

Chapter 7: Fair Housing and Equal Opportunity

Introduction

This chapter summarizes the key regulations and requirements of fair housing and equal opportunity laws applicable to CDBG-DR projects. To be in compliance, the Subrecipient must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, Subrecipients must endorse in attitude and deed all regulations for fairness in the provision of CDBG-DR funded programs and projects.

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by CDBG-DR projects. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, familial status or national origin, all of which are collectively referred to as the “protected classes,” which protects all people.

- ✓ HUD regulations revising the CDBG regulations that took effect in March 2012 also provide for fair housing to persons regardless of sexual orientation or gender identity (actual or perceived).
- ✓ An amendment to Executive Order 11246 also extended coverage to these classes in 2014 and further guidance was issued in September of 2016 (more information later in this chapter).
- ✓ In September 2016, HUD issued guidance formalizing legal standards regarding sexual harassment in housing and how the Fair Housing Act applies to ensure that local nuisance or crime-free housing ordinances to not lead to discrimination.
- ✓ HUD also issued guidance in September 2016 regarding Fair Housing Act protections for persons with Limited English Proficiency (LEP).

This chapter is broken down into three broad areas: Fair Housing and Nondiscrimination; Accessibility; and Equal Opportunity. The fourth section of this chapter is dedicated toward appropriate record keeping and monitoring. Exhibit 7.1 at the end of this chapter provides the Subrecipient with references to the major regulations and requirements covering fair housing and equal opportunity.

City and County subrecipients can assume all of the Fair Housing and Equal Opportunity requirements and will be responsible for following them. Non-profit and for-profit subrecipients cannot take on all of the Fair Housing and Equal Opportunity requirements. For those where it cannot, DLG will be responsible for following them and for giving instructions to the non-profit and for-profit subrecipients into what actions to take to assure that DLG remains compliant with the Fair Housing and Equal Opportunity requirements. It is pointed out in the chapter the Fair Housing and Equal Opportunity requirements that only apply to City/County subrecipients. Unless a distinction is made, the requirements in a section apply to all subrecipients.

Section 7-A. Fair Housing and Nondiscrimination

When the assurances were signed as a part of the City and County Subrecipient’s application for CDBG-DR funds, a commitment was made for the Subrecipient to perform the following activities to further fair housing and ensure nondiscrimination:

- ✓ Maximize choice within the community’s total housing supply;

- ✓ Lessen racial, ethnic and economic concentrations of housing;
- ✓ Facilitate desegregation and racially inclusive patterns of occupancy and use of public facilities;
- ✓ Provide for equal access in HUD-funded programs and facilities/buildings; and
- ✓ Administer the CDBG-DR project in a manner to affirmatively further fair housing. The regulations identify fair housing responsibilities for both states and local grant recipients.

Subrecipients should be aware that fair housing provisions apply to the locality as a whole and not just those activities that are CDBG-DR-funded; and that implementing fair housing activities is an essential part of the CDBG-DR responsibilities.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the Subrecipient or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The Subrecipient is expected to take progressive actions to further fair housing with each CDBG-DR project. Subrecipients should include the fair housing logo on all published materials marketing their housing programs.

Further, provisions regarding equal access (as previously mentioned on page 1 of this chapter) apply to CDBG-DR-funded facilities and buildings that may or may not involve housing (e.g., shelters, service facilities, etc.).

Tip: Review this chapter along with your local policies on fair housing and equal opportunity and update, as necessary. Follow up with DLG staff on any questions.

Fair Housing Activities

Subrecipients are required to designate a fair housing and equal opportunity coordinator to be the prime liaison with DLG. This coordinator will review all plans and activities for compliance to suggest strategies and actions that can be undertaken to comply with the spirit and intent of the law.

City and County Subrecipients are required to pass a fair housing resolution as part of evidentiary materials prior to release of grant funds (as outlined in Chapter 1: Project Administration). The resolution should be published in a newspaper of general circulation or posted in prominent locations throughout the community. (See Attachment 7-1: Fair Housing Resolution for sample language.)

Chapter 1: Project Administration
Attachment 7-1:
Fair Housing Resolution

City and County Subrecipients must also undertake one or more activities to affirmatively further fair housing depending upon local conditions and needs to ensure that all citizens in your community are aware that affirmatively furthering fair housing is a priority.

All subrecipients can utilize the list below to satisfy the requirement of promoting fair housing and equal opportunity. Discretion is left at the local level to determine the appropriateness of the activity(ies) that are chosen.

- ✓ Counseling services,
- ✓ Market the fair housing resolution,
- ✓ Creation of human rights commission,

- ✓ Education programs,
- ✓ Use of HUD affirmative marketing plans,
- ✓ Assistance to fair housing groups,
- ✓ Assistance to minorities in locating to non-minority areas,
- ✓ Voluntary affirmative lending plans,
- ✓ Voluntary affirmative realtor plans,
- ✓ Voluntary affirmative homebuilder plans,
- ✓ Local compliance and monitoring process, and
- ✓ Advertising the benefits of an open community.

Nondiscrimination

The Subrecipient must assure that all CDBG-DR-funded activities undertaken as part of the project are conducted in a manner that will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Also, effective March 2012, the CDBG regulations (24 CFR Part 570) were revised such that the definition of a household includes unrelated individuals regardless of perceived sexual orientation, gender identify or marital status. Segregated facilities, services or benefits, or different treatment are prohibited. For facilities or buildings that have physical limitations or configurations that require and/or that are permitted to have shared sleeping quarters or bathing facilities, refer to 24 CFR Part 5, Federal Register Notice FR 5863-F-02 published September 21, 2016. This notice provides guidance on measures to ensure that recipients and subrecipients, owners, operators, and managers of shelters and other buildings and facilities and providers of services grant equal access to such facilities and services to individuals in accordance with an individual's perceived gender identity.

Subrecipients must demonstrate compliance with Title VI of the Civil Rights Act of 1964 and KRS 344.015. All organizations that receive pass-through federal funding from DLG must comply with DLG's (refer to the link provided) or its own Title VI Implementation Plan. To meet the requirements of compliance, Subrecipients have two options.

DLG's Title VI Plan can be found at:
https://kydlgweb.ky.gov/Documents/CDBG_cities/2021%20DLG%20Title%20VI%20Plan.pdf

- ✓ Option 1: The Subrecipient can adopt the plan created by DLG. To do so, Subrecipients must complete Attachment 7-2: Title VI Self-Survey and Statement of Assurance. In addition, the following items MUST be retained by the Subrecipient with your completed Civil Rights Title VI Self-Survey: (1) Nondiscrimination Policy; and (2) Compliance Assurance, including a copy of all contracts used to provide direct services to clients and a copy of all contracts used to assure that subcontractors or vendors are clearly aware of your agency's commitment to Title VI.
- ✓ Option 2: Though most organizations have chosen to adopt the DLG plan, a Subrecipient may create its own Title VI Implementation Plan and submit it to DLG for approval. The standards for preparing a Title VI Implementation Plan are provided in 45 KAR 1:080.

Attachment 7-2:
Title VI Self-Survey and Statement
of Assurance

Regardless of which option the Subrecipient chooses, it must submit its chosen Title VI Self Survey and Plan to DLG as part of evidentiary materials and maintain a copy of Title VI documents for review by the general public and DLG, HUD or its representatives.

In addition to the specific Title VI requirements, the Subrecipient should take care to ensure the following equal opportunities are made available:

- ✓ Access to any advantage arising out of CDBG-DR projects/activities is not denied solely on the basis of race, color, religion, sex, disability, familial status or national origin alternatively, offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.
- ✓ HUD issued regulations regarding equal access for lesbian, gay, bisexual and transgender (LGBT) persons in February 2012. This includes a general provision which requires housing constructed with or using HUD funds be made available without regard to sexual orientation, gender identity or marital status.
- ✓ Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.
- ✓ Evaluation criteria and administrative practices do not have a discriminatory effect.
- ✓ Affirmative action to overcome the effects of past discrimination.
- ✓ An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the Subrecipient. The poster may be obtained by calling the Kentucky Commission on Human Rights.
- ✓ A Fair Housing Poster must be displayed in a prominent place at the office of the Subrecipient (see link to poster provided at right).
- ✓ An “Equal Access Regardless of Sexual Orientation, Gender Identity or Marital Status” Poster must be displayed at CDBG-DR-funded shelters, housing, facilities and other buildings to ensure that individuals are aware of their rights to equal access.
- ✓ Subrecipients may use Attachment 7-3: Equal Opportunity Checklist to ensure their agency is following all required equal opportunity elements. It is also recommended that Subrecipients have equal opportunity procedures for staff to refer to. (See also Chapter 4 and 5: Procurement and Contracting for detailed guidance on Section 3 concerning employment and business opportunities for low-income residents of the project area.) Suggested elements of equal opportunity procedures include but are not limited to the following:
 - Develop a nondiscrimination checklist to review policies, plans and actions, and documented reviews.

Fair Housing for LGBT Persons:
https://www.hud.gov/LGBT_resources

Kentucky Commission
on Human Rights
1-800-292-5566
TDD 502-595-4084

Fair Housing Posters:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/marketing

Attachment 7-3:
Equal Opportunity Checklist
Chapters 4 and 5

- Develop a network of information points that serve minority, elderly, women, disabled persons and ethnic groups and make sure that information about project services, facilities and improvements is given to these groups for dissemination in addition to normal newspaper/public notice channels.
- Incorporate discussion of the issue of nondiscrimination into decision processes concerning project activities and recipients and document consideration of the issue.
- Develop and maintain a database for the project area that captures information about population characteristics.
- Develop a grievance procedure to handle the complaints the Subrecipient receives. The procedure should be a formal written procedure and should be made available to the citizens. Each complaint should be addressed in a formal response to the complainant. Each complaint and the resolution to the complaint must be well documented in the project files.

Although assurances have been signed relative to nondiscrimination in project implementation, it is still necessary to go beyond the assurance and prove compliance. Both Title VI and Section 109 prohibit discrimination, denial of program benefits, and exclusion from participation in the administration of the project.

Housing Activities and Fair Housing

Subrecipients undertaking housing projects and activities must ensure fair housing rules are followed in the provision of housing services and assistance. Opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services should not discriminate.

Some of the actions to ensure fair housing in housing activities are listed below.

- ✓ Verifying that a copy of the state's Analysis of Impediments (AI) to Fair Housing Choice or Assessment of Fair Housing (AFH) (if/when applicable) is reviewed periodically to ensure actions are taken by the local Subrecipient to address the barriers identified in the AI. If the Subrecipient has adopted its own AI, this document should be used to ensure actions have been taken. http://kydlgweb.ky.gov/FederalGrants/16_FedGrantsHome.cfm
- ✓ Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups. Limited English Proficiency (LEP) requirements must be taken into account and incorporated as appropriate.
- ✓ Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory practices or effect.
- ✓ Posters and other information should be disseminated and posted for all CDBG-DR-funded programs and facilities.
- ✓ Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect.
- ✓ Legal documents used by Subrecipients and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

Tip: Review all documents to ensure fair housing language and logos are used. Also, be alert for situations where potential fair housing or nondiscrimination may occur.

Owners participating in CDBG-DR housing rehabilitation programs have the right to appeal and file grievances. If you are managing a housing program, make owners aware of the grievance procedure and use attachment 7-10 Grievance Procedure.

[Attachment 7-10 Grievance Procedures](#)

Section 7-B. Accessibility

This section of the chapter reviews the requirements Subrecipients must follow to be in compliance with accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (Section 504). Collectively, the accessibility laws and implementing regulations prohibit discrimination based on disability and establish requirements for physical accessibility in connection with federally-funded housing and non-housing activities.

Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Specifically, Section 504 imposes requirements related to:

[Attachment 7-4: Section 504 Checklist](#)

- ✓ Program accessibility;
- ✓ Communications;
- ✓ Accessible design and construction for certain housing and non-housing activities;
- ✓ Subrecipient self-evaluation of programs, services, and activities to ensure programmatic and physical accessibility to persons with disabilities; and
- ✓ Nondiscrimination in employment.

For the purposes of compliance with Section 504, “accessible” means ensuring that programs and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities.

The Fair Housing Act also prohibits discrimination in the housing market based on disability, and imposes design and construction requirements to enhance accessibility in the built environment.

Program Accessibility

Existing housing and non-housing programs administered by the Subrecipient and its funded entities (e.g., subrecipients, developers) must be accessible to persons with disabilities. Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This means that persons with disabilities must: (1) have an equal opportunity to participate in and benefit from the program, and (2) be offered the same range of choices and amenities as those offered to persons that do not have disabilities. Subrecipients ensure that their programs and services are readily accessible to and usable by persons with disabilities to the maximum extent feasible. In other words, the Subrecipient must take steps to provide the necessary access to persons with disabilities, unless the actions would constitute an undue financial and administrative burden, or require a fundamental alteration in the nature of the program.

Examples of steps to ensure program accessibility include:

- ✓ Conduct meetings and program-related marketing and other activities in accessible locations.
- ✓ House program in-take offices in accessible locations.
- ✓ Ensure program-related communications are accessible to persons with disabilities (see Communications section below for more detail).
- ✓ In housing activities, distribute accessible units throughout projects and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice. Make accessible units available to persons with disabilities first.
- ✓ Make reasonable accommodations to persons with disabilities. A reasonable accommodation is a change, adaptation or modification to a policy, program, service, or workplace that allows a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. What is reasonable can only be determined on a case-by-case basis; however the following examples are often considered reasonable accommodations:
 - A federally-assisted housing provider has a policy of not providing assigned parking spaces. A tenant with a mobility impairment, who has difficulty walking, is provided a reasonable accommodation by being given an assigned accessible parking space in front of the entrance to his unit.
 - A federally-assisted housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided a reasonable accommodation by being allowed to mail her rent payment.
 - A federally-assisted housing provider has a no-pets policy. A tenant, who uses a wheelchair and has difficulty picking up items off the ground, is allowed to have an assistive animal that fetches things for her as a reasonable accommodation to her disability.
 - An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance and she needs a ramp to enter the unit. Her federally-assisted housing provider pays for the construction of a ramp as a reasonable accommodation to the tenant's disability.

Communication

Communication is an important component of program accessibility. Persons with impairments to hearing, vision, speech, or mobility may have special communication needs. To the maximum extent feasible, Subrecipients must provide program information in ways to ensure that persons with these types of disabilities are able to access and enjoy the benefits of any program or activity receiving CDBG-DR funds.

Subrecipients must furnish auxiliary aids and services, as necessary, to ensure effective communication with persons with disabilities. These may include:

- ✓ For persons with hearing impairments:
 - Qualified sign language interpreters;
 - Note takers;

- Telecommunication devices for deaf persons (TDDs);
 - Telephone handset amplifiers;
 - Assertive listening devices (devices that increase the sound in large group settings);
 - Flashing lights (where aural communication is used, such as warning bells);
 - Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
 - Transcription services; and
 - Closed and open captioning.
- ✓ For persons with vision impairments:
- Websites that comply with Section 508;
 - Qualified readers;
 - Written materials translated into alternative formats (i.e., Braille, audio tape, large print);
 - Aural communication (Bells or other sounds used where visual cues are necessary); and
 - Audio description services (through a headset, a narrator describes what the visually impaired person cannot see).

The Subrecipient must ensure effective communication with persons with all types of disabilities in all activities, to the greatest extent feasible. Where the Subrecipient communicates with applicants and beneficiaries by phone, a TDD is required or an equally equivalent system must be available.

Limited English Proficiency

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color or national origin in programs that receive federal financial assistance. The Fair Housing Act, as amended, further prohibits discrimination against protected classes.

In certain situations, failure to ensure persons who have Limited English Proficiency (LEP) can effectively participate in, or benefit from, federally assisted programs may violate Title VI's and the Fair Housing Act's prohibition against national origin discrimination. Specifically, housing providers are prohibited from using LEP selectively or as an excuse for intentional housing discrimination. In addition, landlords are prohibited from using LEP in a way that causes an unjustified discriminatory effect.

In addition, persons who, as a result of national origin, do not speak English as their primary language and who have limited ability to speak, read, write or understand English may be entitled to language assistance under Title VI to receive a particular service, benefit or encounter.

DLG has completed a four-factor analysis to ensure meaningful access for LEP persons.

- ✓ The number or portion of LEP persons served or encountered in the eligible service area.
- ✓ The frequency with which LEP individuals come in contact with the designated CDBG-DR Subrecipients.
- ✓ The nature and importance of the program, activity or service provided by the program.

- ✓ The resources available to recipient and the cost.

Additionally, all CDBG-DR recipients will be required to use the same four-factor analysis prior to the release of funds.

DLG has developed a Language Access Plan (LAP) for persons with Limited English Proficiency (LEP), which is available on DLG’s website. The LAP will serve as the guide for determining which language assistance measures DLG will undertake to guarantee access to the CDBG-DR programs by LEP persons. This guidance may be followed by Subrecipients; however, Subrecipients are required to ensure that their LAPs address local limited English proficiency data and needs.

DLG Language Access Plan (LAP):

https://kydlgweb.ky.gov/Documents/CDBG_cities/2021%20DLG%20Language%20Access%20Plan.pdf

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

Subrecipients are not required to take any actions that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burden. Subrecipients finding themselves in this situation should contact DLG for additional guidance.

Accessibility in Housing and Non-Housing Activities

Certain housing and non-housing facilities that are constructed or rehabilitated with CDBG-DR funds must be designed and constructed to be accessible.

Housing Activities

CDBG-DR-funded housing is subject to the accessibility requirements of both Section 504 and the Fair Housing Act, as amended. For housing purposes, an accessible dwelling unit is on an accessible route and has accessible features inside.

HUD CPD Notice 00-09
 Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act

Under Section 504:

- ✓ For newly constructed multi-family rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with 15 or more units:
 - A minimum of five percent of total dwelling units (but not less than one unit) must be made accessible for individuals with mobility impairments;

- An additional two percent of dwelling units (but not less than one) must be made accessible for persons with hearing or vision impairments.
- ✓ Units that are made accessible must be located on an accessible route (either on the ground floor, or on a floor that is served by an elevator).
- ✓ When alterations to a unit are not substantial, any alterations that are made to the multifamily dwelling unit must be made to be accessible to and usable by individuals with disabilities.
- ✓ A rehabilitation project is considered substantial when the rehabilitation costs are 75 percent or more of the replacement cost of the complete facility.
- ✓ Accessible features must meet the requirements of the Uniform Federal Accessibility Standard (UFAS).

Under the Fair Housing Act:

- ✓ All newly constructed units in buildings with four or more units that are on the ground level or can be reached by an elevator must be made accessible.
- ✓ The accessibility standard is outlined in the Fair Housing Act. This standard is often referred to as “adaptable,” and is generally a less stringent standard of accessibility than UFAS.

Uniform Federal Accessibility Standards
<https://www.access-board.gov/aba/ufas.html>

Non-Housing Activities

All of Section 504's nondiscrimination, program accessibility, and reasonable accommodation requirements that apply to housing facilities and programs apply equally to the operation of non-housing facilities or programs. “Facility” is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. “Accessible” for non-housing purposes means that a facility or portion of a facility can be approached, entered, and used by individuals with physical handicaps.

Non-housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities, in accordance with the UFAS standard. In order to make its facilities accessible, a Subrecipient may need to:

- ✓ Relocate programs to accessible facilities or accessible portions of facilities;
- ✓ Acquire or build new facilities that are accessible; or
- ✓ Selectively alter facilities to make them accessible to persons with mobility of sensory impairments.

HUD CPD 05-10, issued Nov 5, 2005, “Accessibility for Persons with Disabilities to Non-Housing Programs funded by CDBG”,
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_15258.pdf

State and local governments are also subject to Title II of the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against persons with disabilities. Title II requires that facilities that are newly constructed or altered by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and useable by persons with disabilities. Title II also requires accessibility of newly constructed or altered streets, roads, highways, and pedestrian walkways.

ADA information is available at
www.ada.gov

Self-Evaluation

DLG has conducted a self-evaluation of its programs, services, and activities to determine if they are programmatically and physically accessible to persons with disabilities. In turn, it requires each of its Subrecipients to conduct a self-evaluation as well.

If a Subrecipient has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to people with disabilities, they must conduct such evaluation and document all needs. If a Subrecipient has already performed a self-evaluation, a new one is not required, unless facilities have been altered.

24 CFR 8.51

Subrecipients can complete the DLG self-evaluation guide, provided as Attachment 7-5, to adopt and use in their own programs. Subrecipients should also involve persons with disabilities in these evaluations.

Attachment 7-5:
Section 504 Self Evaluation

While performing the self-evaluation, Subrecipients should conduct a careful inspection of the following to determine if they are free from discriminatory effects and practices:

- ✓ Employment and personnel policies and practices;
- ✓ Programs and activities;
- ✓ Benefits and service delivery; and
- ✓ Contractual agreements.

Tip: Conduct a “walk-through” of the process required for participation in the service or program to assess its accessibility. Analyze the physical path traveled, as well as the administrative requirements, service delivery, eligibility criteria, and application procedures.

The self-evaluation (along with the transition plan discussed below) must be submitted to DLG as part of the evidentiary materials (see Chapter 1: Project Administration).

Chapter 1:
Program Administration

In the course of the self-evaluation, if the Subrecipient identifies any policies and practices that are found to be discriminatory or contrary to Section 504 requirements, it must take steps to remedy the discrimination.

Transition Plan

If structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a transition plan must be completed and made available for public review and comment.

The plan must address the following items:

- ✓ Identification of physical obstacles in the facilities that limit program accessibility;
- ✓ Description of the method that will be used to make facilities accessible;
- ✓ Specify a schedule to achieve full program compliance; and, if the plan is longer than one year, identify steps to be taken during each year;

- ✓ Indicate the person responsible for implementing the plan; and
- ✓ Identify the person or groups with whose assistance the plan was prepared.

Additional guidance for completing a transition plan is provided in Attachment 7-6. The Subrecipient is not necessarily required to make every part of an existing facility accessible if that is not structurally possible, but Subrecipients must address how persons with disabilities will be assured access. The transition plan must involve persons with disabilities and/or representative organizations. The transition plan must be sent to DLG as part of evidentiary materials (refer to Chapter 1).

Attachment 7-6:
Section 504 Transition Plan
Chapter 1: Project Administration

Special Requirements for Subrecipients with 15 or More Employees

There are two additional requirements for Section 504 compliance for Subrecipients with 15 or more full or part-time employees:

- ✓ Designation of responsible employee and adoption of grievance procedures:
 - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
 - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement. A sample Grievance Procedure is provided as Attachment 7-7.
 - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age disability, religion, familial status, sexual orientation and gender identity may file a complaint. The complaint may be filed with DLG, the Kentucky Human Rights Commission or HUD. More information concerning complaints is provided as Attachment 7-8 to this Chapter.
- ✓ Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. See 24 CFR 8.54 for specific details. In summary, the Subrecipient must provide notice regarding the following:
 - The Subrecipient must publish in a newspaper of general circulation the notice “Policy of Non-Discrimination on the Basis of Disability Status,” which can be found as Attachment 7-9.
 - To document this requirement, the Section 504 Compliance File should contain the printer’s affidavit for the public notice “Policy of Non-Discrimination on the Basis of Disability Status” and other evidence of compliance with the notification policy. To ensure this notice reaches the visually and mobility impaired, it is also recommend to have the notice placed on local radio and/or television stations.

Attachment 7-7: Grievance
Procedures for Complaints

Attachment 7-8: Sample Fair
Housing Complaint Information

24 CFR 8.54

Attachment 7-9:
Policy of Non-Discrimination on
the Basis of Disability Status

- The policy must be submitted to DLG as part of evidentiary materials (see Chapter 1: Project Administration).
- Subrecipients must include the same language of their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
- Subrecipients must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered (e.g., TDD or TTY services, large print on outreach materials and application documents, etc.).

Methods for ensuring participation may include qualified sign language and oral interpreters, readers or the use of taped and Braille materials.

Tip: Review program and projects with an eye toward accessibility compliance. Modify program procedures and housing project work plans as necessary.

Section 7-C. Employment and Contracting

Employment

Nondiscrimination is a requirement of Subrecipients with regard to employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. NOTE that for federally-funded construction contracts and subcontracts, Executive Order 13672 amended Executive Order 11246 in April of 2015 to include sexual orientation and gender identity as protected classes in terms of hiring and employment on such contracts and subcontracts.

Affirmative action and equal employment opportunity policies are fundamental aspects. Steps that can be taken by Subrecipients to prevent discrimination in employment include the following:

- ✓ Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review.
- ✓ Advertise employment opportunities and/or to recruit employees for project-related positions.
- ✓ Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin.

Specifically, Section 504 has a number of general prohibitions against employment discrimination. Subrecipients must ensure that the following items are adhered to:

- ✓ No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives federal assistance.
- ✓ Any Subrecipient cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.
- ✓ In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the Subrecipient. HUD regulations specify that an employer is prohibited from discrimination in the following instances:

- Recruiting, advertising and processing of applications;
 - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness and rehiring;
 - Rates of pay and any other forms of compensation;
 - Job assignments, classifications and descriptions, organizational structures, lines, progression and seniority lists;
 - Leaves of absence, sick leave or any other leave;
 - Fringe benefits available by virtue of employment;
 - Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
 - Employer sponsored activities, including social or recreation programs; and
 - Any other term, condition or privilege of employment.
- ✓ Subrecipients may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.

Reasonable accommodation in employment, as mentioned in the above list, is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified.

It is important for Subrecipients to remember that the essence of Section 504 provides for equal opportunity and not the same level of achievements. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

Procurement and Contracting

Procurement and resulting contracting is another area of grant administration that must be nondiscriminatory. The Subrecipient must ensure nondiscrimination in the solicitation, advertising and awarding of contracts for all of the protected classes with the addition of sexual orientation and gender identity. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory. See Chapter 4: Procurement and Chapter 5: Contracting for more detailed information and guidance.

Chapter 4: Procurement
Chapter 5: Contracting
Executive Order 11246 as
amended by Executive Order
13672

Section 7-D. Record Keeping and Monitoring

Compliance with Federal and state laws is the responsibility of each subrecipient. DLG is required to monitor Subrecipients for compliance with fair housing and equal opportunity laws and requirements. This monitoring is facilitated when records documenting compliance are maintained appropriately by recipients. DLG requires that the records demonstrating compliance with these requirements be kept on a current basis. Records must be maintained for five years following final close-out of the grant. Chapter 1: Project

Chapter 1: Project Administration

Administration also provides guidance on record keeping. All Subrecipients in joint projects must undertake Fair Housing and Equal Opportunity activities as well as maintain full documentation and files.

Fair Housing Records

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

- ✓ Documentation of policies, procedures and practices that ensure non-discrimination of all protected classes and comply with any applicable laws, regulations, policy guidance or other requirements.
- ✓ Documentation of the action(s) the recipient has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions.
- ✓ Demographic data (actual survey or latest census data) depending on the project undertaken may include:
 - The population of the jurisdiction of the unit of general local government receiving CDBG-DR funds;
 - The minority population of the locality (number and percentage);
 - The target area population;
 - The minority population of the target area (number and percentage);
 - The number of disabled, elderly households, and female-headed households in the target area; and
 - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of low and moderate income, and the target area.

Direct Benefit Records

As part of the CDBG-DR application, the Subrecipient is required to submit statistical information on the persons benefiting from the project. It is important that this information be maintained and updated throughout the implementation of the project. Even if the project activities meet the “presumptive benefit” test for proving LMI benefits and surveys have not been conducted or statistical data on beneficiaries has not been collected, benefit data for fair housing and equal opportunity purposes must be maintained.

Data must be collected and retained on beneficiaries according to the statistical categories listed on the Project Beneficiary Profile Form that is part of the Project Completion Report (PCR) (Attachment 13-2 of Chapter 13). This information is necessary both in proving compliance with fair housing and equal opportunity laws and in meeting closeout requirements when the project is completed. The Project Beneficiary Profile will assist the Subrecipient in maintaining specific data on project beneficiaries. The Subrecipient may choose to conduct local surveys or use census data for documentation. These forms are to be maintained throughout the length of the project and updated as significant progress is made. In addition, documentation for each person benefiting must be included in the project files.

Attachment 13-2:
Project Completion Report

For direct benefit activities (i.e., housing and economic development job creation activities), Subrecipients must also provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with CDBG-DR funds. Records must be kept by race, ethnicity and gender of heads of households.

Employment Records

- ✓ Data on employment of the local government that is carrying out an activity funded in whole or in part with CDBG-DR funds. The data to be maintained in the files includes:
 - A description of the local government work force in percentage by race, gender, job title, and hire date.
 - The percentage of minorities in the jurisdiction of the unit of general local government that is receiving CDBG-DR funds and the percentage of minorities working for that unit of general local government.
 - The number of project area residents employed with CDBG-DR funds. Data should show the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG-DR funds to employ staff. (A sample Local Government Employment Work Force Analysis form is provided as Attachment 7-10 to this Chapter). For example, if CDBG-DR funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department. Note this data is not required for any public or private entity performing services under contract to the unit of general local government; e.g., an Area Development District (ADD) or engineering firm that is administering a CDBG-DR project under a contract with a local government.
 - Government hiring practices and policies.
 - Affirmative Action Plan (if applicable).
- ✓ Documentation of the affirmative actions the Subrecipient has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the grounds of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity in administering a program or activity funded in whole or in part with CDBG -DR funds.

Attachment 7-10:
Local Government Employment
Work Force Analysis

Section 504 Records

- ✓ A copy of the self-evaluation;
- ✓ A copy of the transition plan;
- ✓ A list of interested persons who were consulted;
- ✓ A description of areas and buildings examined and any problems identified;
- ✓ A description of modifications made and remedial steps taken to comply with the regulations; and

- ✓ Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

Monitoring

The designated fair housing and equal opportunity coordinator and/or officers should review compliance requirements on an annual basis.

Subrecipients will be monitored by DLG on a periodic basis. Proper notification of a monitoring visit will be provided, however; it is important for Subrecipients to keep all records and files in “monitoring readiness” condition at all times. Some of the areas DLG staff will review to determine if Subrecipients meet compliance with all fair housing and equal opportunity requirements and laws are listed below:

- ✓ A check of the availability and adequacy of employment records;
- ✓ Identification of programs and activities assisted through CDBG-DR funding and assessment of program impact on protected groups;
- ✓ An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
- ✓ A review of voluntary efforts to promote fair housing; and
- ✓ An examination of the extent to which various protected groups have been impacted by relocation activities.

HUD FHEO Compliance and Monitoring

HUD’s Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to recipients regarding compliance. FHEO may perform periodic reviews of Subrecipients or require reports or other information to measure compliance including records of program participation by individuals with handicaps.

It is important for Subrecipients to keep organized records and document their Section 504 activities.

A complaint can be made by any individual or authorized representative of that individual who believes they have been denied opportunities or treated differently, due to their race, ethnicity, gender, disability, or age.

This complaint would be filed with FHEO under the Housing Discrimination Form 903.1 (see website at right). The complainant’s identity will be held in confidence unless written authorization is given. The time period for filing complaints is within 180 days of the alleged Act. Subrecipients should have copies of this form available to the public.

Housing Discrimination Form 903.1:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

A person who believes his/her rights have been violated may file in federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD’s policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance may result ultimately in the termination of or refusal to grant federal assistance.

Local Government Citizen Participation Plan

All City and County subrecipients which receive CDBG-DR funds must have a written and adopted Citizen Participation Plan that includes the following:

1. Provide for and encourage citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas and areas in which CDBG-DR funds are proposed to be used;
2. Ensure that residents will be given reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8, and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable, as well as information and records relating to the unit of local government's proposed and actual use of CDBG funds;
3. Furnish citizens information, including but not limited to:
 - a. The amount of CDBG-DR funds expected to be made available for the current fiscal year (including the grant and anticipated program income);
 - b. The range of activities that may be undertaken with the CDBG-DR funds;
 - c. The estimated amount of the CDBG-DR funds proposed to be used for activities that will meet the national objective of benefit to low- and moderate-income persons; and
 - d. The proposed CDBG-DR activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under § 570.488.
4. Provide technical assistance to groups that are representative of persons of low- and moderate-income that request assistance in developing proposals (including proposed strategies and actions to affirmatively further fair housing) in accordance with the procedures developed by the Commonwealth. Such assistance need not include providing funds to such groups;
5. Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining residents' views and responding to proposals and questions. Together the hearings must cover community development and housing needs (including affirmatively furthering fair housing), development of proposed activities, and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the Commonwealth. There must be reasonable notice of the hearings and they must be held at times and accessible locations convenient to potential or actual beneficiaries, with accommodations for persons with disabilities. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate.

6. Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the Commonwealth and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the Commonwealth . Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the Commonwealth.

7. Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

Exhibit 7.1

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation in, denied program benefits, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.	X		
Title VII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions that affirmatively promote fair housing.	X	X	
Restoration Act of 1987. This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution that receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity that does not directly benefit from such assistance.	X		
Section 109 of Title 1 of the Housing and Community Development Act of 1974: This section of Title 1 provides that no person shall be excluded from participation in (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.	X		X

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
<p>KRS Chapter 344.015(2) and 45 KAR 1:080 Section 1(7) and Section 2: These regulations require that all state agencies receiving federal funds submit an annual Title VI compliance report and any implementation updates to the Auditor of Public Accounts and the Commission on Human Rights Commission not later than July 1 of each year. Title VI of the Civil Rights Act of 1964 pertains to the delivery of services by recipients of federal funds.</p>	X		
<p>The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthened punishment for acts of housing discrimination, expansion of the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and created an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.</p>	X		
<p>The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.</p>	X		
<p>The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation in, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. federal law preempts any state law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 paragraph 11; 101 KAR 1:375 paragraph 2(3); 101 KAR 2:095 paragraphs 6 and 7.</p>	X		

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
<p>Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.</p>	X	X	X
<p>The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210.</p>	X	X	X
<p>Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.</p>	X		
<p>Executive Order 11259: This Executive Order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.</p>	X		
<p>Section 106(d)(5)(B) of the Housing and Community Development Act of 1974: This Act provides that Subrecipients will conduct its programs and administer CDBG to affirmatively further fair housing.</p>	X		

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
<p>The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state and local governments under the Civil Rights Act of 1964.</p>			X
<p>The Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).</p>			X
<p>The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.</p>			X
<p>The Vietnam Era Veterans’ Readjustment Act of 1974 (and Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.</p>			X
<p>Executive Order 11246 as amended by Executive Order 13672: This Executive Order applies to all federally-assisted construction contracts and subcontracts. It provides that contractors and subcontractors shall not discriminate in hiring or employment on the basis of race, religion, color, national origin, sex, sexual orientation, gender identify, age or disability.</p>			X

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
<p>The Kentucky Civil Rights Act (KRS Chapter 344): This is the state corollary to the Federal Civil Rights Act and prohibits discrimination in employment, housing, accommodation, etc. The Kentucky Commission on Human Rights enforces the Act.</p>	<p>X</p>	<p>X</p>	<p>X</p>
<p>24 CFR Part 5 Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs (FR 5863-F-02)</p> <p>24 CFR Part 100 Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act (FR 5248-F-02)</p> <p>Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances against Victims of Domestic Violence, Other Crime Victims and Others who Require Police or Emergency Services (9/13/16)</p> <p>Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency (9/15/16)</p>	<p>X</p>	<p>X</p>	