# CH11 OTHER REQUIREMENTS

## Introduction

In addition to the various major requirements outlined in the previous chapters, there are some additional requirements that apply to the use of CDBG funds relating to citizen participation, certifications, conflict of interest, disclosure and change of use of real property. These rules ensure that the public has an opportunity to comment and be informed of proposed CDBG-funded projects, and that conflicts of interest are avoided in the procurement of services and provision of CDBG-funded activities. The CDBG program also contains specific requirements pertaining to the long-term use of real property acquired using CDBG monies. This chapter provides a summary of these requirements.

This chapter also includes an overview of Fair Housing and Equal Opportunity requirements that CDBG recipients must comply with in the implementation of their programs and activities. Title VIII of the Civil Rights Act of 1968, as amended—commonly known as the Fair Housing Act—prohibits discrimination in the sale or rental of housing based on race, color, religion, sex, or national origin. The Act was amended in 1988 to strengthen enforcement mechanisms, impose stiffer penalties, and expand protections to include familial status and disability

## Section 1 – Citizen Participation

### Overview

It is important that the public have an opportunity to participate in the development and evaluation of CDBG projects. In fact, this is a requirement under the program regulations.

Each locality, prior to submission of any application for CDBG funds, must certify that it has developed a Citizen Participation (CP) Plan. The CP Plan is a document prepared by the locality that describes the process the community will follow to involve the public in the CDBG program. As part of this process, each locality is also required to hold public hearings at certain stages of the process to obtain public input on community development needs and proposed CDBG activities.

Prior to submission of a CDBG application a locality must accomplish the following steps to involve citizens:

(1) Develop a Citizen Participation Plan. Advertise its availability for review to the public. This may be done in conjunction with the needs assessment public hearings.

(2) Solicit input from local officials, businesses, organizations and citizens on the housing, economic and community development needs of the community, particularly those of low- and moderate-income and minority persons.

(3) Advertise or post a notice and hold one or more public hearings to present the identified needs and to solicit public input and comment on the needs.

(4) Develop a written needs assessment which details the specific housing, economic and community development needs and priorities, including the needs of low- and moderate- income persons, and the activities to be undertaken to meet such needs.

(5) Develop a CDBG application for one of the highest, eligible, priority community needs identified in the needs assessment. A copy of the needs assessment and the public hearing minutes must be included with the CDBG application.

(6) Maintain records of all citizen participation efforts including notices, advertisements for hearings, logs, minutes and the written needs assessment for five years and make these available to the public and to Grants Administration, as requested.

## Citizen Participation Plan

A community's CP Plan, including the public hearing components, must meet the requirements for citizen participation found in Section 104 (a)(2) and (a)(3) of Title I of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570.486 of the State CDBG Regulations, and the State Consolidated Plan Regulations at 24 CFR Part 91.

The following guidelines have been developed to assist localities in developing CP Plans. These guidelines set forth the basic elements that must be included in a community's CP Plan. Localities may expand upon these basic elements with any additional provisions that are consistent with the requirements of Title I.

The locality will make its written CP Plan available for public review. This must be accomplished by either conducting a public hearing or by making the CP Plan available for public review at a location convenient to residents of the jurisdiction. (A sample notice for each of the two options is provided in the forms for this chapter.)

Every year, or prior to the development of any application for CDBG funding, the community will assess its community development, economic development, and housing needs, particularly those of low- and moderate- income residents. This process is called a needs assessment.

- The CP Plan must also provide for citizen participation in the determination of community needs by stating that the results of the needs assessment will be presented at one or more public hearings and that citizen comment will be considered.
- When the Community Needs Assessment is presented at a public hearing, the community will also present information concerning the CDBG program, including the amount of CDBG funds available, State funding guidelines, and the range of activities that may be undertaken with such funds, particularly in relation to identified community needs.

All notices of public hearings will be either be published in specified newspaper(s) of general local circulation at least seven days prior to any public hearing or posted in prominent public places in the locality at least ten (10) days prior to any public hearing. Additional information on notices is provided in the next section of this chapter.

The locality must describe in its CP Plan other methods, in addition to notices in newspapers, by which the community will encourage participation by the residents of slum and blighted areas and areas where CDBG activities are proposed.

- Possible methods might include requesting appropriate community leaders and agencies to inform their constituents (ministers, council members, community action agencies, newspaper editors, etc.), distributing notices in low- and moderate-income neighborhoods (particularly in potential project target areas); posting of notices at post offices and area businesses; publication on the locality's web site; and radio and television announcements.

All public meetings concerning the CDBG program must be held at times and locations convenient to citizens, particularly to those who are the potential or actual beneficiaries. In addition, the location of such meetings will be accessible to the disabled or the announcement of such meetings will indicate that assistance will be provided to accommodate the special needs of disabled persons. It may be appropriate to request advance notice of special needs so that they can be met.

Technical assistance will be provided to groups that represent LMI persons that request such assistance in developing proposals for CDBG funding. The unit of general local government must specify the type and level of assistance to be provided. As a condition of providing technical assistance, the local government may require that the activities to be addressed in a proposal be consistent with identified community development and housing needs and State CDBG Program guidelines, that CDBG funds be available for funding such activities as may be involved, and that the governing body of the local government may require approval for providing technical assistance.

The local government must consider for funding any proposals developed by representatives of LMI persons who follow all the requirements for public participation. However, the determination to submit the proposal to the State for funding consideration is the prerogative of the local elected officials since the submission of any CDBG application requires approval by the governing body of the community.

The CP Plan must identify how the needs of residents with Limited English Proficiency (LEP) will be met for public hearings and other activities where a significant number of such individuals can be reasonably expected to participate. LEP persons are persons with a limited ability to read, write, speak, or understand English. Reasonable steps must be undertaken to ensure meaningful access to programs and activities. HUD suggests that an assessment be conducted to determine a reasonable level of program outreach to be provided to LEP persons weighing the following four factors:

1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the grantee/program;

2) The frequency with which LEP persons come in contact with the program;
3) The nature and importance of the program, activity, or service provided to LEP persons; and
4) The resources available to the grantee and costs. The capacity of small jurisdictions to provide comprehensive services may be limited but does not relieve them from compliance.

After completing the assessment, the recipient should include in its CP plan steps to be taken to address the identified needs of the LEP populations they serve including translations of vital documents and outreach activities. Guidelines for the translation of documents is provided in the following graph.

| Size of Language Group | Recommended Provision of Written Language Assistance |
|---|---|
| 1,000 or more in the eligible population in the market area or among current beneficiaries | Translated vital documents |
| More than 5% of the eligible population or beneficiaries *and* more than 50 in number | Translated vital documents |
| More than 5% of the eligible population or beneficiaries *and* 50 or less in number | Translated written notice of right to receive free oral interpretation of documents. |
| 5% or less of the eligible population or beneficiaries and less than 1,000 in number | No written translation is required. |

When addressing the need for spoken interpretation services to LEP populations, the recipient is advised of HUD's instruction in their guidance of 22 January 2007 found at Paragraph VI.B.3 or the Guidance in Appendix A. Oral Interpretation v. Written Translation: Q&As XXII and XXIII clarify that no matter how few LEP persons the recipient is serving, oral interpretation services should be made available in some form. Recipients should apply the four-factor analysis to determine whether they should provide reasonable and timely, oral interpretation assistance, free of charge, in all cases, to any beneficiary that is LEP. Depending on the circumstances, reasonable oral interpretation assistance might be an in-person or telephone service line interpreter.

Prior to making any substantial change in a CDBG-funded project, the locality will hold one or more public hearings to inform its citizens, particularly those who might be affected, of the proposed change and solicit public comment. Any substantial change in the project as described in the approved application will require submission of evidence that a public hearing was held prior to the State's approval. (See Chapter 12 for more information on the requirements for program changes and the section below for

guidance on public hearings.)

The CP Plan must provide for a timely, written answer to written complaints and grievances, within fifteen working days (where practical). The CP Plan must state the name, address and phone number of the person to whom written grievances are to be delivered and the procedures by which grievances will be handled, including any appeal process.

- The CP Plan must provide that, prior to any response to a written grievance which involves State law or policy, State CDBG program guidelines, or Federal regulations governing the CDBG program, the community will provide the written grievance and its proposed response to the State for review and approval of the response. The CP Plan must also provide for the appeal of any written grievance to the State; however, the CP Plan must state that the State will deny those appeals which involve the consistent application of the community's local program policies. The CP Plan should also indicate that after the appeal process has been exhausted, the complainant may seek relief in the appropriate court of law.
- The locality will conduct one or more public hearings to review program performance and accomplishments. At least one public hearing must be held when all activities are completed and prior to the State closing the grant. (Additional information on public hearings is provided below.)

Citizens will be provided with reasonable access to records concerning any project undertaken with CDBG funds. The CP Plan must show the times and location where such information may be reviewed and any conditions, such as whether a written request is required.

- Note: Confidential information normally protected under the State and Federal Freedom of Information Act (FOIA) Laws may not be made available for public review. For example, data concerning personal or business financial statements, earnings or sources of income.

## Public Hearings and Notices

Localities are required to hold public hearings at certain stages of the process, as outlined below:

- Public Hearing on the CP Plan – This hearing is optional as localities are allowed to instead make the plan available for review at a location convenient to residents of the jurisdiction without holding a public hearing. If the recipient chooses to hold a public hearing on its CP Plan, it may do so in conjunction with the needs assessment public hearing (discussed below). If a locality is developing a CP Plan for the first time, or is amending its CP Plan, and chooses not to hold a public hearing, the Notice of CDBG CP Plan Available for Review must be published no less than seven days prior to the date of the needs assessment public hearing.
- Needs Assessment Public Hearing – This hearing is required at least once every twelve months (or prior to submission of an application) to discuss and receive

feedback on housing, community and economic development needs. As stated previously, it may be held at the same time as the hearing on the CP Plan or it may be held separately. This public hearing should be held at a central location (i.e., county building) and not in a planned project target area.

- Public Hearing Concerning Project Amendment – This hearing is required if a recipient proposes to make a substantial amendment to their project, such as removing a proposing activity, adding a proposed activity, or reducing beneficiaries by more than 10%. It must be advertised at least seven days in advance. If a substantial change is proposed, please contact the State to discuss the situation.
- Public Hearing Concerning Program Performance and Accomplishments – Recipients are required to hold a public hearing to receive citizen input into the funded program's performance and accomplishments. This public hearing must be held when all activities are completed but prior to close-out the grant (see Chapter 15 for information on close- out).

## Posting and Publishing Notices of Public Hearings

All notices of public hearings must either be published in an appropriate section in a newspaper of general local circulation at least seven days (not including publication date) prior to the hearing date, or posted in prominent locations in the locality at least ten days (not including posting date) prior to the hearing date.

- The notices should include a statement regarding the recipients' policy of non-discrimination and accessibility requests.
- For posting, it is acceptable to post the notices for 10 days (not including the date of posting) prior to the date of the public hearing. Suitable locations for posting include, but are not limited to:
  - Municipal and county buildings accessible to the general public,
  - Post offices,
  - Libraries,
  - Health departments,
  - Department of Social Services offices, and
  - Other local establishments frequented by area residents.

In addition to the public hearing publication or posting, the locality should make other reasonable efforts to inform citizens who may be affected by a CDBG project, but who might not be reached through formal newspaper/posting notices. Such efforts may include the distribution of leaflets or notices to local organizations or churches, posting on social media, or television and/or radio announcements. Note that these additional efforts may be conducted in addition to the publication or posting but should not be the sole method of hearing notification.

Examples of Notices of Public Hearings are included in the attachments to this chapter.

# CH 11: OTHER REQUIREMENTS

## Additional Requirements

The following additional requirements apply to public hearings:

- Minutes of the public hearing should be taken, including the names and addresses of persons attending, a summary of information presented, and comments by local officials and citizens.
- Localities must maintain files including the before-mentioned attendance records, summaries of comments, evidence of hearing publication or posting (such as the "affidavit of publication" for any notice placed in a newspaper, or photos/memo to file for postings) in order to meet CDBG program recordkeeping and monitoring requirements.

## Community Development Need Assessment

Each locality, prior to being considered for funding, must "identify its community and economic development and housing needs, including the needs of low- and moderate-income persons and the activities to be undertaken to meet such needs."

A community needs assessment is generally considered valid for twelve months if conducted in accordance with a CP Plan. If a public hearing for the needs assessment has been held within the past twelve months of the submission date, another need not be held prior to the development of an application.

This Federal requirement is intended to involve the locality seeking CDBG funding in a basic planning process which will promote better coordinated strategies for addressing local needs, particularly the needs of low- and moderate-income persons. The level of collaboration among partners is a scoring criterion for CDBG applications.

An application for CDBG funds should include only those activities that address needs identified in the needs assessment process. A joint Needs Assessment and Citizen Participation Plan hearing may be held.

Prior to the submission of any application, the locality must have accomplished the following:

- Held one or more public hearings to obtain the views of citizens on community and economic development and housing needs. (The activities that are to be undertaken to address these needs must be presented in a separate public hearing prior to the submission of the application.)
- Identified its community and economic development and housing needs and priorities, including the needs of LMI persons, and the activities to be undertaken. The identification of local needs must be detailed in a written needs assessment document that includes, at a minimum, sections which describe:
    - **Outreach -** The procedures used to identify the community development needs and establish priorities and objectives, including efforts to encourage

meaningful participation by local citizens, particularly those who are minority or of low- and moderate-income. The assessment must summarize the results of outreach efforts, participation results at hearings and the extent of participation in the needs assessment process by the broad community including local leadership, business, LMI groups and residents.

- **Needs -** The locality's community development needs including the following minimum components: housing, infrastructure, public facilities, public safety, economic development, obstacles to economic competitiveness, workforce development, and downtown and neighborhood revitalization. The assessment must specifically identify the needs of low- and moderate-income persons.
- **Priorities and Planned Actions -** At a minimum, the plan should identify the community's top three priority needs and the locality's priorities for addressing the needs of low- and moderate-income persons. Additionally, the plan must specify the activities to be undertaken to meet the identified needs.
- The activities considered for CDBG funding and the rationale for selecting the proposed priority projects and activities.

◆ The project proposed by the locality in its application does not have to be the highest priority community need, but should be included in the needs assessment. There are a number of reasons, which must be documented (including the eligibility of the project for CDBG funding or the availability of other, more appropriate local, State or Federal resources) which would justify submitting an application for other than the top ranked community need.

### Citizen Participation Recordkeeping

The community is required to keep appropriate records, such as newspaper notices of hearings, minutes of its public hearings and responses to inquiries to demonstrate that it is following its CP Plan. The CP Plan and records must be kept available for public inspection and review and maintained with all other project records for at least five years following final close-out.

## Section 2 – Conflicts of Interest

In the procurement of supplies, equipment, construction and services by recipients and subrecipients, the provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 shall apply. In all cases not governed by the ethical standards of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991, such as the acquisition and disposition of real property and the provision of assistance with CDBG funds by the recipient or its subrecipients to individuals, businesses and other private entities under eligible activities, the conflict of interest provisions in the State CDBG regulations at 24 CFR Part 570.489 (h) shall apply in addition to the State Ethics Law.

The CDBG requirements pertaining to conflict of interest are summarized in the following paragraphs.

- Conflicts Prohibited - Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons (described below under "Persons Covered") who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG- assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- Persons Covered - The Conflicts of Interest provisions apply to any person who is an employee, agent, consultant, officer, board member, or elected official or appointed official of the State, the unit of local government, or of any designated public agencies or subrecipients that are receiving CDBG funds.
- Exceptions - Upon the written request of the applicant/recipient, the State may grant an exception to the provisions of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of Title I and the effective and efficient administration of the program or project of the State or the unit of local government. An exception may be considered only after the local government has provided the following:
  - A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made;
  - A certification the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question; and
  - An opinion of the local government's attorney that the interest for which the exception is sought would not violate State or local law. In addition, the State may also require an opinion from the State Ethics Commission that the conflict does not violate State law.
- Factors To Be Considered For Exceptions - In determining whether to grant a requested exception after the local government has satisfactorily met the above requirements, the State shall consider any opinion of the State Ethics Commission, if requested, and the cumulative effect of the following factors, where applicable:
  - Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - Whether an opportunity was provided for open, competitive bidding or negotiation;
  - Whether the person affected is a member of a group of low- and moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or

benefits as are being made available or provided to the group or class;

- Whether the interest or benefit was present before the affected person was in a position as previously described;
- Whether undue hardship will result either to the State or local government or the person affected when weighed against the public interest served by avoiding the prohibited conflicts; and
- Any other relevant considerations.

## Section 3 - Disclosures

Section 102 of the HUD Reform Act of 1989 contained a number of provisions designed to ensure greater accountability and integrity in the way HUD and its recipients make certain types of assistance available. The State CDBG Program is one of the programs that are partially covered by the requirements of Section 102. The regulations implementing Section 102 (currently 24 CFR Part 4, Subpart A) are included in the Reference Section.

A unit of local government applying to the State for a grant will be required to make certain disclosures, as will applicants for assistance from units of local government receiving State CDBG grants. Such disclosures will only be necessary if the aggregate amount of the covered assistance received or expected to be received by the applicant will exceed $200,000 in the Federal fiscal year (October 1 - September 30) in which the application is submitted. The disclosures must be made on the Section 102 Disclosure Report included in the forms for this chapter.

The nature of the disclosure includes the amount of assistance sought from the State CDBG Program and other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be expended.

Assistance subject to these requirements includes any contract, grant, loan, cooperative agreement or other form of assistance under the CDBG program. This includes construction contracts and contracts for professional services.

### Required Disclosures

Each applicant submitting an application for assistance to the State or to a unit of local government for a specific project or activity must make the disclosures if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted. The amount of assistance also includes program income received from CDBG projects.

# CH 11: OTHER REQUIREMENTS

## Content of Disclosure

Applicants that meet the assistance threshold must disclose the following information:

- Other government assistance: Any other government assistance that is or is expected to be made available with respect to the project or activities for which the assistance is sought.
- Interested parties: The name and pecuniary interest of any developer, contractor or consultant involved in the project or activities for which the assistance is sought that exceeds $50,000 or ten percent (10%) of the assistance, whichever is lower. If the interested party is an entity, the disclosures must include an identification of each officer, director, principal stockholder (as specified in the Section 102 Disclosure Report instructions) or other official of the entity.
- Sources and uses of funds: The expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be expended must be disclosed. The report must identify the gross amount of funds from all sources, including but not limited to both governmental and non-governmental sources of funds and private capital resulting from tax benefits. Residency of an individual in housing for which assistance is being sought is not by itself considered a pecuniary interest.

## Updates

During the period in which an application is covered or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the recipient must make the following additional disclosures:

- Any information that should have been disclosed in connection with the application, but that was omitted.
- Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold.
- Changes to previously disclose other government assistance where the revised amount of assistance exceeds the amount previously disclosed.
- Changes in previously disclosed financial interest, where the revised amount of the financial interest of a person exceeds the amount of the previously disclosed interest by $50,000 or by ten percent of such interests, whichever is lower.
- Changes in previously disclosed sources or uses of funds, where:
  - The change in a source of funds exceeds the amount of all previously disclosed sources of funds by $250,000 or by ten percent of those sources, whichever is lower; and
  - The change in a use of funds exceeds the amount of all previously disclosed uses of funds by $250,000 or by ten percent of those uses, whichever is lower.

## Section 4 – Rules for Change of Use of Real Property

The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) that was acquired or improved, in whole or in part, using CDBG funds in excess of $150,000 (for Program Year 2024 and earlier) and $250,000 (for Program Year 2025 and later). These standards shall apply from the date CDBG funds are first spent for the property until five years after programmatic close-out of the recipient's grant.

- A unit of general local government may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the recipient obtains prior written approval from the State CDBG Program and provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:
  - The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government. OR
  - If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as meeting a national objective, it may retain or dispose of the property for the changed use if the State CDBG program is reimbursed. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following the reimbursement of the CDBG program the property no longer will be subject to any CDBG requirements.

## Section 5 - Certifications

When an application for CDBG funds is submitted to the State, it contains a number of certifications that the local government must sign and agree to carry out as part of its approved CDBG program. These certifications are mandated by the provisions in Title I. State CDBG representatives will monitor recipients for compliance with the certifications. The following provides a summary of each certification.

- Citizen Participation - The first three certifications require that a Needs Assessment and Citizen Participation Plan be developed. It also requires that citizens be furnished information on the CDBG program, amount of funds available and range of activities that may be undertaken, including the amount proposed to benefit low- and moderate-income persons. These requirements are outlined in Section 1 of this chapter.
- Residential Anti-Displacement and Relocation Assistance Plan - Recipients must develop and follow a plan which has two components:

  (1) a requirement to replace all low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing

as a direct result of the use of CDBG funds; and (2) a relocation assistance requirement. This plan is required of all recipients regardless of the type of project funded.

- Minimize Displacement - The recipient certifies that it will minimize the displacement of persons as a result of activities that are CDBG funded. CDBG funds should not be used to carry out activities that result in displacement unless there is a health and safety threat. The local government must consult with the State and provide a certification that there are no other feasible alternatives.
- Public Access to Records - The public must be provided reasonable access to records regarding the past use of CDBG funds. This provision should be included in the Citizen Participation Plan. The State requires recipients to hold one or more public hearings to inform the public of the accomplishments of the CDBG program and to assess performance.
- Special Assessments - Where CDBG funds are used to pay all or part of the cost of public improvements, special assessments may only be used to recover capital costs as follows:
  - No special assessments may be made to recover CDBG funds: Special assessments to recover CDBG funds may be made only against properties not owned and occupied by low- and moderate-income persons. Such assessments are considered program income.
  - Special assessments to recover non-CDBG funds: Special assessments to recover the non-CDBG portion of a project may be made, but CDBG funds must be used to pay the special assessment on behalf of all properties owned and occupied by low- and moderate-income persons. CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in their behalf. Non-CDBG funds collected through such special assessments are not program income.
  - The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments only if installation of the public improvements was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements; and installation of the public improvement meets a criterion for one of the national objectives.
- Compliance with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act - Recipients are required to take a proactive role in affirmatively furthering fair housing in the community. Actions to promote fair housing are required to be taken and documented prior to close-out of a CDBG project. Recipients also agree that no person will be excluded from participation, denied program benefits, or subjected to discrimination on the basis of race, color, disability, familial status or national origin.

- Compliance with Title I and Other Applicable Laws - The CDBG program will be conducted in accordance with the provisions of Title I of the Housing and Community Development Act, as amended, as well as other Federal or State requirements and laws. These other requirements include environmental standards, labor standards, acquisition and relocation requirements, fair housing and equal opportunity, Section 504 disability requirements, etc.
- Excessive Force - The Armstrong/Walker "Excessive Force" Amendment (P.L. 101-144) is found in Section 519 of the Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1990. A recipient must certify that it has adopted or will adopt and enforce a policy to prohibit the use of excessive force against any individuals engaged in non- violent civil rights demonstrations by law enforcement agencies within the jurisdiction. The legislative history of this provision indicates that it may be satisfied by any means that will stand a practicable test of use. The policy may be adopted by a local legislative act, such as an ordinance, or by a local administrative act, such as a written statement of policy by the chief executive, an executive order or regulation within the police department. A unit of general local government need not adopt a new policy if it has and is enforcing a written policy that meets the requirements of Section 519. This provision does not amend Title I of the Housing and Community Development Act of 1974, as amended, but applies to the CDBG program.
- Lobbying - The lobbying certification is a result of the requirements contained in Section 319 of Public Law 101-121. It is applicable to the lobbying of federal officials using CDBG funds. CDBG funds may not be used to influence or attempt to influence the awarding of any CDBG project, loan, contract or cooperative agreement. This provision also applies to the renewal or modifications to any CDBG project, loan, contract or agreement. If non-CDBG funds are used for this purpose, the recipient must file a Standard Form LLL, Disclosure Form to Report Lobbying. This language must be incorporated in any award documents at all tiers including subrecipient agreements, recipient contracts or loans and cooperation agreements which exceed $100,000 in CDBG funds.
- Debarment Certification – The State requires a Debarment Certification (located as an attachment to Chapter 7) be submitted with the Start-Up Checklist requirements (refer to Chapter 1). The recipient certifies that neither the local government nor its officers are debarred, suspended, ineligible or voluntarily excluded from receiving funds. Subrecipients and contractors must also sign this certification before entering into any financial agreements or contracts with the recipient.

## Section 6 – SC Illegal Immigration Reform Act

Under the South Carolina Illegal Immigration Reform Act, grantees are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.

Grantees can verify the lawful presence of the applicant by either an affidavit executed by the applicant that he is a U.S. citizen or legal permanent resident 18 years of age or older, or that he is a qualified alien or nonimmigrant under the Federal Immigration and Nationality Act and 18 years of age or older and lawfully present in the U.S.

Grantees must verify eligibility for public benefits through the Systematic Alien Verification of Entitlement, or S.A.V.E. Program, operated by the federal Department of Homeland Security and Social Security Administration.

A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees:

- To register and participate in the federal work authorization program to verify the employment authorization of all new employees; and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification of the employment authorization of all new employees; or
- To employ only workers who possess a valid driver's license or identification card.

A public employer complies with this Act if it obtains a written statement from the contractor certifying that the contractor will comply with the requirements and agrees to provide to the public employer any documentation required to establish either:

- The applicability of this Act to the contractor, subcontractor, and sub-subcontractor;

OR

- The compliance with this Act by the contractor and any subcontractor or sub-subcontractor.

A public employer and contractor must not divide work or duties that would otherwise constitute a single service contract into separate contracts for the purpose of avoiding the requirements of this Act. A public employer need not audit or independently verify a contractor's compliance with this Act.

## Section 7 – SC Financial Identity Fraud and Identity Protection Act

The SC Financial Identity Fraud and Identity Protection Act (the "Act") became effective on July 1, 2009. Following are the requirements concerning the collection, maintenance, and disposal of personal information pertaining to residents of South Carolina. Under the Act, "personal information" includes:

- Social security number (SSN)
- First name or first initial and last name
- Driver's license number
- Financial account number (including credit card or debit card number and security code)
- Any other information that would allow access to a person's financial accounts

With respect to personal information, you may be subject to the following restrictions:

- You may only collect personal information for legitimate purposes as required by law.
- You may not make personal information available to the public.
- You should minimize the dissemination of any personal information either internally within your organization or externally with the general public.
- When you are finished processing documents that contain personal information, you must ensure that all personal information is unreadable or undecipherable.
- Before disposal of any hardware or storage media, all personal information must be removed and the media must be sanitized.
- Do not store personal information on any laptop, blackberry, CD, etc. unless the file is encrypted and password protected.

With respect to SSNs, there are additional restrictions, including the following:

- You may not intentionally print or imbed a person's SSN, or six or more digits of such number, on a card required for access to services.
- You may not require a person to transmit a SSN, or six or more digits of such number over the internet UNLESS there is a secure connection or the SSN is encrypted.
- You may not require a person to use his/her SSN, or six or more digits of such number, to access an internet website UNLESS a password is also required to access the internet website.
- You may not print a person's SSN, or six or more digits of such number, on materials mailed to that person, UNLESS state or federal law requires it.
- You may not collect a person's SSN, or six or more digits of such number, UNLESS you are authorized by law to do so.

- When collecting a person's SSN, or six or more digits of such number, you must separate the number from the rest of the record, or as otherwise appropriate so the SSN can easily be redacted pursuant to a Freedom of Information Act request.
- At a person's request, you must give a statement of the purpose for collecting his/her SSN, or six or more digits of such number, and how it will be used. You can only use the person's SSN, or six or more digits of such number, for the purpose stated.

If at any time there has been an unauthorized access to personal information or there is any risk of unauthorized access, you must immediately notify all persons whose personal information has or has a material risk of being accessed. If the number of persons is greater than 1000, notice must also be given to the SC Department of Consumer Affairs.

If you have any questions concerning these requirements, please contact your local attorney.

## Section 8 – Required Federal Registration

According to federal government policy, every local government, contractor or subrecipient that receives federal assistance, via direct award or contract, from programs such as CDBG must register in the System for Award Management or "SAM". SAM in turn requires a Unique Entity ID (UEI) number. Registrations in SAM and with UEI number are therefore both required. SAM and UEI are described in more detail below.

(NOTE: On April 20, 2022 the DUNS number was replaced with the UEI number from SAM.gov. and is now the authoritative identifier for those doing business with the federal government. The DUNS Number is no longer valid for federal award identification.)

### System for Award Management

SAM is a federal website located at www.sam.gov. It consolidated several previously existing federal systems, including CCR, federal procurement systems and the Catalog of Federal Domestic Assistance. The purpose of SAM is to reduce the number of different systems required to enter and interact with the Federal Government. SAM training videos, user guides and a list of Frequently Asked Questions (FAQs) are all available on www.sam.gov in the Help section.

### SAM Registration for Grantees

SAM registration is a result of federal efforts to make funding more transparent, as required under the Federal Funding Accountability and Transparency Act (FFATA) of 2006. FFATA applied initially to the American Recovery and Reinvestment Act but also applied subsequently to all federal funding programs, including CDBG. FFATA created new reporting requirements for entities such as the South Carolina Department of Commerce that receive and distribute federal funds through awards to subrecipients

such as CDBG grantees. FFATA also created a new, post recovery reporting system in which Commerce must submit subrecipient information to the Office of Management and Budget (OMB). This system is now known as the Federal Sub Award Reporting System (FSRS).

All CDBG awards must be reported in FSRS by the 30th of the month following grant award, or in the case of grant increases over $25,000, by the end of the month following approval. In order to report in FSRS, each award recipient must have a UEI number. Grant recipients must provide evidence that they have a UEI and that their SAM registration is current. SAM registrations should be available for public view in order for the State to verify registration.

### SAM Registration for Contractors

SAM also now houses various federal procurement databases, including the one used to verify contractor debarment status. Therefore, contractors involved with federally funded projects must also register in SAM. As described above, the contractor must first have obtained a UEI number. The UEI is generated in SAM.gov. If you are registered in SAM.gov (active or not), you already have a UEI. It is viewable at SAM.gov. If you are new to SAM.gov and will be registering for the first time, you will get your UEI during SAM registration.

A bidder is not required to be registered in SAM to submit a bid but must be registered in order to be awarded the contract.

Note that there are special requirements that apply to CDBG economic development grants, in that the business receiving or benefiting from assistance must also have a UEI number. This number is required to be reported as part of grant close out.

For grantees, the UEI number must be obtained as soon as possible, and for economic development grants, grantees should ensure that each business has a UEI number before assistance is provided.

## Section 9 – Fair Housing

### Laws, Regulations, and Additional Information

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:

- 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 table below provides information on the Fair Housing, Accessibility, and Equal Employment and Contracting laws and regulations that apply to the State CDBG Program.

| Federal and State Laws and Regulations (included amendments) | Fair Housing and Nondiscrimination | Accessibility | Equal Employment and Contracting |
|---|---|---|---|
| **Title VI of the Civil Rights Act of 1964:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance. | X | | |
| **Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act):** This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing. | X | X | |
| **Restoration Act of 1987.** This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance. | X | | |

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|---|---|---|---|
| **Section 109 of Title 1 of the Housing and Community Development Act of 1974:** This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act**.** | X | | X |
| **The Fair Housing Amendment Act of 1988:** This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions baring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older. | X | | |
| **The Housing for Older Persons Act of 1995 (HOPA):** Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older. | X | | |
| **The Age Discrimination Act of 1975:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7. | X | | |
| **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or | X | X | X |

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| substantially rehabilitated for first occupancy on or after March 13, 1991. | | | |
| **The Americans with Disabilities Act of 1990 (ADA):** This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210. | X | X | X |
| **Executive Order 11063:** This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government. | X | | |
| **Executive Order 11259:** This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States. | X | | |
| **Section 109 of Title I of the Housing and Community Development Act of 1974:** Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex. | X | | X |
| **The Equal Employment Opportunity Act:** This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964. | | | X |
| **The Immigration Reform and Control Act (IRCA) of 1986:** Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and | | | X |

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|---|---|---|---|
| aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). | | | |
| **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment. | | | X |
| **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans. | | | X |

## 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.

Activities that affirmatively further fair housing include:

- 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.)

- 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.
- 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.
- Adopt a local Fair Housing Ordinance that is consistent with the Federal and State Fair Housing Law and notify the public of this action.
- Obtain a summary of complaints by region or locality for the preceding 2- 3 years from the Human Affairs Commission and target public awareness 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.

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. Recipients can address this type of monitoring finding by establishing a special resource file on how they affirmatively further fair housing.

### Fair Housing Plan (For Grants Awarded Prior to April 2, 2025)

All grants awarded prior to April 2, 2025, must include 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 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. Compliance with these requirements will be reviewed as part of the State's monitoring process.

For grants awarded on or after April 2, 2025, a Fair Housing Plan is not required, and fair housing activities will not be reviewed during monitoring.

## Section 10 - 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.
- 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 24 CDR Part 75 ), 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.

## 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).
- 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.

## Section 11 – 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 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.

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

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, the State recommends that CDBG recipients employing less than fifteen persons also take these actions:

- Designate a 504 Contact Person and post or publish the Notice of Non-discrimination at least once during the grant period, 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 the State 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 the State to assess the recipient's progress in complying with these requirements.

Note that the State'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, the State 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 Post/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 either post the notice in public buildings or 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.).

The Section 504 compliance file should contain either the printer's affidavit for the published Policy of Non-discrimination on the Basis of Disability Status or other evidence of compliance with the notification policy such as posting of the notice in public buildings. Also, to ensure this notice reaches the visually and mobility impaired, it is recommended to 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 recipient must furnish auxiliary aids and services as necessary, which may include:

CDBG recipients are <u>not</u> required to provide individually prescribed devices such as:

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

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.

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.

The State 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 the State's Section 504 Compliance Specialist or your State CDBG Program Grants Manager. Follow Non-Discriminatory Employment

Practices (All Recipients)

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 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.
  - 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.
- 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. The State 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.
- 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.
- The regulations do not indicate how often the Self-Evaluation Plan should be updated, but the State recommends the plan be re-assessed at least every five (5) years since a local government's facilities and policies/programs may change.

## 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.

### 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 12 - 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 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 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 11 - Other Requirements - Forms

- Notice of Citizen Participation Plan Public Hearing Sample
- Notice of Availability of Citizen Participation Plan for Review
- Sample Notice of Public Hearing Concerning Needs Assessment
- Notice of Public Hearing Concerning Program Performance and Accomplishments Sample
- Fair Housing Brochure
- 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**