

Chapter 12

Civil Rights and Section 3



STATE OF MISSOURI CDBG POLICY STATEMENT
IN EFFECT FOR ANNUAL GRANTS:

Year	Award Number
2015	B-15-DC-29-0001
2016	B-16-DC-29-0001
2017	B-17-DC-29-0001
2018	B-18-DC-29-0001
2019	B-19-DC-29-0001
2020 (CV)	B-20-DW-29-0001
2020	B-20-DC-29-0001
2021	B-21-DC-29-0001

IN EFFECT FOR DR/MIT GRANTS:

DR-4317	B-18-DP-29-0001
DR-MIT	B-18-DP-29-0002
DR-4451	B-19-DF-29-0001

POLICY CHANGES OR UPDATES TABLE

ACTION	VERSION #	CHANGE #	PAGE #	SUMMARY OF ACTION	APPROVAL DATE
Approval	1	0	Entire document	Creation and approval of Policy	5/24/2022
Update	1.1	1	29-31	Corrected numbering in table in Section 12.8.2	3/06/2023
	1.1	2	2	Added Table of Contents	3/06/2023

CONTENTS

- 12.1 [Introduction](#)
- 12.2 [Fair Housing](#)
- 12.3 [CDBG Contracting Opportunities](#)
- 12.4 [Section 3](#)
- 12.5 [Employment Opportunities](#)
- 12.6 [LGBTQ Equal Access Rule for HUD Programs](#)
- 12.7 [Limited English Proficiency \(LEP\) – Access to Subrecipient's CDBG Program](#)
- 12.8 [Section 504 Program Disability / Accessibility Compliance](#)
- 12.9 [Participation of Religious and Faith Based Organizations](#)
- 12.10 [Summary of Program Requirements](#)
- 12.11 [DED Monitoring](#)

12.1 INTRODUCTION:

State of Missouri CDBG program Subrecipients and those firms contracted by the Subrecipients to be paid with CDBG funds will certify compliance with a broad range of State and Federal regulations relating to Civil Rights and Equal Opportunity. The certifications are contained in the "Statement of Assurances" which are part of the funding approval/grant agreement between DED and the Subrecipient. Civil rights, labor, environmental, and other compliance certifications and provisions are also contained in DED's model construction and professional services contracts for a Subrecipient to use with its contractors and sub Subrecipients.

These statutes and regulations are intended to protect the rights of all persons, and to prohibit discrimination against persons on the basis of race, national origin, color, religion, sex, age (only for employment discrimination), disability, or familial status. The Missouri Department of Economic Development is committed to the CDBG Program's civil rights objectives of fair housing, equal opportunity, and non-discrimination. Each project is monitored for compliance with the HUD/CDBG civil rights requirements. Under state law, fair housing and employment rights are protected from discrimination under Chapter 213 of the Missouri Revised Statutes.

New Section 3 regulations found in 24 CFR part 75 are an important part to the updates to this chapter. The new regulation pertains to projects funded after November 30, 2020. Projects for which assistance or funds are committed between November 30, 2020 and July 1, 2021 are subject to the new Section 3 regulations found in 24 CFR part 75, and HUD expects that funding recipients will begin following this final rule's requirements for new grants, commitments, and contracts. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 for these projects but will not be required to report to HUD on the requirements found in 24 CFR part 75.

12.2: FAIR HOUSING

Fair Housing has traditionally been a strong focus for civil rights efforts in the United States and continues to represent a key objective for both HUD and the Missouri CDBG program. CDBG grant recipients are required to adopt a fair housing ordinance including a complaint policy. Fair Housing

compliance also requires DED's Subrecipients to take two annual official actions. One official action a Subrecipient must take is to affirmatively further fair housing. Here, a Subrecipients actions are to educate and inform its citizens and fair housing stake holders about the state and federal fair housing laws. The second official action is to address identified impediments to fair housing choice. All Subrecipients must complete and document these two types of Fair Housing actions during each 12-month period that your CDBG grant project is open. DED provides suggested official actions in this section and on DED's website. Subrecipients must provide DED staff with documentation of its annual actions at the monitoring visits. Below, we further explain the difference between the two types of official Fair Housing actions.

12.2.1 Subrecipient's Annual Official Action to Address Impediments to Fair Housing Choice

Fair Housing choice means that all persons have the same access to their choice of housing in America regardless of race, color, national origin, religion, sex, disability, or familial status. An impediment to Fair Housing choice is a barrier or something that prevents a person from exercising that right or choice of housing. In 1997, the Missouri CDBG program contracted with a private consultant to perform an Analysis of Impediments (AI) study to assess the existence of impediments to fair housing choice in the State of Missouri. An update of that AI study was done by DED in 2014 and in 2021. The findings from the 2021 update to the state's 2014 AI Study showed that the identified impediments to fair housing choice vary, but exist around the state in each of the following 6 categories:

1. Affordable Housing Shortage: A statewide shortage of affordable housing is a significant barrier to fair housing choice, especially among those with households' incomes at or below 30% Area Median Income (AMI). This shortage is even more critical in rural Missouri.
 - The loss of older affordable housing stock through older federal programs such as Section 236, 202, and 515/516 exacerbates the overall lack of housing opportunities for low-income Missourians.
 - Overly restrictive local zoning and occupancy permit practices that impede affordable housing from being constructed or impede gaining an occupancy permit is another cause.
2. A shortage of fully accessible, affordable housing for special needs and vulnerable populations: Special needs and vulnerable populations, including persons with disabilities, seniors, homeless individuals (including homeless veterans), victims of domestic violence, and youth aging out of foster care experience barriers to fair housing choice due to the lack of affordable housing units that meet their needs. The lack of affordable units for special needs and vulnerable populations is particularly pronounced in Missouri's rural areas.
 - The current federal requirement that 5% of housing units built or substantially rehabilitated with federal subsidies such as the Low Income Housing Tax Credit (LIHTC) is insufficient to see that these needs are met for accessible units. The market demand for fully accessible units is higher.
 - The shortage is also caused by lack of available resources for this purpose, as well as a lack of will to rehabilitate units. The lack of will for rehabilitation arises from greater profitability associated with new construction in many areas of the state.
3. Challenges for the Hispanic Population: Missouri's Hispanic population grew by 25.4% from 2010 to 2018, while the non-Hispanic population grew by 2.0% during the same period. Because fair housing choice is already limited due to a lack of sufficient affordable housing units meeting basic housing quality standards, Hispanic households may face special challenges with fair housing choice.

4. Location and condition of housing opportunities: While some regions of the state have relatively more plentiful affordable housing opportunities than others, the location and/or condition of these units may impose barriers to fair housing choice.
 - Even where affordable units do exist, some stakeholders cited that they are poorly maintained or otherwise of unacceptable quality for decent living.
5. Lack of knowledge/education about fair housing choice: Stakeholders indicated lack of fair housing knowledge is not limited to tenants; they stated that some landlords did not understand these requirements.
 - A majority of the persons surveyed did not know how to properly file a State or Federal fair housing complaint.
 - Stakeholders indicated that policy and decision makers (often elected officials) do not have sufficient knowledge about the need for affordable housing in their community.
6. Not in My Backyard Attitude: Stakeholders indicated that Not-in-My-Backyard (NIMBY) attitudes and behaviors create barriers to fair housing choice by making it difficult or impossible to locate affordable housing opportunities in low-poverty neighborhoods with access to jobs and high-quality public schools.
 - Missouri suffers from a spatial mismatch between jobs and affordable housing units. Many new affordable housing communities have locations (or proposed locations) where there is little need, while neighborhoods with access to jobs, high-quality schools, and other amenities do not have affordable housing opportunities.
 - A lack of public transportation between jobs and quality affordable housing units exacerbates the issue of spatial mismatch. Public transportation that provides access to schools, health care, grocery shopping, and other life necessities is required if low-income households are to have fair housing choice.

Subrecipients must take an official action to address one of the above identified impediments during each 12-month period that your project is open. The CDBG program will continue to provide technical assistance, including a list of official actions, brochures, and documents on our website from which Subrecipients may select an action to implement.

Please Note: In order to achieve compliance, a Subrecipient must complete an official action to address or to minimize one of the above identified impediments each year their project is open. For Example: To address impediment #1 above, a Subrecipient may work with an affordable housing developer (non-for profit or for-profit) to apply for an affordable housing project.

Document each action that is taken by a Subrecipient to address a fair housing impediment identified in the statewide study. A Subrecipient may distribute and post flyers at city hall or county courthouse, post informational notices, make available informational brochures about services to address identified impediments, post online notices of workshops or forums to educate the public or a sector of the public about how to address a specific impediment(s). For example, a Subrecipient may schedule an educational forum with realtors, landlords, bankers, or citizen organizations and invite a fair housing speaker from the Missouri Commission on Human Rights or HUD. Maintain documentation of all official actions taken by a Subrecipient in the project file.

12.2.2 Subrecipient's Annual Official Action to "Affirmatively Further Fair Housing"

Title I, Sec. 104(b) (2) of the Housing and Community Development Act of 1974, as amended, requires that recipients of HUD funds, including states and their Subrecipients, to affirmatively further fair housing. This typically takes the form of promoting and publicizing information about the Fair Housing laws to the citizens of your jurisdiction. This may be accomplished by providing forums, literature, and posters to inform and to educate your citizens and stakeholder businesses about the fair housing rights and laws.

Below are examples of annual official actions for a Subrecipient to select and implement. Adoption of a Fair Housing Ordinance is a program requirement; therefore, something in addition to adopting an ordinance should be done as an annual fair housing furtherance action.

Suggested Fair Housing Furtherance Actions:

1. Provide Fair Housing Educational Materials: Develop and display informational materials to promote local awareness of fair housing laws and guidelines, such as, fair housing pamphlets, fair housing logo or link on official website, fair housing policy statements, etc. Access flyers, pamphlets, PSAs, and other resources from the Missouri Human Rights Commission's website at: <https://labor.mo.gov/discrimination>, from the National Fair Housing Alliance at: <https://nationalfairhousing.org> and from HUD at: www.hud.gov/fairhousing.
2. Develop and encourage Affordable Housing: Encourage development of affordable housing throughout Missouri, including units affordable to households at or below 30% AML.
3. Encourage Universal design principles: Encourage the use of universal design principles in affordable housing development throughout the State, thereby increasing the number of affordable units that are accessible to persons with disabilities.
4. Encourage development of Affordable Housing: Encourage the development of affordable housing for special needs and vulnerable populations, including persons with disabilities, seniors, homeless individuals (including homeless veterans), homeless families, victims of domestic violence, and youth aging out of foster care.
5. Address Fair Housing for Hispanic Population: Work with community organizations to address fair housing choice among Missouri's Hispanic population throughout the state.
6. Encourage affordable housing in areas with access to public transportation: Encourage the development of affordable housing with access to public transportation in low-poverty neighborhoods with access to jobs and high-quality schools.
7. Educate about Fair Housing: Facilitate the dissemination of fair housing knowledge among the public and members of the real estate industry.
8. Commemorate National Fair Housing Month: April is designated as Fair Housing Month to commemorate the Fair Housing Act being signed into law on April 11, 1968. Many Subrecipients adopt and publish a Fair Housing Month proclamation to commemorate this event. You may also

host an educational program and invite a HUD fair housing staff member to speak, or a local fair housing organization speaker.

9. Publicize Changes in the Fair Housing Law: Post and publish any revisions or changes to local, state, or federal Fair Housing ordinances, resolutions, regulations, or policies.
10. Post Fair Housing Posters: Display fair housing posters in public places throughout your community, such as at city hall, the county courthouse, public libraries, housing complexes, community centers, senior centers, religious facilities, lending institutions, etc.
11. Encourage Citizen Participation: Promote active citizen participation in community efforts to improve and make known fair housing policies.
12. Encourage & Promote Equal Housing Opportunities: Offer outreach, counseling, and referral services to aid LMI persons residing in areas of minority concentration or concentrated areas of poverty to find assisted and non-assisted housing outside those concentrated areas.
13. Support Habitat for Humanity's Housing Programs: Facilitate the development of a local Habitat for Humanity chapter in your jurisdiction, or support activities of an existing local Habitat chapter. A list of active chapters in Missouri can be accessed through the national HFH website at: <https://www.habitat.org/>
14. Promote Affordable Home Buying Programs & Lending Practices: Develop down payment assistance programs for LMI households. Partner with area lenders, realtors, religious organizations, and community organizations to promote various affordable housing programs.
15. Educate Housing Partners: Provide home buying, credit counseling, home maintenance, financial literacy, and budgeting classes with prospective homebuyers and renters. Educate members of housing-related industries, such as, real estate agents, mortgage lenders, home builders, and home insurance companies regarding fair housing rights, laws, and responsibilities.
16. Educate Community Organizations and Citizen Groups. Develop public information and educational programs to provide fair housing information to the community. Recipients can focus these programs on the following types of groups and organizations:
 - Citizen groups concerned with housing issues, such as, local or area fair housing groups, tenant associations, unions, voter leagues, etc.
 - Organizations representing specific population groups such as minorities, women, LGBT groups, disabled citizens, elderly citizens, families with children, and groups or classifications of citizens that historically are known to have suffered from discriminatory practices now and in the past.
 - Stakeholder groups affected by an identified impediment to fair housing choice, such as a disability, veterans, or familial status rights organization.

Methods which can be used to inform and involve the public in Fair Housing awareness efforts may include (but not be limited to) the following:

- Sponsoring Fair Housing educational forums.
- Canvassing the community through a mail campaign, which could involve inserting a fair housing flyer or survey in local utility bills or tax statements
- Placing a public service announcement on local radio and/or a community cable television access channel; PSAs are available from both the MCHR & HUD.

- Sponsoring a Fair Housing poster or essay contest in local schools
 - Encourage local lending institutions, realtors, insurers, and other housing-related service providers to include the Fair Housing logo and policy statements in all advertising done through the internet or community information networks, local cable access channels, etc.
17. Survey the Community on Housing Concerns: Use local resources to assess public opinion about the status of fair housing in the community. Suggested contacts for this effort would include:
- Fair housing organizations
 - Public/private community centers and social service facilities
 - Civil rights advocacy organizations
 - LGBTQ organizations
 - Organizations representing minorities, women, senior citizens, persons with disabilities, and other classes of persons protected under the Fair Housing Act.
18. Partner with Fair Housing Organizations: Provide funding for local fair housing organizations and assist with their development.
19. Research and list available land for affordable housing: Assemble an inventory of available land suitable for the development of affordable and assisted housing to market to affordable housing developers.

12.2.3 Additional Resource for posters, brochures, studies and other helpful information:

HUD at: https://www.hud.gov/program_offices/fair_housing_equal_opportunity/marketing
 Missouri Human Rights Commission's website at: <https://labor.mo.gov/discrimination>
 National Fair Housing Alliance at: <https://nationalfairhousing.org/>

12.2.4 Grievance Policy Requirements for Subrecipients

Subrecipients must establish a local grievance process for aggrieved persons to file a discrimination complaint. Within the context of the Missouri CDBG program, a civil rights discrimination complaint may only be based on one of the protected classes of: race, national origin, religion, color, sex, age (for employment only), handicap/disability (for employment & housing), or familial status regarding the denial of program-related benefits, employment, contracting, or fair housing practices. If a complaint arises, it should first be processed at the local level through the Subrecipient's adopted grievance process. A copy of the grievance should be sent to DED. DED will wait for the local process to be completed. If a complaint is appealed to DED, the complaint/grievance will be forwarded to HUD, where it will be formally processed. CDBG Subrecipients, including counties, are to have local policies in place that provides a procedure for processing Fair Housing complaints, under its adopted Fair Housing Ordinance or Fair Housing Resolution.

12.2.5 Resources for filing a Grievance Policy outside of the Subrecipient

In addition to filing a grievance with the Subrecipient, an aggrieved complainant has the right to file their grievance directly with the Missouri Commission on Human Rights or with HUD. If it is an employment discrimination complaint based on age or disability, it may be filed with either the Missouri Commission on Human Rights or with the EEOC. The addresses and contact information for these offices are listed below.

Civil Rights complaints relevant to the Missouri CDBG Program must allege discrimination based on race, national origin, religion, color, sex, age (employment only), handicap, or familial status pertaining to program-related benefits, employment, contracting, or fair housing efforts.

- When a written complaint is received by a Subrecipient, it may be resolved at the local government level under the adopted Fair Housing ordinance or resolution procedure; or the complainant may send it directly to DED, the Missouri Commission on Human Rights, or to HUD.
- All complaints received by DED will be referred to the Subrecipient's designated local intake officer for processing and resolution. If the matter is not resolved at the local level, DED will refer the complaint to the Missouri Commission on Human Rights, or, to the appropriate HUD office.

MO CDBG Program
Missouri Department of Economic Development
Harry S Truman Building
301 West High Street, Room 770
PO Box 118
Jefferson City, Missouri 65102
Telephone: (573) 751-3600; Fax: (573) 526-4157

Missouri Commission on Human Rights (MCHR)
P.O. Box 1129
421 E. Dunklin
Jefferson City, MO 65102-1129
Email: mchr@labor.mo.gov
Website: www.labor.mo.gov/mohumanrights
Phone: 573-751-3325
Fax: 573-751-2905
Toll Free Discrimination Complaint Hotline:
877-781-4236

Relay Missouri
Toll Free /Voice: 866-735-2466
TDD: 800-735-2966

U.S. Equal Employment Opportunity Commission (EEOC) Missouri Offices:

(1) EEOC St. Louis District Office
Robert A. Young Federal Building
1222 Spruce Street, Room 8.100
St. Louis, Missouri 63103
(800) 669-4000

(2) EEOC Kansas City Area Office
Gateway Tower II
400 State Ave., Suite 905
Kansas City, KS 66101
(800) 669-4000

How to File a Housing Discrimination Complaint:

If you believe you have experienced housing discrimination, you should contact HUD's Office of Fair Housing and Equal Opportunity for help at (800) 669-9777 or for persons with disabilities at (TTY) 800-877-8339. You may also download the Apple App, Android App, or file a housing discrimination complaint online. HUD will thoroughly review your allegation to determine if the claims you raise are jurisdictional under the Fair Housing Act and the Equal Access Rule.

Additionally, if you have experienced housing discrimination in a HUD-funded program or when seeking a HUD-insured mortgage, you should contact your local HUD office for assistance with alleged violations of HUD program regulations.

12.3: CDBG CONTRACTING OPPORTUNITIES

CDBG funded Subrecipients must ensure that discrimination does not occur in the solicitation and award of contracts through the development of nondiscriminatory advertising and the direct solicitation of Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE), and Section 3 contractors. Subrecipients must also include civil rights certifications and provisions in their contracts, and follow a procurement evaluation criteria to ensure free, fair, and open competition for all CDBG funded project contracts.

Grant recipients and contractors are required to make affirmative efforts to employ minorities, women, and Section 3 individuals for project related jobs. This is accomplished by the Subrecipient advertising any project related job in local newspapers, periodicals, and with organizations that serve minority and women communities as part of their procurement process.

Project Related Employment also requires required actions. Subrecipients must follow equal opportunity and affirmative action guidelines when procuring contractors, and through their personnel office when hiring individual staff for your CDBG- funded project. For the latter, please refer to Section 12. 5 EMPLOYMENT in this chapter.

Publication Requirements are also required on CDBG and CDBG DR projects. Insert applicable Section 3, DBE and equal opportunity provisions and EO language on the face of the bid documents and RFPs (refer to the Contract Management Chapter for the detailed provisions and language). For example, the cover of the bid document and any advertisement should read, "The City/County of (Name) Is An Equal Opportunity Employer and Encourages MBE, WBE, DBE and Section 3 Contractors to Bid"

12.3.1: Compliance with MBE, WBE, SBE, DBE, and Section 3 Direct Solicitation Procurement Requirements

Minority Business Enterprises (MBE), Woman Owner Business Enterprises (WBE), Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE), and Section 3 enterprises must be directly solicited for CDBG and CDBG DR projects. This can be done through direct solicitation of firms, informing MBE or WBE contractor organizations, advertising announcements in minority newspapers, and/or sending bid or RFP information directly to business concerns. Ensure you are directly soliciting from each category

an adequate amount. It is essential that all bid notices, inclusive of affirmative action efforts, be distributed in a timely fashion to all contractors that are directly solicited.

Section 3 covered projects must place their solicitation for Section 3 covered opportunities on HUD's opportunity portal website at <https://hudapps.hud.gov/OpportunityPortal/Section3>. Documentation must be maintained the file of this solicitation. Direct solicitation is required only on Section 3 covered projects however you can directly solicit Section 3 businesses on all projects to increase Section 3 participation.

12.3.2 Documentation Requirements

It is imperative to document all direct solicitation attempts to maintain a complete CDBG or CDBG DR file. The list and corresponding email or mail solicitation must be in your procurement file for the project. Document the status of the enterprise by saving the registration of the business at the time of solicitation. For example, if you are directly soliciting Handyman Construction Services from the minority business enterprise website, print or screen shot their registration for the grant file. Many registration listings require businesses to update their registration on a regular basis or the business will be removed from the listing. Obtaining documentation of the business registration upfront is the key method to ensure your grant file is complete with this information.

12.3.3 Sources for Direct Solicitation

Below are sources to use to develop a list for direct solicitation of minority, women owned, Section 3, Disadvantage Business, and Small business contractors. You are not limited to using the sources below however contact CDBG for approval of the additional source you are requesting to use.

- a) **Missouri Office of Administration Office of Equal Opportunity (MBE/WBE):**
<https://oeo.mo.gov/>
Toll Free (877)259-2963; 573/751-8130
- b) **Missouri Department of Transportation (DBE):**
<https://www.modot.org/welcome-external-civil-rights>
(888)275-6636
- c) **HUD Section 3 Business Registry:**
<https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>
- d) **Small Business Enterprise (SBE):**
https://web.sba.gov/pro-net/search/dsp_dsbs.cfm
- e) **Minority Contractors Association St. Louis, MO:**
www.mokanccac.org
(314)454-9675
- f) **Minority Contractors Association Kansas City MO:**
minoritycontractors@mca-gkc.org
(816)924-4441

Please refer to 2 CFR 200.321 Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms, for guidance as well.

12.3.4: Reporting of MBE, WBE, DBE, SBE and Section 3 Compliance Efforts

To ensure accurate documentation on a timely basis, the Missouri CDBG program has developed a Contract Procurement Record form for use in maintaining an internal record of all of your project's contracts. This form is called Request for Contractor/Subcontractor Eligibility, and it may be found on the DED website under CDBG Contract Management Forms. This form must be submitted for every debar check. This form will be used to compile information in a report that is submitted annually to HUD on civil right contract and subcontract activity. By obtaining this information upfront, civil right reporting information will be collected when a contractor or subcontract is awarded rather than on a yearly basis. A Section 3 reporting form is required upon project closeout for the annual program or quarterly for the DR program for Section 3 covered projects. Instructions for completing those reports are found on each report form.

The following two report forms must be completed and submitted:

- 1) Request for Contractor/Subcontractor Eligibility Form-Submit for every debar check on contractors and subcontractors.
- 2) Section 3 Summary Report – Submit upon project closeout for CDBG annual projects on Section 3 covered projects unless otherwise stated to DED. DR projects will report on Section 3 on a quarterly basis.

12.4 SECTION 3

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Refer to 24 CFR 135 for the Section 3 regulations.

“Best efforts” and “greatest extent feasible” are statutory terms, used in the statute in different contexts. As such, HUD uses both terms to track compliance, and there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. See 12 U.S.C. 1701u (b)-(d). These terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to Subrecipients or recipients of HUD funding.

HUD acknowledges that some perceive “best efforts” to be the more rigorous standard, while others perceive “greatest extent feasible” to be the more rigorous standard. HUD has determined not to define the difference between these two terms but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark notice. HUD program staff will

evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at 24 CFR §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

12.4.1 Section 3 Applicability

Section 3 Compliance is applicable to a Subrecipient's Project when:

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 et seq.); and/or the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.).

The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

A recipient of Section funding is considered to be any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization. It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 worker.

The following is a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnership
- Housing Trust Fund (HTF)
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grants (ESG)
- University Partnership Grants

- Economic Stimulus Funds
- 202/811 Grants
- Lead Hazard Control Grants (\$100,000 threshold; see Question 12, above, in this part I of these FAQs)
- Healthy Homes Production Grants (\$100,000 threshold; see Question 12, above, in this part I)
- Rental Assistance Demonstration (RAD) (see most recent RAD Notice, found through HUD's RAD website, www.hud.gov/rad/)

*Note: The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact Section3@hud.gov to determine applicability to a particular project/activity.

12.4.1.1 Professional Services Contracts

Professional service contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours. However, this exclusion does not cover all non-construction services.

However, professional services staff labor hours are permitted to be reported and PHAs will be given credit for reporting opportunities created for professional services by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The reporting structure in the rule allows a recipient to count any work performed by a professional services Section 3 worker or Targeted Section 3 worker as Section 3 labor hours and as Targeted Section 3 labor hours (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hires in the professional services context.

12.4.2 Section 3 Considerations

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income individuals and Section 3 business concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

As provided in 2 CFR 200.318, contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. In order to meet the requirements of Section 3 and Federal and state procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

12.4.3 Section 3 Definitions

One of the most essential parts of Section 3 education is understanding the definition of Section 3 terms.

12.4.3.1 Section 3 Worker

- A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
 - The worker's income for the previous or annualized calendar year is below the income limit established by HUD;
 - The worker is employed by a Section 3 business concern; or
 - The worker is a YouthBuild participant.

12.4.3.2 Targeted Section 3 Worker

- A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:
 - is employed by a Section 3 business concern; or
 - currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - A resident of public housing or Section 8-assisted housing;
 - A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 - A YouthBuild participant.
- A Section 3 targeted worker for Housing and Community Development Financial Assistance projects is a Section 3 worker who:
- is employed by a Section 3 business concern; or
- currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
 - A YouthBuild participant.

12.4.3.3 Section 3 Business Concern

- A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

- At least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

12.4.3.4 Low-Income and Very Low-Income Limits

- Low- and very low-income limits are defined in Section 3(b) (2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: <https://www.huduser.org/portal/datasets/il.html>.

12.4.3.5 Service Area

- “Service area” or the “neighborhood of the project” means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

12.4.3.6 YouthBuild

- YouthBuild is a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.
- YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality. Youth also provide community service through the required construction or rehabilitation of affordable housing for low-income or homeless families in their own neighborhoods.
- The Division of Youth Services within the Employment and Training Administration's Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program. Each year, more than 6,000 youth participate in approximately 210 YouthBuild programs in more than 40 states. More information can be found here: <https://www.dol.gov/agencies/eta/youth/youthbuild>.

12.4.4 Direct Solicitation Requirements for Section 3

All Section 3 covered projects must advertise their Section 3 covered contracting opportunity on HUD's website at <https://hudapps.hud.gov/OpportunityPortal/>. Section 3 businesses must also be directly solicited for Section 3 covered projects.

The main source for searching for Section 3 businesses is the HUD Section 3 Business Registry. It may be found at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>

NOTE: The State's list of Disadvantage Businesses Enterprises (DBE) businesses and Small Business Enterprises (SBE) may be used to supplement but not substitute for DED's Section 3 procurement solicitation requirements.

The DBE list may be found on the Missouri Department of Transportation website at:

<https://www6.modot.mo.gov/MRCC/Home/PublicSearch>

The SBE list may be found on the Small Business Enterprise website at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm

Other listings may be able to be used to supplement Section 3 business solicitations. Please contact CDBG if you want to qualify another listing to be used.

12.4.5 Section 3 Difference from Other Programs

Section 3 does differ from the Minority Business Enterprise/Women Business Enterprise programs. Section 3 is both race and gender neutral. The standards provided under this regulation are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD funding to direct employment, training, and contracting opportunities to low-income individuals, and the businesses that employ these persons within their community regardless of race and/or gender.

- Minority Business Enterprise (MBE) means a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.
- Women's Business Enterprise (WBE) is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.
- Section 3 standards are race and gender neutral. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business concern outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.
- The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs and other socially and economically disadvantaged businesses.
- To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD's Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at: https://www.hud.gov/program_offices/sdb.

12.4.6 Section 3 Bid Documents

Grant recipients shall require all covered bidders to submit their Section 3 bidder intent form to comply for compliance with Section 3. The Section 3 bidder intent to comply is required on Section 3 covered projects. If the bidder does not submit a completed Section 3 bidder intent to comply, the bidder can be considered non-responsive. The Section 3 bidder intent to comply can be under forms on the DED website.

12.4.7 Section 3 Target Goals

Your Section 3 reporting goals depend on the type of assistance you are receiving, whether public housing financial assistance or housing and community development financial assistance.

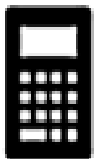
- a. For public housing financial assistance, the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. This means that the *5 percent* is included as part of the *25 percent* threshold.
- b. For housing and community development financial assistance projects (which CDBG falls under), the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. This means that the *5 percent* is included as part of the *25 percent* threshold.

For those employers who do not track labor hours in detail through a time-and-attendance system, HUD does not require they acquire such a system. Instead, they may provide a good faith assessment of the labor hours for a full-or part-time employee.

12.4.7.1 How to Calculate Section 3 Benchmarks

Section 3 benchmarks can be calculated for Section 3 workers by taking the total Section 3 worker labor hours for the project divided by the total project labor hours. If this amount is not at least 25%, Section 3 benchmarks have not been met.

Section 3 benchmarks can be calculated for Targeted Section 3 workers by taking the total Targeted Section worker hours for the project divided by the total project labor hours. If this amount is not at least 5%, Section 3 benchmarks are not met.



$\frac{\text{Section 3 labor hours}}{\text{Total labor hours}} = 25\% \text{ AND } \frac{\text{Targeted Section 3 labor hours}}{\text{Total labor hours}} = 5\%$
<small>[Source: HUD Exchange]</small>

12.4.7.2 Reporting of Section 3 Labor Hours and Targeted Section 3 Labor Hours During Construction

Targeted Section 3 Worker Hours and Section 3 Worker Hours must be reported on a weekly basis for all contractors and subcontractors. The appointed payroll representative will send the weekly Section 3 hour reporting form with the weekly payroll for the contractor or subcontractor. The weekly reporting table example is below. The weekly Section 3 reporting form is on the DED website under forms.

Total Labor Hours	
Targeted Section 3 Worker Hours	
Section 3 Worker Hours	

Weekly Section 3 Reporting Template for Contractors and Subcontractors

12.4.7.3 Reporting of Section 3 Labor Hours and Targeted Section 3 Labor Hours After Construction is Completed (Final Reporting)

When construction is completed on Section 3 covered projects, the main contractor will submit the final total Section 3 worker and Targeted Section 3 report to determine if Section 3 benchmarks have been met. The final reporting table example is below. The final Section 3 reporting form is on the DED website under forms.

	Project Labor Hours	Calculated Percentage	Safe Harbor Benchmark Met?
Total Labor Hours			
Targeted Section 3 Workers Hours			
Section 3 Worker Hours			

Final Section 3 Reporting Template for Main Contractor

12.4.7.4 Safe Harbor for Section 3 (Benchmarks are Met)

Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have

followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks.

12.4.7.5 Section 3 Benchmarks are Not Met Requirements

If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review). Recipients will be considered to have complied with Section 3 requirements, in the absence of evidence to the contrary, if they meet all benchmark goals and certify compliance with prioritization requirements found in 24 CFR § 75.9 or §75.19. However, if subsequent HUD enforcement activities reveal that the recipient has failed to comply with the recipient responsibilities set forth at 24 CFR§75.13 or §75.23, this compliance determination may be rescinded.

12.4.7.6 Qualitative Efforts when Section 3Benchmarks are Not Met

If reporting indicates that the agency has not met the Section 3 benchmarks, the agency must report in a method prescribed by HUD program offices on the qualitative nature of its activities and those its contractors and subcontractors pursued per 24 CFR § 75.15(b) and § 75.25(b). Such qualitative efforts may, for example, include but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, and childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act
- Promote the use of HUD's Section 3 Business Registry and HUD's Opportunity Portal

12.4.8 Document Section 3 Requirements and EO Compliance:

Recordkeeping requirements for recipients are found at 24 CFR § 75.31. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors/subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 CFR §75.31. Maintain supporting documentation that reflects the recipient's Section 3 compliance activities, along with affirmative action and equal opportunity efforts in the areas of employment, program benefits, contracting, and housing activities. Maintain direct solicitation, advertisements, and procurement records.

12.4.9 Section 3 Compliance Documentation:

It is very important the Subrecipient (city or county), contractor, and subcontractor maintain all the required documentation as this will be checked for upon monitoring. Documentation that is required for the project file is discussed below.

Documentation of Section 3 Worker Status, Target Section 3 Worker Status, and Section 3 Business Concern: It is very important proper documentation is obtained for the project file. Documentation must be present at the time of monitoring for the project. A prospective Section 3 worker or business concern can certify that they meet the eligibility requirements. The individual or business must contact the agency or developer from which they are seeking employment or contracting opportunities (e.g., the PHA, city, or local government). They should identify themselves as a Section 3 worker, Targeted Section 3 worker, or Section 3 business concern and provide whatever documentation that the recipient agency requires under their certification procedures. Prospective Section 3 workers and business concerns may self-certify that they meet the requirements as defined in the regulations. HUD recipients, contractors and subcontractors may also establish their own system to certify Section 3 workers and business concerns.

A sample self-certification form can be found on the DED CDBG website under Section 3 forms for Section 3 worker status, Target Section worker status and Section 3 business concern.

Documentation of Section 3 Business Status:

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility for a Section Business Concern. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Documentation of Certification of Section 3 Worker or Targeted Section 3 Worker:

There are many ways that a worker can be certified as either a Section 3 Worker or Targeted Section 3 Worker under 24 CFR part 75.

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

For Housing and Community Development Financial Assistance projects:

- (i) A worker's self-certification that their income is below the income limit from the prior calendar year;
- (ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
- (iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- (iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
- (v) An employer's certification that the worker is employed by a Section 3 business concern.

For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

For Housing and Community Development Financial Assistance projects:

- (i) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
- (ii) An employer's certification that the worker is employed by a Section 3 business concern; or
- (iii) A worker's self-certification that the worker is a YouthBuild participant.

A recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established. They may not come back any further than when the new regulation implementation date of November 30, 2020.

Documentation of Qualitative Efforts to Meet Section 3 Compliance: Qualitative efforts must have back-up documentation showing compliance has been met by the Subrecipient or contractor. Ensure an adequate amount of qualitative efforts have been met.

12.4.9.1 Section 3 Compliance Documentation for Multi-Family and Housing Related Projects

Multi-Family and Housing Related projects that qualify as a Section 3 covered project must have a Section 3 plan. A sample Section 3 plan can be located on the DED website under Section 3 forms. All Subrecipients are encouraged to have a Section 3 plan.

While the final rule does not require Subrecipients to have Section 3 plans, HUD views having them as a best practice that will aid recipients in complying with the Section 3 requirements and achieving the Section 3 goals. The Section 3 plan can serve as a guide for ensuring that the Section 3 requirements are properly implemented.

Multi-Family and Housing Related projects must submit a comprehensive Section 3 Plan, signed by the Owner/Developer and the General Contractor, to the Section 3 Administrator and Compliance Specialist for review and approval. The Section 3 Plan will include the Section 3 goals of the Owner/Developer and the General Contractor. Upon submission of the Section 3 Plan, the Section 3 Administrator and Compliance Specialist will review and either approve it, conditionally approve it with suggested modifications, or disapprove the plan. After the Section 3 Plan has been approved, the Compliance Specialist will review and monitor it regularly to assess its implementation and the attainment of the Section 3 goals.

12.4.9.2 Final Section 3 Report

The final Section 3 Summary Report form and instructions may be found on the DED website on the DED CDBG forms website. It must be submitted to DED before closeout can occur. This report is only for grants awarded on and after November 30, 2020. Grants awarded before November 30, 2020 are still required to adhere to the requirements of the old rule (24 CFR Part 135). Recipients of such assistance or funds will still be expected to maintain records of Section 3 statutory, regulatory, and contractual compliance but will no longer be required to report Section 3 compliance to HUD in SPEARS.

12.4.10 Subrecipient Responsibilities

Subrecipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR part 75. These responsibilities include but are not limited to the following:

1. Designing and implementing procedures to comply with the requirements of Section 3: Subrecipient agencies must take an active role in ensuring Section 3 compliance. The first step is implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3 and maintain records verifying that compliance.

2. Facilitating the training and employment of Section 3 workers: The subrecipient agency must act as a facilitator, connecting Section 3 workers to training and employment opportunities.

3. Facilitating the award of contracts to Section 3 business concerns: The subrecipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, subrecipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity-building training.
4. Ensuring Contractor and Subcontractor Awareness of and Compliance with Section 3 Benchmarks and responsibilities: The subrecipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.
5. Ensuring Compliance and Meeting Numerical Benchmarks: Subrecipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; penalizing non-compliance; providing incentives for good performance; and refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.
6. Reporting Requirements: Subrecipient agencies must document all actions taken to comply with the requirements of Section 3 and report these activities either through the Section 3 Performance Evaluation and Registration System (SPEARS), for Public Housing financial assistance, or any reporting system designated by program areas overseeing other funding.
7. Subrecipient Responsibilities include posting Section 3 contract opportunities at <https://hudapps.hud.gov/OpportunityPortal/>.
8. Subrecipients should also ensure Section 3 Posters with a designated Section 3 coordinator at Section 3 covered project work sites.
9. Subrecipients should make sure their partners and contractors understand Section 3 requirements, as it is the Subrecipient that is held accountable for meeting these requirements. Subrecipients should take every opportunity throughout the contracting process to inform potential bidders and selected contractors of their Section 3 obligations. It is recommended that at a minimum, these requirements be reviewed at the following stages of the contracting processes:
1. Bid solicitations and requests for proposals
 2. Pre-bid meetings
 3. Pre-construction conferences
10. In order to successfully target Section 3 workers and businesses for employment and contracting opportunities, subrecipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities is instrumental in reaching Section 3's employment and contracting goals.
11. It is recommended that subrecipient agencies establish procedures to certify Section 3 workers and Section 3 business concerns for employment and contracting opportunities. Thereafter, they should maintain a list of eligible workers and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available.

12.4.11 Contractor Responsibilities

The contractor must follow the Section 3 obligations as stated in their contract. Contractors must also ensure their subcontractors have appropriate Section 3 language in their contract including reporting requirements.

Per the New Rule, Section 75.27 Contract Provisions:

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require sub-recipients, contractors, and subcontractors to meet the requirements of Section 75.9, regardless of whether Section 3 language is included in recipient or sub-recipient agreements, program regulatory agreements, or contracts.

12.4.12 Section 3 Strategies

To comply with the Section 3 Regulations, the City or County, the Owner/Developer, General Contractor, or Subcontractor, as applicable, must implement an aggressive campaign to encourage participation of Section 3 Resident and Business concerns. Some strategies to implement this campaign include the following:

1. Publish in a local newspaper a notice of the potential employment and training opportunities for Section 3 Residents and potential contracting opportunities for Section 3 Business Concerns. Written notice must be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
2. Submit letters or flyers to the residents of the Section 3 Covered Project advising them of the employment, training and contracting opportunities for the Section 3 Covered Project (applies to rehabilitation when there are existing residents);
3. Provide the residents of the Section 3 Covered Project and the surrounding area with information on how to get certified as a Section 3 Resident or a Section 3 Business Concern;
4. Provide the local public housing authority with flyers, notices and other information related to the Section 3 employment, training and contracting opportunities for the Section 3 Covered Project;
5. Provide information to residents of a Section 3 Covered Project and the surrounding area regarding established job training programs located within the Section 3 Area;
6. Provide minority and women-focused labor and trade organizations with notice of Section 3 employment, training, and business opportunity goals;
7. Provide minority and women-focused labor and trade organizations with notice of when and where plans and specifications for bid review will be distributed;
8. Establish public forums regarding Section 3 Covered Projects being developed within the Section 3 Area, in which the Owner/Developer, General Contractor, and Subcontractor will participate;
9. Seek out referral sources to ensure job readiness for public housing residents through

on-the-job-training (OJT) and mentoring to obtain necessary skills that will transfer into the external labor market.

12.4.13 Section 3 Monitoring

The Section 3 Administrator or Compliance Specialist may conduct on-site random reviews or compliant driven reviews of the Section 3 Covered Project to determine whether the Owner/Developer, General Contractor, or Subcontractor are complying with Section 3 Regulations. In the event the Section 3 Administrator or Compliance Specialist determines the Owner/Developer, General Contractor, or Subcontractor is not meeting its employment, training or contracting opportunity goals set out in the approved Section 3 Plan, he/she will provide the respective party with written notice of non-compliance. The notice will require the non-complying party to meet with the Section 3 Administrator and Compliance Specialist to determine if the non-complying party used its best efforts to meet Section 3 requirements and if further outreach attempts would result in goals being successfully met.

12.4.14 Section 3 Complaints

Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

Contractors found to be negligent in their Section 3 responsibilities should be reported to the DED Section 3 coordinator. The Section 3 coordinator will work with the HUD program office on these complaints.

12.5 EMPLOYMENT OPPORTUNITIES

Subrecipient Employment & Contracting Requirements:

- a) Hiring Discrimination Prohibited: Recipients of CDBG funds must not deny the opportunity for employment in any CDBG program or activity on the basis of race, color, religion, sex, disability, age, or national origin.
- b) Employment Records: Statistical data must be collected on the number and percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff. For example, if the grant is used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment information must be available from that department when it is requested for DED's reporting requirements.
- c) Section 3 Employment Requirement: The Section 3 regulation requires that Subrecipients, "to the maximum extent possible," must ensure that lower income (LMI) residents in their community receive any employment or training provided by a CDBG project. Review Section 3 Objectives in this chapter under the topic, "Contracting Opportunities." Section 3 residents are residents whose household income meets the LMI income limits, or who meet the regulatory definition of a Section 3 business concern.

12.6 LGBTQ Equal Access Rule for HUD Programs

Part of HUD's mission is to give every person and family access to a safe, secure and affordable home including ensuring fair and equal access to housing for all Americans, regardless of their sexual orientation, gender identity or marital status. HUD is working to promote, strengthen and create opportunities for LGBTQ inclusion in its federal programs and regulations.

This rule is made applicable to the HUD CDBG Program at 24 CFR 570.3 and 24 CFR 5.403 under the definition of "family." In both regulations, the definition of "family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status..." Under this equal access rule, HUD makes clear that CDBG funded projects must be administered in a non-discriminatory manner with respect to providing the project's services or assistance to all eligible beneficiaries, inclusive of LGBT individuals and families.

On February 3, 2012, HUD issued the first of three rules focusing on ensuring fair and equal access to housing for all Americans, regardless of their sexual orientation, gender identity, nonconformance with gender stereotypes, or marital status. The first rule, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" required that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule also included a definition for sexual orientation and gender identity, and expanded the definition of family in most of HUD's programs. Building on that rule, on September 21, 2016 HUD issued a final rule, "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs Rule" (Gender Identity Rule). The Gender Identity Rule ensures that all individuals have equal access to many of the Department's core shelter programs in accordance with their gender identity. Following what had previously been a practice encouraged by HUD, providers that operate single-sex projects using funds awarded through the Office of Community Planning and Development (CPD) are required by the rule to provide all individuals, including transgender individuals and other individuals who do not identify with the sex they were assigned at birth, with access to programs, benefits, services, and accommodations in accordance with their gender identity without being subjected to intrusive questioning or being asked to provide documentation. HUD's rule will require a recipient, sub recipient, or provider to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures (including policies and procedures to protect individuals' privacy and security), so that equal access is provided to individuals based on their gender identity. This requirement includes tenant selection and admission preferences. The rule also updates the definition for sexual orientation and gender identity.

Lastly, on November 17, 2016 HUD issued a third final rule, "Equal Access to Housing in HUD's Native American and Native Hawaiian Programs-Regardless of Sexual Orientation or Gender Identity." This rule applied the same equal access provisions from the first rule to HUD's Native American and Native Hawaiian programs. Therefore, those programs are also required to make a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

12.7 Limited English Proficiency (LEP) - Access to Subrecipient's CDBG Program

On August 1, 2000, the President issued Executive Order 13166. The purpose of the executive order was to ensure improved access to all federal programs for all individuals who, as a result of their "national origin," are limited in their English proficiency.

Subrecipients/recipients are prohibited from practicing discriminating on the basis of age, race, color, national origin, religion, sex, handicap, or familial status, when implementing their CDBG-funded project. This prohibition applies directly to the Subrecipients, sub Subrecipients, and to all project contractors or subcontractors. The project's beneficiaries must be identified and demographic data compiled for the Subrecipient's project file to meet applicable HUD reporting requirements and to ensure that all potential project beneficiaries are treated equally during the course of the Subrecipient's CDBG-funded project.

Project beneficiaries may not be discriminated against on either an individual or a group basis if they fall within one of the above protected groups/classes. In general, no one should be mistreated during the implementation of a CDBG funded project. Discrimination may not take place on either an individual or group basis, whether the beneficiary is a direct or indirect beneficiary of the project's activities. The Subrecipient should have a process and a written grievance procedure in place to address any concerns from a potential project beneficiary or an actual project beneficiary.

In regard to project beneficiaries or potential project beneficiaries that have a limited English proficiency (LEP), a Subrecipient is required to take steps to ensure full and meaningful access to the activities or services of the project. A Subrecipient may take a number of steps to provide meaningful access for their CDBG- funded project. At the minimum, a Subrecipient should provide a translator that speaks the language of the national origin of that individual or that family to explain the project and the steps they need to take to participate in the project.

If the LEP beneficiaries are significant in number of one or more national origin groups, e.g., 50 or more, the Subrecipient should develop an implementation plan. The plan should involve the following 3 steps:

1. Conduct a Four-Factor Analysis of the population of that national origin group;
2. Develop a written Language Assistance Plan; and,
3. Provide appropriate language assistance.

12.7.1 Four-Factor Analysis

A four factor analysis is performed by determining number of LEP persons, frequency of contact, importance of activity, and resources of communities. A sample four factor analysis is found on the DED website under civil rights forms. The areas to be addressed in the four-factor analysis are described below.

1. Number: determine the number of LEP persons in the population or project area to be served.
2. Frequency: with which LEP persons come into contact with the program, project, or service.
3. Importance: of the CDBG-funded service, project, information, program, or activity.
4. Resources: organize the available financial and staff resources to provide assistance to the LEP persons to be served by the project.

12.7.2 Language Access Plan

When a determination is made that a plan should be implemented by the four-factor analysis, the Subrecipient should develop a language access plan. [A sample language access plan is found on the DED website under civil rights forms.](#) The Subrecipient should address the areas below to develop a language access plan.

1. Assess the scope of service to be provided to the LEP persons or community by gathering population data on the national origin group to be served.
2. Work with local organizations of that LEP national origin group.
3. Find services that provide interpretation and translation. Adopt language assistance measures.
4. Subrecipient must assign LEP assistance responsibilities to staff or to their grant administrator.

12.7.3 Safe Harbor to Comply with LEP Requirements

The following LEP requirements must be met in order to meet the minimum requirements of the LEP requirements. This is called Safe Harbor status.

1. Written Translation in each language that constitutes 5% or 1000 persons, whichever is less, of the population of eligible persons to be served or likely to be encountered for the CDBG-funded project; or
2. If there are fewer than 50 persons in a language group that reaches the 5% trigger, then the Subrecipient must provide written notice of the right to receive competent oral interpretation of the written materials;
3. There is **NO** Safe Harbor for oral interpretation. Reasonable availability is expected based on the four-factor analysis.

12.7.4 Resources for LEP

In conclusion, at the minimum, a Subrecipient must develop access for interpretation/translation services for LEP persons, individuals and families to be served by the Subrecipient's CDBG funded project in the language of their national origin. There are numerous resources to help CDBG Subrecipients for LEP requirements.

This page provides documents created by HUD program offices printed in English and other languages.

https://www.hud.gov/program_offices/fair_housing_equal_opp/marketing

https://www.hud.gov/program_offices/fair_housing_equal_opp/limited_english_proficiency_0

www.lep.gov

12.8 SECTION 504 PROGRAM DISABILITY/ACCESSIBILITY COMPLIANCE

Section 504 Rehabilitation Act Compliance prohibits discrimination on the basis of disability in any program or activity that receives federal financial assistance. This means, for example, that persons with disabilities may not be denied the opportunity to participate in a program or activity because

of their disability; may not be required to accept a different kind or lesser program or service than what is provided to others without disabilities, and may not be required to participate in separate programs and services from those available to persons without disabilities, even if separate programs and services exist. In general, with respect to housing, a housing provider may not deny or refuse to sell or rent to a person with a disability, and may not impose application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions that are different than those required of or provided to persons without disabilities. Housing providers may not require persons with disabilities to live only on certain floors, or in one section of the housing. Housing providers may not refuse to make repairs, and may not limit or deny someone with a disability access to recreational and other public and common use facilities, parking privileges, cleaning or janitorial services, or any services which are made available to other residents without disabilities. Additionally, persons with disabilities may not be denied the opportunity to serve on planning or advisory boards because of their disabilities.

12.8.1 CDBG MODEL Section 504 SELF-EVALUATION

Missouri CDBG Subrecipients are required by Federal law and program regulations to conduct a self-evaluation of accessibility to determine if their current programs, services, policies, and practices meet the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). This means that a CDBG program must be accessible to a person with any type of a disability accepted under the Act. A Subrecipient must have a designated Section 504/ADA Coordinator.

12.8.2 SECTION 504/ADA ACCESSIBILITY & DISABILITY COMPLIANCE

The following technical assistance questionnaire is separated into three sections.

- Subrecipients who have less than 15 full time employees need only complete Part I;
- Subrecipients that employ 15 or more full time employees are required to complete Part I, Part II, and Part III; and,
- **All Subrecipients** are required to complete the relevant portions of this questionnaire and maintain this information in the Citizen Participation file for public review and on-site monitoring by CDBG field staff.

How many full time employees does the _____ Subrecipient have?

Part I (To be completed by all Subrecipients)

1. Briefly, describe your community's programs and services, including their purpose, scope, activities, and participants. The following includes examples of public services you might provide that would be covered under the Act:
 - a. Water and sewer service, or other municipal utilities such as electricity, natural gas, etc.
 - b. Parks and Recreation programs
 - c. Transportation infrastructure (streets, sidewalks, public transit, etc.)
2. Provide a brief description of the various policies that direct the operation of the programs and services you listed. Identify any current exceptions, special provisions, or separate programs designed for persons with disabilities.

3. Identify any program qualifications, eligibility, admission requirements, or licensing standards that an individual must meet that might negatively affect individuals with disabilities. For each item answered that appears to have a negative effect, include a description of action(s) planned to reduce or eliminate the disparate impact.
 - a. Do you currently provide a qualified disabled individual the opportunity to participate in, or benefit from, the aid, benefit, or service you provide? Examples might include accessibility to the spectator seating area at the city's baseball field, or the rodeo arena at the county fairgrounds.
 - b. Do you provide opportunities for participation or benefit to the disabled, equal to opportunities afforded the population at large?
 - c. Do you avoid providing different or separate aids, benefits, or services to a qualified individual with a disability unless proven necessary to make them as effective as the aids, benefits, or services provided to others?
 - d. Do you exercise due diligence to avoid assisting or contracting with any persons or entities that are known to discriminate based on disability?
 - e. Do you allow qualified disabled individuals a full opportunity to participate in all local policy planning or advisory boards? This includes providing reasonable accommodations in the scheduling of time and/or location of meetings, use of auxiliary aids including guide dogs, etc.

4. In the area of employment, describe your policies, practices, or procedures followed to ensure non-discrimination based on disability in:
 - a. Public advertising of vacant positions and other job opportunities
 - b. Processing and review of applications
 - c. Testing and minimum requirements as a condition of employment
 - d. Interviewing, including responding to requests for accommodation and use of nondiscriminatory questions
 - e. Promotion/demotion, layoff/reinstatement, or transfer, including changes in compensation resulting from these actions
 - f. Job assignments/classifications and nondiscriminatory treatment by supervisory personnel
 - g. Access to benefits, including policies on use of vacation and sick leave, unpaid leave of absence, and compensatory time. Also include opportunities for training, attendance at conferences, or other supported activities, including recreational or social programs, health and insurance benefits, etc.
 - h. Process for considering a request for a reasonable accommodation on the job, including method of determining whether an individual with a disability is capable of performing the essential functions of a particular job with or without a reasonable accommodation

5. To insure that your communication with disabled applicants, participants, and members of the public are as effective as communications with non-disabled individuals, the Subrecipient should address the following:
 - a. If any written materials are produced on a program or service, indicate whether the following alternative formats are provided:

- | | | |
|-----------------------|------------------------------|-----------------------------|
| 1. Audio tape | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Braille | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Reader | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Aide | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Mailed to home | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Large print format | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Interpreter | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Other assistance | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- b. How would a disabled person learn about these auxiliary aids and services, and how could they request such assistance from you?
- c. How will you ensure that meetings, hearings, and conferences are accessible for individuals with communication disabilities?
- d. Do you currently offer TDD (telecommunication device for the disabled) access within your communications system?
- e. Is 911 or E-911 emergency service offered within your jurisdiction? If so, is there a TDD connected to your system?
- f. Do you have a toll-free phone number to access services and programs? If so, is it usable by persons with hearing impairments?
- g. Do you have any public telephones located within your facilities? If so, is at least one phone hearing aid compatible?
- h. If you determine that equally effective communication cannot be provided, you must include a statement in your self-evaluation explaining why the service, program, or activity would be fundamentally altered or result in undue financial and administrative burdens. You must also include a description of alternative actions that will be taken to provide the benefits or services to the maximum extent possible.

Part II (To be completed by Subrecipients with 15 or more employees)

1. Do you have a policy regarding non-discrimination on the basis of disability that is in compliance with CDBG requirements? Yes No

If you answered No to this question, you may contact the CDBG office for a sample policy and initial notice. If you answered Yes to this question, have you published a notice regarding this policy? (Please include the publication date.)

2. Is a copy included in the appropriate project files with your self-evaluation and other related documentation? Yes No
3. Does your Notice of Nondiscrimination include the following:
- | | | |
|--|------------------------------|-----------------------------|
| a. Contact information for your 504/ADA coordinator | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. How to request auxiliary aids or other services | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. That alternative formats are available | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. That a complaint grievance procedure has been adopted | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

4. Do you have a grievance procedure? Yes No

If you answered No, then you must adopt one for successful completion of this project. You may contact the CDBG office for a sample copy.

If you answered Yes, does it include the following?

a. A statement allowing an individual to submit a grievance in alternative formats Yes No

b. A time limit for filing a grievance procedure Yes No

c. Information on how to also file a complaint through appropriate State or Federal agencies Yes No

Part III Section 504 Accessibility Transition Plan (to be completed by Subrecipients with 15 or more employees)

Please complete the attached Section 504 Transition Plan Outline for **EACH** publicly owned or publicly leased facility in your jurisdiction.

I have reviewed the above self-evaluation and believe it to be accurate as of this date.

Signature, Chief Elected Official

Date

12.8.3 CDBG Model Section 504 Accessibility Transition plan

The Section 504 Accessibility Transition plan is required for 15 or more employees.

- Complete a Plan page for each publicly owned or publicly leased facility.

Date:

Name of person completing this form:

Title:

Phone Number:

E-Mail Address:

The following information is required regarding each facility:

- Name and address of facility
- Necessary structural changes (if needed)
- Type of action to be taken
- Person responsible for overseeing action
- Projected start date for action
- Projected completion date for action
- Projected cost for completing project

12.8.4 SECTION 504/ADA (SAMPLE) GRIEVANCE PROCEDURE

The City/County of _____ has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the Americans With Disabilities Act (ADA) and implementing Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794). Section 504 states, in part, that "no otherwise qualified individual with a disability.....shall, solely by reason of her or his 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."

1. Complaints should be addressed to _____, who has been designated by the City/County to coordinate Section 504/ADA compliance efforts. Complaints should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.
2. A complaint should be filled within 10 days after the complainant becomes aware of the alleged violation. (Processing allegations of discrimination that occurred before this grievance procedure was in place will be considered on a case-by-case basis.)
3. An investigation, as may be appropriate, will follow a filing of a complaint. The Section 504/ADA Coordinator will be in charge of the investigation. These rules contemplate informal but thorough investigations that afford all interested persons and their representatives an opportunity to submit evidence relevant to a complaint.
4. A written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the Section 504/ADA Coordinator and a copy forwarded to the complainant no later than 30 days after its filing.
5. The Section 504/ADA Coordinator will maintain the files and records of the City/County relating to the complaints filed.
6. The complainant can request a reconsideration of the case in instances where he/she is dissatisfied with the resolution. The request for reconsideration should be made within 10 days to the Mayor/Presiding Commissioner.
7. Using the grievance procedure is not a prerequisite to the pursuit of other remedies, including the filing of a Section 504 or ADA-related complaint with the responsible Federal department or agency.
8. These rules will be construed to protect the substantive rights of interested persons, meet appropriate due process standards, and assure that the City/County complies with the ADA, Section 504 and all implementing regulations.

This procedure was adopted by the City/County of _____ on the _____ day of _____, 20_____.

Mayor/Presiding Commissioner

Attest

12.8.5 Alternative Accessibility Standard Allowed Under Section 504 of the Rehabilitation Act of 1973

On May 27, 2014, HUD announced an alternative accessibility standard to the Section 504 accessibility standard. It announced that developers may use the American with Disabilities Act (ADA) 2010 Standards for accessible design as an alternative to the Uniform Federal Accessibility Standards (UFAS) when undertaking new construction or alterations to existing structures on or after May 23, 2014, except for specific design provisions where the UFAS standard affords greater accessibility.

Under Section 504, HUD requires that its programs or activities that are paid for with HUD funds be readily accessible to and usable by persons with disabilities. Section 504 prohibits discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department. Section 504 specifically prohibits the denial of benefits of, exclusion from participation in, or other discrimination against qualified individuals with disabilities in Federally assisted programs or activities because a Subrecipient's facilities are inaccessible to or unusable by individuals with disabilities. The regulation requires that the design, construction, and alteration of projects meet physical accessibility requirements.

Prior to May 27, 2014, this meant compliance with the UFAS accessibility standards when using HUD funds. Now, it means that the 2010 ADA Standards may be used as an alternative, except where the UFAS standards provides for greater accessibility.

12.8.6 Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA requires that covered buildings comply with the Uniform Federal Accessibility Standards (UFAS). The ABA does not cover privately-owned housing, but covers buildings or facilities financed in whole or in part with federal funds. The ABA applies to public housing (24 C.F.R. § 40), and to buildings and facilities constructed with CDBG funds (24 C.F.R. § 570.614). In practice, buildings built to meet the requirements of Section 504 and Title II of the ADA will conform to the requirements of the ABA because HUD ABA regulations require compliance with UFAS.

12.8.7 The American Disabilities Act

The ADA is a comprehensive civil rights law for persons with disabilities and applies to housing under certain circumstances. Title II of the ADA covers the programs, activities, and services provided by public entities (state and local governments and their instrumentalities and special purpose districts). Title II requires public entities to make both new and existing housing facilities accessible to persons with disabilities, as well as ensuring that individuals with disabilities have access to the programs, activities, and services provided. Housing covered by Title II of the ADA includes, for example, public housing agencies, community development agencies, and other housing developed or operated by States or units of local government, such as housing on a State university campus.

Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations. Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public or when they are made available to the general public or residents of developments. For example, it covers the rental office, since, by its nature, the rental office is open to the general public. In addition, if a

day care center, or a community room is made available to the general public, it would be covered by Title III. Title III applies, irrespective of whether the public and common use areas are operated by a federally-assisted housing provider or by a private entity. However, if the community room or day care center were only open to residents of the building, Title III would not apply.

Further, it is likely for Section 504 to apply to a housing project that is covered by the ADA. Additionally, the Fair Housing Act often applies to residential housing where the ADA and/or Section 504 also apply. Where more than one federal accessibility law applies, the housing project must be in compliance with all applicable federal laws.

Note: For purposes of physical accessibility where both the ADA and Section 504 apply, the element that would provide the greatest accessibility of the accessibility standards (either UFAS, the 2010 ADA Standards for Accessible Design, or HUD's Deeming Notice) must be met.

For more information go to:

https://www.hud.gov/program_offices/fair_housing_equal_opportunity/disabilities/sect504faq
www.hud.gov/program_offices/fair_housing_equal_opportunity/physical_accessibility
www.ada.gov

12.9 Participation of Religious and Faith Based Organizations

Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity.

12.10 SUMMARY OF PROGRAM REQUIREMENTS

The following actions must be taken by all Subrecipients, including counties, in the area of civil rights, fair housing, and equal opportunity:

1. Fair Housing Ordinance: Develop and enact a local fair housing ordinance that is substantially equivalent to current Federal fair housing law and provides an effective enforcement mechanism to which local resources are committed. DED has a model ordinance on our website for your use.
2. Excessive Force Prohibition Ordinance: Develop and enact local laws, or guarantee enforcement of existing policies, prohibiting the use of excessive force by law enforcement personnel, within the Subrecipient's jurisdiction, against non-violent civil rights demonstrations. This policy should also include a prohibition against the physical barring of the entrance or exit to a facility or location that is the subject of such demonstration.
3. Annual Official Action to Address an Impediment: Plan and implement an official action on an annual basis, by the annual date of funding approval, to address one of the states identified impediment to fair housing choice within the Subrecipient's jurisdiction.
4. Annual Official Action to Affirmatively Further Fair Housing: Plan and implement an official action on an annual basis, by the annual date of funding approval, to affirmatively further fair housing within the Subrecipient's jurisdiction.

5. Section 504 Compliance: Applies to CDBG program accessibility, and project employment and contracting. Complete the Section 504 self-evaluation in this chapter. If the Subrecipient has more than 15 employees, complete the Accessibility Transition Plan. Take the necessary local action(s) to create full accessibility to all publicly owned or leased facilities of the Subrecipient. Reduce or eliminate any disparate impact to disabled citizens and meet the requirements of the ADA Act.
6. LGBTQ Equal Access Rule for HUD Program: Ensure compliance with HUD's equal access rule.
7. Limited English Proficiency Access to CDBG Program & Services: When implementing Subrecipient's CDBG project, make translation services available to provide access to Subrecipient's LEP residents.
8. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, as amended, 12 U.S.C. 1701u: The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance.

12.11 DED MONITORING

The DED staff will monitor for program compliance through site visits reviews to the project. Your DED field representative will use the Equal Opportunity/Civil Rights monitoring checklist, in the Program Administration Chapter of the CDBG Administrative Manual, to review Subrecipient compliance.

Please have the following records in your project files:

- Subrecipient's annual official actions taken to address/reduce an impediments to fair housing choice
- Subrecipient's annual official actions taken to affirmatively further fair housing
- Fair Housing Complaint Policy/Civil Rights Complaint Policy
- Provide list of MBE, WBE, DBE, SBE and Section 3 firms directly solicited to bid for construction and professional service contracts including documentation of eligibility, Section 3 does not apply to certain professional service contracts
- Equal opportunity statements on construction bid(s), RFP/RFQs, and related advertising
- LGBTQ Requirements involving Equal Access
- Documentation for Section 3 Requirements (complete list in Section 3 section)
- Contractor and Subcontractor Eligibility Forms for reporting civil right status of contractors and subcontractors
- Section 3 closeout report on Section 3 covered projects
- Limited English Proficiency (LEP) Access documents if required
- 504 Self Evaluation Part I and if over 15 employees must also have Part II and Part III
- Grievance Procedure for ADA complaints
- Any complaints regarding Civil Rights and their resolution

****Civil Rights Helpful Hints****

- ❖ Develop a list of MBE, WBE, DBE, SBE and Section 3 firms to directly solicit for the project's construction bids and professional services proposals/RFPs & RFQs however make sure you check before every solicitation that their registration has not expired.
- ❖ Make sure your construction contractors complete the Section 3 contract forms including the Section 3 Bidder Intent to Comply.
- ❖ Section 3 requirements must have back-up documentation in the file
- ❖ Include civil rights certifications in all project contracts; in both construction and professional services contracts.
- ❖ An activity to **affirmatively further fair housing** is not the same as an action intended to **reduce impediments to fair housing choice**. Therefore a Subrecipient must do one official actions each year that their grant is open of both types of fair housing actions.
- ❖ Subrecipients may use Missouri Commission on Human Rights Fair Housing website for examples of annual official actions to affirmatively further Fair Housing
- ❖ Comply with the Limited English Proficiency Requirements, when applicable to your project.

NOTE:

- HUD notified state CDBG programs to follow the Analysis of Impediments to Fair Housing Choice; instead of the Fair Housing Assessment.
- DED will notify Subrecipients and administrators of new requirements after they are issued by HUD.
- Notify DED of any project related discrimination complaints (if any) and their resolution.

CIVIL RIGHTS LAWS, EXECUTIVE ORDERS, AND REGULATIONS

CDBG Subrecipients must ensure that all project activities will be administered in compliance with civil rights laws and regulations. The following are summaries of those parts of the civil rights laws, regulations, and executive orders that are applicable to CDBG funded projects:

1. Fair Housing Act – Title VIII of the Civil Rights Act of 1968, as amended. Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing related transactions, based on race, color, national origin, religion, sex, disability, and familial status, including children, under the age of 18 living with parents, legal custodians, pregnant women, and people securing custody of children under the age of 18.
2. Sections 104(b) (2) and 106(d) (5) (B) of Title I of the Housing and Community Development Act of 1974, as amended – provides that CDBG funds may not be distributed to a Subrecipient, local unit of government, until they certify that it will conduct and administer its program in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and that it will affirmatively further fair housing.
3. Executive Order 12892 – requires federal agencies to affirmatively further fair housing in their programs and activities, and provides that the Secretary of HUD will be responsible for coordinating the effort.
4. Title VI of the Civil Rights Act of 1964, as amended – Prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance, here CDBG funds.
5. Section 519 of Public Law 101 - 144 (1990 HUD Appropriations Act) requires each unit of local government that receives Title I funds to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations.
6. Section 906 of the Cranston-Gonzales National Affordable Housing Act, as amended by subsection 104(1) of the Housing and Community Development Act of 1974 – no CDBG funds may be obligated or expended to any unit of general local government that fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations or fails to adopt and enforce a similar policy of applicable state and local laws against physically barring entrances to or exits from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction.
7. Section 109 of Title I of the Housing and Community Development Act of 1974 – Prohibits discrimination on the basis of race, color, national origin, sex, or religion in programs and activities receiving financial assistance under Title I of the

Housing and Community Development Act of 1974. Here, a Subrecipient's receipt of CDBG program funds.

8. Section 503 of the Rehabilitation Act of 1973, as amended – provides for nondiscrimination in contractor employment. All recipients of federal funds must certify Affirmative Action for handicapped/(disabled) workers for all project contracts and include the following certifications:
 - a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action steps to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor pursuant to the Act.
 - d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action steps to employ and advance in employment qualified handicapped employees and applicants for employment and the rights of applicants and employees.
 - e. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action steps to employ and advance in employment physically and mentally handicapped individuals.
 - d. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

9. Section 504 of the Rehabilitation Act of 1973 – Prohibits discrimination based on disability in any program receiving federal financial assistance. Here, a Subrecipient's receipt of CDBG funds.
10. Title II of the Americans with Disabilities Act of 1990 – Prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing assistance and housing referrals.
11. Architectural Barriers Act of 1968 - The Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped/disabled persons.
12. Age Discrimination Act of 1975 – Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
13. Title IX of the Education Amendments Act of 1972 – Prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance.
14. Executive Order 11246, as amended - Bars discrimination in all phases of federal employment because of race, color, religion, sex, or national origin during the performance of a federal or federally assisted construction contract.
15. Executive Order 12898 – Requires that each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.
16. Executive Order 13166 – Eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally conducted programs and activities.
17. Executive Order 11063, as amended – Directs all departments and agencies to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the Federal Government; or provided with Federal financial assistance; or provided with insured or guaranteed federal loans; or eliminate discriminatory lending practices with respect to such residential property and related facilities, including land to be developed for residential use, insofar as such practices relate to loans insured or guaranteed by the Federal Government.