance Manual Section on Prohibition of National Origin Discrimination.

National origin discrimination means treating someone less favorably because s/he comes from a particular place, because of his or her ethnicity or accent, or because it is believed that s/he has a particular ethnic background.

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National origin discrimination also means treating someone less favorable at work because of marriage or other association with someone of a particular nationality. Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, s/he is entitled to the same employment opportunities as anyone else.

Examples of national origin bias violations covered under Title VII include:

- **Employment Decisions:** Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.
- **Harassment:** Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- **Language:** Accent discrimination – an employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance. English fluency – a fluency requirement is only permissible if required for the effective performance of the position for which it is imposed. English-Only Rules must be adopted for nondiscriminatory reasons. And English-Only Rules may be used if it is needed to promote the safe or efficient operation of the employer's business.

<http://www.eeoc.gov>

16. Section 109 of the Housing and Community Development Act of 1974, as amended (24 CFR Part 570.602): Section 109 provides that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any programs funded in whole or in part with CDBG funds.

17. Section 104, subsection 1 of the Housing and Community Development Act of 1974, as amended: Requires local governments to adopt and enforce a policy prohibiting use of excessive force by law enforcement agencies against any individuals engaged in non-violent civil rights demonstrations and requires enforcing applicable state and local laws against physically barring exits or entrances of facilities or location that are the subject of non-violent civil rights demonstrations.

STATE LAWS

1. Discrimination in Housing NRS Chapter 118 & SB 368: It is the public policy of the State of Nevada that all people in the State have equal opportunity to inherit, purchase, lease, rent, sell, hold and convey real property without discrimination, distinction or restriction because of race, religious creed, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status or sex.

SB 368 prohibits discrimination in housing and certain other transactions involving real property on the basis of sexual orientation or gender identity or expression.

2. NRS Chapter 613 Employment Practices: Unlawful employment practices: Discrimination on basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; interference with aid or appliance for disability; refusal to permit service animal at place of employment.

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GRANTEE RESPONSIBILITIES

There are six general areas for which grantee efforts must be documented in order to demonstrate a good faith effort to comply with federal civil rights requirements:

- 1) **Program Benefits:** efforts to ensure minority participation in the program;
- 2) **Grantee Hiring and Employment Practices:** the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women;
- 3) **Contractor Affirmative Action:** actions by contractors and subcontractors to employ minorities and women;
- 4) **Fair Housing:** non-discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin;
- 5) **Actions to Affirmatively Further Fair Housing:** compliance with the federal mandate to administer all programs so as to affirmatively further housing availability, and to prevent discrimination in federally-assisted housing; and
- 6) **Handicapped Accessibility Requirements:** actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

PROGRAM BENEFITS

1). PROGRAM BENEFITS: Responsibilities of CDBG Grantees

Laws:

- Title VII of the Civil Rights Act of 1964
- Section 109 of the Civil Rights Act of 1964
- Section 3 of the Housing and Urban Development Act of 1968

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Required Actions:

Actions that help ensure compliance regarding Program Benefits include:

- Filing the Project Benefit Report when the project is completed. The report is required before the project can be closed.
- Maintaining case records that indicate the census track, income, age, household size, race, ethnicity, female-headed household status and disability/handicap status of each applicant and recipient of direct benefits. Direct benefit projects are those in which a household is qualified for assistance based on the household's income (e.g., housing projects, income qualified side service connections, or economic development jobs). Data must be kept by very-low (50%) and low-income (80%) limits and reported on the Project Benefits Report.

Be sure to collect information for both program applicants and beneficiaries. This information may be collected through an application form or other suitable mechanism. A sample form for logging direct beneficiary data is at the end of the chapter.

- For direct benefit projects, adopting written local program policies and guidelines that identify program eligibility criteria, program application requirements, income definitions and limits, and income verification procedures, as well as appropriate appeal procedures for reviewing applicant complaints and claims.
- Adopting a Title VI certification that states the needs of protected groups within the community or target area have been analyzed and considered during the selection of activities to be undertaken as part of the project. For this, protected groups are: Blacks, Hispanics, Asian and Pacific Islanders, Native Americans and Alaska Native. Have on file census, survey or other base data that identifies the income and household size, race, sex, handicap status and ethnicity of households within areas that may have disproportionate need.
- Having on file documentation of providing protected groups with the opportunity to identify their needs and provide input for the design of project activities to meet protected groups' needs.
- Submitting a Section 3 Summary Report (for projects \$100,000 and over).
- Including Section 3 language pertaining to the civil rights requirements in all requests for bids and for proposals, in all bid documents, and in all contracts.
- Publishing/publically noticing a Section 3 notice in the area newspaper before advertising for construction bids (sample at end of chapter).
- Placing the advertisements in publications having a circulation among minority groups in the area of the project to ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending CDBG benefits into the grantee's community.
- Including the notation, "*An Equal Opportunity Employer*", on city/county stationary when used for CDBG project-related correspondence.

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GRANTEE HIRING AND EMPLOYMENT PRACTICES

2) GRANTEE HIRING AND EMPLOYMENT PRACTICES: Responsibilities of CDBG Grantees

Laws:

- Title VII of the Civil Rights Act

Grantees must maintain data, records, and documentation regarding grantee hiring and employment practices. The following information regarding grantee employment practices must be maintained:

Personnel policies;

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**Interview and hiring records;
Employee records (training, promotion, salary levels);
Data on overall employment of women and minorities; and
Employment data that indicates staff composition by race, sex, handicap status and national origin.**

Required Actions:

- Promote equal employment opportunity in hiring and keep data regarding affirmative actions for equal employment opportunity.
 - Prominently display the equal opportunity poster.
 - Include notice of equal opportunity in all program advertisements.
 - Include advertisements in minority newspapers, such as those published on reservations.
 - Notify minority organizations located in the area of potential CDBG-related job openings.
 - Any employment advertisements published should include the following statement: "City/County is an Equal Opportunity Employer."
 - Make the city's/county's equal employment policies clearly known to everyone involved in hiring, promotion, and salary decisions.
 - Ensure that employment recruitment records include a summary of the number of applicants for each position relating to the CDBG Program: document the number of applicants who are minorities, women and handicapped persons.
 - Ensure there is documentation by race, gender, and disability/handicap of the number of persons interviewed and the reasons for the hiring decisions.
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CONTRACTOR AFFIRMATIVE ACTION

3) CONTRACTOR AFFIRMATIVE ACTION: Responsibilities of Contractor Affirmative Action:

Laws:

- Executive Order 11246

Required Actions for Contractors & Grantees:

- Do not discriminate against any phase of employment under federally assisted construction contracts; and

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- Take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay, and selection for training.

Additionally, requirements concerning women-owned and minority owned businesses fall within the Contractor Affirmative Action Requirements. **Disadvantaged Business Enterprises (DBEs) is a term used to collectively refer to both women-owned business enterprises and minority-owned businesses.**

Grantees should encourage the prime contractors on CDBG projects to utilize DBE firms to the maximum extent possible. Examples of affirmative actions to encourage contracting with DBEs include:

- Utilizing the local media (electronic and print) to market and promote contract and business opportunities for DBEs, including placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Developing procurement procedures that facilitate opportunities for DBE's to participate as vendors and suppliers of good and services, including assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Developing informational and documentary materials (fact sheet, program guides, procurement forecast, etcetera) on contract/subcontract opportunities for DBEs;
- Sponsoring business opportunity-related meetings, conferences, seminars, etc. with minority and women business organizations;
- When economically feasible, and where consistent with State and Federal laws, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business and women's business enterprises;
- Establishing delivery schedules that encourage participation by small and minority business and women's business enterprises;
- Utilizing the services and assistance of the U. S. Small Business Administration <http://www.sba.gov/> and the Minority Business Development Agency of the U. S. Department of Commerce <http://www.commerce.gov/>;
- Requiring the prime contractor to take the affirmative steps outlined if subcontracts are to be let.
- Maintaining centralized records with statistical data on the utilization and participation of DBEs as contractors/subcontractors in all CDBG-assisted program/contracting activities in the grantee's Civil Rights file.

Refer to Chapter V: Construction Management & Labor Standards for Nevada's Disadvantaged Business Enterprises' contact information.

The **Minority Business Enterprise (MBE) Report** is used to document DBE Contract Awards for activities of \$10,000 or more. The form **should be completed at the time of bid award** and updated if additional contractors or subcontractors perform work on the project involving activities of \$10,000 or more.

Minority Business Enterprise versus Section 3: In some communities, particularly smaller, rural ones, Section 3 commitments to use local businesses may conflict with commitments to use minority and women-owned firms because minority or women-owned firms may not exist in the community. However, **if the community makes reasonable efforts to solicit bids from appropriate local firms and also from Minority Business Enterprises, it is meeting both objectives and it may then select the lowest and best bidder.**

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Pre-bid conferences are optional but important, particularly when many of the bidders have not performed work under federally assisted contracts. This gives the grantee an opportunity to discuss all aspects of the project in addition to the Section 3 and Executive Order 11246 requirements for targeting advertisements for employment to minorities, women and lower income area residents. Prospective bidders can also be informed about the additional record keeping necessary for these requirements and the need to file reports.

Preconstruction Conference:

At the preconstruction conference the grantee should explain to the contractor all the activities required to meet the civil rights provision. The grantee should provide contractors a copy of any applicable checklist(s), forms, and/or posters with an explanation of use. It is important that contractors/subcontractors are made aware they can be barred from participation in future federally-funded contracts if they are found, as a result of a complaint, to have taken discriminatory action. It is also important for the contractor to be made aware of filing of all required reports.

Start-up Activities:

The contractor must make efforts to notify and recruit local lower income, minority and female potential employees of the job opportunities. The contractor needs to create a file to document their efforts. Any advertising should include the words – *“(Name of firm) is an equal opportunity employer; local residents, minority group members and women are encouraged to apply”*.

Additional Contract Activities:

In addition to these required activities contractors are urged to undertake other affirmative actions. There are a number of activities that can be done in this regard:

- All minority and female personnel can be evaluated for promotional and training opportunities. This should be done annually.
- The contractor should evaluate his or her personnel practices to ensure that they do not have a discriminatory effect.
- All supervisors can be reviewed to ensure adherence to and compliance with the contractor’s Equal Employment Opportunity policies and affirmative action obligations.

One technique for documenting good faith efforts that has proved successful is to keep a log of all contracts made concerning the project. For example:

- The date the solicitation for bids was sent to the newspapers is noted.
- Every time a telephone inquiry about the bid was made, the name of the person and the subject matter discussed is briefly noted.

This log should document all actions taken concerning the CDBG project. This can be used to show compliance with various regulations, such as labor standards, environmental review requirements and fair housing and equal opportunity provisions.

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CONTRACTOR AFFIRMATIVE ACTION: Responsibilities of CDBG Grantees

Grantees must maintain data and documentation that the contractors and subcontractors have met their responsibilities. Grantee responsibilities include:

- Maintaining copies of notices of bid solicitations and Requests for Proposals (RFPs) and Requests for Qualifications (RFQs) in the CDBG Program Management file. Refer to Chapter IV: Procurement for additional guidance on RFPs and RFQs.
 - Keeping copies of RFPs, RFQs, and bid packages for individual projects in the appropriate CDBG Project File.
 - Retaining data on the dollar amount of contract awards to DBE/MBE firms in the grantee file.
 - Including equal opportunity clauses in all bid specifications and contracts.
 - Providing Equal Employment Opportunity (EEO) notices for contractors to post in the workplace and retaining copies for the grantee file. Notices are available at: <http://www.eeoc.gov/>
 - Including DBE/MBE firms in bid solicitation and RFP and RFQ lists.
 - To the extent feasible, making employment and business opportunities available to project area (Section 3) residents.
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FAIR HOUSING

4) FAIR HOUSING: Responsibilities of CDBG Grantees:

Laws:

- Title VIII of the Civil Rights Act of 1968, as amended in 1988 (commonly known as the “Fair Housing Act”)
- Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule

Federal law obligates all grantees, regardless of project type or size, to take steps to affirmatively further fair housing. Fair housing means that no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising

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of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

Fair Housing Laws & Presidential Executive Orders

Under Fair Housing Laws, it is unlawful to:

- Refuse to sell or rent a dwelling or to negotiate for the sale or rental of a dwelling;
- Discriminate in the terms, conditions or privileges involved in a sale or rental;
- Engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies dwellings;
- Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement (or make any oral statement) that indicates any illegal preference or limitation;
- Select media or locations for advertising that deny particular population segments access to information about housing opportunities;
- Impose different sales prices or rental charges upon a dwelling;
- Use different qualification criteria or sale or rental standards or procedures (such as income standards, credit analyses, etcetera);
- Represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available;
- Discourage any person from inspecting, purchasing or renting a dwelling (by exaggerating drawbacks, failing to inform them of desirable features, limiting information regarding suitably priced dwellings available for sale or rental, or communicating that s/he would not be comfortable or compatible with existing residents);
- Engage in block busting practices (inducing property owners to sell hastily or at a loss, by appealing to fears of depressed property values or other undesirable neighborhood consequences because of threatened minority encroachment, with the intention to resell at inflated prices);
- Deny access to or membership or participation in any multiple-listing service, real estate brokers' association, or other service organization or facility;
- Limit the use of privileges, services or facilities associated with a dwelling;
- Assign any person to a particular section of a community or to a particular floor of a building;
- Refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently;
- Discriminate in the making of loans or the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings;
- Fail to make repairs or delay maintenance or repair of sale or rental dwellings; or
- Evict tenants because of race, color, religion, sex, handicap, familial status, or national origin.

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ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING

5) **ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING: Responsibilities of CDBG Grantees**

Laws:

- 24 CFR Section 570.904(c)

CDBG grantees are required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.

The CDBG grantee must document the steps it has taken to promote fair housing.

Required Actions:

The activities required to meet the fair housing requirements fall into three categories:

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- (1) Actions taken by Local Government;
- (2) Information and Education for the General Public; and
- (3) Cooperation with the Housing Industry.

Fair Housing activities must be documented. Each time an activity is undertaken a memo to the file should be written stating the date, the activity, and the individuals or organizations that participated.

The following are examples of fair housing activities in each of the categories:

I. Government Actions:

- a. Developing, adopting, publishing and promoting a fair housing resolution, if no such resolution exists. A fair housing resolution is an official statement by local elected officials supporting equal access to housing for all persons. Grantees who adopted a Fair Housing Resolution prior to 1989 must adopt and publicize a new resolution and/or ordinance to ensure that all federally protected classes, including familial status and the handicapped, are included. The Fair Housing Resolution must be developed, adopted and published before grantees can receive funding.
- b. Establish a procedure to remedy complaints of discrimination, as per the ordinance, include referral to Nevada Equal Rights Commission.
- c. Provide information about fair housing to realtors and lenders within the jurisdiction and keeping records of these educational outreach efforts. See a copy of an informational brochure and a sample outreach letter at the end of this chapter.
- d. Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.
- e. Review local zoning laws and procedures and assess the impacts of existing zoning on achieving progress in fair housing including the impacts on adequate provision of multi-family and/or less expensive single family construction.
- f. Survey special housing needs of minorities, women, and people who are disabled/handicapped to determine possible effects of discrimination.
- g. Review project activities to ensure they serve low- and very low-income residents and those who are in protected classes.
- h. Identify a staff person to serve as the contact point for dissemination of information and brochures on fair housing, and answering any questions local residents may have about the law and its coverage. Silver State Fair Housing Council can provide information, training and brochures. Contact information is: 775-324-0990/702-749-3288 or 888-585-8634 toll free; web site address: www.ssfhc.org. The State enforcement agency to contact is the Nevada Equal Rights Commission (NERC) 775-823-6690/702-486-7161 or <http://nvdetr.org/nerc.htm> .
- i. Designate a department or staff person within your unit of government as a local source of information on Fair Housing rights and on resolution of complaints.
- j. Prominently display the “Fair Housing” poster and Complaint Pamphlet at the CDBG project headquarters, city hall or county courthouse to explain fair housing rights, practices and statutory requirements.
- k. Use the “Equal Housing Opportunity” slogan and logo on grantee stationary.
- l. Adopt a Fair Housing Action Plan.

II. Information and Education for the General Public:

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- a. Publish information materials directed to consumers regarding their rights under Fair Housing laws and how they may obtain assistance if they believe they have been discriminated against. Distribute and post informational and educational material through all organizations that have contact with the public: community agencies, libraries, government offices, employers, real estate and rental offices, schools, churches, etcetera.
- b. Provide and encourage use of public service announcements and other Fair Housing advertisements in all media.
- c. Develop a public information network concerning fair housing using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially Realtors, landlords, financial institutions, and minority households.
- d. Develop a local fair housing program to make housing opportunities known to minorities, to monitor compliance and to refer discrimination complaints to the appropriate authorities.

III. Cooperation with the Housing Industry:

- a. Grantee must ensure nondiscrimination in administering CDBG housing programs, including relocation of persons displaced by CDBG activities;
- b. Grantee may not select sites or location of housing and housing-related facilities which have an exclusionary or discriminatory effect;
- c. Under the Fair Housing Law (Title VIII), the actions, if based on race, color, religion, sex, national origin, familial status or handicap, are considered discriminatory;
- d. Refusing to sell or rent to, deal or negotiate with any person;
- e. Discriminating in terms or conditions for buying or renting housing;
- f. Advertising that housing is available only to persons of a certain race, color, religion, sex, national origin or familial status;
- g. Denying that housing is available for inspection, sale or rent when it really is available;
- h. "Blockbusting" which is persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood in order to drive down prices and gain a windfall profit;
- i. Denying or making different terms or conditions for home loans by commercial lenders such as banks, savings and loan associations and insurance companies; and
- j. Denying to anyone the use of or participation in any real estate services such as brokers' organizations, multiple-listing services or other facilities related to the selling and renting of housing.

Each CDBG grantee must affirmatively further fair housing choice by:

- Promoting maximum choice within the community's total housing supply;
- Lessening racial, ethnic, and economic concentrations; and
- Facilitating desegregation and racially inclusive patterns in the occupancy and use of public facilities.

In addition to the above requirements, Housing Rehabilitation projects must also incorporate fair housing considerations into local housing rehabilitation program policies.

- Include the HUD fair housing logo in all program marketing materials and advertisements, as well as in all program plans and policies.

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Grantees who have received prior CDBG grants should consider undertaking additional activities, where appropriate, in support of fair housing opportunities in the community such as:

- Development of an affordable housing policy and strategy.
- Providing financial assistance to support the local public housing authority or other related housing programs and groups.
- Development of a one-step permits process to facilitate new housing development.
- Identification of the housing needs of low- and moderate-income minorities and women.
- Encourage the development of a Voluntary Affirmative Marketing Agreement (VAMA) with the Board of Realtors.
- Sign a cooperation agreement with the local housing authority.
- Republication of the Fair Housing Resolution, if reasonable.

Additional HUD guidance concerning fair housing requirements can be found in: ***Performance Review Standards for Fair Housing Requirements*** in the CDBG Program at:

<http://www.hud.gov/offices/cpd/communitydevelopment/rulesandregs/memoranda/choice92.cfm>

HANDICAPPED ACCESSIBILITY

6) HANDICAPPED ACCESSIBILITY: Responsibilities of CDBG Grantees

Laws:

- Section 504 of the Rehabilitation Act of 1973, as Amended
- Public Law 101-336, Title II of the Americans with Disabilities Act of 1990
- Fair Housing Amendments Act of 1988
- Title I of the Americans with Disabilities Act

The grantee must take steps to notify participants, applicants, beneficiaries, and employees, including those with impaired vision or hearing that it does not discriminate on the basis of handicap. Public notices should include the statement “City/County does not discriminate on the handicapped status in the admission or access to, or treatment or employment in, its federally assisted programs and activities.” The grantee must ensure arrangements exist that make telecommunication devices for the

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deaf (TDD) available to the hearing impaired. The TDD Relay Service and TDD number must appear on all notices and announcements.

CDBG Grantees are responsible for providing access to disabled/handicapped persons in five basic areas:

- I. Accessible Communications
- II. Access to Employment
- III. Access to Program Benefits
- IV. Physical Accessibility to Programs
- V. Data and Documentation

I. Accessible Communications

When advertising public meetings or program services and activities, the grantee must include a written statement similar to the following:

The city/county makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in any CDBG Program service or activity. Persons needing an accommodation must notify (. . . who . . .) no later than (. . .date . . .) to allow adequate time to make needed arrangements.

You may call (. . .telephone number. . .) or write (. . .address. . .) to make your request known. Telecommunications Device for the Deaf: TDD #(775)-XXX-XXXX. Or Nevada Relay: Dial 771 or 1-800-326-6868 (English), 1-800-877-1219 (Spanish).

Required Actions:

The grantee should take appropriate steps to ensure effective communication with applicants, beneficiaries and members of the public. Section 504 states that ***“appropriate auxiliary aids should be furnished to allow individuals with handicaps and equal opportunity to participate in, and enjoy the benefits of a program or activity receiving federal financial assistance.”***

Steps include:

- All publications must include a statement similar to the following: ***“This document will be provided in an alternative, accessible format upon request.”***
- When setting up public meetings, be cognizant of the fact that the meeting room must be handicap accessible in various ways. For example, some individuals may have a total or partial visual or hearing impairment. Each situation requires a different type of accommodation.

Grantees must ensure that all persons with hearing, visual or manual impairments may participate in public hearing/meetings and receive public services. Accommodations, such as sign language interpreters or other assistance, do not need to be provided at every meeting, but are required on upon request as appropriate.

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- Use Disability Access Symbols to alert people with disabilities/handicaps concerning access accommodations and information. Place appropriate symbols on advertising, publicity, websites, publications, signs, and etcetera. The 12 symbols are online and downloadable at:

https://graphicartistsguild.org/tools_resources/downloadable-disability-access-symbols

- Where a grantee communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs) or equally effective communication systems, such as interpreters, shall be used. Grantees must develop and implement procedures that will ensure communication with the hearing impaired.

Note: Grantees are not required to secure their own TDDs. Nevada has in place a telephone relay system for the deaf, Nevada Relay. Nevada Relay makes communication by telephone simple, dependable, and convenient for people who have difficulty using a standard phone. This standard telephone service is offered throughout the State of Nevada and enables standard telephone users to communicate with people who are deaf, hard of hearing, Deaf/Blind or speech disabled and uses a text telephone (TTY) or other assistive telephone device. Dial 711 or 1-800-326-6868 (English), 1-800-877-1219 (Spanish) to use Nevada Relay.

For additional information on communications, access services for persons who are deaf or hard of hearing at:

<http://relaynevada.com>

II. Access to Employment

Laws:

- Title VI of the Civil Rights Act of 1964
- Rehabilitation Act of 1973, Section 504, as Amended
- Public Law 101-336, Title II of the Americans with Disabilities Act of 1990
- Housing and Community Development Act of 1974, Section 109, as Amended
- Housing and Urban Development Act of 1968, Section 3, as Amended
- Age Discrimination Act of 1975, as Amended
- 24 CFR Part 85.36, Common Rule
- Executive Order 11246, Equal Opportunity under HUD Assisted Contracts
- NRS, Chapter 613: Employment Practices

Title I of the ADA prohibits discrimination by an employer against a qualified person with a disability.

Section 504 of the Rehabilitation Act of 1973, as Amended states that a grantee shall ***“make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.”***

Equal Employment Opportunity (EEO) Policy: The local government must adopt an Equal Employment Opportunity (EEO) Policy Resolution. CDBG grantees may not deny employment on the basis of race, color, national origin, age, sex, handicap or ancestry, sexual orientation and gender identity/expression.

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Required Actions:

Equal opportunity documents fall into two categories: those required by:

1. Executive Order 11246 dealing with equal employment opportunity, and
2. Section 3 requiring affirmative action to employ local businesses and local lower income Residents.

Activities to comply with equal opportunity requirements are:

- Review existing local employment policies and include the EEO policy in the local government policy manual/handbook.
- Inform local government officials and employees, the public, and those applying for employment with the local government of the provisions of the EEO policy.
- Designate a person to disseminate the information and oversee EEO responsibilities and compliance. This can be pursued in a number of ways, such as:
 - Job opening advertisements must include the following phrase: “(Grantee or Contractor Name) is an Equal Opportunity Employer. Minorities and women are encouraged to apply.”
 - Notify nearby minority organizations of job openings.
 - Maintain employment records related to equal employment opportunity.
- Obtain and review basic data (e.g., census data) that identifies the proportion of African Americans, Native Americans, Hispanics, Asians and Pacific Islanders, Alaskan Native, women, female head of households, aged, and disabled persons in the community or area to be served by the CDBG-assisted project (direct benefits).
- Maintain employment data for the recipient jurisdictions’ work force that indicates staff composition by race, sex, handicap status and national origin. This data must be maintained in the grantee’s project file/notebook. Use the standard EEO-4 form included at the end of this chapter.
- Review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.
- Revise existing personnel policies if they are found to be inconsistent with applicable laws.
- Advertise as an equal opportunity employer.
- Display an equal opportunity poster prominently within the City Hall, County courthouse, or any facility used during the conduct of the CDBG project. A sample poster is included at the end of the chapter. Posters and the supplement (English, Spanish, Arabic & Chinese) can be accessed at: <http://www1.eeoc.gov/employers/poster.cfm>

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- Where evidence of past discrimination exists, take affirmative steps to redress the effects of this discrimination in employment policies, procedures, and practices, and document the actions taken.

In addition, grantees and/or subrecipients who employ 50 or more employees must do the following:

- Identify a compliance officer to oversee the grantee's compliance efforts. This compliance officer takes the lead in evaluating the grantee's facilities, programs, policies and practices and in drafting the transition plan if one is needed.
- Adopt and implement a grievance procedure to provide for timely resolution of discrimination complaints pertaining to accessibility of the grantee's programs and activities and the impact of its policies on persons with disabilities. This may be incorporated into an existing grievance procedure.
- Provide initial and ongoing efforts to notify citizens that the grantee does not discriminate on the basis of handicapped status in its federally funded services, activities and practices. The designated compliance officer should be identified in all outreach efforts so that questions and comments may be properly directed to that person. A sample notification of a nondiscrimination policy is at the end of the chapter. At a minimum, it should be posted in a public location such as the city/town hall or courthouse.
- Upon completion of an ADA Self-Evaluation (Self-Evaluation form at the end of the chapter), the grantee must keep on file for at least three years:
 - A list of interested persons consulted.
 - A description of areas examined and any problems identified.
 - A description of modifications made and remedial steps taken.

Many of the equal employment opportunity requirements apply to both grantee and any contractors. It is the grantee's responsibility to see that the contractors comply with the requirements. Section 3 requirements are:

- Publication of a Section 3 Public Notice: Economic Opportunities for Low- and Moderate- Income Persons or an equivalent in order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements.
- Assess the likelihood of local hiring occurring as a result of the CDBG project.
- If local hiring is likely to occur, develop a plan that outlines:
 - The number and nature of position openings.
 - The timing of the recruitment and hiring efforts.
 - Steps that will be taken to affirmatively advertise the position(s) among protected groups.
 - Steps that will be taken to recruit local project area residents as candidates for employment.

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- If local promotional or training opportunities are likely to occur during the project period, develop a plan that identifies:
 - The number and nature of the training or promotional opportunities.
 - The timing of the training or promotional opportunities.
 - Steps that will be taken to affirmatively advertise these opportunities to protected groups within and outside of the existing workforce.
 - Steps that will be taken to recruit local project area residents as candidates for training opportunities.
- Maintain documentation of special efforts taken to identify, train, involve and/or hire protected groups and lower-income project area residents.

When the bid is advertised the grantee must take steps to implement Section 3 and Executive Order 11246 requirements for notification of contracting opportunities, particularly to local and disadvantaged business enterprises.

All of the necessary types of contractors and skilled laborers may not be available in the area if the grantee is a small town or sparsely populated rural county. However, it is advantageous to the community to contract locally and for contractors to work locally if possible. In this way, benefits of the employment, in tax dollars and reduction of assistance payments, in the case of Section 3 employees or employers, remain in the community.

An important aspect of carrying out the provisions of Section 3 and Executive Order 11246 is to make local businesses aware of the opportunity to bid on the CDBG project. It is very important that all available methods be used to publish and announce the Advertisement for Bids. The advertising activities must be documented and the documentation placed in the project civil rights files.

There are a number of activities that can be undertaken to make people aware of opportunities under Section 3. These include local newspapers, posting notices, contacting local unemployment or welfare office and any other public agency, working with your local job training program, notifying the applicable labor unions or trade associations and working with community organizations serving lower income, minority or female potential employees. Take care to keep all contacts, notices and correspondence in the civil rights file.

Additional requirements for Section 3 and Executive Order 11246 are contained in Chapter V: Construction Management & Labor Standards.

Reasonable Accommodation: Employment

Factors to consider in determining whether an accommodation would impose an undue hardship on the operation of a program include:

- The size of the program with respect to the number of employees, the number and type of facilities, and size of the budget.
- The type of operation, such as the composition and structure of the grantee's and sub recipient's work force.
- The nature and cost of the accommodation(s) and/or alteration(s) needed.

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Making **reasonable accommodation** may include:

- Making facilities used by employees accessible to and usable by individuals with disabilities.
- Job restructuring, job relocation, part-time or modified work schedules, acquisitions, modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
- Employers are required to make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer.
- Where possible, the employer is required to make such accommodations as providing physical hardware or equipment to allow the disabled/handicapped person to complete job duties or reassigning job tasks among workers.
- When interviewing, the employer may ask job-related questions, such as “Can you perform the essential functions of the job either with or without a reasonable accommodation.” Do not ask an applicant if they have a disability/handicap or ask any questions about his/her specific disability/handicap prior to extending a conditional offer of employment.
- When recruiting, the CDBG grantee and their contractors and subcontractors must include the following written statement:

The (. . .grantee/contractor name. . .) makes reasonable accommodations for any known disability/handicap that may interfere with an applicant’s ability to compete in the recruitment and selection process or an employees’ ability to perform the essential duties of the job. In order for the (grantee/contractor) to make such accommodations, the applicant must make known any needed accommodation.

(continued on following page)

You may call (. . .telephone number. . .) or write to (. . .address. . .) to make your request known. Telecommunications Devise for the deaf: TDD# (775) XXX-XXXX. Or use the Nevada Relay: Dial 711 or Dial 771 or 1-800-326-6868 (English), 1-800-877-1219 (Spanish).

III. Access to Program Benefits

Title II of the ADA specifies that qualified individuals with disabilities/handicaps are not to be excluded from participation in, or to be denied the benefits of, any services, programs, or activities funded in whole or in part with federal funds.

Reasonable Accommodation: Program Benefits

CDBG grantees **may not provide services or benefits to disabled persons through programs that are separate or different**, unless the separate programs are necessary to ensure that the benefits or services are equally effective. If a separate program is permitted, an individual with a disability must have the

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right to choose to participate in the regular or the separate program. The grantee may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.

Making **reasonable accommodation** may include:

- Providing qualified persons with disabilities/handicaps with benefits and services that are as effective as those provided to non-handicapped individuals.
- Avoiding aiding or perpetuating discrimination against qualified persons who have handicaps.
- Affording qualified persons with handicaps with the opportunity to participate as members of planning or advisory bodies.
- Utilizing criteria or methods of administration that do not subject qualified persons who have a handicap to discrimination.
- All services, programs and activities must be accessible to everyone, including people with disabilities, regardless of the accessibility of the grantee's facilities.
- Affirmative steps must be taken to ensure that qualified persons with disabilities are informed of the availability of program services and activities.
- Services and activities must be readily accessible to and usable by individuals with disabilities. This may require administrative changes that would include scheduling activities for persons who are handicapped at handicapped accessible locations, assigning auxiliary aides to assist clients who are handicapped, providing CDBG visits or on-call transportation services, and publicizing the availability of audio equipment and telecommunication devices for persons who are deaf.
- Holding all public hearings in a location that is accessible to all individuals. Language must be included in the public hearing notice that ensures accessibility for persons with disabilities. An example of such language could be: *"The city hall/county building is accessible for persons with disabilities. Please let us know if you will need any special accommodations to attend the meeting."*

IV. Physical Accessibility

Laws:

- 24 CFR Part 8.4 (b)(1)(iii) and (iv)

It is illegal to discriminate against an individual who is disabled/handicapped by providing: any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others . . . unless such action is necessary to provide qualified individuals with disabilities/handicaps with housing, aids, benefits or services that are as effective as those provided to others.

Required Actions:

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Section 504: The grantee must adopt complaint resolution procedures concerning ADA and Section 504 to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). These procedures must allow for prompt and equitable resolution of charges alleging non-compliance with ADA. Other requirements are:

- Persons in wheelchairs or otherwise physically disabled must be able to maneuver through the building and into meeting rooms.
- Completion of an ADA Self-Evaluation Inventory (Analysis of Impediments) of local public facilities and buildings to determine the extent of local compliance with ADA requirements.
- Preparation of an ADA Transition Plan for Handicapped Accessibility to Public Facilities based on the ADA Self-Evaluation Inventory.

ADA SELF-EVALUATION

Ensuring access to employment opportunities, program benefits and buildings for persons with disabilities/handicaps requires that CDBG grantees assess the needs of that population by working with the population to determine their needs. Once needs are determined, the grantee must conduct an ADA Self-Evaluation. The Self-Evaluation must include a description of the need/problem and how it will be corrected or eliminated. Examples of areas to be reviewed include:

- Program eligibility and outreach;
- Communications;
- Employment practices, such as recruiting announcements;
- Physical accessibility of buildings and facilities;
- Complaint procedures

Methods of achieving program accessibility may include such actions to:

- Locate programs or services in accessible facilities;
- Assign aides to assist beneficiaries;
- Conduct home visits;
- Add or redesign equipment or furnishings;
- Change management policies or procedures;
- Acquire or build new facilities;
- Selectively alter existing facilities.

If the Self-Evaluation indicates programs, policy, procedures or structural changes are needed, the grantee must develop a transition plan for making the necessary changes to assure services, programs, policies and practices are accessible. The transition plan for eliminating obstacles should identify the steps required to complete the alterations. Interested citizens, especially citizens with disabilities, should be invited to help develop the plan. The transition plan must:

- Identify the physical obstacles that limit accessibility to persons with disabilities.
- Describe in detail the procedure that will be used to make the facility accessible.
- Provide a schedule identifying actions to be taken within the first year.

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- Identify the official responsible for implementation of the plan and those who assisted in preparing the plan.
- Be made available for public review.

Under Review

COMPLIANCE: RECORD KEEPING AND PLANNING

COMPLIANCE REQUIREMENTS PRE-APPLICATION

In addition to the areas covered in this chapter so far, when applications are submitted, the grantee agreed to comply with several CDBG program requirements. That compliance is attested to in the Grant Agreement. Submission of the Grant Agreement confirms that the city/county has agreed to abide by the terms and conditions set forth in the following assurances and certifications:

- 1) **Statement of Assurances:** the city/county will comply with Federal and State laws and statutes.
- 2) **Grantee Questionnaire:** the city/county will submit an annual audit.
- 3) **Program Assurances:** the city/county agrees to abide by CDBG program guidelines/regulations.
- 4) **Financial Assurances:** the city/county agrees to comply with all requirements regarding financial management.
- 5) **Lobbying Assurances:** the city/county agrees to abide by Federal lobbying regulations.
- 6) **Anti-Displacement Plan:** the city/county certifies it has adopted an Anti-Displacement Plan.
- 7) **Section 504: Non-discrimination of Basis of Handicap:** they city/county certifies they have met all Section 504 requirements.
- 8) **Activities Furthering Fair Housing:** the city/county certifies that they affirmatively further fair housing choice and maintain evidence of those actions.

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- 9) **Prohibiting Use of Excessive Force:** the city/county certifies that they have adopted a policy regarding use of excessive force and the policy prohibits such use of force and enforces laws against barring entrance to a facility that is subject to non-violent demonstrations.

Some of these requirements (e.g. Section 504 and Activities Furthering Fair Housing) are covered in this chapter and also discussed in prior chapters. No application is funded without submission of the Annual Participation Statement/Grant Agreement and acceptance of the responsibility for carrying out the requirements.

Other requirements not yet covered in this chapter that have required actions are:

Lobbying Assurances: Adoption of a Hatch Act Resolution and:

- Adoption of a policy of compliance with Hatch Act regulations.
- Informing local government officials and CDBG grantee employees of the provisions of the Hatch Act; and
- Designation of a local government representative to disseminate the information and brochure regarding Hatch Act responsibilities.

Anti-Displacement Plan: In accordance with the Housing and Community Development Act of 1974, as amended and HUD regulations at 24 CFR 42.325, CDBG grantees agree to adopt an Anti-Displacement Plan. Approved plans are consistent with the goals and objectives of activities assisted under the Act: the city/county will take steps to minimize the direct and indirect displacement of persons from their homes.

Excessive Force Policy: The local government must adopt and enforce a policy that prohibits the use excessive force by law enforcement agencies within its jurisdiction against nonviolent civil right demonstrators. The policy will include enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

RECORD KEEPING REQUIREMENTS:

Laws:

- Title VI of the Civil Right Act of 1964
- Rehabilitation Act of 1973, Section 504, as Amended
- Public Law 101-336, title II of the Americans with Disabilities Act of 1990
- Housing and Community Development Act of 1974, Section 109, as Amended
- Age Discrimination Act of 1975, as Amended

Required Record Keeping and Reporting:

Procurement

Grantees are required to maintain records for each procurement process:

- that identifies the procurement method used and why it was selected;
- the rationale used for selecting the contract type;

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- reasons for selecting and rejecting bidder/qualified firm, and
- the basis for the contract cost or price.

Grantees are also required:

- to keep a copy of the procurement advertisement published in the newspaper;
- to keep records of minority- and women-owned and local businesses that were invited to make proposals or submit statements of qualifications, and
- to report the use of such firm and the dollar amount of their contract to CDBG using the Contract and Subcontract Activity (MBE) form.

Bid Solicitation

For Bid Solicitation, Grantees are required to:

Ensure that all necessary equal opportunity documents (Executive Order 11246 and Section 3) are included in the bid package. Required documents for Executive Order 11246 include:

- Equal Opportunity Clause for contracts \$10,000 and under;
- Standard Equal Opportunity Clause for construction over \$10,000;
- Standard Solicitation for Bid Language for construction over \$10,000;
- Standard Federal Equal Employment Opportunity Construction Contract Specification for Construction over \$10,000, including minority and female utilization goals;
- Certifications of bidder and proposed subcontractors regarding Equal Employment Opportunity.

Under the terms of Executive Order 11246, CDBG grantees are required to:

- Include the equal opportunity clause in all non-exempt federally-assisted contracts for more than \$10,000, as set forth in Section 202 of Executive Order 11246; and
- Ensure that all federally-assisted construction contractors and subcontractors on a CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

To meet other requirements of Executive Order 11246, the following actions must be taken:

1. All contractors and subcontractors must sign the certifications regarding Equal Employment Opportunity.
2. The contractor is required to maintain a list of minority and female applicants.

To satisfy the Section 3 requirements the following actions must be taken:

1. The Section 3 Clause must be included in contracts for projects of \$100,000 and over.
2. Grantees must have their own Section 3 Plan. If needed, the CDBG Staff can be contacted for a model Section 3 Plan that can be adopted.

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3. Contractors must maintain lists of lower income area residents who apply for regular, apprentice and trainee positions. Cities and counties must maintain the same type of lists for applicants if they use force account labor.
4. Contractors and subcontractors must sign the Certifications Regarding Section 3 and Segregated Facilities.

Under the terms of Section 3, CDBG grantees are required to:

- 1) Obtain certification of bidder and proposed subcontractors regarding Section 3 and Segregated Facilities;
- 2) Obtain a Section 3 Workforce Breakdown for all contractors and subcontractors;
- 3) Have a current Section 3 Plan.

It is the responsibility of the local government to obtain all signed Certifications. The preconstruction conference is a good time to make certain all Certifications are signed.

Construction

For Construction projects, Grantees are required to:

- maintain records for each procurement process that identifies the procurement method used and why it was selected;
- the rationale used for selecting the contract type;
- reasons for selecting and rejecting bids/qualified firms; and
- the basis for the contract cost or price.

Grantees are also required to:

- keep a copy of the procurement advertisement published in the paper;
- keep records of minority- and women-owned and local businesses that were invited to submit bids.
- report the use of such firms and the dollar amounts of the contracts to CDBG using the Contract and Subcontract (MBE) form.
- report the Grantee Notification of Contractors and Subcontractors, including those businesses that are not minority owned.
- Complete and submit to CDBG the Section 3 Workforce Breakdown form, if applicable.

Report forms for the MBE, Grantee Notification, and Section 3 are included at the end of Chapter V: Construction Management & Labor Standards.

ACTIVITIES & PLANS

This section outlines a suggested set up for the Civil Rights/Equal Opportunity/Fair Housing file. The CDBG grantee will need to coordinate with his/her Human Resources staff member to secure copies of personnel policies and procedures for inclusion or reference in the file. Also included in this section is an outline for plans, policies and procedures that CDBG grantees are required to develop and implement.

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Civil Rights/Equal Opportunity/Fair Housing File

A central/general file can be kept that encompasses any CDBG project. However, files should be updated on an annual basis. If there are issues that are project specific, any documentation should be placed in the project file. The permanent file should include a copy of the city or county:

1. Personnel Policies;
2. Affirmative Action Plan;
3. Section 3 plan;
4. Fair Housing Ordinance or Resolution;
5. Section 504 Handicapped Access Plan;
6. Nondiscrimination Policy; *
7. Excessive Force Policies;
8. A minority owned business list.

Contact the Nevada Equal Rights Commission, <http://detr.state.nv.us/nerc.htm> for information on the resolution of complaints of discrimination, particularly NRS 613.330-13.430, and other policies relating to nondiscrimination.

*CDBG grantees must adopt and enforce a nondiscrimination policy designed to ensure that all project activities funded in whole or in part with CDBG funds are conducted in a manner that will not cause discrimination. Nondiscrimination also applies to employment practices. This is a fundamental aspect of the CDBG program.

Section 3, Section 504, Affirmative Action & Language Assistance Plans

Although only **Section 3, Section 504, Affirmative Action, and Language Assistance** require specific actions, such as adopting plans, the grantee should document all activities to show compliance with the federal and state laws. For instance, as noted throughout the Manual, the contractor may carry out some required activities. However, it is the responsibility of the grantee to make sure that activities are completed and the contractor provides documentation to the grantee. Development of plans helps define responsibilities.

Required plans for CDBG grantees are as follows:

Section 3 Plan:

The local government must adopt a Section 3 Plan. The purpose of Section 3 is to assure that qualified local residents, particularly low-income residents, and local small businesses are given employment and contracting opportunities created by CDBG projects.

If a Section 3 Plan has already been adopted, the grantee should review the Section 3 requirements to ensure the plan has been implemented as required. Section 3 requires that to the greatest extent feasible, the CDBG grantee shall:

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- Provide opportunities for training and employment be given to lower-income residents of CDBG-assisted projects; and
- Award contracts for work on such projects to business concerns located in, or owned in substantial part by “project area” residents.

In order to accomplish this objective, CDBG grantees must take the following affirmative steps:

- Place qualified small and minority businesses and women’s business enterprises on bid solicitation lists;
- Ensure that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources of goods or services;
- Divide total requirements, when economically feasible and consistent with state law, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
- Establish delivery schedules that encourage participation by small and minority businesses and women’s business enterprises whenever possible;
- Use the services and assistance of the U.S. Small Business Administration and the minority Business Development Agency of the U.S. Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the above paragraphs.

Section 504 Plan:

The local government must perform an ADA Self-Evaluation to ensure that individuals with handicaps can participate in all of the programs and activities provided by CDBG. The evaluation must be in consultation with interested persons, including handicapped individuals or groups representing handicapped individuals. The grantee must maintain a list of these persons for at least three years. An ADA Self-Evaluation review form is included at the end of this chapter.

Local governments must also develop and adopt a Section 504 Plan. The plan designates at least one person to coordinate the efforts of the grantee to comply with the handicap requirements. The plan must be developed, based on the ADA Self-Evaluation, to identify any barriers (including policies and procedures) that exist that might prevent access by handicapped individual to programs and activities. The plan must state what actions will be taken to remove such barriers and identify a date by which the barriers will be moved or specify program modification so barriers are no longer a problem. The plan must provide a complaint procedure that incorporates appropriate standards and provides for prompt and equitable resolution of complaints alleging handicap discrimination.

Section 504 Handicapped Access Complaint Procedure: The regulations implementing Section 504 of the Rehabilitation Act of 1973 as amended requires that each grantee adopt a procedure for handling complaints from handicapped individuals claiming access has been denied due to physical barriers. The procedure must incorporate appropriate standards and provide for prompt and equitable resolution of complaints alleging handicap discrimination. The procedure may be incorporated into the city/county Complaint Procedure. A sample Grievance Policy/Procedure is included at the end of the chapter.

Any problems or complaints concerning discrimination or noncompliance during a CDBG project should be referred to the CDBG staff since GOED is responsible for monitoring civil rights, equal opportunity, and fair housing compliance as one of the state grant requirements. CDBG staff members will attempt to negotiate a resolution to the complaint before any formal action is taken. If an informal resolution of the

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problem cannot be achieved, there is a formal complaint procedure to be followed. A person who wishes to pursue a complaint to this stage should contact the CDBG Director at GOED. However, resolution by the City/County is the preferred approach.

Affirmative Action Plan:

An “Affirmative Action Plan” is a document that usually does several things:

1. It states the jurisdiction’s commitment to being an equal opportunity employer who does not discriminate in hiring or personnel actions on the basis of race, sex, age, color, religion, national origin or handicap; or ancestry, sexual orientation and gender identity/expression.
2. The plan contains information on the percent of the local work force who are members of minority groups or are women and state goals of hiring members of those groups into each sector of the work force in the proportion in which they are present in society;
3. The plan outlines a procedure to be followed if someone wishes to file a complaint of discrimination. The complaint procedure for Sections 3 and 504 can be part of the city’s/county’s general complaint procedure process.

An Affirmative Action Plan, particularly for larger unit of government, is an excellent way to show good-faith efforts to hire women and minorities into all areas of the jurisdiction’s work force.

Language Assistance Plan:

Under Title VI, federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for persons with Limited English Proficiency (LEP) to the recipient’s programs and activities. To do this this, the recipient should:

- (1) conduct the four-factor analysis;
- (2) develop a Language Access Plan (LAP); and
- (3) provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options.

All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects’ budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis.

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However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

The four-factor analysis is an analysis of citizens of a community who have Limited English Proficiency. Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations.

As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- 2) The frequency with which LEP persons come into contact with the program;
- 3) The nature and importance of the program, activity, or service provided by the program; and
- 4) The resources available and costs to the recipient.

The assessment should reveal if a particular language group exists in a greater percentage in the community than in the state. **Table I: Recommended Provision of Written Language Assistance** provides guidance to the grantee on whether or not a Language Assistance Plan needs to be developed.

Table I: Recommended Provision of Written Language Assistance

SIZE OF LANGUAGE GROUP	RECOMMENDED PROVISION OF WRITTEN LANGUAGE ASSISTANCE
1,000 or more in the eligible population in the market area or among current beneficiaries.	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number.	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number.	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number.	No written translation is required.

Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of the LEP Final Guidance. Access the plan at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq

Language assistance that a recipient might provide to LEP persons includes, but is not limited to:

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- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

An effective Language Access Plan (LAP) contains specific elements that guide the grantee in implementing needed language services.

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves.

Some elements that may be helpful in designing an LAP include:

- Identifying persons with LEP who need language assistance and the specific language assistance that is needed;
- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided: outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g. model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g. eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

SUMMARY

Nondiscrimination and affirmative action are concepts that can be difficult to define. The following two scenarios provide an example of each:

1. A community is granted funds to renovate a historic building to be used as a community center. The finished structure does not have any wheelchair access.

The consequence of this oversight in planning is that community members who have a handicap are denied an equal opportunity to benefit from the project.

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2. A contract is granted to upgrade a city's wastewater facility. The contractor advertises for employees in the local newspaper, but fails to notify the area unemployment office, local minority organizations, and the job-training center of the employment possibilities.

This standard advertising procedure may have the unintended effect of denying equal employment opportunity to low income residents who cannot afford a subscription to the newspaper and may neglect other groups that should be particularly targeted for affirmative action for employment opportunities.

The first example points out that ensuring nondiscrimination is making certain that all groups are treated equally and have an equal chance to enjoy benefits of CDBG funded activities.

The second example shows that taking affirmative action means making a special effort to inform, employ, provide services to, or otherwise assist groups who, because of past discrimination or age or physical handicap, are at a disadvantage when compared to societal norms.

The following factors should be taken into consideration to ensure nondiscrimination:

1. In CDBG funded projects, recipients may **not**:
 - a. Deny access to, provide different, or provide segregated services, facilities or improvement;
 - b. Select sites or locations of facilities, services or improvements that have an exclusionary or discriminatory effect, or
 - c. Use methods of program administration, or eligibility criteria for project benefits that have a discriminatory effect (i.e. excessive user fees).
2. In employment and contracting for programs funded by CDBG, grant recipients and contractors:
 - a. May not deny, on the basis of race, color, national origin or sex, the opportunity for employment in any program or activity funded by CDBG; and
 - b. Must ensure nondiscrimination in methods of advertising, distribution of solicitations, content of bid specification, evaluation criteria and awarding of contracts.
3. Grant recipients must, to the maximum extent feasible, make provisions that ensure:
 - a. Lower income residents in the area receive any training or employment generated by CDBG projects; and
 - b. Utilization of Section 3 area businesses located in, or owned in substantial part by, persons residing in the project area.

Taking affirmative action means taking steps to ensure the spirit of the law is implemented. During the course of a project, actions must be taken to ensure that no one is discriminated against in receiving service and benefits from the CDBG project. Be diligent and consistent in implementing the project's civil rights responsibilities. Understand and be able to explain the purpose and importance of the laws and requirements in the CDBG program to staff members and those awarded contracts.

Under Review