

# CH 12

# FAIR HOUSING AND EQUAL OPPORTUNITY

## Introduction

Title VIII of the Civil Rights Act of 1968, as amended, known as the Fair Housing Act, prohibited discrimination in the sale or rental of housing on the basis of race, color, religion, sex and national origin. It was amended in 1988 to provide stiffer penalties, establish an administrative enforcement mechanism and expand its coverage to prohibit discrimination on the basis of familial status and disability. By amending this law, Congress demonstrated a renewed commitment to achieving fair housing.

This chapter provides an overview of the Fair Housing and Equal Opportunity requirements that CDBG recipients must ensure compliance with in the implementation of their programs and activities.

## Section 1 - Fair Housing

### Introduction

All CDBG recipients are required to develop a Fair Housing Plan that provides a schedule and detailed description of activities that the recipient will undertake during the grant period to affirmatively further fair housing in the recipient's jurisdiction. This plan must be submitted to Grants Administration for approval as part of the Start-Up Checklist requirements prior to the release of funds. The format for this plan is included in the attachments to this chapter.

### Laws and Regulations

South Carolina has passed a Fair Housing Law that provides rights and remedies substantially equivalent to those found in the Federal Fair Housing Act. At the time of passage, South Carolina was the first State in the Southeast Region, and the second State in the nation to pass a Fair Housing Law recognized by HUD as being substantially equivalent to the National Fair Housing Law.

With passage of this law, South Carolina has now achieved full formal certification from HUD as a "substantially equivalent jurisdiction" to whom the Federal Government defers all authority in administering Fair Housing Law enforcement. Under the Fair Housing Law, the following actions (if based on race, ethnicity, color, religion, sex, national origin, familial status or disability), are considered discriminatory:

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- ◆ Refusing to sell or rent to, deal or negotiate with any person in a covered group.
- ◆ Discriminating by advertising that housing is available only to persons of a certain race, color, religion, sex, familial status, disability or national origin.
- ◆ Denying that housing is available for inspection, sale or rent when it really is available.
- ◆ "Blockbusting" for profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
- ◆ Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and insurance companies.
- ◆ Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple-listing services or other facilities related to the selling and renting of housing.
- ◆ Recipients may not, directly or through contractual or other arrangements, discriminate against anyone on the grounds of race, color, national origin, sex, disability or familial status.

The remaining parts of this section provide information on the civil rights laws and regulations that apply to the State CDBG Program.

## ***Fair Housing***

**Title VIII of the Civil Rights Act of 1968**, as amended: Prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status or disability. The law also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.

**South Carolina Fair Housing Law of 1989**: Provides rights and remedies substantially equivalent to those found in the Federal Fair Housing Act.

## ***Equal Opportunity***

**Title VI of the Civil Rights Act of 1964**: Provides that no person shall be excluded from participation, be denied program benefits or be subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance.

**Title VIII of the Civil Rights Act of 1968, as amended**: Prohibits discrimination in housing on the basis of race, color, religion, sex, national origin,

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familial status or disability. The law also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.

**Section 109 of the Housing and Urban Development Act of 1974:** Provides that no person shall be excluded from participation, including employment, denied program benefits, or be subjected to discrimination on the basis of race, color, national origin, sex, age, religion or handicap under any program or activity funded in whole or in part under Title I of the Act (CDBG).

**Section 3 of the Housing and Urban Development Act of 1968, as amended in 1992:** Requires 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 businesses that provide economic opportunities to low- and very low-income persons.

**The Age Discrimination Act of 1975, as amended:** Provides that no person shall be excluded from participation, be denied program benefits, or be subjected to discrimination on the basis of age under any program or activity receiving Federal funds.

**Section 504 of the Rehabilitation Act of 1973, as amended:** Provides that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation, including employment, be denied program benefits, or be subjected to discrimination under any program or activity receiving federal funds.

**Executive Order 11063:** Provides that no person on the basis of race, color, religion, sex or national origin, shall be discriminated against in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal Government.

**Executive Order 11246:** Provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin, in any phase of employment during the performance of Federal or Federally-assisted contracts in excess of \$10,000.

**The Common Rule at 24 CFR 85.36:** Includes requirements to encourage the use of small, minority and female-owned businesses in procurement and contracting with Federal funds.

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## Affirmatively Furthering Fair Housing

In addition to prohibiting a wide range of discriminatory practices, the Fair Housing Act requires CDBG programs to be administered in a manner that affirmatively furthers fair housing. All CDBG recipients must submit a certification providing assurance that it will administer the CDBG program and activities relating to housing and community development in a manner to affirmatively further fair housing. When the Chief Executive Officer signs the certifications of the grant application he/she commits to:

- ◆ Analyze and address housing needs.
- ◆ Actively promote wider housing opportunities for all persons regardless of race, color, religion, sex, national origin, familial status or disability.
- ◆ Provide opportunities for racially inclusive housing patterns.
- ◆ Promote accessible living environments in all aspects of the public and private housing market.

In addition to the meeting the certification requirements, a Fair Housing Plan is required to be submitted prior to release of funds. The purpose of the Fair Housing Plan that all CDBG recipients are required to develop is to encourage recipients to develop a comprehensive strategy for creating an environment which fosters non-discrimination, an accessible living environment and the promoting of actions designed to affirmatively further fair housing.

The State allows flexibility in selecting specific fair housing activities to be implemented by all CDBG recipients; however, the recipient must undertake one or more activities that reflect local conditions and needs. **HUD interprets compliance with affirmatively furthering fair housing by recipients as identification of barriers to fair housing choice & removal of those barriers. Recipients should document how their fair housing actions will identify or address local barriers or impediments.**

Fair housing actions should also increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by recipients and cooperative ventures with housing-related industries such as mortgage lenders, homebuilders and local nonprofits working in housing. Recipients are expected to utilize local and grant resources to carry out progressive actions to further fair housing with each CDBG project received and are not expected to carry out the same activities with every new grant. The recipient must document and report on resources spent for fair housing activities.

An acceptable level of activity for each recipient to further fair housing is outlined below:

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- ◆ All typical activities (identified in this section) must be undertaken by new recipients, recipients that have not had open grants in the past three years, and the lead grantee for Regional Planning Grants.
- ◆ One activity (typical or significant) must be undertaken by joint recipients of Regional Planning Grants.
- ◆ If a grantee receives grants on a regular basis, then it is expected that they will conduct all of the typical activities and at least one significant activity, from the significant activity list provided in this section, even though they may only have one open grant. Recipients should not propose the same activities for every grant unless the results of those activities can be shown to be significant.
- ◆ When there are multiple grants (no matter what type) open simultaneously with overlapping grant periods, then undertaking all typical activities is required. Additionally, for each grant awarded, at least one significant activity must be undertaken within each grant period. A different significant activity is required for each grant.
- ◆ In some cases, where the activity takes a considerable effort, a single significant activity may count for multiple grants; e.g. developing a report of regulatory or other barriers to affordable housing and adopting recommendations to remove barriers.
- ◆ Regional Planning Grant funds can be used to fund significant fair housing activities on behalf of participating counties and can be used to meet the fair housing requirements for other open grants during that period.

### Typical Activities Include:

- ◆ Proclaim each April as Fair Housing Month and notify the public of this action.
- ◆ Display fair housing posters in Town Hall or the County Administrative building and other prominent buildings.
- ◆ Create a fair housing information center in a centralized area to distribute fair housing materials to the general public.
- ◆ Establish a special resource file on affirmatively furthering fair housing and include:
  - Copies of local fair housing laws/ordinances,
  - Copies of the State Fair Housing Law,
  - Copies of HUD's Advertising Guidelines,

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- Fair Housing and equal opportunity studies/reports prepared by HUD, or other housing organizations,
- Fair housing Posters,
- Fair housing Pamphlets,
- Names, addresses, and telephone numbers of:
  - ◇ Citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate personnel, lenders), and
  - ◇ Organizations representing specific population groups, minorities, women, senior citizens, etc.
- ◆ Discuss fair housing issues at public hearings, especially needs assessment, where citizens (not just local officials) are in attendance.
- ◆ Use the HUD Equal Opportunity logo in advertising for CDBG assisted housing activities. (Only for projects that include housing)

## Significant Activities Include:

- ◆ Conduct an analysis of impediments to fair housing and identify strategies and actions to overcome such barriers.
- ◆ Undertake actions and overcome impediments to fair housing choices.
- ◆ Develop a public information program using local newspapers, radio stations, bulletin boards, churches and utility bill mailings to increase community awareness of affordable housing issues and fair housing requirements.
- ◆ Develop a local pool of interested/knowledgeable individuals who would be qualified and willing to speak to groups about affordable and fair housing concerns, when requested. Advertise the availability of the service.
- ◆ Develop public information and educational programs promoting fair housing and provide fair housing information to the following types of groups:
  - Citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate agents/ brokers)
  - Organizations representing specific population groups (minorities, Hispanics, women, senior citizens, persons with disabilities)
  - Other local organizations (Lion's Club, Optimists, Sertoma, chambers of commerce, downtown business groups, local garden clubs, various neighborhood groups, church groups, etc.)

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- ◆ Public information and educational programs might include passing out fair housing flyers at meetings, inviting a speaker to discuss fair housing, facilitating a discussion, etc.
- ◆ Develop announcements including information on the Fair Housing Law and contact information for free PSAs on radio and television. Document when the PSAs are run.
- ◆ Write an article for the local newspapers on fair housing and document when it is published.
- ◆ Conduct meetings with financial institutions, realtors and landlords to discuss the implications of fair housing and lending practices.
- ◆ Educate the public and address issues of NIMBY that limit fair housing choices.
- ◆ Sponsor a fair housing poster contest for K-5 or an essay contest in the local 6-12 schools with winners receiving a savings bond. Display the posters throughout the community. This should be done in or near the target area but for larger communities or counties could be undertaken in all schools.
- ◆ Design and produce a fair housing poster that can be displayed in prominent public buildings (town hall, post office, library, DSS, DHEC, etc) and businesses (Laundromat, gas station, real estate, insurance, bank, drug store) throughout the locality to highlight fair housing issues and provide contacts.
- ◆ Set up a booth at community festivals with flyers regarding fair housing. The booth can be manned by local volunteers.
- ◆ Conduct a survey of existing public opinion about the status of fair housing in the community.
- ◆ Conduct a survey to determine residents' views regarding the availability of affordable housing and housing services. Establish a local committee to examine the results and address issues.
- ◆ Adopt a local Fair Housing Ordinance that is consistent with the Federal and State Fair Housing Law and notify the public of this action.
- ◆ Examine land use and zoning policies and practices to determine if there are barriers to the development of affordable housing and, if so, try to remove and prevent those practices.
- ◆ Obtain a summary of complaints by region or locality for the preceding 2-3 years from the Human Affairs Commission and target public awareness

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- activities based on the results. This could include targeted mailings or meetings.
- ◆ Conduct a study of affordable housing needs and ways to provide housing opportunities and accessible living environments for all persons.
  - ◆ Conduct a survey or study of housing availability and accessibility for persons with disabilities.
  - ◆ Based on the results of surveys or studies, address fair housing needs of targeted populations including the disabled, persons with limited English proficiencies, and other minority groups.
  - ◆ Provide funding or in-kind support of fair housing activities undertaken by local organizations.
  - ◆ Cooperate with Community Housing Resource Boards (CHRBS), where they exist, to enhance fair housing efforts. If one does not exist, create a board or committee.

CDBG recipients should develop public information and education programs to help promote fair housing. Fair housing can be provided to citizen groups concerned with housing issues, organizations representing specific population groups, and other local organizations and advocacy groups. In addition, one of the major monitoring findings regarding fair housing is the recipient's failure to inform the public of its fair housing actions. Recipients can address this type of monitoring finding by establishing a special resource file on how they affirmatively further fair housing.

## **Analysis of Impediments**

The Consolidated Planning regulations at 24 CFR Part 91 requires the State to certify that it will affirmatively further fair housing. The definition of affirmatively furthering fair housing includes conducting an Analysis of Impediments (AI) to fair housing choice within the jurisdiction.

While the State conducts a statewide AI, recipients are strongly encouraged to undertake an AI also. The AI should include:

- ◆ Identification of impediments to fair housing choice,
- ◆ Actions to address identified impediments, and
- ◆ Actions to maintain a fair housing environment.

Recipients are further encouraged to seek input from citizens and local advocacy groups and to work collaboratively with county-wide or regional organizations to address impediments to fair housing choices.



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## Section 2 - Equal Opportunity

As required by the laws and regulations outlined in Section 1 of this chapter, CDBG recipients must provide equal opportunity to all persons without regard to race, color, religion, age, familial status, disability, national origin, or sex in the administration of their program. The major categories where equal opportunity must be provided are:

- ◆ Provisions of services, facilities and improvements (program benefit),
- ◆ CDBG-related employment,
- ◆ Contracts, and
- ◆ Housing.

Recipients must assure that all CDBG-funded activities are conducted in a manner which will not cause discrimination on the basis of race, color, national origin, religion, sex, disability, age or familial status.

All activities funded, in whole or in part by the grant, must be implemented in a way that does not exclude participation in, deny the benefits of, or discriminate against persons on the basis of race, religion, color, national origin, disability, age, marital status, familial status or sex. The recipient must keep accurate beneficiary records to document compliance.

Applicable civil rights laws establish a broad civil rights mandate for all CDBG-funded programs. Specific requirements of the CDBG program are summarized below.

### Provisions of Services, Facilities and Improvements

For CDBG-funded public services, facilities, improvements (Title VI and Section 109):

- ◆ Recipients may not, directly or through contractual or other arrangements, discriminate against anyone on the grounds of race, color, national origin, sex, religion, disability or familial status. Discriminatory actions could include:
  - Denying facilities, services or benefits.
  - Providing different facilities, services or benefits.
  - Providing segregated or different treatment.
  - Restricting access to any advantage or privilege enjoyed by others.
- ◆ Recipients may not select sites or locations of facilities that have an exclusionary or discriminatory effect.

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- ◆ Recipients may not use criteria or methods of program administration that have a discriminatory effect.

## **CDBG-Related Employment**

In employment (Section 109 and Executive Order 11246), recipients may not deny on the basis of race, color, religion, national origin or sex, the opportunity for employment in any CDBG program or activity.

## **Contracts**

In contracting (24 CFR Part 85, E.O. 11246 and Section 3), the following rules apply:

- ◆ Contractors under CDBG-funded programs may not deny on the basis of race, color, religion, national origin or sex, the opportunity for employment.
- ◆ Recipients must ensure non-discrimination in the solicitation and awarding of contracts generated from Title I funds, including:
  - ◆ Non-discriminatory advertising and distributions of solicitations,
  - ◆ Non-discriminatory bid specifications or evaluation criteria, and
  - ◆ Non-discriminatory awards of contracts.

## **Housing**

In CDBG-funded housing programs and activities (Title VIII, Civil Rights Act of 1968 and Fair Housing Act and Executive Order 11063), the following rules apply:

- ◆ Recipients are required to ensure non-discrimination in administering their CDBG housing programs. This includes the provision of relocation housing and services for persons displaced by CDBG activities.
- ◆ Recipients may not select sites or locations of housing and housing-related facilities that have an exclusionary or discriminatory effect.
- ◆ Recipients must take all actions necessary and appropriate to prevent discrimination in housing and housing-related activities.

HUD regulations became effective March 5, 2012 regarding Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity. This regulation ensures that HUD programs are open to all eligible individuals regardless of sexual orientation or gender identity. This rule includes the following central provisions:

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- ◆ HUD-assisted housing, including housing acquired, rented, or rehabilitated with HUD funds, must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- ◆ The definition of “family” is revised to include families regardless of the actual or perceived sexual orientation, gender identity or marital status.
- ◆ Owners and administrators of HUD-assisted housing are prohibited from inquiring into an applicant or occupant’s sexual orientation and gender identity for the purpose of determining eligibility or otherwise making housing available.

## Other Requirements

The following are additional non-discrimination provisions that recipients must take into account:

- ◆ No persons in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (Age Discrimination Act of 1975).
- ◆ No otherwise qualified handicapped individual in the United States, shall solely by reason of his/her handicap be excluded from the participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance (Rehabilitation Act of 1973, Section 504). (Also see Section 3 of this Chapter.)
- ◆ Recipients must take affirmative action to overcome the effects of past discrimination in the administration of CDBG programs where there has been a specific finding of past discrimination. Recipients may voluntarily take affirmative action to overcome the effects of conditions that tend to limit or exclude participation by any persons.
- ◆ Recipients may voluntarily take affirmative action to encourage contracting with minority and female-owned business enterprises. See Chapter 8: Procurement and Contracting for a list of actions that may be undertaken to encourage minority business contracting.

## Section 3 – Grantee Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that training, employment and contracting 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

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who are recipients of government assistance for housing, and to businesses that provide employment opportunities to low-and very low-income persons.

Section 3 is a federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

## Thresholds and Applicability

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds **for the following Section 3 covered projects**: housing rehabilitation; housing construction; and other public construction. The requirements apply to recipients or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the assistance exceeds \$200,000 but no contract exceeds \$100,000, the Section 3 requirements apply only to the recipient. The Section 3 requirements apply to the entire project or activity that is funded with CDBG assistance (subject to the threshold requirements), regardless of whether the Section 3 activity is fully or partially CDBG funded.

## Preferences for Section 3 Residents and Businesses

Recipients, subrecipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities to Section 3 residents.

- ◆ A **Section 3 resident** is a public housing resident or an individual who resides in the metropolitan or non-metropolitan county in which the Section 3 covered assistance is expended, **and** who is a low or very low-income person.
  - A low-income person is defined by CDBG as a person from a family whose income does not exceed 80% of the median family income for the area.
  - A very low-income person is defined by CDBG as a person from a family whose income does not exceed 50% of the median family income for the area.

A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence of eligibility. (See the Section 3 Resident Certification Form in the Attachments to this chapter.)

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Contracting opportunities must also be given, where feasible, to:

- ◆ Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area in which the Section 3 covered project is located.
- ◆ Other Section 3 businesses.

A Section 3 business is defined as:

- ◆ 51% or more owned by Section 3 residents; or
- ◆ Whose permanent, full time employees include persons, at least 30% of whom are currently Section 3 residents or within three years of the date of first employment were Section 3 residents; or
- ◆ That provides evidence of a commitment to subcontract in excess of 25% of the dollar award to businesses that meet the definition of a Section 3 business.

A Section 3 covered contract is:

- ◆ A contract or subcontract (including professional services contract) awarded by a recipient or contractor for work arising in connection with Section 3 assistance. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, installation of materials is covered.

The Section 3 covered service area is defined as:

- ◆ The geographical service area in which the persons benefitting from the Section 3 covered project reside. The service area should not extend beyond the unit of local government in which the Section 3 covered assistance is provided.

## **Responsibility of the Recipient**

Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes:

- ◆ Submission of a *Grantee Section 3 Action Plan* at the grant start-up. The plan identifies procedures and actions to be followed by the recipient to notify Section 3 residents about training and employment opportunities and Section 3 businesses about contracting opportunities, and to document efforts to comply with the requirements to the greatest extent feasible. (A *Grantee Section 3 Action Plan* and *Sample Notice* are included in the attachments to this chapter.)

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- ◆ Implementing procedures to notify Section 3 residents and businesses of employment or contracting opportunities.
- ◆ Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns.
- ◆ Notifying potential contractors for Section 3 covered projects of Section 3 requirements and incorporating the Section 3 clause in all construction solicitations and contracts. (See the *CDBG Contract Special Provisions* in the attachments to Chapter 8.)
- ◆ Including the Section 3 *Information Sheet for Contractors/Businesses* and Section 3 clause (see attachments in Chapter 8) in all solicitations and contracts for a Section 3 covered project.
- ◆ Requiring all bidders on contracts meeting Section 3 thresholds to submit the *Bidder's Section 3 Estimated New Hires* and the *Bidder's Section 3 Proposed Contracts/Subcontracts* forms. A Section 3 Business Certification form must also be included for businesses that meet Section 3 qualifications. (Forms are included in the Attachments to Chapter 8).
- ◆ Reviewing Section 3 requirements at the pre-construction conference.
- ◆ Requiring each contractor and subcontractor on a Section 3 covered contract, prior to the final payment for services, to submit the *Contractor's Section 3 New Hires* and the *Contractor's Section 3 Business Utilization* reports (included in the attachments to Chapter 8) and monitor contractor documentation for compliance.
- ◆ Submitting to Grants Administration at project close out, for applicable Section 3 covered contracts, the *Grantee Section 3 Report* which provides the recipient's Sections 3 accomplishments and provide a narrative description of actions taken to meet goals. (This report is included in the attachments to Chapter 15.)
- ◆ To the greatest extent feasible, attempt to reach numerical goals and document actions taken to comply with the requirements of Section 3, including the results of actions taken and impediments, if any.

Recipients may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training employment, and contracting opportunities to Section 3 Residents and Section 3 Businesses.

Numerical goals apply to the entire amount of the Section 3-covered projects. Each recipient and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold) may demonstrate compliance with the requirements by committing to:

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## ◆ Training and Employment:

- 30 percent of the aggregate number of new hires be Section 3 residents

Examples of efforts to offer training and employment opportunities to Section 3 Residents include:

- Enter into "first source" hiring agreements with organizations that represent Section 3 residents;
- Sponsor employment training programs for Section 3 residents;
- Advertise training/employment opportunities by distributing flyers to residents of public housing and other areas where Section 3 residents live or post notices in the area;
- Contact resident councils or other organizations;
- Sponsor informational meetings;
- Provide assistance to residents in completing job applications and/or holding interviews in locations where Section 3 residents live;
- Consult/coordinate with existing job training programs;
- Advertise through local media; and
- Maintain a file of Section 3 resident information for contacting in case of future hiring/training opportunities.

Nothing in the requirements shall be construed to require employment of Section 3 residents who do not meet the qualifications of the positions being filled.

## ◆ Contracting:

- 10 percent of the total dollar amount of covered construction contracts
- 3 percent of the total amount of other contracts

Examples of efforts to identify and use Section 3 businesses include:

- Incorporate Section 3 outreach and contracting in procurement procedures.
- Identify eligible business concerns for CDBG-assisted contracts through: the Chamber of Commerce, business associations, local

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advertising media including newspapers; public signage; citizen advisory boards; and all other appropriate referral sources.

- Maintain a list of eligible business concerns for utilization in CDBG-funded procurements and notify appropriate project area business concerns pending contractual opportunities, and to make available this list for procurement needs.
- Carry out workshops to assist Section 3 businesses in participating in contract opportunities.

For additional examples, see Chapter 8: Procurement.

In the absence of evidence to the contrary, a recipient that meets the minimum numerical goal will be considered to have complied with the Section 3 preference requirements. A recipient that has not met the numerical goal has the burden of demonstrating why it was not feasible. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, which were provided in its efforts to comply with Section 3.

A Section 3 resident or business may file a complaint alleging non-compliance by the recipient or contractor with HUD FHEO.

Additional information on Section 3 requirements for CDBG recipients is included in the Attachments to this chapter and in *Chapter 8: Procurement and Contracting*.

## Section 4 – Section 504 Accessibility Requirements

### Overview

Section 504 of the Rehabilitation Act of 1973, as amended in 1978 and 1986, established policy, goals and procedures for assuring that no otherwise qualified individual with disabilities shall, solely on the basis of the disability be denied benefits, subjected to discrimination, or excluded from participation in any program or activity receiving Federal financial assistance.

HUD published a Final Rule at 24 CFR Part 8 on "Non-discrimination Based on Handicap," which became effective on July 11, 1988. This rule details the administrative responsibilities and

As part of the *Start-Up Checklist*, each grant recipient is required to submit to Grants Administration a schedule for addressing each of the required actions for compliance with Section 504 requirements. All previous recipients should already be in full compliance.



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compliance actions required along with deadlines for those actions.

Other Federal laws that address disability discrimination include: The Architectural Barriers Act of 1968, The Americans with Disabilities Act, and the Fair Housing Amendments Act of 1988. These Acts are summarized in the Reference Section of the manual.

All CDBG recipients must take the following actions regarding disabled persons regardless of the number of persons employed by the recipient:

- ◆ Establish effective communication methods (i.e., auxiliary aids, information regarding accessible services, activities and facilities),
- ◆ Demonstrate non-discriminatory employment practices,
- ◆ Conduct a self-evaluation of policies, practices and programs, and
- ◆ Develop a transitional plan for compliance.

CDBG recipients employing fifteen or more individuals must also undertake the additional actions listed below to fulfill program requirements. Though not required by law, Grants Administration recommends that CDBG recipients employing less than fifteen persons also take these actions:

- ◆ Designate a 504 Contact Person and publish the *Notice of Non-discrimination*, and
- ◆ Develop a Grievance Procedure.

The HUD rule requires every recipient of Federal funds, including subrecipients, to demonstrate compliance with these requirements. The term "recipient" refers to any local government, public or private organization or agency to which Federal aid is provided. This applies whether the Federal assistance is received directly, from the State or through another recipient. Recipients are asked not to use the term "handicap" in its communications.

If the recipient has had a Section 504 Compliance Schedule approved by Grants Administration in the past twelve months under another CDBG grant and there are no required changes to the schedule, a copy of the schedule may be submitted with the new grant number added to the schedule.

This *Section 504 Compliance Schedule* is included in the attachments to this chapter. Recipients are encouraged to be realistic in the timeframe for completing such actions. The recipient's schedule will be used as a monitoring tool by Grants Administration to assess the recipient's progress in complying with these requirements.

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Note that Grants Administration's approval of the *Section 504 Compliance Schedule* does not in any way relieve a CDBG recipient of responsibilities under the Americans with Disabilities Act (ADA). Title III of the ADA requires that all public accommodations requiring structural changes be modified and accessible by no later than January 26, 1995. If a CDBG recipient has not met this deadline, Grants Administration recommends that the recipient seek the advice of legal counsel.

To document compliance with Section 504, each recipient with 15 or more employees must be able to demonstrate that it has accomplished the requirements outlined below.

### **Designate a Section 504 Contact Person and Publish a *Notice of Non-Discrimination* (if 15 or More Employees)**

At least one individual should be designated as the Section 504 Coordinator and should be the single point of contact for all Section 504 activities. The 504 Coordinator should be a permanent full-time employee. Responsibilities of the Section 504 Coordinator may include:

- ◆ Oversee formation of the citizens advisory committee.
- ◆ Receive and investigate grievances.
- ◆ Organize training activities.
- ◆ Ensure that the recommendations identified in the self-evaluation and transition plan are implemented.
- ◆ Serve as the single point of contact for individuals who may be disabled.
- ◆ Keep abreast of changes in Section 504 and ADA regulations and policies.

The recipient must assure that appropriate initial and continuing steps are taken to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional agreements with the recipient, that it does not discriminate on the basis of disability in violation of these rules and regulations.

The *Policy of Non-discrimination on the Basis of Disability Status* notice can be found in the attachments to this chapter. The recipient must publish the initial notice in the non-legal section of a newspaper of general circulation. "Continuing steps" are defined as efforts to notify the public on an ongoing basis including regular posting of the notice at Town Hall and other public locations, as well as inclusion of the notice's language in all official notifications of the recipient (e.g. position vacancy announcements, advertisements for bids, announcement of Council or other meetings, etc.).

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The Section 504 compliance file should contain the printer's affidavit for the public notice *Policy of Non-discrimination on the Basis of Disability Status* and other evidence of compliance with the notification policy. Also, to ensure this notice reaches the visually and mobility impaired, have the notice placed on local radio and/or television stations.

### Develop a 504 Grievance Procedure (if 15 or More Employees)

The recipient must establish a grievance procedure that incorporates appropriate due process standards and procedures for the prompt and equitable resolution of complaints alleging any discriminating action against a disabled person. The grievance procedure must be a written description of the steps a citizen can use to resolve a complaint with the locality.

Any 504 Grievance Procedure must include the following elements:

- ◆ A detailed description of how to file a grievance.
- ◆ At least a two-step review process that allows for appeal. (It is recommended that a Grievance Committee be appointed by the chief elected official to handle complaints or grievances.)
- ◆ Reasonable timeframes for review and resolution of the grievance.
- ◆ A statement that informs the public that alternative methods of filing complaints are acceptable (e.g., personal interviews, tape recording, etc.).
- ◆ Name, address, telephone number, and TDD Number of the person who will receive and process the grievance.

A sample grievance procedure can be found in the attachments to this chapter.

### Develop and Practice Effective Communication Methods (All Recipients)

The regulations at 24 CFR Part 8.6 require the recipient to take appropriate actions to ensure that applicants, participants, and members of the general public with disabilities have communication access that is equally effective as that provided to people without disabilities. To overcome communication barriers, equipment and other services are frequently used by individuals who are blind, visually impaired, hearing impaired, speech impaired, or who have a cognitive impairment. The

CDBG recipients are not required to provide individually prescribed devices such as:

- ◆ Glasses
- ◆ Hearing aids
- ◆ Readers for personal use or study
- ◆ Any other devices of a personal nature

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CDBG recipient must furnish auxiliary aids and services as necessary, which may include:

For persons with hearing impairments:

- ◆ Qualified sign language interpreters,
- ◆ Note takers,
- ◆ Telecommunication devices for deaf persons (TDDs),
- ◆ Telephone handset amplifiers,
- ◆ Assertive listening devices (devices that increase the sound in large group settings),
- ◆ Flashing lights (where aural communication is used, such as warning bells),
- ◆ Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information),
- ◆ Transcription services, and
- ◆ Closed and open captioning.

For persons with vision impairments:

- ◆ Qualified readers,
- ◆ Written materials translated into alternative formats (i.e. Braille, audio tape, large print),
- ◆ Aural communication (Bells or other sounds used where visual cues are necessary), and
- ◆ Audio description services (through a headset, a narrator describes what the visually impaired person cannot see).

The CDBG recipient must pay attention to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care.

When a CDBG recipient communicates by phone, a TDD/TTY or other equally effective communication system must be used. For clarification of the term "equally effective" please refer to HUD Technical Guidance Memorandum 91-1 in the Reference Section of the Manual.

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CDBG recipients must communicate in such a manner that disabled persons may obtain the information they need regarding the recipient's programs. All public hearings must be held in locations accessible to the disabled. Recipients must provide a sign language interpreter or make reasonable accommodations for disabled persons to participate in public hearings. It is acceptable to require that persons with disabilities provide adequate advance notice that they need a particular auxiliary aid or service. All communications must clearly outline the specific procedure, which must be followed if an individual with disabilities intends to request an auxiliary aid and/or service.

If for some reason effective communication as requested by the individual cannot be provided, the recipient must notify the individual immediately of the specific reasons why their request cannot be granted and the reasons why the decision was made.

Grants Administration recommends utilizing the checklists described below for all information made available to the public. (These three communications checklists are included in the attachments to this chapter.)

- ◆ Section 504 Management Resources Checklist: A list of materials and resources that will be needed to document compliance with Section 504. Gathering this information will enable the recipient to conduct the self-evaluation in a prompt and efficient manner.
- ◆ Printed Materials Checklist: This checklist will help the recipient ensure that all printed materials issued are printed in compliance with Section 504.
- ◆ Information Dissemination Checklist: A copy of this checklist should be completed each time program information is disseminated. The recipient's goal should be to standardize the dissemination process to ensure that every effort is made to communicate with the disabled within the recipient's jurisdiction.

These checklists and a copy of the material disseminated should be maintained in the Section 504 Compliance file.

The CDBG recipient is not required to undertake any action that would, if taken, result in a fundamental alteration of the program or which would result in an undue financial and/or administrative burden. If you determine that an action will result in an undue financial or administrative burden, or a fundamental alteration in a program or service, you must immediately notify Grants Administration's Section 504 Compliance Specialist or your Grants Administration Grants Manager. Follow Non-Discriminatory Employment Practices (All Recipients)

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The following requirements apply to employment practices to ensure non-discrimination:

- ◆ The recipient assures that no qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.
- ◆ The recipient will not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunity or status because of a disability.
- ◆ The recipient assures that prohibition against discrimination in employment applies to the following activities: recruitment, advertising, employment application processing, hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or compensation, job assignments, job classifications, organizational structures, position descriptions, lines of progression, seniority lists, leave of absence, sick leave, fringe benefits, selection and financial support for training, selection for leaves of absence for training, employer-sponsored activities (recreational or social), and other terms, conditions or privileges of employment.
- ◆ A recipient will not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with disabilities or employees with disabilities to discrimination.
- ◆ A recipient must provide reasonable accommodations for the known physical or mental limitation of an otherwise qualified applicant with disability (reasonable accommodations may include: accessible facilities, job restructuring, job relocation, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters).

Determining whether an individual with a disability is qualified for the position must be done at the time of the employment action and involves two steps. The first step is to determine if the individual satisfies the prerequisites for the position (i.e. appropriate education, skills, licenses, etc.). The second step involves determining whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. Essential functions are ones that the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation.

- ◆ CDBG recipient must make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant for employment or employee with a disability, unless the recipient can

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- demonstrate that the accommodation would impose an undue burden on its operations. There are three categories of reasonable accommodations:
- Accommodations that are required to ensure equal opportunity in the application process,
  - Accommodations that enable the local government's employees with disabilities to perform the essential functions of the position held or desired, and
  - Accommodations that enable the locality's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.
- ◆ A reasonable accommodation in employment may include but is not limited to one or more of the following actions:
- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities,
  - Re-structuring, including part-time or modified work schedules or reassignment to a vacant position,
  - Acquisition or modifications of devices or equipment,
  - Appropriate adjustment or modification of examinations, training materials, or policies, or
  - The provision of qualified readers or interpreters.

### **Conduct a Self-Evaluation of Policies, Practices and Accessibility (All Recipients)**

Each CDBG recipient or contracting agency must, after consulting with interested persons (including individuals with disabilities or organizations representing individuals with disabilities), evaluate its current policies and practices to determine whether or not they constitute barriers to participation by the disabled. The self-evaluation process should be viewed as the starting point toward achieving compliance with Section 504 requirements. The self-evaluation process is a comprehensive review of all current policies and practices to determine whether or not there are barriers to participation by the disabled in programs or services.

The self-evaluation includes communication and employment as well as the policies and practices for all services, programs and activities. Information to be included in the plan:

- ◆ A list of persons consulted about the self-evaluation.
- ◆ A description of the areas examined and any problems identified.

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- ◆ A description of any modifications made to the policies, procedures, services and programs.
- ◆ Areas to be evaluated including but not limited to:
  - Buildings and/or facilities for physical accessibility.
  - All programs, activities, and services.
  - All outreach and communications.
  - Eligibility and admission criteria and practices.
  - Employment practices and guidelines.
  - Complaint processing procedures.

It should be noted that the self-evaluation must include all aspects of the recipient's organization not just those portions that pertain to the CDBG program and its administration.

The self-evaluation may determine that some non-structural modifications may be necessary, along with staff training on how to make reasonable modifications to achieve program accessibility. The self-evaluation may also determine that some structural modifications may be necessary. These should be identified early in the process so that the modifications can be budgeted for and completed on a timely basis.

The regulations also require the CDBG recipient to consult with persons with disabilities and/or representative organizations throughout the self-evaluation process. The regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. Grants Administration recommends that no less than four and no more than seven individuals should comprise the citizens advisory committee. It is also recommended that the committee consist of a wide variety of members.

Below are some suggestions for soliciting persons to compose the self-evaluation committee:

- ◆ Solicit one or two local officials.
- ◆ Draw upon local agencies or chapters of disability advocate organizations. Many disability groups have county chapters.
- ◆ Check with local veterans groups.
- ◆ Publicize widely in appropriate media accessible to persons with disabilities.
- ◆ Ask for the help of the local school system.



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- ◆ Include persons within the community known to have disabilities.
- ◆ Check with the nearest vocational rehabilitation service.
- ◆ Advertise on local radio, and/or television.
- ◆ Advertise in local and regional newspapers.
- ◆ Contact the SC Commission for the Blind.
- ◆ Contact the SC Department of Disabilities and Special Needs.

By establishing a citizens advisory committee made up of the above types of individuals, the recipient will be able to:

- ◆ Ensure the most complete evaluation of programs and policies, and to uncover any impediments or barriers to participation by persons with disabilities.
- ◆ Receive information from persons or experts from organizations representing disabled individuals who are in an excellent position to recommend the least costly, most innovative solutions to accessibility problems.
- ◆ Demonstrate their commitment to the goals of Section 504 and ADA and help win support from all citizens for their handling of compliance issues.

### **Develop a Transition Plan for Compliance (All Recipients)**

CDBG recipients are also required to develop a Transition Plan for Compliance with Section 504. The Plan must:

- ◆ Identify any physical obstacles in the recipient's facilities that limit accessibility of its programs or activities to individuals with disabilities. (A copy of the Uniform Federal Accessibility Standards (UFAS) Checklist is located in the Reference Manual.)
- ◆ Describe in detail the methods that will be used to make the facilities accessible.
- ◆ Specify the schedule for taking steps necessary to achieve compliance with the rules and regulations of Section 504, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition plan.
- ◆ Identify the official(s) responsible for implementation and completion of each structural modification identified in the plan.
- ◆ Identify the persons or groups who assisted in the development of the plan.

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## ***Reasonable Accommodation***

The CDBG recipient must make reasonable accommodations to the known physical or mental impairments of an otherwise qualified participant with disabilities or employee with disabilities, unless the recipient can demonstrate that such accommodation would impose an undue hardship on program operations.

"Reasonable accommodation" is any adaptation of the facility, program or service that will allow a qualified individual with disabilities to participate. It should not place an undue financial and/or administrative burden on the recipient. Primary consideration should be given to the form of accommodation requested by disabled persons.

Types of accommodations could include but are not limited to:

- ◆ Conducting home visits.
- ◆ Assigning aides to assist beneficiaries.
- ◆ Locating programs or services in accessible facilities.
- ◆ Adding or redesigning equipment or furnishings.
- ◆ Selectively altering existing facilities or acquiring or building new facilities.
- ◆ Change management policies or procedures.
- ◆ Job restructuring.
- ◆ Modification of work schedules.
- ◆ Provision of readers or interpreters.

If for some reason a reasonable accommodation as requested by the individual cannot be provided the following steps should be followed:

- ◆ Notify the individual immediately of the specific reasons why their request cannot be granted and the reasons why the decision was made.
- ◆ When claiming fundamental alteration or undue burden, document the basis for the decision in a written statement and demonstrate that all resources available for the funding and operation of the service, activity, or program were taken into consideration.
- ◆ Obtain the written concurrence of both the chief elected official and the chief executive officer.

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## ***Take Needs of Disabled into Consideration in Design and Construction***

Recipients must take the special needs of the disabled into consideration in the design and construction of CDBG financed improvements, and data must be collected and maintained in the project files showing the extent that disabled persons have benefited from CDBG activities.

## **Section 5 - Recordkeeping**

Compliance with Federal and State laws is the responsibility of each recipient. The State is required to monitor CDBG recipients for compliance with civil rights laws and regulations. This monitoring is facilitated when records documenting compliance are maintained appropriately by recipients. The State requires that the records demonstrating compliance with these requirements be kept on a current basis.

Records must be maintained for five years following final close-out of the grant.

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

- ◆ Documentation of the action(s) the recipient has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions.
- ◆ Demographic data (actual survey or latest census data) on the project, including:
  - The population of the jurisdiction of the unit of general local government receiving CDBG funds.
  - The minority population of the locality (number and percentage).
  - The target area population.
  - The minority population of the target area (number and percentage).
  - The number of disabled, elderly households, and female-headed households in the target area.
  - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of low and moderate income, and the target area.
- ◆ For direct benefit activities, provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with CDBG funds. Records

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must be kept by race, ethnicity, disability status and gender of heads of households.

- ◆ Data on employment in each of the local government's operating units carrying out an activity funded in whole or in part with CDBG funds. The data must be maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form including:
  - A description of the local work force in percentage by race and gender.
  - The percentage of minorities in the jurisdiction of the unit of general local government which is receiving CDBG funds and the percentage of minorities working for that unit of general local government.
  - The number of project area residents employed with CDBG funds.
  - CDBG employment showing the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff. For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the City, then employment data should be available for the department.
  - (This data is not required for any public or private entity performing services under contract to the unit of general local government; e.g., a COG or engineering firm which is administering a CDBG project under a contract with a local government.)
  - Government hiring practices and policies.
  - Affirmative Action Plan (if applicable).
- ◆ Data indicating the race and ethnicity of households, and disabled status of persons displaced as a result of CDBG activities, including the address to which each displaced household is relocated. Where activities cause a significant level of displacement of businesses, the recipient should provide data indicating the impact on businesses owned by minorities and women.
- ◆ Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968.
- ◆ Data including the racial/ethnic character of each business entity that receives a contract or subcontract of \$10,000 or more paid, or to be paid, with CDBG funds. Data indicating which of those entities are women's business enterprises as defined in Executive Order 12138 and the amount of the contract or subcontract. Also, documentation of efforts to identify

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and solicit female and minority contractors including a list of those contacted and those responding.

- ◆ Documentation of the affirmative actions the local government has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the grounds of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
- ◆ If the project involves relocation activity, a signed statement by each person relocated indicating that they were shown, and given the opportunity to relocate to, a housing unit(s) in a non-impacted area outside of the target area.
- ◆ Records indicating relocation by census tract or similar demographic data giving race, sex and head of household status, and showing where each family relocated was relocated from and to.
- ◆ Records indicating the members of any advisory committees, indicating race, sex and whether a project area resident.
- ◆ Number of businesses relocated and number of minority businesses relocated.

All CDBG recipients must maintain in their Section 504 Recordkeeping file the most up to date version of the following, as applicable.

- ◆ Self-evaluation.
- ◆ Transition plan.
- ◆ A current, up to date copy of the Grievance Procedures.
- ◆ A current, up to date copy of the Reasonable Accommodations Plan.
- ◆ A list of interested persons who were consulted.
- ◆ A description of areas and buildings examined and any problems identified.
- ◆ A description of modifications made and remedial steps taken to comply with the regulations.

## Chapter 12: Fair Housing and Equal Opportunity Attachments

Fair Housing Plan and Schedule

Sample Fair Housing Resolution

Fair Housing Brochure

Section 3 Definitions

Applicability Thresholds for Section 3

Section 3 Flow Chart

Examples of Efforts to Offer Training

Examples of Efforts to Award Contracts to Section 3 Businesses

Section 3 Brochure

Section 3 Brochure (Spanish) **(New 11/2012)**

Section 3 Information Sheet

Section 3 Frequently Asked Questions

(Also see: <http://portal.hud.gov/hudportal/documents/huddoc?id=11secfaqs.pdf>)

Grantee Section 3 Action Plan

Sample Notice of Employment and Contract Opportunities

Section 3 Resident Certification

Section 3 Business Certification

Section 3 Complaint Register and Instructions **(Revised 2012)**

Sample Notice: Policy of Nondiscrimination on the Basis of Disability Status

Sample Section 504 Grievance Procedure

Section 504 Management Resources Checklist

Section 504 Printed Materials Checklist

Section 504 Information Dissemination Checklist

Section 504 Self-Evaluation Questionnaire

Section 504 Compliance Schedule

**Forms and resources listed here can be downloaded from [www.cdbgSC.com](http://www.cdbgSC.com)**