

FAIR HOUSING/EQUAL OPPORTUNITY PROCESS

I. INTRODUCTION

All recipients of Community Development Block Grant (CDBG) funds must comply with non-discrimination and affirmative activity requirements of all legislation providing Fair Housing/Equal Opportunity (FH/EO) rights to all affected citizens.

Such compliance will involve every aspect of CDBG projects from the initial public hearing process to the submission of closeout documents. No CDBG project is exempt from these requirements. As a recipient of CDBG funds, grantees have a fair housing responsibility even if housing is not involved.

Generally, FH/EO requirements can be classified into two types of responsibilities: non-discrimination and affirmative activities.

Non-discrimination laws require that no person or protected group is denied benefits such as employment, training, housing or contracts generated by any CDBG-funded activity. Also, the extent to which protected groups within the community are participating in and receiving benefits from the project activity is a non-discrimination consideration.

Affirmative activities are steps taken to address past instances of possible FH/EO discrimination or noncompliance or to aid in meeting the intent of FH/EO provisions. Grantees must maintain, and provide to the Arkansas Economic Development Commission, upon request, comprehensive records of all non-discrimination and affirmative activities conducted in conjunction with their project.

As Section II of this chapter defines in detail, individuals may not be discriminated against or excluded from participation in project-related activities on the basis of:

- Race (Also see Minority and Women Business Enterprise requirements on III. E)
- National Origin
- Religion
- Color
- Sex and Marital Status
- Age
- Handicap (Disability)
- Familial Status

Section III of this chapter defines each activity that grantees must undertake to ensure compliance with FH/EO requirements. Required documentation resulting from these activities are specified in Section IV, while Section V provides a checklist to ensure complete documentation by grantees of all FH/EO requirements.

II. FAIR HOUSING/EQUAL OPPORTUNITY LAWS AND REGULATIONS

The major Fair Housing/Equal Opportunity laws and regulations applicable to CDBG grantees are listed below by category in summary form. Copies of each of these laws can be obtained from the Arkansas Economic Development Commission grants manager.

A. Civil Rights

1. **Title VI of the Civil Rights Act of 1964**, as amended by the Equal Employment Opportunity Act of 1972, provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.
2. **Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)**, as amended, prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex and/or national origin. The 1988 amendments extended the prohibition to include people with disabilities and familial status under the protected classes.
3. **Section 109 of the Housing and Community Development Act of 1974** provides that no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of race, color, religion, national origin or sex under any program or activity funded in whole or in part under Title I of the Act.
4. **Section 104(b)(2) of the Housing and Community Development Act of 1974** requires that each grantee certify that the grant will be administered in conformance with the Fair Housing Act and that the grantee will “affirmatively further fair housing” (AFFH). Similar language can be found at 24 CFR 570.487.
5. **Section 3 of the Housing and Urban Development Act of 1968**, as amended, is a statutory provision which requires that, to the greatest extent feasible, opportunities for training, employment, contracting and other economic opportunities be given to low and moderate income residents of the project area and contracts for work in connection with the project be awarded to eligible businesses which are located in, or owned in substantial part, by persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in construction contracts. Implementing regulations are published at 24 CFR 135 of the Federal Register dated June 30, 1994. To view federal regulations online, refer to the following website: <http://www.gpoaccess.gov/cfr/index.html>.

Section 3 applies to local governments receiving CDBG funds for public construction projects when such funds exceed **\$200,000** in any federal fiscal year and to contractors and subcontractors (subrecipients) when CDBG assistance exceeds **\$100,000** in the aggregate.

Section 3 is applicable to the entire project (employees of grantees and their contractual subrecipients) if the thresholds are met regardless of whether the project is fully or partially funded with CDBG funds.

Section 3 compliance requires:

- Including specific Section 3 language (Form 52, Section 3 Clause) in all procurement advertisements and contracts.
- Notifying Section 3 residents and businesses of available training and employment opportunities as they arise.
- Providing training and employment opportunities for Section 3 eligible persons “to the greatest extent possible”.
- Collecting and documenting data on all actions taken to comply with Section 3 requirements including the number of available opportunities available to Section 3 eligible persons.
- Pursuing achievement of 30 percent Section 3 new hires annually.
- Submitting annual reports to the Arkansas Economic Development Commission when required.
- Justifying noncompliance.
- Contacting the grants division grants manager in the event that Section 3-specific complaints arise.

Section 3 requires that employment and training consideration be given to qualified low and moderate income residents of the project area. These requirements apply only to **new hires** as a result of the CDBG-funded project. While Section 3 specifies grantee objectives of hiring at least 30 percent of new hires for the project from Section 3 eligible individuals, it is stressed that this is an objective based upon the grantees’ good faith efforts. Review of efforts that fall short of this percentage will be considered with proper justification indicating the absence of employment opportunities, the lack of qualified individuals or other documentation indicating that a good faith effort to comply with this requirement was achieved.

B. Disability and Handicapped Accessibility

1. **The Architectural Barriers Act of 1968 (ABA)** requires buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds. Similar language is addressed in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

2. **Section 504 of the Rehabilitation Act of 1973**, as amended, prohibits discrimination based on disability in any program or activity receiving federal financial assistance. This section requires adaptations needed so that a qualified person with a disability may fully participate in a program, take advantage of a service, perform a job, or be able to use and enjoy a dwelling, including common areas.
3. **Title V of the Rehabilitation Act** requires that handicapped individuals be considered equally for employment with firms doing business with the federal government annually in amounts exceeding \$2,500.
4. **The Americans with Disabilities Act of 1990 (ADA)**, as implemented by 28 CFR 35 and 130, prohibits discrimination against “a qualified individual with a disability” in employment, all public services, 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.
5. **Section 503 of the Rehabilitation Act of 1973** prohibits discrimination and requires employers with federal contracts or subcontracts that exceed \$10,000 to take affirmative action to hire, retain, and promote qualified individuals with disabilities. All covered contractors and subcontractors must also include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts.

For more information, please go to www.dol.gov/ofccp.

6. **Program Accessibility**

Communication is an important component of program accessibility. Disabilities involving impairments to hearing, vision, speech or mobility may affect communication. Members of the community who have disabilities must be able to access and enjoy the benefits of a program or activity receiving CDBG funds; therefore, varied approaches may be required to assure effective communication and information dissemination.

Specifically, the grantee must be receptive 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.

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

For persons with hearing impairments:

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

For persons with vision impairments:

- Qualified readers
- Written materials translated into alternative formats (e.g., Braille, audio tape, large print)
- Aural communication (Bells or other sounds used where visual cues are necessary)
- Audio description services

The grantee must ensure effective communication with persons with all types of disabilities in all activities. Grantees are NOT required to take any action that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

C. Age

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

The Age Discrimination Act of 1975, 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.

D. Sex

The Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

III. GRANTEE RESPONSIBILITIES

Paragraphs A through I below define the various responsibilities required for FH/EO compliance as they occur in chronological event order.

A. Application

1. The Certification of Requirements Form in the application package must be executed and submitted with application documents.
2. Economic (income) and proposed demographic data collected during pre-application or application development must be submitted to the Arkansas Economic Development Commission.

B. Grant Requirements

1. An Equal Employment Opportunity Poster (Form 53) must be posted at the project site.
2. An Equal Housing Opportunity Poster (Form 54) must be posted by the grantee in a prominent area accessible to its citizens.
3. Grantees must adhere to all FH/EO laws and regulations referenced in the grant agreement.
4. General and specific grant requirements pertaining to the conduct of required FH/EO activities and the establishment of comprehensive written records to substantiate such activities must be adhered to.
5. All certifications listed under Part II, paragraph 32 of the grant agreement and Part III, Section A, Scope of Work must be implemented.

C. Designation of Fair Housing/Equal Opportunity Certifying Officer

This person must be appointed by the grantee's chief executive officer immediately after execution of the grant agreement. This person must be or become familiar with all FH/EO laws, regulations and requirements and will be the liaison with state and federal officials who monitor civil rights compliance. The grantee must notify the Arkansas Economic Development Commission of this designation by submitting a Fair Housing/Equal Opportunity Certifying Officer Notification Letter (Form 55) to the grants division upon designation.

D. Fair Housing Activities

As one CDBG grant requirement, grantees must undertake at least one activity (Forms 60 and 61) to affirmatively further fair housing. Fair housing characterizes the ability of persons, regardless of race, color, religion, sex, age, handicap, familial status or national origin, of similar income levels, to have available to them the same housing and employment choices.

E. MBE/WBE Procurement

In accordance with Executive Order 11246, as amended, efforts to solicit minority and women's business enterprises (MBE/WBE) must be conducted whenever goods or services are procured. Grantees should:

1. Include qualified small, minority and women's business enterprises on solicitation lists.
2. When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by small, minority and women's business enterprises.
3. Use the services and assistance of the Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and the Community Services Administration which maintains a directory of minority contractors, suppliers and vendors.
4. Contact the Small & Minority Business Division of the Arkansas Economic Development Commission for assistance in contracting with and soliciting minority-owned businesses in the area and throughout the state.

Arkansas Economic Development Commission
Small & Minority Business Division
900 West Capitol Avenue, Suite 400
Little Rock, Arkansas 72201

F. Economic Development

1. Complete demographic data for each employee hired in conjunction with the project (Form 56, Section III of the ACEDP EDSA Income Certification Form for the Economic Development Set-Aside program).
2. Complete and submit the Job Activity Log (Form 99) to document demographic data for all employees hired in conjunction with the project.

Both forms must document economic and demographic data for all jobs created.

G. Contract Management

1. Ensure that all contracts contain the required FH/EO clauses (See the contracts for services provided in the Procurement Chapter of this manual.)
2. Complete and submit to the Arkansas Economic Development Commission Annual Contract and Subcontract Activity Reports (Form 57) to document all contracts awarded.
3. Ensure that executed contract documents from prime contractors include executed Section 3 Certification and Workforce Breakdown forms. (Form 59).

H. Complaint Procedures

When a complaint arises, immediately contact the Arkansas Economic Development Commission grants manager who will assist in referring the complaint to the HUD State Field Office. Generally, complaints must be filed within 180 days of the time of the alleged violation.

I. Closeout

Complete and submit the Equal Opportunity Direct Benefit Form (Form 58) with closeout forms.

Even in the absence of prior discrimination, a grantee, in administering a program or activity funded in whole or in part with ACEDP funds, should take affirmative action to overcome the effects of conditions that would otherwise result in limiting participation by persons of a particular race, color, national origin, sex, age, religion, handicap or familial status. For example, efforts to solicit MBE/WBE firms (see above) are affirmative activities.

IV. REQUIRED DOCUMENTATION

All compliance documentation with the aforementioned laws and the commitment to affirmatively further FH/EO activities and non-discrimination must be kept in a separate FH/EO file which will be available for the Arkansas Economic Development Commission to review upon request. Listed below are documents that are applicable to most ACEDP projects:

A. Forms/Reports (Summarized from above)

- Equal Employment Opportunity Poster (Form 53)
- Equal Housing Opportunity Poster (Form 54)
- FH/EO Certifying Officer Notification Letter (Form 55)
- Annual Contract and Subcontract Activity Reports (Form 57)
- Equal Opportunity Direct Benefit Form (Form 58)
- Income Certification Form (Form 56)*
- Job Activity Log & Instructions (Form 99)*
- Affirmative Action plan is required from grantees with past poor performance.

Economic Development Projects Only

The documentation below is required if the project involves displacement or relocation of households or businesses. The extent to which various protected groups have been impacted by relocation activities must be documented.

- Data on the number and the racial/ethnic and gender characteristics of displaced households.

- Documentation of the location and type of activities that caused the displacement including a map of the area.
- File of documentation for each relocation case, including all assistance provided.

B. Economic and Demographic Data

The following data must be collected and retained by the grantee:

- Proposed economic and demographic data (race, ethnicity, sex, female head of household, and handicap) used in the planning of the project and/or submitted with pre-application and/or application documents.
- Demographic and income data regarding all Section 3 employment opportunities provided as a result of the project. This data will include grantee employment records, Section 3 information collected from all recipients of federally-funded contracts (Section 3 New Hire Employment Report, Form 59), and any other information applicable to hiring new employees in conjunction with this project.
- All public participation documentation including public meetings and hearings and particular efforts to notify and involve disadvantaged citizens. A list of all individuals and organizations to which these efforts were directed must be maintained.
- Evidence of program priorities as they relate to community needs.

C. FH/EO Activities

Data for the following activities must be collected and retained by the grantee.

- Evidence of the city/county equal employment practices and overall community effort to consistently provide these opportunities.
- Evidence that the city/county affirmatively furthers equal employment opportunities including, but not limited to: advertisements; recruitment; testing; hiring or firing; compensation, assignment or classification of employees; transfer, promotion, layoff or recall; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, etc.; and other terms and conditions of employment including retaliation against individuals who oppose unlawful employment practices or exercise their rights under equal opportunity law.
- Documentation regarding completion of at least one Fair Housing Activity in conjunction with the project. A list of Affirmative Action Housing Activities is included as Form 60. A Sample Fair Housing Ordinance is also provided as Form 61.

V. FAIR HOUSING/EQUAL OPPORTUNITY CHECKLIST

The following Fair Housing/Equal Opportunity (FH/EO) Checklist contains general FH/EO documents applicable to most CDBG projects.

	YES	NO
1. Has a Fair Housing /Equal Opportunity (FH/EO) Certifying Officer been designated?	___	___
2. Has a FH/EO Certifying Officer Notification Letter (<u>Form 55</u>) been submitted to the Arkansas Economic Development Commission?	___	___
3. Has a comprehensive file, consisting of the documents listed below, been established to document compliance with FH/EO requirements?	___	___
A. General Project Benefits		
• Copies of public participation documentation, including special efforts to inform protected classes	___	___
• Project beneficiary demographic data collected	___	___
• Equal Opportunity Direct Benefit Form (<u>Form 58</u>)	___	___
B. Project-Specific Employment Data		
• Copy of job creation records which include demographic data (<u>Form 97</u>)	___	___
• Copy of employment and personnel policies	___	___
• Contract and Subcontract Activity Reports (<u>Form 57</u>)	___	___
C. Business Opportunities		
• Evidence that FH/EO guidelines were followed in employment practices	___	___
• Procurement records indicating compliance with FH/EO requirements	___	___
D. Fair Housing		
• Data on general housing characteristics, if applicable	___	___
• Data on housing assistance for minorities, if applicable	___	___
• Documentation of fair housing activity conducted (<u>Forms 60 and 61</u>).	___	___

E. Other

- Section 3 New Hire Employment Reports (Form 59) _____
 - An Equal Employment Opportunity Poster prominently displayed (Form 53) _____
 - An Equal Housing Opportunity Poster prominently displayed (Form 54) _____
 - If displacement occurred, data for the racial, ethnic and gender characteristics for those displaced _____
 - Documentation of location/type of displacement activities _____
 - Amounts of displacement assistance provided _____
 - Affirmative Action Plan(s) _____
 - Employment policies and procedures _____
4. If a complaint was filed, were the correct resolution procedures followed, including notifying the Arkansas Economic Development Commission? _____