

Section 8

Civil Rights

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Section 8 – Civil Rights

1.0 Introduction

This section presents summaries of the key regulations and requirements of civil rights, fair housing, equal opportunity, and equal employment opportunity (EEO) laws applicable to the administration of the Louisiana CDBG funds.

The civil rights laws and related laws and regulations are designed to protect individuals from discrimination on the basis of:

1. Race
2. National Origin
3. Religion
4. Color
5. Sex
6. Age
7. Disability

As they apply to the Louisiana CDBG program, these laws protect individuals from discrimination in:

1. Housing
2. Benefits created by CDBG projects
3. Employment
4. Business Opportunities

Population groups specifically protected by provisions of these laws include:

1. Minorities (specifically - Blacks, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives)
2. Women
3. Groups distinguished by age
4. Persons with Disabilities
5. Family Status

The applicable laws and regulations provide for:

1. Nondiscrimination
2. Equal Opportunity
3. Affirmative Action (to reduce past discrimination)

2.0 Definitions, Acronyms, Initialisms, and Terminology

Please reference these terms for explanation of commonly used names, acronyms, and phrases used within this section.

1. **Contractor** – An entity selected in accordance with the procurement requirements at 2 CFR 200.318. In accordance with 2 CFR 200.319, such procurement actions must be conducted in a manner that provides for free and open competition. With specific regard to the context of Section 3 (24 CFR 75.5), a Contractor is an entity entering into a contract with either (1) A recipient to perform work in connection with public housing financial assistance, or a Section 3 Project; or (2) A subrecipient for work in connection with a Section 3 Project. [24 CFR 75.5]
2. **Extremely-Low-Income Person** – Persons or families whose total household incomes do not exceed 30 percent of the median income for the area. [Per the U.S. Consolidated Appropriations Act of 2014]
3. **Labor Hours** – 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. [24 CFR 75.5]
4. **Low-Income Person** – Persons or families whose total household incomes do not exceed 80 percent of the median income for the area. (Per Section 3(b)(2) of the U.S. Housing Act of 1937.) [24 CFR 135.5; 24 CFR 75.5]
5. **Material Supply Contracts** – Contracts for the purchase of products and materials, including—but not limited to—lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies. [24 CFR 75.5]
6. **MBE (Minority Business Enterprise)** – MBE means a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.
7. **Mixed-Finance Development** – Refers to the development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing, wherein the public housing units are owned in whole or in part by an entity other than a Public Housing Agency. [24 CFR 905.604]
8. **Neighborhood of the Project** – Defined as either (1) The area within one mile of the Section 3 Project; or (2) If fewer than 5,000 people live within one mile of a Section 3 Project, the area 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. (Same as “Service Area”) [24 CFR 75.5]
9. **New Rule** – The regulations collectively codified within 24 CFR Part 75.

10. **Old Rule** – The regulations collectively codified within 24 CFR Part 135.
11. **OSDBU (Office of Small & Disadvantaged Business Utilization)** – OSDBU is the HUD Office responsible for ensuring that small businesses are treated fairly and that they have an opportunity to compete and be selected for a fair amount of HUD’s prime and subcontracting opportunities.
12. **Professional Services** – Defined as 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. [Per 24 CFR 75.5]
13. **Public Housing Agency (PHA)** – Any state, parish, municipality, or governmental entity—or public body or agency or instrumentality of these entities—that is authorized to engage or assist in the development or operation of public housing. [24 CFR 905.108]
14. **Public Housing Financial Assistance** – Public Housing Financial Assistance means: (1) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937; (2) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act; (3) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act; and (4) The entirety of a Mixed-Finance Development project, regardless of whether the project is fully or partially assisted with public housing financial assistance. [24 CFR 75.3(a)(1)]
15. **Section 3 Coordinator** – The individual tasked with overseeing all Section 3 responsibilities for the grantee/recipient.
16. **Section 3 Business Concern** – As related to Section 3 of the of the HUD Act of 1968 (per 24 CFR 75.5), a business concern meeting at least one of the following three criteria, documented within the last six-month period:
 1. The business is at least 51% owned and controlled by Low- or Very-Low-Income persons;
 2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
 3. The business is at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-Assisted Housing.
17. **Section 3 Covered Activity** – As related to Section 3 of the HUD Act of 1968, any activity which is funded by Section 3 Covered Assistance. [24 CFR 135.5]
18. **Section 3 Covered Assistance** – As related to Section 3 of the of the HUD Act of 1968, assistance provided under any CDBG program that is expended for work arising in connection with housing rehabilitation, housing construction, or other public construction projects. [24 CFR 135.5]
19. **Section 3 Covered Contract** – As related to Section 3 of the of the HUD Act of 1968, a

contract or subcontract awarded by a recipient or contractor for work generated by the expenditure of Section 3 Covered Assistance, or for work arising in connection with a Section 3 Project. This does not include contracts for the purchase of materials and supplies unless the contract includes purchasing of materials and installation of these materials and supplies. For example: A contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and thus is covered by Section 3. [24 CFR 135.5]

20. **Section 3 Project** – The housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes Programs. The “project” is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. [24 CFR 75.3(2)]
21. **Section 3 Resident** – A public housing resident or an individual who resides in the metropolitan area or non-metropolitan county/parish in which the Section 3 Covered Assistance is expended; and who meets the definition of low-income or very low-income person. [24 CFR 135.5]
22. **Section 3 Worker** – Per 24 CFR 75.5, any worker who currently fits—or when hired in the past five years fit—at least one of the following categories, as documented:
 1. The worker’s income for the previous or annualized calendar year is below the income limit established by HUD;
 2. The worker is employed by a Section 3 Business Concern;
 3. The worker is a YouthBuild participant.
23. **Section 8-Assisted Housing** – Housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937. [24 CFR 75.5]
24. **Service Area** – Defined as either (1) The area within one mile of the Section 3 Project; or (2) If fewer than 5,000 people live within one mile of a Section 3 Project, the area 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. (Same as “*Neighborhood of the Project*”) [24 CFR 75.5]
25. **Small PHA** – A Public Housing Authority that manages or operates fewer than 250 housing units. [24 CFR 75.5]
26. **Subcontractor** – 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. [24 CFR 75.5]
27. **Subrecipient** – A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. [2 CFR 200.93]

28. **Targeted Section 3 Worker**** – Per 24 CFR 75.21, a Targeted Section 3 Worker for housing and community development financial assistance is defined as a Section 3 Worker who is *also*:
1. A worker employed by a Section 3 Business Concern; or
 2. A worker who currently fits—or when hired fit—at least one of the following categories:
 - a. Living within the Service Area or the Neighborhood of the Project; or
 - b. A YouthBuild participant

*(**Per 24 CFR 75.11, as it relates to public housing financial assistance, the Targeted Section 3 Worker definition also includes considerations for residents of public or Section 8 Housing.)*

29. **Very-Low-Income Person** – Persons or families whose total household incomes do not exceed 50 percent of the median income for the area. (Per Section 3(b)(2) of the U.S. Housing Act of 1937.) [24 CFR 135.5; 24 CFR 75.5]
30. **WBE (Women’s Business Enterprise)** – A WBE is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.
31. **YouthBuild Program / Participant** – YouthBuild programs are those receiving assistance from the Department of Labor under the Workforce Innovation and Opportunity Act of 2013. They are community-based pre-apprenticeship programs that provide job training and educational opportunities for at-risk youth. [24 CFR 75.5]

3.0 Civil Rights Requirements — Laws and Statutes

Civil Rights laws applicable to Louisiana CDBG-DR/MIT programs are set forth in the statutes and Executive Orders which follow:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, or 3. National Origin
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment and other economic opportunities, should be directed to: <ol style="list-style-type: none"> 1. Low and very low income persons, and 2. Business concerns which provide economic opportunities to low and very low income persons.
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, 3. Religion, 4. Sex, or 5. National Origin. 6. Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing
Section 504 of the Rehabilitation Act of 1973, as amended	No otherwise qualified individual shall, solely, by reason of his or her handicap, be: <ol style="list-style-type: none"> 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, 3. National Origin, or 4. Sex.
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in: <ol style="list-style-type: none"> 1. Housing (and related facilities) provided with federal assistance 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of \$10,000.
Equal Access to HUD-assisted or Insured Housing - § 5.105 (a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status. (new regulation effective 3/5/2012)

4.0 Strategies and Procedures

This section presents strategies and procedures for complying with various civil rights, equal opportunity and affirmative action laws, regulations, and requirements outlined above. As a CDBG grant recipient, grantees must assure that all CDBG-funded activities undertaken as part of a program are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disability, or age.

The information that follows can be used in whole or in applicable part to assure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

4.1 Nondiscrimination, Equal Opportunity, and Affirmative Action in Employment

1. Maintain employment data that indicates staff composition by race, sex, disabled status and national origin.
2. Develop or review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.
3. Advertise as an equal opportunity employer.
4. Publish an annual statement of nondiscrimination and/or include such statement in any publicity on CDBG programs.
5. Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspaper/public service channels.
6. Utilize information points throughout the community to advertise employment opportunities.
7. Develop or implement an Affirmative Action Plan.
8. Develop a Section 3 of the HUD Act of 1968 compliance plan.
9. Display Equal Opportunity posters prominently.
10. Take affirmative action to overcome the effect of past discrimination.

4.2 Nondiscrimination, EEO, and Affirmative Action in Contracting

1. Advertise as an equal opportunity employer in bid solicitations.
2. Solicit bids from minority, women, and locally owned businesses.
3. Maintain a list of locally owned businesses that were awarded contracts.
4. Require a Section 3 of the HUD Act of 1968 clause in all contracts.
5. Inform contractors of equal opportunity requirements at pre-construction conferences or through other means of notification.
6. Require contractor to submit monthly utilization reports.
7. Monitor contractor compliance at work site.

4.3 Nondiscrimination, Equal Opportunity, and Affirmative Action in Housing

1. Information concerning housing services and activities should be disseminated through agencies and organizations which routinely provide services to protected groups.
2. Contract documents used by grantees and lending institutions participating in local programs should be reviewed and revised if necessary to eliminate any discriminatory

- intent or practice.
3. Criteria for selecting recipients of housing assistance should be evaluated for any discriminatory effect.
 4. Acceptable Fair Housing Activities.
 5. Publicize that the recipient will assist persons experiencing discrimination in housing.
 6. Development and adoption of a fair housing policy with identification of methods of enforcement.
 7. Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.
 8. Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.
 9. Work with local banks to post "equal lending opportunity" advertisements.
 10. Use "equal housing opportunity" slogan and logo on city letterhead.
 11. Sponsor fair housing seminars and campaigns.
 12. Work with minority and women leaders in the area to promote housing development and increase minority and female participation.
 13. Assist local housing developers in developing outreach programs to attract minorities and females.
 14. Review zoning ordinances and comprehensive plans to insure they promote special de-concentration of assisted housing units.
 15. Create a local housing authority.
 16. Publicly advertise the city as a "fair housing city."
 17. Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

4.4 Complaints

A complaint may not always refer to a violation of a particular civil rights law or laws. A complaint should be reviewed as a civil rights complaint when the complaint:

1. Indicates the belief that he or she has been denied opportunities, treated differently, etc.
2. States his or her race, ethnicity, gender, status as a handicapped person, or age.

Any person, or any specific class of persons, who believes that he or she has been subject to discrimination may file a complaint. A complaint may be filed by the complainant or a representative. A Section 3 of the HUD Act of 1968 Complaint Register is included as Exhibit 8-1. The form contains all of the necessary components of the complaint process. The information provided on this form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine if the allegations of non-compliance are valid.

With the exception of complaints filed under Executive Order 11246, civil rights complaints must be referred directly to the Department of HUD, Office of Fair Housing and Equal Opportunity (FHEO) (1-800-669-9777). Section 3 of the HUD Act of 1968 complaints are required to be filed at the appropriate HUD FHEO Regional Office in which the violation occurred within 180 days from the date of the action or omission upon which the complaint is based. Complaints filed under Executive Order 11246 must be referred to the regional Office of Contract Compliance Programs, Department of Labor. Confidentiality is mandatory. The name(s)

of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the Department of HUD. OCD should, however, be notified that a compliant has been registered. See also Section 2 (“Administration”), Subsection 5.0.

5.0 Developing and Implementing a Fair Housing Program

The Federal Fair Housing Law provides that “...no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions including lenders, builders and homeowners insurance companies” (24 CFR 100.5).

As a recipient of CDBG funding, grantees must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5)); (E.O.12259(1-202)); (24 CFR 570.601). This basically takes the form of promoting and publicizing Fair Housing laws as explained below. Grantees must also agree to develop and maintain records of the efforts taken to assure fair housing.

In addition, each grantee must conduct at least one Fair Housing activity each year of the Cooperative Endeavor Agreement (CEA) period and maintain documentation of that activity that was or will be conducted. This documentation must be available when OCD conducts its on-site monitoring. The documentation must identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided. Exhibit 8-2 offers suggestions of activities which can be undertaken which will be determined to “further Fair Housing” and includes a sample Utility Bill Stuffer and a Fair Housing flyer. As a prerequisite for performing various Fair Housing activities, grantees need to be aware of the different possible infractions that constitute discriminatory conduct. A list of regulations that categorize and explain the different types of discriminatory conduct under federal law and provides contact information in the event a person feels they have been discriminated against is included in Exhibit 8-2.

6.0 Section 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754) requires that grantees shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps.

Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance". The grantee is responsible for compliance with Section 504 by the developer in economic development programs.

6.1 Minimum Section 504 Requirements for All Grantees

In order to comply with Section 504, the following actions must be initiated:

1. Assurance — Each grantee shall submit an assurance to OCD that the CDBG Program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the grantee for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with OCD. A sample 504 assurance is attached as Exhibit 8-3.
2. Self-Evaluation — Each grantee shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed within six months of receipt of any grant award after July 1988.
3. Building Designation and Status — The self-evaluation shall designate all buildings and structures as “new” or “existing” depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services for the public can be approached, entered, and used by persons with disabilities. At minimum the following items should be addressed in the self-evaluation: Parking – Spaces, Curbs, Ramps, Routes and Pathways - Slopes, Levels, Ramps, Notices, Entrance Ways - Widths and Heights, Interiors - Door Grasp, Pressure, Pathways, Elevators, Service - Counter Heights, Notices, and Auxiliary Services - Telephones, Restrooms, Drinking Fountains.
4. Policy Modifications vs Structural Changes — Each grantee shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a recipient 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, a recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).
5. Visually or Hearing Impaired — Each grantee must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

6. Benefit to Those with Disabilities — Each grantee must maintain data for OCD showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

6.2 Other Section 504 Requirements, as Applicable

If structural changes to non-housing facilities will be undertaken to achieve program accessibility (see notes below), a recipient shall develop a transition plan with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, for those areas which cannot be made accessible administratively (24 CFR 8.21 (4)).

The construction activities identified in the transition plan must have been/ must be completed within three years of completion of the self-evaluation that was done within six months of the first grant award made after July 1988 (24 CFR 8.21(c) 3 -see 2 above). The transition plan must be made available for public inspection, and, at a minimum, it shall:

1. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities;
2. Describe in detail the method to be used in making the facility accessible;
3. Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then you must identify the actions to be taken during each year of the transition period;
4. Identify the individual responsible for implementation of the plan; and
5. Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless the grant recipient has recently acquired a facility that was constructed prior to 1988, that will house programs and services available to the public, and intends to make physical alterations to this facility, the three year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

NOTE: New non-housing facilities (designed, constructed or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps (24 CFR 8.32).

If the grantee employs fifteen or more persons:

1. Designated 504 Coordinator — A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;
2. Grievance Procedures — The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.
3. Statement of Compliance — The grantee shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision

or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the grantee does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.

A grantee shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with OCD. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

4. Records Maintenance & Disclosure — The grantee must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

In order to assist you with Section 504 compliance, a separate handbook was developed and is included as Exhibit 8-5.

The regulation requires that you must have available a TDD or equally effective method for communicating with hearing impaired persons. Louisiana has an approved relay service which may be utilized. In order to utilize the relay system, the grantee must have a policy indicating the use of the relay system by the grantee and publish the telephone numbers in the newspaper. The numbers are: TDD Users 1-800-846-5277, and Voice Users 1-800-947-5277. This service is free of charge. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works from both TDD and voice telephones and while it is applicable in most states, you are still required to list the “800” numbers presented above.

If you have been the recipient of prior disaster Recovery CDBG funds and have a completed self-evaluation and if applicable, a transition plan, as mentioned above, the three year time period for completing the construction activities specified in a transition plan for most grantees has expired. For “existing” buildings and facilities that house programs and services for the public and are not accessible you must have adopted policies and/or modified practices to achieve accessibility. Prior grantees should prepare a summary of their past compliance activities. A sample summary of actions taken to achieve compliance with Section 504 can be found in Exhibit 8-4 of this manual.

Note: The “Summary of Actions to Achieve Compliance with Section 504” must contain three sections: physical accessibility, communications, and employment. Also, you must re-submit the required assurance previously disclosed to OCD.

7.0 Compliance with Section 3 of the HUD Act of 1968

This subsection outlines the requirements and procedures to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)—colloquially “Section 3”—are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to Low- and Very Low-Income Persons—particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and Very-Low-Income Persons and Section 3 Business Concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

This subsection addresses the requirements outlined in 24 CFR Part 75 (the “New Rule”), and grantees or subrecipients seeking any further guidance, clarification, or context regarding any topics covered in this subsection should refer to that specific regulation. Any contracts or agreements executed, or projects for which assistance or funds were committed, prior to the New Rule Effective Date of November 30, 2020 are still required to adhere to all requirements outlined in 24 CFR Part 135 (the “Old Rule”). For a summary of key changes from the Old Rule to the New Rule, see Exhibit 8-6.

7.1 Applicability of Section 3

A “**Section 3 Project**” is any project that involves housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of **\$200,000**. (The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes Programs.) The “project” is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing; and applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in 24 CFR 75.3. Section 3 requirements do not apply to (1) Materials Supply Contracts [24 CFR 75.3(b)]; or (2) Indian and Tribal Preferences [24 CFR 75.3(c)].

7.2 Overall Requirements

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients must ensure that, within the metropolitan area (or nonmetropolitan county/parish) in which the project is located: (1) *employment and training opportunities* arising in connection with Section 3 Projects are provided to Section 3 Workers; and (2) *contracts for work* awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers.

To help grantees comply with the Section 3 requirements and achieve Section 3 goals, a sample **Section 3 Plan** is included as Exhibit 8-7. This plan is intended to be a tool to guide grantees through all of the Section 3 requirements outlined in this section. While 24 CFR Part 75 does not specifically

require grantees to have Section 3 plans or policies in place, HUD views having them as a best practice that will aid recipients in complying with Section 3 requirements and achieving Section 3 goals. To this end, grantees are encouraged to utilize the sample plan as a template; and adapt it to fit the resources within their individual communities and to meet the respective needs of their specific programs and activities. Once their respective plan has been fully developed, it is recommended that grantees formally adopt the resulting Section 3 plan and maintain a signed copy within the project files.

7.2.1 Requirements for Employment and Training

Where feasible, priority for *opportunities and training* should be given in the following order to:

1. Section 3 Workers residing within the Service Area or Neighborhood of the Project; and Employed by a Section 3 Business Concern; and
2. Participants in YouthBuild programs.

7.2.2 Requirements for Contracting

Where feasible, priority for *contracting opportunities* should be given in the following order to:

1. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Service Area or Neighborhood of the Project; and
2. YouthBuild programs.

7.3 Labor Hours and Worker Categorizations

One of the principal features that was rolled out as part of the Section 3 New Rule was that tracking and reporting would be now focused upon labor hours rather than new hires. This change was designed to prioritize local employment and promote employee retention. As a result, recipients are expected to track and report upon the total number of **labor hours worked** by: (1) Section 3 Workers; (2) Targeted Section 3 Workers; and (3) All workers overall. (For a summary of key changes from the Old Rule to the New Rule, see Exhibit 8-6.)

A “**Section 3 Worker**” is an individual that currently fits (or when hired in the past five years fits) at least *one* of the following criteria: (1) Low- or Very Low-Income as established by HUD’s income limits; (2) Employed by a Section 3 Business Concern; or (3) a YouthBuild participant. A “**Targeted Section 3 Worker**” is a Section 3 Worker, who meets any of the three aforementioned criteria and *in addition* also meets one of the two following criteria:

1. Employed by a Section 3 Business Concern
2. Currently fits—or when hired fits—at least one of the following categories:
 - a. Living within the Service Area or the Neighborhood of the Project; or
 - b. A YouthBuild participant

To this end, the above definitions provide for the following Venn Diagram:



7.4 Section 3 Measurement Ratios and Benchmarks

Recipients and subrecipients must attempt to reach the Section 3 benchmarks and targets as established by 24 CFR Part 75.23(b)(3) and Federal Register Notice 2020-19183:

Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Section 3 Workers:

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} \geq 25\%$$

Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Targeted Section 3 Workers, as defined at §75.21(a):

$$\frac{\text{Target Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} \geq 5\%$$

In the absence of evidence to the contrary, subrecipients of covered funding will be considered in compliance with Section 3 Safe Harbor [24 CFR 75.23] if the established benchmarks regarding the above ratios are met. Subrecipients that fail to meet the minimum numerical goals outlined above must also report upon the specific qualitative efforts that they have employed in pursuit of the numerical goals, which are outlined in subsection 7.5.2 below.

7.5 Section 3 Reporting

7.5.1 Reporting of Labor Hours

Per 24 CFR 75.25(a), for Section 3 Projects, recipients must report in a manner prescribed by HUD:

- i. The total number of labor hours worked;
- ii. The total number of labor hours worked by Section 3 Workers; and
- iii. The total number of labor hours worked by Targeted Section 3 Workers

Eligibility of Labor Hours Reported — Section 3 Workers' and Targeted Section 3 Workers' labor hours may be counted for five years from when their status as a Section 3 Worker or Targeted Section 3 Worker is established, pursuant to subsection 7.6 below. [24 CFR 75.25(a)(2)]

Inclusion of Hours Reported — The labor hours reported must include the total number of labor hours worked on a Section 3 Project, including labor hours worked by any subrecipients, contractors, and subcontractors that the recipient is required, or elects pursuant to any considerations for Professional Services (see below). [24 CFR 75.25(a)(3)]

Basis of Hours Reported — Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting. [24 CFR 75.25(a)(5)]

Frequency of Reporting — Unless otherwise provided, reporting must be carried out annually to HUD on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program. [24 CFR 75.25(c)]

Professional Services — Professional Services contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours.

However, grantees, subrecipients, contractors, and subcontractors may report labor hours from Section 3 Workers and Targeted Section 3 Workers (the numerators in the outcome ratios in subsection 7.4) from Professional Services without including Professional Services in the Total Labor Hours worked (the denominator in both of the outcome ratios in subsection 7.4). The effect of this reporting structure is to give the recipient a bonus if they are able to report Section 3 hires in the Professional Services context.

It should also be noted that if a contract covers both Professional Services and other work and the subrecipient/contractor/subcontractor chooses not to report labor hours from Professional Services, the labor hours under the contract that are not from Professional Services must still be reported. [24 CFR 75.25(a)(4)]

7.5.2 Additional Reporting Requirements / Qualitative Efforts

If the grantee or subrecipient's reporting indicates that the Section 3 Benchmarks outlined in section 7.4 above are not met, the subrecipient must report on the qualitative nature of its activities and those that its contractors and subcontractors pursued. Examples of such qualitative efforts include, but are not limited to, the following:

- Applicant Outreach – Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers.
- Training and Apprenticeship – Providing training or apprenticeship opportunities.
- Employment Assistance – Providing Technical Assistance (TA) to help Section 3 Workers compete for jobs—e.g., resume assistance, coaching—or providing or connecting Section 3 Workers with assistance in seeking employment, including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Job Fairs – Holding one or more job fairs, or sponsoring a job informational meeting in the Service Area / Neighborhood of the Project.
- Work Readiness & Retention – Providing or referring Section 3 Workers to services supporting work readiness and retention—such as work readiness activities, interview clothing, test fees, transportation, and child care.
- Educational Assistance – Providing assistance to apply for or attend community college, a four-year educational institution, or vocational/technical training.
- Financial Literacy – Assisting Section 3 Workers to obtain financial literacy training and/or coaching.
- Business Concern Outreach – Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns.
- Competition Assistance – Providing Technical Assistance to help Section 3 Business Concerns understand and bid on contracts.
- Contract Sizing – Sizing, splitting, or dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns, particularly where economies of scale or efficiency of delivery are not factors. [2 CFR 200.321(b)(3)]
- Bidder Viability Support – Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns.
- Business Registries – Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.

- **One-Stop Outreach** – Providing outreach, engagement, or referrals with the state One-Stop System as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act of 2013.

The above listing is not intended to be all inclusive. Grantees and subrecipients are encouraged to develop and tailor their specific qualitative efforts with the end goal of Section 3 benchmark achievement in mind, as outlined in subsection 7.4 above. Clear, affirmative steps to achieve the established numerical goals must be taken, and documentation to adequately corroborate all efforts and attempts must be retained. **To this end, grantees and subrecipients that are unable to meet the minimum numerical goals outlined in subsection 7.4 above must demonstrate why it was not possible to do so, and retain supporting documentation to sufficiently substantiate this determination.** Such justifications should describe the efforts that were taken, any barriers, roadblocks, or impediments encountered, and any other relevant information that will enable OCD to make the most accurate, informed compliance determination.

7.6 Recordkeeping to Support Section 3 Worker Categorizations and Certifications

7.6.1 Recordkeeping for Workers

Recipients must maintain documentation—or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation—to ensure that workers meet the definition of a Section 3 Worker or a Targeted Section 3 Worker, at the time of hire or the first reporting period, as follows:

- **Section 3 Worker** – For a worker to qualify as a Section 3 Worker, one of the following must be maintained:
 - i. **Self-Certification of Income** – A worker's self-certification that their income is below the income limit from the prior calendar year;
 - ii. **Self-Certification of Program Participation** – A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
 - iii. **Program Management Certification of Program Participation** – Certification from a Public Housing Agency, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
 - iv. **Employer Certification of Income** – An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

- v. Employer Certification of Section 3 Business Concern Employment – An employer's certification that the worker is employed by a Section 3 Business Concern.
- **Targeted Section 3 Worker** – For a worker to qualify as a Targeted Section 3 Worker, one of the following must be maintained:
 - i. Employer Confirmation of Worker Residence – An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
 - ii. Employer Certification of Section 3 Business Concern Employment – An employer's certification that the worker is employed by a Section 3 Business Concern.
 - iii. Self-Certification of YouthBuild Participation – A worker's self-certification that the worker is a YouthBuild participant.

Recipients and subrecipients may report on Section 3 Workers and Targeted Section 3 Workers for five years from when their certification as a Section 3 Worker or Targeted Section 3 Worker is established.

Grantees, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate an individual's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements include but are not limited to: evidence of receipt of Federal housing assistance; evidence of receipt of other Federal subsidies or participation in Federal assistance programs; Federal tax returns; proof of residence in a neighborhood, zip code, census tract, or other area that has officially been identified by HUD. To help grantees certify Section 3 Workers and Targeted Section 3 workers and provide the appropriate documentation to support the workers' Section 3 status claims, a sample **Section 3 Worker Self-Certification Form** is provided as Exhibit 8-8.

7.6.2 Recordkeeping for Business Concerns

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

- i. It is at least 51% owned and controlled by Low- or Very-Low-Income Persons;
- ii. Over 75% 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% owned and controlled by current public housing residents or residents who currently live in Section 8-Assisted housing.

Grantees, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate a business concern’s claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements may include: Federal tax returns for workers, owners, or businesses; payroll data; employee statements of self-certification; articles of business organization, ownership, or incorporation; partnership or operating agreements; evidence that owners or employees received housing or other Federal subsidies.

To help grantees certify and track Section 3 Business Concerns seeking a preference in contracting, a sample **Section 3 Business Concern Certification Form** has been provided as Exhibit 8-9. Additionally, businesses that believe they meet the Section 3 Business Concern requirements can self-register in the HUD Business Registry at the following website:

<http://www.hud.gov/Sec3Biz>

Section 3 standards are both race and gender neutral. A WBE and/or MBE must provide evidence that it meets at least one criterion of a Section 3 Business Concern as outlined above in order to receive preference under Section 3. More information regarding WBE or MBE programs can be found through HUD’s Office of Small and Disadvantaged Business Utilization (OSDBU) at the following website: https://www.hud.gov/program_offices/sdb

The documentation outlined in this subsection must be maintained for the time period required for records retention in accordance with applicable program regulations and 2 CFR 200. For further guidance regarding Section 3 Recordkeeping—including additional considerations specific to Public Housing Agencies—see 24 CFR 75.31.

7.7 Contracting Requirements

7.7.1 Contract Provisions

Per 24 CFR 75.27, grantees and subrecipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 Project. Additionally, recipients of Section 3 funding must also require subrecipients, contractors, and subcontractors to meet the overall requirements as outlined in subsection 7.2 above—regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

7.7.2 Contracting and Subcontracting Strategies

The following examples are provided to help grantees and subrecipients ensure that the contracting objectives of Section 3 are met, and that the established Section 3 Benchmarks are ultimately achieved. These methods and strategies can be undertaken to assist in reaching Section 3 Workers and Section 3 Business Concerns for contracting opportunities; and when utilized effectively, can supplement some of the qualitative efforts outlined in subsection 7.5.2 above. This list should not be considered all inclusive. For additional information regarding contracting, see Section 6 – Procurement Methods and Contractual Requirements.

1. Small Purchase Procurement — The use of small purchase procedures (contract may not exceed the Simplified Acquisition Threshold) such as soliciting quotations from a minimum of 3 qualified sources. At the time of solicitation, inform the parties of the Section 3 Covered Contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain at least 3 quotes from qualified sources must be made and documented.
2. Section 3 Compliance History — In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract. (See Exhibit 8-7 for a sample Section 3 Plan.)
3. Contractors Associations and Community Organizations — Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4. Housing Development Publicity — Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. Formalized Notices — Providing written notice to all known Section 3 Business Concerns of the contracting opportunities.
6. Maintain Contact — Follow up with Section 3 Business Concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7. Pre-Bid Meetings — Coordinating pre-bid meetings at which Section 3 Business Concerns could be informed of the upcoming contracting opportunities.
8. Section 3 Workshops — Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 Business Concerns can take advantage of upcoming contracting opportunities.
9. Assisting with Barriers to Entry — Advising Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
10. Bidding Facilitation — Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 Business Concerns.
11. Contract Sizing — As noted in subsection 7.5.2 above, where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 Business Concerns.

12. YouthBuild Programs — Contacting agencies administering HUD YouthBuild programs and notifying these agencies of the contracting opportunities.
13. Advertisement / Publication — Advertising the contracting opportunities through trade association papers and local media such as television, newspapers, radio, and websites.
14. Business Concern Listing — Developing and maintaining a list of eligible Section 3 Business Concerns.
15. Advance Goal Setting — Establishing concrete numerical goals (dollar amounts, and number of awards) for contracts to Section 3 Business Concerns.

7.8 Additional Section 3 Resources

All grantees and subrecipients are highly encouraged to ensure that contractors, residents, and businesses in their community are aware of the available tools and resources that will assist with employment and training opportunities—principally the HUD Section 3 Opportunity Portal and the HUD Section 3 Business Registry.

7.8.1 HUD Section 3 Opportunity Portal

The HUD Section 3 Opportunity Portal helps match Section 3 Workers to employment and training opportunities, and Business Concerns to contracting opportunities. The portal can be accessed online at the following address: <https://hudapps.hud.gov/OpportunityPortal/>

7.8.2 HUD Section 3 Business Registry

The HUD Section 3 Business Registry is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts. The database can also be used by Section 3 residents to identify businesses that may have HUD-funded employment opportunities. The HUD Section 3 Business Registry can be accessed online at the following web address: <http://www.hud.gov/Sec3Biz>

8.0 Overall Recordkeeping

All grantees are required to maintain equal opportunity records. The content of these records should include the following information:

1. Population Data – This includes population data by census tract or smaller geographic areas which includes prevailing population characteristics relating to race, ethnic groups, sex, age, head of household and handicapped.
2. Employment Data – (For communities with 10 or more employees) EEO form 4; Personnel

Policies; Affirmative Action and/or Section 3 plans (if applicable); copies of any advertisements for employment; documentation of special efforts to identify, train, involve and/or hire minority and lower-income residents.

3. Minority Business Participation – Documentation of efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses.
4. Section 3 Business Concern Participation – Documentation of efforts to solicit locally owned businesses; maintain data concerning the number and dollar amount of contract awarded to locally owned businesses.
5. Fair Housing – Document efforts to affirmatively further fair housing; copy of Fair Housing policy.
6. Contractor Compliance – Records of any monitoring trips to project site and any findings; copies of contractors' monthly utilization report.
7. Project Beneficiaries – Record of applicants, and direct and indirect beneficiaries by race, color, sex, national origin, age and handicap.
8. Displacement and/or Relocation – Data on race, head of household, age and income of persons affected.
9. Records Management – See Section 4 (“Records Management”) for full records management requirements.

9.0 Resources

Exhibit	Topic
Exhibit 8-1	HUD Complaint Register
Exhibit 8-2	Suggested Activities to Affirmatively Further Fair Housing
Exhibit 8-3	Sample Section 504 Assurance
Exhibit 8-4	Sample Summary of Actions Taken to Achieve Compliance with Section 504
Exhibit 8-5	OCD Section 504 / ADA Technical Assistance Handbook
Exhibit 8-6	Key Changes of Section 3 New Rule
Exhibit 8-7	Sample Section 3 Plan
Exhibit 8-8	Sample Self-Certification Form for Section 3 Workers and Targeted Section 3 Workers
Exhibit 8-9	Sample Certification Form for Section 3 Business Concerns