

## CHAPTER 9

# FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

Localities receiving Community Development Block Grants (CDBG) through the Michigan Strategic Fund (the MSF) are required to comply with various state and federal laws that provide for equal opportunity and non-discrimination in all aspects of the projects they undertake with those grants. Applicable state and federal laws were established to ensure that protected groups are not subjected to discrimination under any program supported in whole or in part with CDBG funds. The laws discussed in this chapter include provisions for extending opportunities to minority- and women-owned businesses (MBE/WBE), residents of project areas, training, and providing fair and equal access to housing.

Briefly, the various laws, regulations, and executive orders apply to four general areas:

- Project beneficiaries
- Employment opportunities
- Contracting opportunities
- Fair Housing

These laws are applicable to private businesses and contractors involved in the covered projects, as well as the Unit of General Local Government (UGLG) themselves. This chapter will describe the implementation procedures, compliance requirements, reporting, and recordkeeping responsibilities of the UGLG. A listing of applicable laws is provided in this chapter.

### SECTION 1 – PROJECT BENEFICIARIES

The UGLGs are responsible for ensuring that laws regarding civil rights and equal opportunity are adhered to throughout implementation of a CDBG project. Specifically, UGLGs are responsible for ensuring and monitoring their performance in meeting statutory requirements provided in related laws.

#### PROJECT BENEFICIARIES

The applicable state and federal laws provide that no person in the United States shall, on the grounds of race, color, national origin, religion, sex, familial status, and/or physical handicap, be excluded, denied benefits, or subjected to discrimination under any program funded in whole or in part by CDBG funds. In CDBG funded projects, recipients are prohibited from practicing discrimination on the grounds of race, color, national origin, religion, sex, handicap, or familial status. This prohibition applies directly to the UGLG and to all project contractors or subcontractors. Beneficiaries should be determined, and demographic data compiled, with this information made available in the project file for public review.

For purposes of the CDBG program, the term **direct beneficiary** is defined as a person or family receiving a direct service (benefit) for which they are required to either complete a personal income verification form or submit an application for the purpose of demonstrating eligibility under a particular criterion (such as income limit). The term **indirect (area) beneficiary** is defined as a person or family who receives a service (benefit) that is equally provided to the whole community or a targeted portion of the community.

As an example, a new job created as a result of a CDBG economic development project would be considered a direct benefit to the persons hired in the newly created jobs. Replacing a water line that serves the entire community or target area would fall under the definition of an indirect (area) benefit; however, providing hookup into a municipal water or sewer system is considered a direct benefit and eligibility must be demonstrated as described in the previous paragraph. Street paving would ordinarily be considered an indirect (area) benefit, as would a new water tower or wastewater treatment system improvement. This prohibition applies directly to the UGLG and to all project contractors or subcontractors involved in the project. For the purpose of documenting compliance at the development stage of the project, project beneficiaries must be identified by assessing demographic data, and the information must be available for public review at the UGLG's office(s). Beneficiaries will be identified at the Application stage, as discussed in the State of Michigan CDBG Program's Funding Guide, either through

income information from the census or another US Department of Housing and Urban Development (HUD) acceptable survey methodology, or by determining which families are likely to benefit directly from the project.

Documentation of beneficiaries served will be reported on a semi-annual basis for projects that involve job creation/retention. Beneficiary information provided for other types of projects is reported at the time of close-out under a project close-out report found in Chapter 13. The UGLGs are required to maintain beneficiary information by race, ethnicity, and gender and submit this information at the time of close-out. This information is used by the State to complete the HUD performance evaluation report that is submitted to HUD annually.

## **SECTION 2 – EMPLOYMENT AND CONTRACTING OPPORTUNITIES**

### **UGLG OPERATIONS**

The UGLGs or their agents must not deny the opportunity for employment in any CDBG program or activity based on race, color, religion, sex, or national origin, familial status, and/or physical handicap. For internal operations, the UGLGs must maintain statistical data on the number and percentage by race and gender of the personnel in any department, office, or agency of the unit of local government that is receiving funding under the project.

Public or private entities performing professional services under contract to a UGLG, such as a regional planning organization or private consulting firm, are exempt from the requirement to track and maintain this data. However, they are prohibited from discriminating against any of the groups mentioned above in their hiring process. Businesses receiving assistance through an UGLG in order to develop or retain jobs must also maintain data on the number (and percentage) of employees by race and gender as provided by the UGLG in the CDBG Job Creation Summary Report (Form 2-C). Compliance with employment provisions related to Section 3 is discussed later in this Chapter.

The UGLGs must also make available a personnel policy manual during monitoring visits. The manual must contain language related to its hiring practices and the applicable civil rights and equal opportunity language. The UGLGs must also provide a sample hiring announcement in its equal opportunity file that documents equal opportunity advertising statements. The files should also contain any complaints filed and the associated resolutions.

### **CONSTRUCTION BIDDING**

The UGLGs must ensure that discrimination does not occur in the solicitation and award of contracts through the development of nondiscriminatory advertising, distribution of solicitations, bid solicitations, bid specifications, and evaluation criteria. The UGLGs and its contractors that participate in the project are required to make affirmative efforts to employ minorities and women, and to maximize opportunities for minority- and women-owned businesses to participate in the CDBG project. Contractors are also prohibited from employment and other discrimination activities defined in the applicable civil rights and equal employment opportunity laws, including EO 11246. These provisions are covered in Chapter 4: Procurement and Contracting.

For the MEDC projects, the UGLGs are required to submit their contracts with developers and any bid documents with contractors to the CDBG Program Specialist for review and approval before executing these documents.

## **SECTION 3 – ECONOMIC OPPORTUNITIES**

### **24 CFR § 75.5 SECTION 3 DEFINITIONS**

The terms HUD, Public housing, and Public Housing Agency (PHA) are defined in 24 CFR part 5. The following definitions also apply to this part:

*1937 Act* means the United States Housing Act of 1937, 42 U.S.C. 1437 et seq. *Contractor* means any entity entering into a contract with:

- (1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
- (2) A subrecipient for work in connection with a Section 3 project.

*Labor hours* means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

*Low-income person* means a person as defined in Section 3(b)(2) of the 1937 Act.

*Material supply contracts* means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

*Professional services* means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

*Public housing financial assistance* means assistance as defined in § 75.3(a)(1).

*Public housing project* is defined in 24 CFR 905.108.

*Recipient* means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

*Section 3* means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

*Section 3 business concern* means:

- (1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
  - (i) It is at least 51 percent owned and controlled by low- or very low-income persons;
  - (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
  - (iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
- (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

*Section 3 project* means a project defined in § 75.3(a)(2).

*Section 3 worker* means:

- (1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
  - (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
  - (ii) The worker is employed by a Section 3 business concern.
  - (iii) The worker is a YouthBuild participant.
- (2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

- (3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

*Section 8-assisted housing* refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

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

*Small PHA* means a public housing authority that manages or operates fewer than 250 public housing units.

*Subcontractor* means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

*Subrecipient* has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

*Targeted Section 3 worker* has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

*Very low-income person* means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

*YouthBuild programs* refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

### **HUD SECTION 3**

To the maximum extent feasible, UGLGs must also ensure that lower income residents that reside in affected project areas receive employment, training, and contracting opportunities. Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that to the greatest extent feasible, preference for economic opportunities, such as job training and employment that arise through HUD-assisted projects, shall be directed toward Section 3 residents and to business concerns which provide economic opportunities to these residents. Section 3 reporting and performance requirements apply to the UGLGs if the CDBG award amount is more than \$200,000.

A Section 3 worker currently fits or when hired with the past five years fit at least (and can document) one of the following:

1. A worker whose income for the previous year is below the income limit established by HUD.\*
2. A worker who is employed by a Section 3 business concern.
3. The worker is a YouthBuild participant.

\*PLEASE NOTE: the income limit for Section 3 is based on one individual, rather than a family or household income.

The person seeking training and employment under Section 3 provisions is responsible for providing evidence of eligibility. See Section 3 Targeted Worker Certification (Form 9-L). This form is new and replaces Form 9-A Section 3 Resident Eligibility Certification, which is obsolete for construction contracts signed November 30, 2020 or later.

#### **A Targeted Section 3 Worker**

1. A worker employed by a Section 3 Business concern.
2. A worker who currently or within the last five years:
  - a. lives within the service area of the project
  - b. resides in public housing or Section 8-assisted housing
  - c. is a YouthBuild participant



Businesses covered by Section 3 are defined as follows:

1. Businesses at least 51% owned and controlled by low- to very low-income persons;
2. Businesses which more than 75% of the labor hours are performed by Section 3 workers
3. Businesses that are at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 businesses are responsible for providing evidence of eligibility. See Section 3 Business Concern Certification (Form 9-A1).

A Section 3 covered contract is a contract or subcontract awarded by the UGLGs or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, if the materials contract includes installation, then the contract constitutes a Section 3 covered contract. Section 3 requirements are triggered when a covered project creates the need for a new employment, contracting or training opportunities. Recipients are not required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities. If the expenditure of covered funding does not result in new employment, training or contracting, Section 3 requirements are not triggered, but the recipient must still submit reports indicating that the requirements were not triggered.

### SECTION 3 REPORTING & NUMERICAL GOALS

For Section 3 projects, recipients are required to report on labor hours:

1. The total number of labor hours worked;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

The Section 3 regulations establish numerical goals that the UGLGs and covered contractors may strive to achieve to the greatest extent feasible:

1. 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;  
Section 3 Worker Labor Hours divided by Total Labor Hours = 25%

**AND**

2. 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers;  
Targeted Section 3 Labor Hours divided by Total Labor = 5%

3. *Additional Reporting if Section 3 Benchmarks are **NOT** met:*

If the Recipients' reporting indicates the Section 3 benchmarks have not been met, the Recipient must report on the nature of activities pursued in the absence of not meeting Section 3 benchmarks.

Contractors will complete Section 3 Total Labor Hours Tracking (Form 9-N). UGLGs will use the contractor's tracking to complete the Section 3 Total Labor Hours Final Report (Form 9-O). The reports are due at project closeout. NOTE: Section 3 Summary Report (formerly Form 9-C) is obsolete and no longer required for projects with construction contracts signed November 30, 2020 and after. Section 3 Reporting has been replaced with Section 3 Total Labor Hours Final Report.

In addition, UGLGs may complete and maintain a Section 3 Contract & Worker Solicitation (Form 9-D, formerly named Contract Solicitation & Section 3 Reporting Record) for covered projects, as an internal record of efforts to involve Section 3 businesses in the funded project. This tool will allow the UGLG to verify solicitation of bids, price quotations, and proposals from all participating contractors and professional services providers. The forms may accompany Form 9-N Section 3 Contractor Labor Hours Tracking when submitted at project closeout.

For more information, please refer to the updated Section 3 Packet (Form 9-C1). The Section 3 Packet includes a CDBG Advisory, Section 3 Overview, and Section 3 Flow Chart. NOTE: the Section 3 Compliance Certification, previously in the Section 3 Packet is obsolete and no longer required.

### **SECTION 3 RESPONSIBILITIES**

The UGLGs are responsible for the following to encourage the use of Section 3 businesses and compliance requirements:

1. Implement Section 3 Policy (Form 9-B). The policy has been updated based on new Section 3 requirements in 24 CFR 75 and must, at a minimum, include the language found in Form 9-B. The updated policy includes UGLG and contractor responsibilities, resources, and reporting requirements and is to be signed by the UGLG and adopted.
2. Develop a Contractor's Section 3 Plan (Form 9-B3 (new) - replaced former forms 9-B1 Section 3 Plan for General Contractor and 9-B2 Section 3 Plan for Subcontractor) for the UGLG and contractor(s).
3. Implement Procurement procedures that provide preference to Section 3 Business Concerns.
4. Develop a list of Section 3 businesses to be notified of opportunities for participation in project contracts. A registry of Section 3 Certified Businesses may be found on HUD's website (<http://www.hud.gov/Sec3Biz>). Please note the following disclaimer: "HUD has not verified the information submitted by businesses listed in this registry and does not endorse the services that they provide. Users of this database are strongly encouraged to perform due diligence by verifying Section 3 eligibility before providing preference or awarding contracts to firms that have self-certified their Section 3 status with the Department".
5. Notify Section 3 businesses of contract opportunities. This can be accomplished by distributing public notices, including newspaper advertising, and/or sending information to disadvantaged businesses that could reasonably be expected to submit a bid. The UGLGs must ensure that all bid notices be distributed in a timely manner. Please refer to Chapter 4 – Procurement and Contracting for additional requirements regarding the advertising and direct solicitation of bids.
6. Ensure contractors and subcontractors awareness of Section 3 goals and responsibilities, including Section 3 provisions in the construction contract.
7. Ensure a Section 3 Clause and Section 3 Contractor Packet (Form 4-T) is required to be included in all construction contracts (prime/general and subcontractors). Refer to Chapter 4, Section 3 Procurement Procedures.
8. Procurement action taken to meet HUD benchmarks. Recordkeeping and reporting, to include submitting a Section 3 Total Labor Hours Final Report (Form 9-O) and maintaining outreach efforts (a Section 3 Contractor & Worker Solicitation (Form 9-D) may be used to demonstrate outreach efforts).

9. Monitor contractor and subcontractor compliance with applicable Section 3 provisions.
10. Obtain information from prime contractors on Section 3 accomplishments.

### **Outreach Best Practices**

. Best practices demonstrating outreach to Section 3 Workers and Businesses within the municipality include:

1. Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
2. Use of signage at the project site and flyers posted in the project area.
3. Notification of potential training or employment opportunities to neighborhood and non-profit groups, including Public Housing Authorities, servicing low- and very low-income persons.
4. Communication of opportunities to employment agencies and career centers. A copy of a “Notice to Citizens Opportunity for Work” (Form 9-P), may be used for development of Section 3 employment opportunities. Send completed form to the local [Michigan Works!](https://www.michiganworks.org/) service center (<https://www.michiganworks.org/>).

### **Section 3 Business and Resident Resources**

The following are potential resources where UGLGs/contractors might find Section 3 businesses and/or residents:

1. [HUD Section 3 Registry/Portal](#) (Businesses)
2. [MSHDA MBE/WBE list](#) (Businesses)
3. [MDOT DBE list](#) (Businesses)
4. [MDOT Michigan Unified Certification Program \(MUCP\)](#) (Businesses)
5. [Michigan Works!](#) (Businesses & Workers)
6. [PHAs](#) (Workers)

## **SECTION 4 – MINORITY & WOMEN BUSINESS ENTERPRISES (MBE)/(WBE)**

### **MBE/WBE PARTICIPATION**

The UGLGs and their agents are encouraged to utilize MBE/WBE in the CDBG projects. Although HUD does not specify a numerical goal for MBE and WBE participation in the CDBG projects, UGLGs are encouraged to undertake steps to encourage participation by these types of businesses.

UGLGs may complete and maintain an optional Section 3 Contract & Worker Solicitation (Form 9-D) to record efforts to involve MBE/WBE businesses in the funded project. This optional tool will allow the UGLG to verify solicitation of bids, price quotations, and proposals from all participating contractors and professional services providers. This report, or something similar, must be maintained in the project files for monitoring purposes.

The UGLGs are required to maintain the Contract and Subcontract Activity Report (Form 4-P) and submit each report to MEDC. The State must submit a consolidated Contract and Subcontract Activity Report to HUD annually. The Contract and Subcontract Activity Report is further discussed in Chapter 4.

### **MBE/WBE RESPONSIBILITIES**

The UGLGs are responsible for the following to encourage the use of MBE/WBE businesses and compliance requirements:

1. Develop a list of minority-owned and women-owned businesses to be notified of opportunities for participation in project contracts. The local Chamber of Commerce or similar business association can often provide a listing of companies. Regional planning organizations may also serve as a source of information.
2. Notify eligible MBE/WBE firms of contract opportunities. This can be accomplished by distributing public notices, including newspaper advertising, and/or sending information to disadvantaged businesses that could reasonably be expected to submit a bid. The UGLGs must ensure that all bid notices, including Affirmative Action efforts, be

distributed in a timely manner. Please refer to Chapter 4 – Procurement and Contracting for additional requirements regarding the advertising and direct solicitation of bids.

3. Monitor contractor and subcontractor compliance with applicable MBE/WBE provisions.

## **SECTION 5 – FAIR HOUSING**

### **EFFORTS TO ADDRESS IMPEDIMENTS TO FAIR HOUSING CHOICES**

Fair housing choice means that all persons have the same access to housing choices regardless of race, color, national origin, religion, sex, disability, familial status, or income level. An impediment to Fair Housing Choice is a barrier or an action that prevents a person from exercising that right. Some of those barriers may include a shortage of affordable housing, income variables, discrimination based on historical prejudices, and a lack of knowledge/education about fair housing choices. In some cases, ordinances, regulations, and policies may cause disparate impacts.

### **EFFORTS TO AFFIRMATIVELY FURTHER FAIR HOUSING**

Title 1 of the Housing and Community Development Act of 1974, as amended, requires that the UGLGs receiving HUD funding (including states and their UGLGs) affirmatively further fair housing. This effort generally takes form in promoting and publicizing Fair Housing and Civil Rights laws. The UGLG must develop a method for documenting efforts to promote and monitor fair housing activities. This chapter provides examples of actions that can be taken to accomplish this requirement. Local conditions and needs should determine the type of activities undertaken. UGLGs must certify via resolution or ordinance that they will affirmatively further fair housing. For a sample fair housing ordinance, refer to Fair Housing Ordinance SAMPLE (Form 9-E). In addition to the fair housing certification, the UGLGs must have fair housing posters displayed and must undertake at least one additional activity to further fair housing which should be identified in their Fair Housing Plan. This information must be made available at the monitoring visit. Refer to Fair Housing Awareness (Form 9-Q) as a resource document summarizing fair housing requirements, materials, videos, and other fair housing resources.

### **SUGGESTED FAIR HOUSING ACTIVITIES TO FURTHER FAIR HOUSING**

1. Schedule fair housing activities during April, which is National Fair Housing Month. Many UGLGs adopt and publish a Fair Housing Month proclamation.
2. Post and publish any revisions to local fair housing policies that bring the UGLGs into compliance with current state and federal laws.
3. Encourage active participation in community efforts to enact strong fair housing policies.
4. Develop and display informational materials to promote local awareness of fair housing laws and guidelines (e.g. fair housing pamphlets and brochures, fair housing logo on official stationery, fair housing policy statements).
5. Display state and federal fair housing posters in places of public accommodation throughout the community.
6. Maintain a log of all fair housing activities performed.
7. Provide funding for local fair housing organizations and assist in their development.
8. Offer outreach, counseling, and referral services to aid LMI persons residing in areas of minority concentration to find assisted housing outside those areas.
9. Obtain housing units outside areas of minority concentration for use as assisted housing.
10. Acquire sites outside areas of minority concentration for the development of assisted housing.
11. Assemble a comprehensive inventory of available land suitable for the development of assisted housing.

12. Conduct educational programs focused on prospective homebuyers or renters, businesses, local government employees, and members of housing-related industries (e.g. real estate agents, mortgage lenders, builders, homeowners' insurance companies) regarding fair housing rights and responsibilities.
13. Develop public information and educational programs to provide fair housing and information to the community. Methods that can be used to inform and involve the public in fair housing awareness efforts may include, but are not limited to the following: canvassing the community through a mail campaign, such as inserting a flyer in local utility bills or tax statements; placing a public service announcement on local radio and or community cable television access channel, or sponsoring a fair housing poster contest in local schools the UGLGs can focus these programs on the following types of groups:
  - a. Citizen groups concerned with housing issues (fair housing groups, tenant associations).
  - b. Organizations representing specific population groups (minorities, women, senior citizens, families with children, single-parent families, etc.) known to have suffered from discriminatory practices in the past.
  - c. Other local organizations (advocacy groups, unions, voters' leagues). Use local resources to assess public opinion about the status of fair housing in the community. Suggested contacts for this effort could include:
    - Fair housing organizations.
    - Public/private community centers and social service facilities.
    - Civil rights advocacy groups.
    - Organizations representing minorities, women, senior citizens, persons with disabilities, and other protected groups.
14. Document actions taken at the local level to address fair housing impediments identified in a local study. Public notice of this activity, and/or other forms of public participation in the process, can be considered as a qualified furtherance action.
15. Encourage local lending institutions, realtors, insurers, and other housing-related service providers to include the fair housing logo and policy statements in all advertising done through the internet or related means, such as community information networks, local cable access channels, etc.
16. Facilitate development of a local Habitat for Humanity chapter in your jurisdiction, or support activities of local chapters already in existence.
17. Invite a representative from a federal or state agency concerned with fair housing issues to a local advocacy group meeting or informational program.

While the MSHDA awards the State of Michigan's CDBG housing grants (which naturally involve fair housing compliance), it is important to note that CDBG grants awarded by the MEDC are also covered by the Federal Fair Housing requirements and the UGLGs must comply with the provisions above notwithstanding the nature/purpose of their specific CDBG award.

#### **COMPLAINT PROCESSING**

If a complaint arises, a full report should be sent to the CDBG Program Specialist and made available during the monitoring visit. The MEDC will then forward the complaint to HUD and corrective action will be decided upon. The UGLGs must maintain a local fair housing complaint process. A sample complaint process is provided in Housing Discrimination Complaints SAMPLE (Form 9-F).

## SECTION 6 – OTHER COMPLIANCE REQUIREMENTS

### SECTION 504 COMPLIANCE

The UGLGs are required to certify that they will comply with provisions of Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds.

Section 504 regulations define an individual with a disability as any person who has a physical or mental disability that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself. The law also applies to individuals who have a history of such impairments, as well as those who are perceived as having such an impairment. A person who meets the above definition, and who is otherwise qualified for the program, service, or activity, is covered under Section 504.

To comply with the provisions of the Act, all UGLGs are required to conduct a self-evaluation of accessibility to determine if their current programs, services, policies, and practices meet the requirements of Section 504 of the Rehabilitation Act of 1973. Including persons with disabilities in completing the self-evaluation process is important to completing a meaningful product. For a sample of how to conduct and document a self-evaluation, please see Section 504 ADA Self-Evaluation (Form 9-G). Evidence of performing the self-evaluation must be made available at the monitoring visit. The UGLGs should take the following steps, as recommended by HUD, in completing the self-evaluation:

1. Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs activities and services.
2. Modify any policies and practices that are not or may not be in compliance with Section 504 regulations.
3. Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect.

All UGLGs are required to evaluate their accessibility and provide a Section 504 ADA Self-Evaluation (See Form 9-G for a fillable sample). For UGLGs that have 15 or more employees the following additional Section 504 requirements apply; UGLGs with less than 15 employees are excluded from these additional Section 504 requirements.

- The UGLGs that employ 15 or more employees must designate at least one person to be responsible for 504 activities and adopt a grievance procedure to address 504 complaints. A grievance procedure must be made available at monitoring Please see Grievance Procedure SAMPLE (Form 9-I).
- If the UGLG employs 15 or more employees, the UGLG must also notify all parties associated with the project that they may not discriminate based on handicap. Please see Non-Discrimination on Basis of Handicap SAMPLE (Form 9-J) for a sample notice. If applicable, this must be made available at monitoring.

The UGLG is required to publish a notice in the newspaper stating compliance with the provisions of Section 504. The notice must identify the individual designated to coordinate Section 504 compliance. The notice or full-page advertisement must be placed in the file and must be available during monitoring visits. Other notification processes may also be used, including distributing fliers, posting notices, and providing other written materials.

The UGLG will need to demonstrate to the MEDC that they are following these rules by providing the self-evaluation form, designation form, and published notice during the monitoring visit.

The UGLG should be aware of the need to provide appropriate communication devices that may be necessary to provide for access to programs and services. Further, the UGLG should be aware of needs for employee accommodations in their own

operations. The UGLG should also be familiar and comply with the provisions of the Americans with Disabilities Act (ADA) in administering its project.

The UGLGs aiding businesses to construct new facilities must comply with Section 504 and the ADA as it pertains to accessibility.

Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with handicaps. For the purpose of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that the UGLGs make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the UGLG's program or activity.

Programs that involve non-housing facilities shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This does not:

1. necessarily require the UGLGs to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps.
2. in the case of historic preservation programs or activities, require the UGLG to take any action that would result in a substantial impairment of significant historic features of an historic property.
3. require the UGLGs to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the UGLGs shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

The UGLGs that are assisting the construction of housing developments must also ensure that those developments comply with the Section 504 provisions regarding set asides of apartments for groups with specific disabilities. These rules are not likely to apply to MEDC UGLGs since the program does not support the rehabilitation or construction of housing facilities. However, if a UGLG believes that their project does trigger these requirements they should contact their CDBG Program Specialist.

#### **EXCESSIVE FORCE POLICY**

All UGLGs must certify compliance with the regulations under CFR 91.225 (b)(5), (also known as the Armstrong Walker Amendment) which prohibits the use of excessive force by law enforcement agencies within their jurisdiction against any individuals engaged in non-violent civil rights demonstrations. Further, and in case where a jurisdiction has no police department, the UGLG must also certify that it has adopted and is enforcing a policy against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction. The Excessive Force policy must be made available during the monitoring visit. For a sample of such a policy, please see Excessive Force Policy SAMPLE (Form 9-K).

## **SECTION 7 – RECORDKEEPING**

### **CIVIL RIGHTS, SECTION 3, AND CONTRACTING**

The MEDC staff will monitor for program compliance through a review of reports and site visits to project sites. The following records should be maintained in the UGLG program files:

- Equal opportunity advertising statements and policies.
- Statements on hiring policies.
- Personnel manuals.
- Employment data summaries.
- Section 3 employment efforts and business utilization reports from contractors.
- Data on distribution of direct and indirect benefits.

- Contract records documenting civil rights compliance in contract procurement, and proof of inclusion of all applicable civil rights certifications in project contracts.
- Complaints, if any, and their resolution.
- Actions taken to reduce impediments to fair housing.
- Policies adopted and enforced regarding Fair Housing and Equal Opportunity
- Associated Section 3 reports, and may include the optional Contract & Worker Solicitation (Form 9-D), as well as copies of Contract and Subcontract Activity (Form 4-P).

## **SECTION 8 – APPLICABLE LAWS**

### **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED (42 U.S.C. 2000D)**

This Act states that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance based on race, color, or national origin. Regulation citation: 24 CFR Part 1.

### **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED**

This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status, or handicap. Regulation citation: 24 CFR Parts: 105, 108, 109, 110, and 115; Part 200 subpart M.

### **SECTION 109 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1974, AS AMENDED**

This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the Community Development Block Grant Program (CDBG) on the basis of race, color, age, disability, religion, national origin, or sex. Regulation citation: 24 CFR 570.602.

### **AGE DISCRIMINATION ACT OF 1975, AS AMENDED**

This Act states that programs receiving federal assistance may not discriminate on the basis of age, unless an age distinction is necessary to accomplish the objective of the program. Regulation citation: 45 CFR Part 91.

### **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

This Act states that no otherwise qualified individual may be excluded solely because of his/her handicap from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. Regulation citation: 24 CFR Part 8.

### **ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED (42U.S.C. 4151-41-57)**

This Act requires that certain federally funded buildings or facilities be designed, constructed, or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated CDBG funds after December 11, 1995, that meet the definition of “residential structure” (as defined in 24 CFR 40.2) or the definition of “building” (as defined in 41 CFR 101-19.602(a)) are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards. Regulation citation: Appendix A to 24 CFR Part 40 for “residential structures” and Appendix A to 41 CFR Part 101-19 for “general buildings”.

### **AMERICANS WITH DISABILITIES ACT (ADA)**

This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to, and usable by, persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense. Regulation citation: 42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225.

**CHAPTER 9 FORMS**FHEO Plans and Policies

- 9-E Fair Housing Ordinance SAMPLE
- 9-F Housing Discrimination Complaints SAMPLE
- 9-G Section 504 ADA Self-Evaluation
- 9-I Grievance Procedure SAMPLE
- 9-J Non-Discrimination on Basis of Handicap SAMPLE
- 9-K Excessive Force Policy SAMPLE

## Section 3 Forms for Projects with Construction

Contracts signed on or before 11/29/2020, 24 CFR 135

- 9-A Section 3 Resident Eligibility Certification
- 9-B1 Section 3 Plan for General Contractor
- 9-B2 Section 3 Plan for Subcontractors
- 9-C Section 3 Summary Report, HUD-60002

## Section 3 Forms for Projects with Construction

Contracts signed 11/30/2020 and after, 24 CFR 75

- 9-A1 Section 3 Business Concern Certification
- 9-B Section 3 Policy
- 9-B3 Section 3 Contractor's Plan
- 9-L Section 3 Targeted Worker Certification
- 9-M Contractor Permanent Workforce
- 9-N Section 3 Contractor Labor Hours Tracking
- 9-O Section 3 Total Labor Hours Final Report

Section 3 Resources

- 9-C1 Section 3 Packet
- 9-D Section 3 Contractor & Worker Solicitation
- 9-P Section 3 Notice to Citizens Opportunity for Work
- 9-Q Fair Housing Awareness