

CHAPTER C:
FAIR HOUSING AND
EQUAL OPPORTUNITY

C.1 FAIR HOUSING & EQUAL OPPORTUNITY OVERVIEW

The CDBG program is a federal program administered by the Department of Housing and Urban Development (HUD). Part of HUD’s mission statement is to “build inclusive and sustainable communities free from discrimination”, which includes furthering Fair Housing, Equal Employment Opportunities, and Accessibility for disabled persons. Several laws and regulations, along with the issuance of executive orders, have been put into place to prevent discrimination under federally funded programs based on race, color, national origin, religion, sex, disability, and the presence of children. These protections cover housing and employment opportunities. For a full list of laws, regulations, and executive orders, refer to Exhibit C-1, but for quick reference, use the five steps below during the administration of federally funded projects.

1. Affirmative steps must be taken to promote fair and equal access to housing, regardless of the type of grant, or amount of grant.
2. Equal opportunities must be afforded to all persons.
3. No person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age, or disability.
4. Affirmative steps must be taken to assure that minority- and female-owned businesses are informed of grant funded contracts.
5. To the greatest extent feasible, Section 3 resident and business concerns should be given preference in employment, training, and contracting.

Compliance with Fair Housing & Equal Opportunity requirements is easy if a complete and organized recordkeeping system is instituted at the beginning of the project. Fair Housing & Equal Opportunity activities should occur early in the project timeline, and not at the end. Preferably, activities should be undertaken before the bidding of the project.

C.2 FAIR HOUSING LAW

Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, and financing of dwellings based on:

- Race
- Color
- Religion
- Sex
- National Origin

The Fair Housing Amendments Act of 1988 expands the coverage of Title VIII to:

1. Prohibit discrimination in housing on the basis of:
 - a. Disability
 - b. Familial Status
2. Strengthen the administrative enforcement provisions of Title VIII.
3. Provide for the award of monetary damages where discriminatory housing practices are found.

The following actions are considered to be discriminatory under the Fair Housing Law:

- Refusing to sell, rent, deal, or negotiate with any person.
- Discriminating in terms or conditions for buying or renting.
- Advertising that housing is available only to persons of a certain race, color, religion, sex, national origin, or of a specific family size.

- Denying that housing is available for inspection, sale, or rent when it really is available.
- "Blockbusting" - persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
- Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loans, and insurance companies.
- Denying to anyone the use of or participation in any real estate services, such as broker organizations, multiple-listing services, or other facilities related to the selling and renting of housing.
- Refusing to allow reasonable accommodation to be made for a person with disabilities.

NOTE: *Tennessee’s fair housing laws also prohibit discrimination on the basis of “creed”, in addition to the protected classes identified by Title VIII (T.C.A. § 4-21-601).*

C.3 FAIR HOUSING ACTIVITIES

As a recipient of CDBG funds, grantees are required to affirmatively further fair housing. At least one TNECD approved fair housing activity must be accomplished within the grant period to inform the community about fair housing, that denial of fair housing rights to the citizens is illegal, and the grantee supports fair housing practices. Fair housing activities must be approved by TNECD before being implemented. Selected fair housing activities should also address the issues outlined within the Analysis of Impediments to Fair Housing Choices .

The Analysis of Impediments to Fair Housing Choices serves to remind jurisdictions to reflect on the current fair housing situations in their communities. Currently, this document is updated regularly by TNECD and should be referred to before a grantee conducts a fair housing activity.

C.4 FAIR HOUSING ORDINANCES

A Fair Housing Ordinance is an important tool for a county or municipality to protect its citizens against discrimination and unfair housing practices. Not only does this ordinance clearly define prohibited practices and applicability, but it also can be used to address complaint procedures and outline penalties for violations.

C.5 SECTION 3 REQUIREMENTS

A new final rule regarding Section 3 was issued in the Federal Register on September 29, 2020 (85 FR 60907) and will be effective as of October 29, 2020. TNECD is currently reviewing the rule to determine the effect on Tennessee’s CDBG program.

A Section 3 Area Resident is any low-income individual residing within the Section 3 area.

A Section 3 Area is, for the purpose of training and employment a jurisdictional area of the local government in which the project is located. For the purpose of contracting, the Section 3 area is the county in which the project is located.

A Section 3 Business Concern is a business (1) that is 51% or more owned by Section 3 residents; or (2) whose permanent full-time employees include persons, at least 30% of whom are currently Section 3 residents, or who, within three years of the date of employment with the business concern were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) of this definition of “Section 3 business Concern.”

Section 3 is a provision of the Housing and Urban Development Act of 1968, implemented by the regulations set forth in 24 C.F.R. Part 135, which requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents. Further, to the greatest extent feasible, contracts in connection with these projects are to be awarded to Section 3 business owners.

Section 3 does not require the creation of economic opportunities for low- and very low-income persons simply for the sake of creating economic opportunities.

Generally, Section 3 requirements apply to any grantee who receives a grant of \$200,000 or more and to any contractor whose contract is \$100,000 or more. Section 3 requirements are triggered by the need for hiring new employees or for additional training needed to upgrade present employees because of this project. See 24 C.F.R. § 135.3 for more information.

Section 3 recipients (State, unit of local government, or contractor) must include the Section 3 clause (Exhibit C-2) in all contracts awarded (24 C.F.R. § 135.38).

The Section 3 regulations established thresholds and goals for meeting the “greatest extent feasible” requirement (24 C.F.R. § 135.30). Meeting these goals is not statutorily mandated, but in the interests of efficient program administration, constitutes a “safe harbor” for compliance with Section 3. The training and employment goals are 30% of the aggregate number of new hires for each fiscal year. For Section 3 contracts, each covered contract or activity is to commit to Section 3 business concerns at least 10% of the total dollar amount of all covered contracts for building trades work arising in connection with the covered activity, and at least 3% of the total dollar amount of all other covered contracts.

All applicable grantees must prepare and keep a Section 3 file. To fulfill this requirement, the following tasks must be completed:

1. Complete Section 3 questionnaire (Exhibit C-3) and place in file.
2. Insert LMI threshold for grantee into the file.
3. Document all outreach efforts to recruit Section 3 residents or business concerns including efforts of the contractor as well as the grantee. The outreach may include the following:
 - Advertising in the newspaper or other local media;
 - Contacting area churches, labor unions, distributing flyers, etc.;
 - Informing resident groups such as PHA resident councils;
 - Holding workshops to assist Section 3 residents in completing applications for employment and training; and
 - Identifying the businesses within the area and informing them of the upcoming opportunities.
4. Maintain a list of all Section 3 business concerns hired by the grantee or contractor.
5. Maintain a list of all Section 3 employees hired or trained specifically for this project by the grantee or contractor/subcontractor.
6. Complete the online Section 3 webform as part of the closeout process.
7. Post Policy of Non-Discrimination (Exhibit C-4).

C.6 HOUSING DISCRIMINATION COMPLAINT PROCEDURE

The Fair Housing Act provides that any person who believes that he or she has been or will be subject to a discriminatory housing practice because of race, color, religion, sex, disability, familial status, or national origin may file a complaint with the Secretary of Housing and Urban Development.

The aggrieved person or the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the help of an authorized representative, including any agency acting on behalf of an aggrieved person.

1. Prepare a complaint letter, including the Housing Discrimination Complaint form (Exhibit C-5).
Complaints may be filed to:

FHEO Headquarters
U.S. Department of Housing and Urban Development
451 7th Street, SW Washington, DC 20410
-or-
Atlanta Regional Office
U.S. Department of Housing and Urban Development Southeast Office
40 Marietta Street
Atlanta, GA 30303

2. Complaints may also be filed in person or by mail to:

Tennessee Human Rights Commission
Housing Section
7175 Strawberry Plains, Ste. 209
Knoxville, TN 37914

3. Each written complaint must be signed and affirmed by the aggrieved person.
4. Complaints may also be filed online through the HUD website at the following address:
https://www.hud.gov/topics/housing_discrimination .

C.7 RELOCATION ACTIVITIES

CDBG grantees may not select sites or locations for housing and housing-related facilities which have an exclusionary or discriminatory effect. CDBG grantees must also take all necessary and appropriate actions to prevent discrimination in housing and housing-related activities.

Records must be kept that will document the following:

- The number of and the racial/ethnic and gender characteristics of displaced persons.
- The location of CDBG-funded activities that caused displacement.
- The type of replacement housing provided to each displaced person.
- The discrimination procedure must be followed in cases of housing discrimination.
- See Chapter E of this handbook for additional guidance on relocation.

C.8 POLICY OF NONDISCRIMINATION OF THE BASIS OF DISABILITY STATUS

The Department of Economic and Community Development, Division of Rural Development, does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs or activities. Please contact TNECD for additional information/complaint process:

Kent Archer
CDBG Director
William R. Snodgrass Tennessee Tower, 27th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
(615) 354-3591
kent.archer@tn.gov

TNECD has been designated to coordinate compliance with the nondiscrimination requirements contained in Department of Housing and Urban Development (HUD) regulations implementing Section 504 (24 C.F.R. Part 8).

C.9 GRANTEE EMPLOYMENT

No person shall be denied employment under any federally assisted program on the basis of any of the following protected classes:

- Race
- Religion
- Color
- Age
- National Origin
- Disability
- Sex

The city/county must make available a copy of any written policies and procedures used by the grantee to hire, terminate, promote, or train individuals. If no formal written hiring policies are available, the city/county will need to implement a policy utilizing the format in this manual (Exhibit C-6) and place a copy in the file indicating that the city/county will not deny employment under any federally assisted program on the basis of any protected classes identified above.

C.10 CONSTRUCTION GENERATED EMPLOYMENT

Employment of individuals through construction of a CDBG project may occur. Those responsible for the hiring must be aware of the Equal Employment Opportunity requirement.

Three things must be considered when meeting this requirement.

1. The construction contract must have the proper equal employment opportunity language and correct goals for minority and female employment. (Refer to Exhibits C-2 and C-7 and to the Supplemental and General Conditions of the contract document in the Labor Standards Chapter.)

2. The city/county must document efforts to inform minority or female owned firms, and Section 3 Businesses, of the impending project and invite their participation.
3. Any contractor who intends to use subcontractors must provide documentation that he or she has attempted to use, or is using, minority or female owned firms, and Section 3 businesses. Copies of letters or a memo of the telephone call must be included in the files.

C.11 SECTION 504

Section 504 of The Rehabilitation Act of 1973 requires equal opportunity for persons with disabilities in federally assisted programs. Section 504 states:

“No otherwise qualified individual with disabilities in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Under Section 504, an individual must be provided the opportunity to participate in, or benefit from, the program that is equal to that provided to other citizens. The opportunity need not be identical in approach, but rather, must afford a person with a disability an equal opportunity to obtain the same result. This is commonly referred to as "program accessibility."

Under Section 504, federal funds recipients must ensure that their programs are accessible to qualified individuals with disabilities. Essentially, this means that when "viewed in its entirety," a program offered by the recipient must be readily accessible to and usable by persons with disabilities. Not every single building or dwelling unit has to be accessible.

The focus of Section 504, for existing facilities, is on programs, not buildings. If accessibility can be ensured through alternative means, such as providing auxiliary aids, relocating programs, or making home visits, structural changes are not required. Only when absolutely necessary to achieve program accessibility are recipients required to retrofit existing facilities.

Recipients must remember, however, that the program accessibility requirement applies only to existing facilities. New construction and alterations must be fully accessible and designed in accordance with recognized accessibility standards.

Every organization that receives federal financial assistance from HUD, including community development agencies and local governments, is deemed a recipient and must meet the specific requirements of the Section 504 regulations (24 C.F.R. Part 8). Requirements include having policies and procedures that do not discriminate against qualified individuals with disabilities and making reasonable accommodations to allow participation by such individuals.

All recipients of federal assistance must conduct self-evaluations as part of their initial Section 504 compliance activities and designate a 504 coordinator and post conspicuously the designee.

Any recruitment of informational material published by a recipient must contain a statement regarding the recipient's pledge not to discriminate on the basis of disabilities.

C.12 MINORITY/FEMALE BUSINESS SOLICITATION

Contractors, vendors, and suppliers may not be denied an opportunity for employment under the CDBG programs on the basis of:

- Race
- Religion
- Color
- Age
- National Origin
- Disability
- Sex

Recipients of federal funds must take affirmative steps to ensure minority- and female-owned businesses are afforded opportunities to bid on service, material, and construction contracts. To meet the requirement, grantees must take steps to inform minority- and female-owned businesses about federally funded contracts.

- The grantee should notify minority and female-owned businesses of contracts and bid deadlines. This applies to professional service contracts and materials and equipment purchases, as well as to construction contracts. For construction contracts, notices should be published in the local newspaper and a statewide publication. In addition, notices may also be published in a minority publication.
- The invitation to bid should be sent directly to minority- and female-owned firms in addition to running advertisements. These efforts must be documented.
- Solicit quotes and proposals from minority and female-owned firms. For non-construction contracts, or any solicitation not requiring formal bidding (e.g., small purchases or local procurement contracts), it is a good idea for larger cities and counties to develop a list of local minority and female-owned businesses to use when small purchase and local procurement procedures are followed.
- Invite by phone or letter any minority and female contractors in a reasonable geographic area to bid. For example, a project in Marion County should solicit bids not only from within the county, but also from Hamilton County. Copies of letters and memos of phone calls should be placed in the file.
- A contract and subcontract activity report form must be filled out each time a contract or subcontract is awarded. These forms must be sent to the State as soon as contracts have been awarded (Exhibit H-3).
- Databases for Female/Minority-Owned business are maintained by State departments to provide an up-to- date list of qualified contractors.
- The Governor’s Office of Diversity Business Enterprise (GoDBE) acts as *“the central point of contact to attract and assist minority owned, women owned, service-disabled veteran owned and small business enterprises interested in competing in State of Tennessee procurement and contracting activities”*.

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>

- The TDOT Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprise (DBE) “*provides a directory of DBE and Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) companies that are certified to conduct business in the state of Tennessee*”. <https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>

C.13 RECORDKEEPING

Retention of records for fair housing and equal employment opportunity should follow the requirements outlined in the “Recordkeeping” section of the Introduction. The Equal Opportunity and Fair Housing section of the Project Checklist is also a good resource that details the documents that should be kept.

C.14 FAIR HOUSING AND EQUAL OPPORTUNITY EXHIBIT LIST

- C-1 FAIR HOUSING AND EQUAL OPPORUNITY LAWS AND REGUALTIONS
- C-2 SECTION 3 CONTRACTING CLAUSE
- C-3 SECTION 3 QUESTIONNAIRE
- C-4 POLICY OF NON-DISCRIMINATION
- C-5 HOUSING DISCRIMINATION COMPLAINT FORM (HUD 903)
- C-6 SAMPLE HIRING POLICY
- C-7 MINORITY EMPLOYMENT GOALS