

Chapter 7 - Fair Housing, Equal Opportunity, and Section 504

FAIR HOUSING AND EQUAL OPPORTUNITY

Basic Federal Requirements

Fair Housing

The Federal Fair Housing Act (42 United States Code 3601–19) states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States, and to prohibit any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The text of the Federal Fair Housing Act is found at <https://www.justice.gov/crt/fair-housing-act-2>

Federal statute at Section 106(d)(5) of the Housing and Community Development Act requires that no funds may be distributed by the state to any unit of general local government unless the locality certifies that it will affirmatively further fair housing.

Federal regulation at 24 CFR part 570.487(b)(2) requires that units of general local government shall develop proposed actions to affirmatively further fair housing at

the local level, for state review and approval. The state will consider the locality to have met its certification to affirmatively further fair housing if the locality has carried out the state approved actions.

Equal Opportunity

Fair Housing and Equal Opportunity Requirements - Title VI of the Civil Rights Act of 1964 *Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–7)*, provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Executive Order 11063

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EXO11063, *as amended by Executive Order 12259*

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EXO12892, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex or national origin, in the sale, leasing, rental or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are,

among other things, provided in whole or in part with the aid of loans, advances, grants or contributions agreed to be made by the Federal Government.

Section 109 of the Housing and Community Development Act

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/109 requires that no person in the United States shall on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available under the Act.

Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped persons as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8 and are applicable.

Executive Orders 11625 and 12138 provide that the unit of general local government should administer its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises. All Executive Orders may be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

Section 3 of the Housing and Urban Development Act of 1968 as amended by the Housing and Community

Development Act of 1992, requires that employment and other economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low and very low income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Reasonable Accommodations and Service Animals

A Joint Statement of the Department of Housing and Urban Development and the US Department of Justice entitled "*Reasonable Accommodations Under the Fair Housing Act*" dated May 17, 2004 is a good resource regarding reasonable accommodations.

On February 17, 2011 HUD developed a memorandum regarding "*New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973*", which is an excellent guiding resource document regarding service animals.

Both documents are included as **Exhibit 7I**.

Fair Housing Resource Packets

Information about Fair Housing can be obtained by contacting the Fair Housing Council of Oregon (FHCO) at 1-800-424-3247

(Hot Line) or at <http://www.fhco.org/>. The FHCO also has resource packets with a host of materials summarizing the fair housing laws, resource lists and contact information available upon request. Grant recipients are encouraged to obtain a copy of this resource packet as early as possible in the project, to use as a resource in complying with Federal and the State of Oregon fair housing laws.

Federal Requirement

Documentation is required of the actions(s) the recipient has carried out to affirmatively further fair housing, including records on funds provided, if any, for such actions. Affirmatively furthering fair housing cannot be met by paper compliance or meaningless actions. Affirmatively further fair housing is NOT:

- Fair Housing Month proclamations
- Poster contests

While public education is an important part of developing inclusive communities, basic education is not a substitute for a carefully developed plan with action items, timetables, and strategies to advance fair housing choice, reduce segregation, and take positive steps to address barriers to fair housing choice in government activities. All CDBG recipients, regardless of project type, must certify that they will affirmatively further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of action to be taken by the recipient, not just passive compliance with existing laws and ordinances.

Fair housing choice is the ability of persons of similar income levels to have available to them a like range of housing choices

regardless of race, color, national origin, religion, sex, familial status or disability. Local governments, because of their influence and power are in the most effective position to promote fair housing. CDBG grant recipients make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. Although OBDD has a minimum specific action requirement, it is important for recipients to be aware of this commitment to understand every individual's fair housing rights and ensure all local policies and practices do not hinder fair housing and when appropriate actively further fair housing.

State Requirement

Recipients must meet the minimum requirements below:

- 1) All grant recipients, must adopt and publish a Fair Housing Resolution (Exhibit 2B) and submit the affidavit of publication to OBDD within 6 months prior to the First Draw for Non-Construction Activities/funds.
- 2) All grant recipients must distribute and post the Fair Housing Poster and Brochures at City Hall and/or the County Court House and other locations within the community and submit documentation that this was completed within 6 months prior to the First Draw for Non-Construction Activities/funds. Brochures and posters can be found at: <http://www.fhco.org> or <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>.

Note for item 1 & 2 above: If the grant recipient's jurisdiction is comprised of 5% of

more non-English speaking persons, the fair housing resolution, brochures and posters must be disseminated in the applicable non-English language.

- 3) All grant recipients must undertake and complete at least one an additional fair housing activity for each grant prior to the final draw for grant funds. The recipient must inform OBDD of the specific additional fair housing action they plan to undertake and clearly document the action was completed within the project file. Documentation can include but is not limited to: a copy of a newly adopted fair housing action plan, newspaper articles covering the additional fair housing activity, meeting and board minutes, contracts and agreements with workshop presenters, sign-in sheets, web-sites, and video files. Every recipient must adopt and publish a Fair Housing Resolution prior to receiving the first drawdown of grant funds. A resolution adopted for a prior project is acceptable if it has been published within six months prior to the first grant drawdown. See **Exhibit 2B** for a model resolution.

Note for #3 above: If a grant recipient has received more than one grant per program year, example P10005 and P10027, the grant recipient need only conduct one additional fair housing activity for both grants.

Additional Fair Housing Activities

All grant recipients must undertake and complete at least one an additional fair housing activity for each grant prior to the

final draw for grant funds. Actions that the state will accept without further review include:

- Develop and adopt a comprehensive Fair Housing Action Plan, identifying specific actions and timetables. Document the analysis and make it available to the public. Develop a fair housing action plan with corresponding steps to address actions the recipient will undertake to promote fair housing;
- Conducting or participating in an analysis of impediments to fair housing in the community. Document the analysis and make it available to the public. Develop a fair housing action plan with corresponding steps to address actions the recipient will undertake to promote fair housing;
- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies and practices. Document the review and make it available to the public. Develop a fair housing action plan with corresponding steps to address discriminatory practices;
- Support and participate in an educational program coordinated with local realtors, home builders, and/or mortgage lenders designed to provide information on fair housing rights;
- Establish a fair housing complaint referral program that provides public information and assistance to persons who want to file a complaint with the federal government or the State of Oregon. Procedures for filing Housing Discrimination Complaints are described on the HUD website at https://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination and at the Fair Housing Council of Oregon by calling 503) 223-8197 or 1-800-424-3247 (Voice and TTY);

- Provide financial or other documented local support to state or local fair housing organizations that provide information, referral and other assistance in the community. Community Development Block Grant administration funds can be used for this without receiving prior approval from the state; and
- Host an informal fair housing session for local employers to encourage cooperation in efforts to find housing for their employees and to promote equal housing choices within the community;
- Speak to an elementary school class about the fair housing rights of the children and their families;
- Host and invite the Fair Housing Council of Oregon to have a discussion with group leaders or rental property owners and managers about their fair housing responsibilities.
- Adopt a resolution that supports government assisted housing programs in the community and print a notice or advertisement that appears in a prominent location of the local newspaper that states that the grantee is an active supporter of fair housing laws. The notice or advertisement must include the contact information for the recipients Fair Housing representative. See **Exhibit 7A** for a sample resolution;
- Develop a community Fair Housing web-page which prominently displays the community's commitment to further fair housing on the community web-site, including links to fair housing enforcement and education agencies; and
- Recipients may ask the state to approve other actions designed to further fair housing choice in their communities. Such as implementing the actions identified

within the recipients Fair Housing Action Plan.

Local Fair Housing Organizations and Resources

Examples of local organizations that are often involved in fair housing activities include:

- Community Development Corporations and other non-profits
- Boards of Realtors
- Lender associations and financial institutions
- Legal Aid programs
- Public housing authorities
- Community action agencies
- Fair Housing Council of Oregon

The FHCO is a statewide non-profit organization that provides a wide range of resources to communities. They promote equal access to housing by providing education, outreach, technical assistance, and enforcement opportunities. Their contact information is:

Fair Housing Council of Oregon
1221 SW Yamhill St., #305
Portland, OR. 97205

Phone: (503) 223-8197
Statewide: (800) 424-3247

information@fhco.org

The State of Oregon has developed a 2016-2020 Fair Housing Action Plan which provides a listing of resources and actions necessary to remove impediments to fair housing. A copy can be obtained from OBDD-IFA. Recipients can obtain copies of fair housing posters, brochures and videos for use

from Oregon Housing and Community Services, FHCO and from the department.

Project Applicants and Beneficiaries

Federal Requirement

Recipient of grants for projects that qualified under the low and moderate income direct benefit and limited clientele national objective, must collect data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of any program or activity funded in whole or in part with Community Development Block Grant funds and submit this information to the Department. For all projects that qualified under the low and moderate-income area wide national objective, documentation is required about race and ethnicity of persons living in the project service area.

State Requirement

The recipient must collect and maintain the data described in **Chapter 12** for monitoring by state staff. A summary of the data will be required at the time of monitoring and prior to administrative closure of the project. Administrative closure of a project cannot occur until the state has determined that the project met the national objective requirements.

Displaced Households and Persons

Federal Requirement

Data must be collected for the racial, ethnic and gender characteristics of persons displaced as a result of Community Development Block Grant activities, including the address to which each displaced household relocated. Where activities cause a significant level of displacement of businesses, data indicating the impact on businesses owned by minorities and women is required.

State Requirement

Recipients with projects that will cause residents or tenants of housing or businesses to move (e.g., rehabilitation of a single family home to be used for a shelter) must collect the required data in a form to be agreed on with the state.

Section 3

Federal Requirement

Documentation is required for actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, relative to the hiring and training of low and moderate-income persons and the use of local businesses. More information is at <http://www.hud.gov/offices/fheo/section3/section3.cfm>

State Requirement

To comply with the Section 3 requirements, with the exception of the microenterprise assistance and regional housing center grant

recipients, all CDBG grant recipients are required to submit:

- 1) An annual HUD 60002 form by no later than January 31 of each year to OBDD-IFA. The reporting period is January 1 – December 31 of each year;
- 2) A final HUD 60002 form at the completion of the project covering any information that was not previously reported on the most recent annual submission; and
- 3) A Section 3 Plan prior to the first draw of non-construction funds.

A copy of the **HUD 60002 form** can be downloaded from the Internet at this address https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3 and is included as **Exhibit 5C** of this handbook. The details regarding Section 3 compliance are found in Chapter 5.

Minority and Women Owned Businesses

Federal Requirement

For every contract funded in whole or in part with CDBG funds of \$10,000 or more, the grant recipient must collect data indicating the racial and ethnic character of each business entity. The data must indicate which of those entities are women's business enterprises and the amount of the contract or subcontract. Documentation of any affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

State Requirement

Recipients are encouraged to take affirmative steps to use small, minority-owned or women-owned firms in grant-funded projects. Chapter 5 explains actions recipients can use to take affirmative steps. In addition, recipients are required to submit a Minority, Women and Emerging Small Business Activity Report for all contracts or subcontracts in excess of \$10,000, funded in whole or in part with Community Development Block Grant funds, prior to the final drawdown of grant funds. A copy of this report is included in **Exhibit 5B**.

There are additional requirements for housing rehabilitation that must be met and the details for compliance are found in Chapter 5.

Actions to Overcome Prior Discrimination

Federal Requirement

Documentation is necessary of any affirmative actions the local government has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the ground of familial status, race, color, national origin or sex in administering a program or activity funded in whole or in part with Community Development Block Grant funds.

State Requirement

Recipients that have been the subject of formal compliance or court actions related to

discriminatory practices must inform the state about their situation and describe actions resulting from the compliance order or court action. During the States on-site monitoring of the program the recipient must provide any such documentation for the preceding five years.

LGBT Rule

On February 3, 2012, HUD published a final rule in the Federal Register entitled “Equal Access to Housing in HUD Programs regardless of Sexual Orientation or Gender Identity” which became effective Mar 5, 2012. This rule is to ensure that HUD programs, including the CDBG program are open to eligible individuals regardless of sexual orientation or gender identity. Subsequently, on September 21, 2016 HUD published a final rule entitled “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs.” This rule, effective October 21, 2016, will ensure that all individuals have equal access to many of HUD’s core shelter programs in accordance with their gender identity. HUD’s new rule will require a recipient, sub-recipient, sub-grantee or provider to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures (including policies and procedures to protect individuals’ privacy and security), so that equal access is provided to individual based on their gender identify. HUD has provided a document (Exhibit 7B) that grantees can publicly post to inform clients and staff of the equal access requirements. Therefore, a lesbian, gay, bisexual, or transgender (LGBT) person’s experience with sexual orientation

or gender identity in housing discrimination will be covered by the Fair Housing Act.

Examples:

- A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. That situation may constitute illegal disability discrimination under the Fair Housing Act because the man is perceived to have a disability, HIV/AIDS.
- A property manager refuses to rent an apartment to a prospective tenant who is transgender. If the housing denial is because of the prospective tenant’s non-conformity with gender stereotypes, it may constitute illegal discrimination on the basis of sex under the Fair Housing Act.

State Requirement

Oregon is one of several states that already bans sexual orientation housing discrimination and gender identity/expression housing discrimination. If a person has experienced (or are about to experience) housing discrimination, they should contact the regulating state agency to file a complaint. The regulating state agency is the Oregon Bureau of Labor & Industries, and their contract number is 971-673-0792.

Additionally, if a person has experienced (or are about to experience) housing discrimination, they can contact HUD's Office of Fair Housing and Equal Opportunity for help at (800) 877-0246. You may also file a housing discrimination complaint online at the following link:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint. HUD will thoroughly review the allegation to determine if the claims are jurisdictional under the Fair Housing Act.

SECTION 504 NONDISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES

Basic Federal Requirement

"No otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." Source: Federal statute in Section 504 of the Rehabilitation Act of 1973. This is found in 24 CFR Part 8, on the Internet at

http://www.access.gpo.gov/nara/cfr/waisidx_98/24cfr8_98.html.

Relationship of Section 504 to the Americans with Disabilities Act (ADA)

Most of the terms, concepts and definitions in the Americans with Disabilities Act come

directly from the regulations for Section 504. The underlying principle of both laws is the same—covered entities cannot discriminate on the basis of disability in their programs, activities and services. The ADA complements but does not replace Section 504. Recipients must still comply with Section 504, as well as any additional requirements imposed by the ADA. However, the OBDD will only monitor for Section 504 compliance. A table that shows many of the differences between Section 504 and the ADA is included in this handbook as **Exhibit 7C**. **Exhibit 7D** provides additional explanation for key terms and phrases used in the Section 504 regulations.

Definitions:

Applicable definitions are found in 24 CFR Part 8.3 that can be accessed at

http://www.access.gpo.gov/nara/cfr/waisidx_98/24cfr8_98.html.

Recipient – As used in this chapter and throughout this handbook, recipient refers to the city or county recipient of the Community Development Block Grant award. It does not apply to organizations or individuals who contract with the recipient.

Individuals with handicaps/ disabilities -

This includes any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Some examples of impairments include neurological, musculoskeletal, respiratory, cardiovascular, mental retardation, emotional or mental illness, and learning disabilities. The full definition of this term is found in 24 CFR Part 8.3.

Program or activity - All the operations of the recipient city or county.

TTY - Text Telephone used for use in communicating over the telephone with hearing- or speech-impaired persons. This was formerly called TDD.

UFAS - Uniform Federal Accessibility Standards. This is the standard guide used for identification of physical obstacles or barriers. Compliance with UFAS will achieve compliance with physical accessibility standards of the HUD Section 504 regulations. A copy of the Uniform Federal Accessibility Standards is available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>.

Telephone Communication with Persons with Hearing Impairments

Persons with all types of disabilities must be able to communicate with the recipient. Where the recipient communicates with applicants and beneficiaries of the project by phone, a TTY is required. Where such contact is infrequent, the recipient may instead use a TTY relay service. The Oregon Telecommunications Relay Service (OTRS) provides full telephone accessibility to deaf, hard of hearing or speech-impaired persons. To access OTRS, call the voice number from a TTY or **711** from a voice phone. More information is available at <http://www.oregonrelay.com> or by calling (800) 735 1232.

The Public Utility Commission encourages public agencies that receive more than one

call a week from persons with hearing impairments to purchase a TTY rather than depend on the relay service, which was established to assist individual citizens.

Required TTY Action

Each recipient should examine the composition of its community and the nature of the grant funded activity to determine whether to purchase a TTY or use the Oregon Telecommunications Relay Service. Whichever alternative is chosen, the recipient must make the public aware of how persons with hearing impairments may contact them.

Communicating with Persons with Hearing, Visual and Manual Impairments

Section 504 regulations also require that the recipient “...furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.” [24 CFR 8.6(a)(1)]

This means that the recipient must make arrangements in advance of all public meetings to offer, on request and as appropriate, sign language interpreters or other assistance. These services do not have to be provided automatically for every meeting, but the willingness to make accommodation for persons with hearing, visual, or manual impairments must be offered in public announcements about public meetings. In addition, all public meetings must be held in a location, which is accessible to all individuals.

Oregon Department of Human Services' Deaf and Hard of Hearing Services maintains a directory of communication services at <http://www.oregon.gov/DHS/BUSINESS-SERVICES/ODHHS/Pages/index.aspx>.

Required Action for Communicating with Persons with Hearing, Visual and Manual Impairments

In every public meeting notice, the recipient must include a statement to the effect that persons with hearing, visual or manual impairments who wish to participate in the meeting should contact the recipient by a certain date so that appropriate communication assistance can be arranged. The recipient must be ready to back up that commitment with the necessary assistance. If there are no requests for assistance, the meeting can proceed without making special arrangements. The meeting must be held in a location accessible to all individuals. During regular monitoring of the grant, the state must see evidence that the required notice has been made and, if a request was made for assistance, how the recipient responded.

Sample language for public meeting notices:

"The [meeting facility] is handicapped accessible. Please let us know if you will need any special accommodations to attend the meeting."

Employment Practices Subject to Section 504

Employment practices of the recipient, including recruitment, testing, physical examinations and hiring, are all subject to requirements of Section 504. The recipient must make reasonable accommodations for the needs of employees with disabilities. "Reasonable accommodation" means that the recipient is not required to take any actions that will result in a fundamental alteration in the nature of a program or activity or in undue financial or administrative burdens.

Additional Employment Requirements for Recipients with More than 15 Employees (persons, not full time equivalents)

Designation of responsible employee -

The recipient must designate one employee as the person responsible for coordinating all Section 504 responsibilities.

Adoption of grievance procedures - Each recipient must adopt a grievance procedure for all employees and Oregon Community Development Block Grant project beneficiaries. The procedure must incorporate due process standards and allow for quick and prompt resolution of any complaints of alleged discrimination based on disability. An example for a grievance procedure is included in this chapter (**Exhibit 7E**).

Notice requirements - The recipient must publish a notice to notify the public and any individuals and groups which may be affected that it does not discriminate on the basis of disability. These individuals and

groups include employees, union, professional organizations and potential program participants. The notice must identify the Section 504 coordinator. A sample notice is included in this chapter (**Exhibit 7F**).

The notice must be published at the start of the grant period unless the recipient has published one for a prior grant and the required information (e.g., the name of the Section 504 coordinator) is unchanged. See Chapter 2 – “Prior to First Draw for Non-Construction Activities” for more information. After the initial notice, notice must be given on an ongoing basis, such as through printing of a nondiscrimination statement on all employee recruiting announcements, application forms and on official stationary used for general communications from the recipient to the public and constituent organizations. Sample language for recruiting announcements, letterhead, etc.: “The [recipient] is an Affirmative Action/Equal Opportunity Employer and complies with Section 504 of the Rehabilitation Act of 1973.”

Requirements for Recipients Employing Fewer than 15 Persons

The department will monitor for evidence (in the form of complaints) that the recipient has or has not made reasonable accommodation for employees with disabilities or for persons with disabilities seeking employment.

Program Accessibility - Self Evaluation

Each recipient must conduct an evaluation of all its programs and services—not just the

Community Development Block Grant assisted program—to determine whether the programs, policies and procedures of the recipient are accessible to persons with disabilities. The evaluation must be done in consultation with individuals with disabilities or organizations representing them. If problems are found, the recipient must then identify corrective actions to be taken by the recipient to overcome any obstacles to the full participation of such persons. Corrective actions may or may not include structural improvements. See **Exhibit 2C** for the required “Self-Evaluation Checklist” for recipient use.

The self-evaluation plan must include three elements:

1. An evaluation of the current policies and practices of the recipient relative to the intent of Section 504;
2. Modification of any policies and practices that do not meet the 504 requirements; and
3. Corrective actions to remedy any discrimination found.

Accessibility for Housing Rehabilitation Projects

Section 504 requirements apply to City and County recipients of housing rehabilitation grants. However the requirements to not get passed onto the non-profit sub-grantee or private homeowners receiving benefits from the loans made with these grant funds.

Accessibility for Non Housing Rehabilitation Projects

To the maximum extent feasible, grant-assisted rehabilitation of non-housing

facilities must be done so that the facilities are made readily accessible to and usable by persons with disabilities. The recipient is not required to make structural changes in existing facilities where other methods are equally effective in ensuring accessibility to all persons. In addition, the recipient is not required to take actions that would result in “a fundamental alteration in the nature of its program or activity” or in “undue financial and administrative burdens” on the recipient.

Accessibility for New Construction Projects

New facilities assisted with grant funds must be designed and constructed to be readily accessible to and usable by persons with disabilities. The Uniform Federal Accessibility Standards are the benchmark for design of new construction and rehabilitation improvements. (Reference 24 CFR Part 8.21, http://www.access.gpo.gov/nara/cfr/waisidx_98/24cfr8_98.html and the UFAS <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>).

The UFAS provide for some exceptions to accessibility requirements that are pertinent to some projects. In Part 4.1.4, “General Exceptions,” the UFAS state that “Accessibility is not required to elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, lookout galleries, electrical and telephone closets, and general utility rooms.”

Historic Preservation effects on Accessibility Requirements

Accessibility improvements to comply with Section 504 need not be provided if alterations would substantially impair the historic features of the property or result in undue financial and administrative burdens on the recipient. The recipient instead can make other, non-physical accommodations to assist persons with disabilities. (Reference: 24 CFR 8.21(ii); UFAS, Part 4.1.7).

Fair Housing and Equal Opportunity Complaints

HUD’s Fair Housing and Equal Opportunity (FHEO) office handles complaints regarding the federal laws. More information about the federal complaint process is located at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint. The complaint form is located at: <https://portal.hud.gov/FHEO903/Form903/Form903Start.action> a copy of the complaint form is also included as **Exhibit 7G**.

Oregon Civil Rights Complaints

The Oregon Bureau of Labor and Industries (BOLI) handles civil rights complaints in the following areas:

- Employment rights of persons with disabilities
- Fair housing
- Injured workers
- Oregon Family Leave Act
- Pre-employment questions
- Protected classes

- Race, color, national origin, sex, religion discrimination

The BOLI web site contains fact sheets on all the above topics, which can be located at:

<http://www.oregon.gov/BOLI/> More information about the complaint process can be located at:
http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx

LIMITED ENGLISH PROFICIENCY PLANS (LEP)

LIMITED ENGLISH PROFICIENCY (LEP) Starting in 2012 all grant recipients must provide an OBDD approved LEP prior to the first draw of non-construction funds. Exhibit 7H contains a checklist for reference/ tool in developing a Limited English Proficiency Plan.

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Civil Rights Act

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. In certain situations, failure to ensure that persons who are Limited English Proficient (LEP) can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

Executive Order EO 13166

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

HUD Federal Register

HUD's guidance was finalized on January 22, 2007 in Federal Register FR-4878-N-02. In accordance with this guidance, the LEP requirements apply to all entities receiving funds directly or indirectly from HUD. Subrecipients and state grant recipients are likewise covered when federal funds are passed to them through the grantee (State of Oregon). For example, Entitlement CDBG, State CDBG and the HOME Investment Partnership Program recipients' and subrecipients are covered. Coverage extends to a recipient's entire program or activity, i.e. to all parts of the recipients operations. This

is true even if only one part of the recipient receives federal assistance.

Definition of LEP Person

LEP persons are who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

Required Analysis

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should:

- (1) Conduct the four-factor analysis;
- (2) Develop a Language Access Plan (LAP);
and
- (3) Provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP.

The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not

impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

4 Factor Analysis

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons through the 4 factor analysis. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- 2) The frequency with which LEP persons come into contact with the program;
- 3) The nature and importance of the program, activity, or service provided by the program; and
- 4) The resources available and costs to the recipient.

Language assistance that a recipient might provide to LEP persons includes, but is not limited to:

- Oral interpretation services;
- Bilingual staff;

- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

Language Access Plan

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include:

- Identifying LEP persons who need language assistance and the specific language assistance that is needed;
- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided;
- Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to

help with the provision of language services; and

- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

Definition of Vital Documents

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Language Service Needs

Recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective

beneficiary's response indicates a need for language assistance, the recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak" card can be downloaded.

<https://www.lep.gov/ISpeakCards2004.pdf>

A recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language.

Translating Versus Interpreting

In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral

interpretations, HUD encourages recipients to use members of professional organizations. Examples of such organizations are: national organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); and, state organizations. While HUD recommends using the list posted on the official LEP website (<https://www.lep.gov/>). its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

Use of Family Members

Generally, recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense.

Prevailing Documents

Generally, the English language document prevails. The HUD translated documents may carry the disclaimer, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, questions regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality. Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance.

Safe Harbor for Vital Documents

A "safe harbor," in the context of this guidance, means that the recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the recipient provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made

reasonable efforts to provide written language assistance.

HUD has adopted a "safe harbor" for translation of written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the recipient is in noncompliance.

Rather, the "safe harbors" provide a starting point for recipients to consider:

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth "safe harbors" for written translations.

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

When HUD conducts a review or investigation, it will look at the total services the recipient provides, rather than a few isolated instances.

Note: When there is fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group, HUD recommends that recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested.

Safe Harbor for Oral Interpretation

There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

Complaints

In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD recipient failed to take reasonable steps to provide meaningful access to LEP persons.

The local HUD office, will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the HUD recipient failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its

recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

If a person believes that a HUD federally assisted recipient is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to the HUD website (<http://portal.hud.gov/hudportal/HUD>) or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by one of HUD's recipients. If HUD's investigation or review results in a finding of compliance, HUD will inform the recipient in writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the recipient in writing of its finding and identify steps that the recipient must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by:

- (1) terminating the financial assistance of the recipient only after the recipient has been given an opportunity for an administrative hearing; and/or
- (2) referring the matter to DOJ for enforcement proceeding.

Quick Checklist for Fair Housing, Equal Opportunity, and Section 504

	1. Recipient requested, received and reviewed the “Resource Packet” available from the Fair Housing Council of Oregon. <i>This is optional.</i>
	2. All grant recipients, must adopt and publish a Fair Housing Resolution (Exhibit 2B) and submit the affidavit of publication to OBDD within 6 months prior to the First Draw for Non-Construction Activities/funds.
	3. All grant recipients must distribute and post the Fair Housing Poster and Brochures at City Hall and/or the County Court House and other locations within the community and submit documentation that this was completed within 6 months prior to the First Draw for Non-Construction Activities/funds.
	4. All grant recipients must undertake and complete at least one an additional fair housing activity for each grant prior to the final draw for grant funds.
	5. Recipient collected and maintains the racial, ethnic and gender characteristics of the applicants to, participants in, or beneficiaries of any CDBG funded activity/program for low and moderate income - direct benefit (LMH), presumed benefit (LMC), family size and date (LMC).
	6. Recipient maintains the race and ethnicity data of all persons living within the service area of any low and moderate-income area wide benefit project.
	7. The Section 3 clause, Exhibit 5G, was inserted into all construction contracts and the non-construction contracts/agreements in excess of \$100,000.
	8. The HUD form 60002, Exhibit 5C, regarding Section 3 compliance was completed and submitted to OBDD annually and prior to the final construction draw.
	9. The OBDD reviewed Section 3 plan was submitted prior to the first draw of non-construction funds
	10. The Minority, Women and Emerging Small Business Report form, Exhibit 5B, was completed and submitted to OBDD prior to the final draw.
	11. Housing Rehabilitation recipients are meeting the additional Minority, Women and Emerging Small Business Report requirements outlined in Chapter 5.
	12. The recipient, its sub-grantee (including housing rehabilitation non-profit providers and microenterprise assistance non-profit providers) submitted an OBDD reviewed Limited English Proficiency Plan, prior to the first draw for non-construction funds.

	13. Recipient reported any actions to overcome prior discrimination reports or complaints for the preceding five years.
	14. The Self Evaluation Checklist for Compliance with 504, Exhibit 2C, was completed and submitted to OBDD prior to the first draw. Recipient must update the checklist if the list is more than five years old, or if the recipient has made improvements not reflected on the current checklist.
	15. If the recipient has more than 15 employees, the recipient has adopted the grievance procedures, Exhibit 7D, and the Policy of Nondiscrimination on the Basis of Handicapped Status, Exhibit 7E.
	16. Non-housing public works projects for new construction have, to the maximum extent feasible, designed and constructed the improvements in accordance with the Uniform Federal Accessibility Standards (UFAS).
	17. Community facility projects for new construction have designed and constructed the improvements in accordance with the Uniform Federal Accessibility Standards (UFAS).
	18. Any complaints have been referred to: ---- HUD's Fair Housing and Equal Opportunity Office ---- The Bureau of Labor and Industries ---- The Fair Housing Council of Oregon