

Georgia Department of Community Affairs
2010 Other Compliance Manual

Except for the newly released Compliance Directives at the beginning of this manual, there are no changes from the 2009 Other Manual. Always remember to visit our website for the most recent Compliance Manuals, notices and directives. The website can be found at www.tinyurl.com/dcacompliance.

To be notified of changes to the manual or website email: compliance@dca.ga.gov with “Add Me to Your Email List” in the subject line.

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TAB III

TAB III: OTHER COMPLIANCE REQUIREMENTS

Non Discrimination (HOME & TAX CREDIT)

The owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age or handicap. Additionally, owners of post-1989 allocated projects can not refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers and staff members should be familiar with both state and federal civil rights and fair housing laws. An adverse finding of discrimination must be reported to DCA on the Owner's Annual Certification of Compliance. **The Owner should include a copy of the finding included with the annual certification.**

A. Fair Housing and Equal Opportunity (HOME & TAX CREDIT)

All Tax Credit and HOME recipients must comply with any and all federal laws, state and local laws relating to fair housing and equal opportunity including but not limited to the following:

- **Minority Business Enterprise Executive Orders 11625, 12432, and 12138** relating to use of minority and women-owned business enterprises which provide that owners must make efforts to encourage the use of minority and women's business enterprises in connection with HOME funds by prescribing procedures acceptable to establish and oversee an outreach plan.
- **The Federal Fair Housing Act** (42 U.S.C. §3601 et seq. (1968)) and the **Georgia Fair Housing Act** (O.C.G.A. §8-3-200 et seq., (1992 Supp.)) requires each owner to affirmatively further fair housing. It is illegal to discriminate against any person because of race, color, religion, familial status, sex, handicap, or national origin: in the sale of rental or housing of residential lots; in advertising the sale or rental of housing or residential lots; in the financing of housing or residential lots; in the provision of real estate brokerage services; or in the appraisal of houses or residential lots. Blockbusting, the use of racial fears and prejudices to entice one racial group to flee a neighborhood when members of a disparate racial group move into the area, is also illegal. Normally, "blockbusting" refers to realtor exploitation of racial tensions.
- **Age Discrimination Act of 1975** (42 U.S.C. §6101 et seq.) which prohibits discrimination based on age.
- **Executive Order 11063** which requires that all action necessary and appropriate be taken to prevent discrimination based on race, color, religion (creed), sex, national origin, familial status or disability in the sale, rental, leasing or other disposition of residential property and related facilities, or in the use or occupancy thereof, where such property or facilities are owned or operated by the Federal Government, or provided with HOME funds and in the lending practices with

respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the U.S. Department of Housing and Urban Development.

- **Title VI Civil Rights Act - 1964** (42 U.S.C. 2000d) which provides that no person in the United States may, on the basis of race, color, or national origin, be excluded from participation in, or be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Housing and Urban Development.

B. Labor Standards (HOME)

If HOME funds are provided (whether for construction or non construction expenses) to projects involving the construction of affordable housing consisting of 12 or more units, then the contract relating to the new construction or rehabilitation must comply with the following labor standards:

- Davis-Bacon Act, 40 U.S.C. 276(a)-5
- Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-332
- Copeland “Anti Kickback” Act, 40 U.S.C. 276(c) 1982.
- All applicable regulations and HUD Handbook #1344.1

Each developer/owner is required to attend a preconstruction conference. During this conference DCA’s Federal Regulations Compliance Officer will distribute applicable forms and instructions relating to labor standards and answer any questions you may have. The following summary of general requirements is intended to be a summary and should not replace direct conversations with DCA staff. Records should be maintained to evidence compliance with all requirements.

GENERAL REQUIREMENTS

Every construction and/or rehabilitation contract or subcontract must have appended to it the labor provisions contained in HUD Form 4010, obtained from DCA at preconstruction conference. The property owner is required to ensure that all contractors and subcontractors comply with this requirement.

The Labor Standards do not apply to individuals who are considered volunteers or to members of an income eligible family who provide “sweat equity.”

Davis-Bacon Requirements

DCA will provide the owner/developer with the local prevailing wage rate for the class of laborer/mechanic involved in the project at the preconstruction conference. Wage rate decisions are based on determinations made by the U.S. Dept. of Labor (DOL).

The owner/developer is required to:

- Have a written contract with all contractors and subcontractors on the project;
- Submit to DCA a certification from the Bureau of Apprenticeship and Training for each apprentice employed on the project;
- Ensure that the applicable ratio of apprentices to journeymen is not exceeded;
- Ensure that all apprentices are paid the applicable wage rate;
- Ensure that the applicable wage rate decision, as changed or modified, is used in the contract bidding process, if any, and at the time the contract is awarded;
- Ensure that no party who is debarred/suspended or given limited denial of participation is used as a contractor or employee (see Section 1 of this Manual);
- Ensure that wage decisions and DOL posters are displayed on the project job site (poster will be distributed at the preconstruction conference);
- Attend a pre-construction conference with DCA (mandatory, before you start construction) which is held after loan underwriting and thirty days prior to closing; and
- Allow DCA to monitor the construction and/or rehabilitation and conduct on-the-job interviews with workers on the job site.

Copeland Act Requirements

In general under the Copeland “Anti-Kickback” Act, the owner/developer must:

- Ensure that persons working on the construction and/or rehabilitation of the project are paid weekly and that only those salary deductions which are permissible are taken;
- Submit to DCA, on a weekly basis, payrolls and Statements of Compliance from contractors and subcontractors (the forms will be distributed at the preconstruction conference and must be used to document compliance with this responsibility);
- Retain for at least three (3) years (and sometimes longer) the documents described in the immediately preceding paragraph B;
- Check the payrolls of the contractor and subcontractors for accuracy; and
- Ensure that contractors and subcontractors retain for at least three (3) years the basic records supporting the payrolls.

Contract Work Hours and Safety Standards Act

The property owner/developer must ensure that laborers and mechanics that work in excess of forty (40) hours in any work week receive overtime compensation at a rate at least equal to one and one-half times the basic rate of pay for overtime hours.

Common Pitfalls to Avoid.

- ◇ Starting work prior to preconstruction conference and loan closing without written authorization from DCA.
- ◇ Failure to obtain a wage determination from DCA prior to soliciting construction bids.
- ◇ Failure to submit weekly contractor/subcontractor payrolls and Statements of Compliance to DCA.
- ◇ Failure to provide documentation that employees are receiving the compensation reflected on payrolls (i.e. employee interviews).
- ◇ Failure to pay workers for overtime.
- ◇ Failure to submit draw requests in a timely manner.

Failure to comply with the items listed above may affect your compliance score and ability to compete in future funding rounds.

C. Affirmative Marketing Plan (HOME)

Affirmative Marketing requirements and procedures adopted by the DCA require each project owner to provide information to and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familiar status or disability in accordance with the provisions of the Final Rule of the HOME Investment Partnerships (HOME) Program. Each project owner must adopt an affirmative fair housing marketing plan to be utilized by the Owner, Developer and Property Manager in the marketing of the project. Each year, the Owner must submit a copy of the Affirmative Marketing Plan to DCA with the annual HOME Owners certification. If the Plan has undergone any updates or changes, they should be noted and documented.

REQUIREMENTS. At a minimum, DCA requires that each project affirmative fair housing marketing plan include the following:

- (1) Affirmative marketing requirements and procedures adopted by the Owner detailing methods of informing the public, owners, and potential tenants about Federal Fair Housing Laws and the project's affirmative marketing policy.
- (2) The projects Affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions must include that all units are

made available to the “general public” and are not restricted to a particular class of people.

- (3) The project Owner must select sites for fair housing posters display (at a minimum in the property management office)
- (4) All appropriate project materials distributed to the public by the Owner, Manager, or Developer will contain the equal housing opportunity logo including but not limited to correspondence, notices and advertising, press releases and solicitations for renters.
- (5) Project owner must provide to all current tenants of any existing building being considered for assistance through the HOME programs a briefing and a written description of tenants’ rights relating to federal fair housing laws and the projects affirmative marketing policy.
- (6) Project Owners and/or Management Company must make good faith efforts to solicit eligible persons who are not likely to apply for housing assistance, through special outreach efforts, including but not limited to community reorganizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service agencies, medical service centers, homeless shelters and the use of minority specific media. Outreach efforts can include the distribution of flyers and or brochures at these locations.
- (7) To the extent feasible, project related contracts for work on HOME assisted housing should be awarded to business concerns which are located in or owned in substantial part by persons residing in the housing market area where the HOME assisted housing is or will be located.
- (8) To the extent feasible, training and employment of low-income persons residing within the housing market of the HOME assisted housing.

Each Project Owner is required to detail the project’s Affirmative Fair Housing Marketing Plan in the HUD Affirmative Fair Housing Marketing Plan Form that is included in the Form Appendix to this Manual. Additional information may be included by attachment to that form.

Annually, the project owner is required to:

- (1) Compile and analyze data showing the race/ethnicity, gender, and household type of each applicant, and the application status, including if the applicant is currently housing, on the wait list, was offered but did not accept housing, or if the application was withdrawn or reject.
- (2) Assess the success of affirmative marketing efforts in light of the date above.

- (3) Identify any changes and or corrective actions to be taken where affirmative marketing requirements have not been met or affirmative marketing efforts have not been successful.
- (4) Complete a new Affirmative Fair Housing Marketing Plan which reflects any plan adjustments necessary to more effectively affirmatively market the project's units.
- (5) Report annual to DCA, the results of the previous year's affirmative marketing efforts.

RECORDS. A copy of the approved Affirmative Marketing Plan must be kept at the project site or rental office of the project. DCA compliance staff will request a copy of this form during the annual compliance monitoring. In addition records which describe affirmative marketing activities, including, but not limited to, a record of all published notices and newspaper articles, sales brochures, advertising and press releases shall also be maintained.

D. Section 3 of the Housing and Urban Development Act of 1968 (HOME) (12 U.S.C. §171U et seq.)

Provides that, to the greatest extent feasible, opportunities for training and employment arising in connection with planning and carrying out any project assisted with HOME funds be given to low-income persons residing within the program service area. In addition, to the greatest extent feasible, contracts for work (of all types) to be performed in connection with any project must be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, maintenance or repair, which are located in or owned in substantial part by persons residing in the program service area.

Section 3 Area Resident – means:

- 1) A public housing resident;
- 2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is;
 - (i) a low-income person – any person with a gross household income less than 80% of the area median income (adjusted for household size) as established by HUD
 - (ii) a very low income person – any person with a gross household income less than 50% of the area median income (adjusted for household size) as established by HUD
- 3 A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing the evidence (if requested) that the person is eligible for the preference.

Section 3 Business Concern - as defined:

- 1) That it is 51% or more owned by Section 3 residents; or
- 2) Whose permanent, full-time employees include, persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “Section 3 business concern.”

Section 3 Service area – means the geographical area in which the persons benefiting from the Section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the Section 3 covered assistance is expended

What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968 that requires that programs of direct financial assistance administered by the U.S. Department of Housing and Urban Development (HUD) provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. Further, to the greatest extent feasible, contracts in connection with these projects are to be awarded to local businesses. Section 3 is a tool for fostering local economic development, neighborhood economic improvement, and individual self-sufficiency.

Who Must Comply with Section 3 Requirements?

Section 3 applies to employment opportunities generated (jobs created) as a result of projects receiving Community Development Block Grant (CDBG) or HOME Investment Partnership Program (HOME) funding through IHFA, whether those opportunities are generated by the grantee, a sub-recipient, or a contractor. The requirements of Section 3 applies to all projects or activities associated with CDBG or HOME funding, regardless of whether the Section 3 project is fully or partially funded with CDBG or HOME.

Section 3 applies to DCA programs as follows:

1. Is the HOME award more than \$200,000?
 - a. If no, Section 3 does not apply to your project.
 - b. If yes, Section 3 applies to the grantee.
2. Are there any contracts or subcontracts for more than \$100,000? (Individual contracts are not aggregated for the \$100,000 threshold)

What Does Section 3 Require?

Grantees, sub recipients, and contractors must make good faith efforts to:

1. Utilize Section 3 area residents as trainees and employees in connection with the project.

2. Award contracts to Section 3 business concerns for work in connection with the project.

The grantee must keep records and submit reports to IHFA, documenting the good faith efforts taken and the results of these actions.

What is a Good Faith Effort?

Good faith effort means that a grantee, sub-recipient, or contractor must take concrete steps to expand resident training and employment opportunities, such as making residents aware of available training and employment positions, encouraging residents to participate in the job application process, and actually employing Section 3 area residents.

With respect to business participation, a good faith effort means identifying small businesses located within the boundaries of the Section 3-covered project area, making them aware of contracting opportunities, encouraging the participation of affected businesses in the procurement process, and actually awarding contracts to these Section 3 business concerns. The law sets forth two criteria for good faith efforts:

1. Greatest extent feasible to use area residents as trainees and employees and to award contracts to local businesses
2. Consistent with existing federal, state, and local law, two additional requirements have been established through regulation:
 - a. affirmative actions
 - b. actions that can be documented

Examples of Good Faith Efforts

1. Identify the number and type of positions that are needed to undertake the program or project, and that are vacant.
2. Recruit Section 3 residents for all vacant positions through methods such as advertising through local media, Phase, community organizations, employment development agencies and job training centers, and homeless shelters. Prominently display notices at the project site or other locations where they are likely to be seen by low- and very low-income residents.
3. Where feasible, use trainees on the project.
4. Hire Section 3 residents.
5. Keep records of any Section 3 residents hired and the positions for which they were hired.

Implementation

Section 3 must be implemented in a manner consistent with existing Federal, State, and local laws. Section 3 does not supersede these laws, nor do these laws cancel or override the Section 3 obligation.

- A. Employment – Section 3 is race neutral, directed at low income and very-low income persons.
- B. Procurement - Despite the method of procurement used, the solicitation of bids/proposals and the final contract documents must include notice of Section 3 obligations. Preference is based on whether the contractor provides economic opportunities to lower income persons (preference requirements only apply to the grantee).
- C. Contracting - Applies to the State’s recipients as well as the recipients’ contractors.
Examples:
 - 1. Include notice of Section 3 requirements in bid solicitations.
 - 2. Target solicitations to small local businesses.
 - 3. Include Section 3 clause in contract documents.
 - 4. Develop a business outreach plan.
 - 5. Require bidders to indicate how they will comply with Section 3.
 - 6. Award contracts to businesses that provide economic opportunities to low- and very low-income persons.

You must implement procedures during your grant to track for the following:

- (1) Total number of employees working on the job/housing award.
- (2) Total number of employees working on the job/the-housing award that are Section 3.
- (3) Total number of new hires/trainees hired to work on the job/housing award.
- (4) Total number of new hires/trainees hired to work on the job/housing award that are Section 3.
- (5) Number of hours worked on the job/the-housing award by all employees.
- (6) Number of hours worked on the job/the-housing award by all Section 3 employees.
- (7) Number of hours worked on the job/the-housing award by Section 3 new hires/trainees.

Reporting Requirements

At the end of the grant period, you will be required to report to DCA on all of the following:

- (1) The efforts made to direct employment and other economic opportunities generated by the housing grant.
- (2) Total number of employees working on the job/housing award.
- (3) Total number of employees working on the job/the-housing award that are Section 3.
- (4) Total number of new hires/trainees hired to work on the job/housing award.

- (5) Total number of new hires/trainees hired to work on the job/housing award that are Section 3.
- (6) Number of hours worked on the job/the-housing award by all employees.
- (7) Number of hours worked on the job/the-housing award by all Section 3 employees.
- (8) Number of hours worked on the job/the-housing award by Section 3 new hires/trainees.

E. Tenant Relocation and Displacement Policies (HOME & TAX CREDIT)

Please see DCA's Uniform Relocation Manual.

F. Accessibility (Tax Credit and HOME)

Please see DCA's Accessibility Manual.

G. Environmental (Tax Credit and HOME)

Please see DCA's Environmental Manual.