

# Accessibility, Equal Opportunity, and Fair Housing

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## Introduction

A key focus of this chapter is to ensure that CDBG-DR funding will advance equity and reduce barriers to recovery for New Jersey residents. DCA ensures that all programs and activities in the State's CDBG-DR Action Plan will be conducted without bias or discrimination on the basis of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. Projects and activities planned with CDBG-DR funds will not have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their community needs, particularly in racially and ethnically concentrated areas of poverty. Programs are designed to provide necessary ADA accommodations to support the recovery needs of impacted individuals with disabilities.

Subrecipients are required to administer their CDBG-DR funds in compliance with the following federal laws and Executive Orders regarding fair housing and discrimination.

- **Title VI of the Civil Rights Act of 1964:** This law states that no person 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.
- **Fair Housing Act, Title VIII of the Civil Rights Act of 1968:** The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to protect families with children and persons with disabilities from discrimination in the sale or rental of housing. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to increase accessibility for persons with disabilities.
- **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended:** This law mandates that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds.
- **Section 3 of the Housing and Community Development Act of 1968:** This section implemented in [24 CFR Part 75](#) requires that, to the greatest extent feasible, low- and very low-income persons who live in the metropolitan area of the CDBG project receive opportunities for training and employment and award contracts to businesses that hire low- and very low-income.
- **Section 504 of the Rehabilitation Act of 1973, as amended:** This section specifies that no qualified individual shall, solely because of their disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal assistance, including ensuring access to services and physical accessibility in facilities.
- **The Americans with Disabilities Act (ADA) of 1990:** This law prohibits state and local governments, public accommodations, and commercial facilities from employment discrimination. The ADA also requires that facilities that are newly constructed or altered, by or for use by a public entity, be designed and constructed so that the facility is readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

- **The Age Discrimination Act of 1975, as amended:** This law provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.
- **The Architectural Barriers Act of 1968:** The Architectural Barriers Act (ABA) of 1968 requires that certain buildings financed with federal funds be designed, constructed, or altered to ensure accessibility for persons with physical disabilities. The ABA covers any building or facility receiving federal funds, except privately owned residential structures. Any covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards.

Additionally, the State's Action Plan follows the New Jersey State Law Against Discrimination, **N.J.S.A. 10:5-1**, which provides additional protection against housing discrimination based on race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, sex, gender identity or expression, disability, affectional or sexual orientation, family status or source of lawful income, or source of lawful rent payment.

Subrecipients must take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have timely, meaningful access and an equal opportunity to participate in services and benefits provided by CDBG-DR funded activities. Additional information on LEP can be found later in this chapter.

## 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 identity 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 § 5.106\(c\)](#), 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.

## Employment

Equal Employment Opportunity (EEO) policies play a critical role in preventing discrimination in the workplace. Steps that can be taken by subrecipients to prevent discrimination in employment include the following:

- Review of jurisdictional employment policies and procedures to identify and eliminate discriminatory practices. This review must be documented.
- Advertise employment opportunities to recruit employees for project-related positions.

- Develop and maintain employment data on staff composition by race, sex, disability and national origin to ensure compliance with EEO reporting.

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 above, 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 they are qualified.

### Procurement and Contracting

Procurement and contracting are other areas of grant administration that must be nondiscriminatory. Subrecipients 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 the Procurement and Contracting Chapters for more detailed information and guidance.

## Accessibility and Section 504

Subrecipients must follow the requirements outlined below to be in compliance with accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. 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 their disability, be excluded from participation (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:

- 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.

### Program Accessibility

CDBG-DR programs administered by DCA and their funded entities (e.g., subrecipients, contractors, 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, subrecipients 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.
- Ensure program-related communications are accessible to persons with disabilities (see Communications section below for more detail).
- Make reasonable accommodation 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.

### Communication and Accessibility

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 participate in the planning and public information

dissemination related to CDBG-DR programs, as well as 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). A 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.

### Accessibility in Non-Housing Activities

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

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 [Uniform Federal Accessibility Standard](#) (UFAS). In order to make its facilities accessible, a Subrecipient may need to:

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

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.

**Section 504 Self-Evaluation**

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. A self-evaluation guide is provided below. 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.

The subrecipient must complete the Section 504 Self-Evaluation. During the self-evaluation, if a subrecipient identifies any policies and practices that are found to be discriminatory or contrary to Section 504 requirements, the subrecipient must take steps to remedy the discrimination.

**Limited English Proficiency (LEP) and Language Access Plan (LAP)**

DCA has developed a comprehensive Language Access Plan (LAP) as the appropriate response to meet the needs of LEP individuals, as well as to comply with Title VI and Final Guidance (72 FR 2732). DCA will update the LAP as new Census data becomes available. The LAP provides direction on LEP needs as identified by the four-factor analysis data as set forth in the plan. The LAP also describes how DCA, its partner agencies and subrecipients will provide meaningful language access for LEP individuals to the DCA’s CDBG-DR funded activities, programs, and services. A link to the Language Access Plan can be found here <https://nj.gov/dca/ddrm/plansreports/index.shtml>. Subrecipients must adopt DCA’s LAP and carry out program activities in accordance with the plan, as applicable.

**Source Documents**

<b>File Name</b>	Subrecipient Section 504 Self-Evaluation Form (attachment)
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