

# *FAIR HOUSING COMPLIANCE:* Hot Topics



# Presented by:

Deborah Manigault and Irma Abalos

HUD

Office of Fair Housing & Equal Opportunity

1670 Broadway Street

Denver, CO 80210

IRMA PH: 303-672-5186

DEBORAH PH: 303-839-2619

FAX: 303-672-5026

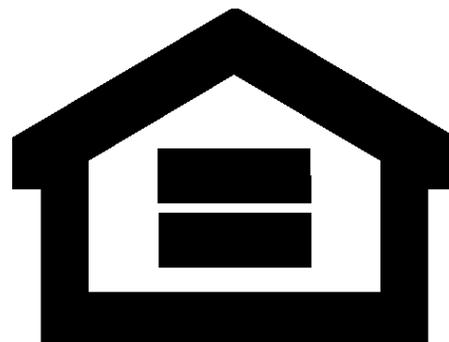
TDD: 303-672-5248

[Irma.D.Abalos@HUD.Gov](mailto:Irma.D.Abalos@HUD.Gov)

[Deborah.G.Manigault@HUD.Gov](mailto:Deborah.G.Manigault@HUD.Gov)

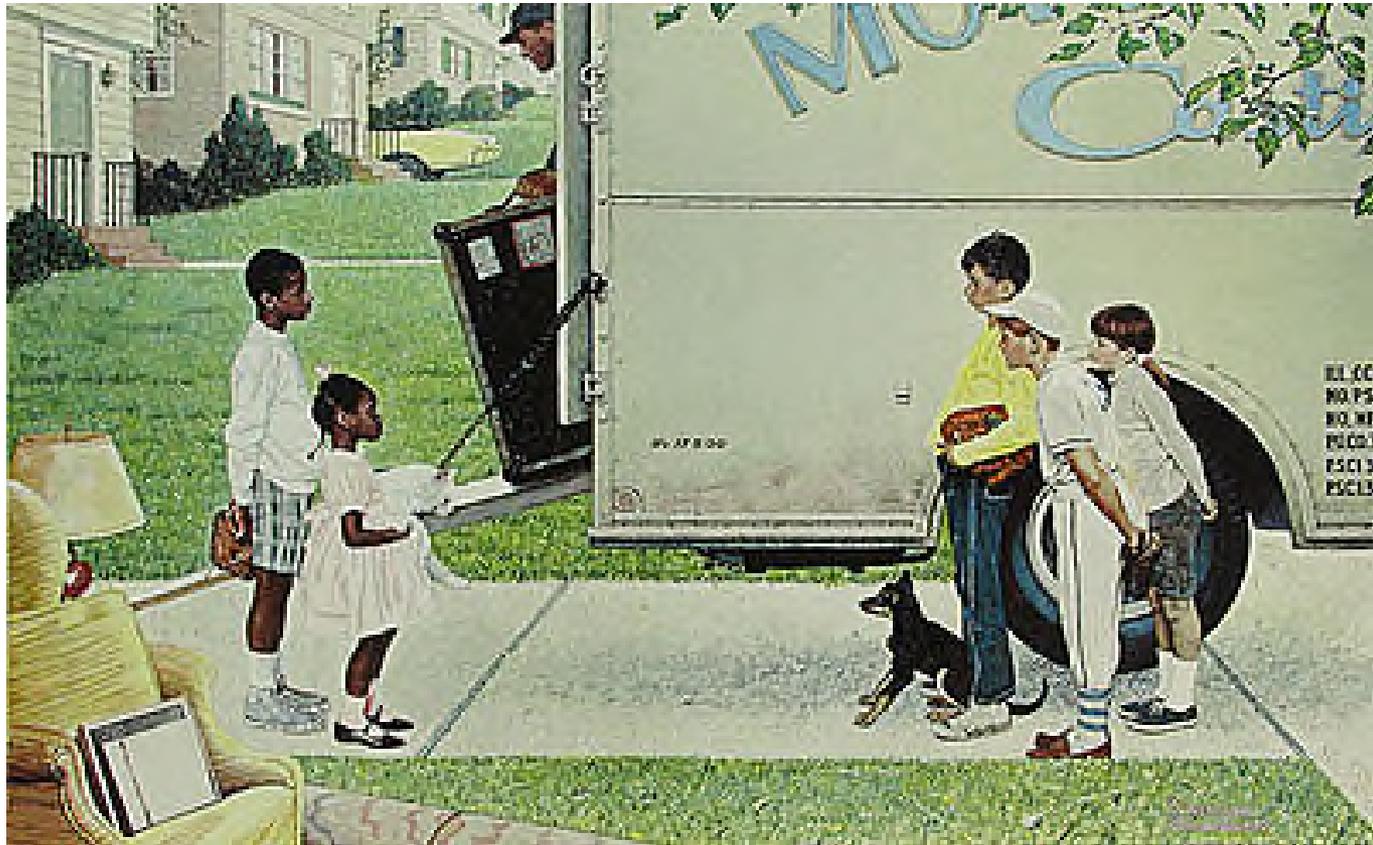
[www.hud.gov](http://www.hud.gov)

[www.espanol.hud.gov](http://www.espanol.hud.gov)



EQUAL HOUSING  
OPPORTUNITY

*“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”*  
- Dr. Martin Luther King Jr.



# What do fair housing laws mean?

- Fair Housing Act: “to provide, within constitutional limitations, for fair housing throughout the United States.”
- Promotion of freedom of choice = increase in diversity.
- Fed & local agencies administer programs & activities to affirmatively further fair housing.
  - Affirmatively: positively or in a proactive way

# Fair Housing Laws

- Federal Fair Housing Act - Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq.
- Recipients of federal money:
  - **Title VI of the Civil Rights Act of 1964.**
  - **Section 504 of the Rehabilitation Act of 1973.**
  - **Section 109** of the Housing and Community Development Act of 1974.
  - **Title II** and Title III of the Americans with Disabilities Act.
  - Age Discrimination Act of 1975.

## Fair Housing Act:

Title VIII of the Civil Rights Act of 1968 & the Fair Housing Amendments Act of 1988

42 U.S.C. § 3601, et seq.

## Protects against discrimination based on:

- Race
- Color
- Religion
- Sex
- Familial Status
- National Origin
- Handicap (Disability in Colorado law)

# Fair Housing Protections

## Federal Law

- Race
- Color
- Religion
- Sex
- Handicap
- Familial Status
- National Origin

## State or Local Laws

- Race
- Color
- Religion/\*Creed
- Sex
- Disability (\*physical or mental)
- Familial Status
- National Origin/Ancestry
- Marital Status
- Sexual Orientation
- Transgender Status/Gender Identity
- Source of Income



# Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

24 C.F.R. Part I



# Section 504 of the Rehabilitation Act of 1973

Section 504 Prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

**ACCESS, ACCESS, ACCESS!**

24 C.F.R. Part 8

# Title II of the Americans with Disabilities Act, as amended

- Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance, and housing referrals.

# Disparate Impact

- Under the Fair Housing Act: Intent is not required to establish liability.
  - Liability can be established by a showing of disparate impact or discriminatory effect.
  - Acts, conduct, or policies that have the effect of excluding persons who are members of a protected class.
  - HUD issued final rule on discriminatory effect/disparate impact in 2013.
    - <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>
- Similar analysis under compliance and application of civil rights laws as applied to federal recipients.

# Trends in Fair Housing Complaints

## Most Common Fair Housing Complaints Filed in FY2013

### BASES

Of 8,368 fair housing complaints filed nationally, the most common basis was **disability**, which represented 53% of filed cases, followed by **race** at 28% of filed cases, **familial status** at 14% of filed cases, and **national origin** at 12%.

### ISSUES

Nationally, the most common issue in complaints is **discriminatory terms, conditions, privileges, services, and facilities in the rental or sale of property**. More than 68% of individuals filing fair housing complaints complained about this issue. The second most common type of complaint was the failure to make a reasonable accommodation at 30%.

# Definition of DISABILITY

- The term “disability” means, with respect to an individual:
  - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (B) a record of such an impairment; or
  - (C) being regarded as having such an impairment.

# Reasonable Accommodations

- One type of disability discrimination prohibited is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.
  - Under 504, reasonable accommodations include reasonable modifications.

# Reasonable Accommodations

- For an accommodation to be reasonable, there must be an identifiable relationship or **nexus** between the requested accommodation and the individual's disability.
- The requested accommodation must be necessary to **ameliorate** the effects of the disability and provide the person with a disability an equal opportunity to use and enjoy a dwelling.

# What is Reasonable?

- The requested accommodation must be reasonable:
  - \*Does not impose an undue financial **and** administrative burden on housing provider.
  - \*Does not fundamentally alter the nature of the housing provider's operations.
  - \*The determination is made on a case-by-case basis.

# Requesting an Accommodation

- A reasonable accommodation must be requested.
- A request can be made at any time, by the person with a disability, a family member, or by someone else who is acting on behalf of the person with a disability.
- **Request does not have to be in writing. It can be oral or by any other effective method.**
- Housing provider should **always** place the request in writing and document the outcome.

# Verifying Reasonable Accommodations

- May request documentation of the need – only to the extent necessary to verify the disability and if an accommodation is needed.
- **May not acquire confidential medical records or inquire into the nature or severity of a person's disability.**
- Verification of disability and need for accommodation can be from: medical provider; licensed health provider; professional representing social service agency, disability agency or clinic, a peer support group, a non-medical service agency; or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

# Reasonable Accommodations

- Common Reasonable Accommodation Requests:
  - Waiving a no pets policy to allow a service or companion animal
    - **No requirement the animal must be certified or trained**
  - Waiving guest fees for live-in-aides
  - Accessible Parking
  - Removal of snow and ice for residents in a wheel chair

# Reasonable Accommodations

- When can a housing provider deny a reasonable accommodation request?
  - The request was not made on or on the behalf of a person with a disability.
  - There is no disability related need for the accommodation.
  - The accommodation is not reasonable:
    - Imposes an undue financial **and** administrative burden
    - Causes a fundamental alteration to the nature of the program
  - Tenancy of the resident poses a direct threat to the health or safety of other individuals, unless that threat can be eliminated or reduced significantly by a reasonable accommodation

# Reasonable Accommodations

- Disability Related Need
  - Must be a nexus between the requested accommodation and the disability of the requester
    - Necessity, at a minimum, means the accommodation will affirmatively enhance the individual's quality of life by ameliorating the effects of the disability.

# Reasonable Accommodations

- Undue Financial ***and*** Administrative Burden
  - An action that requires significant difficulty or expense
  - Must balance the burden to the housing provider with the benefits to the resident
  - Factors to Consider:
    - Cost of the accommodation
    - Financial resources of the housing provider
    - Administrative responsibilities imposed on the housing provider because of the requested accommodation
  - Documentation and records needed to support an alleged burden

# Reasonable Accommodations

- **Fundamental Program Alteration**
  - A change that would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change
  - **Examples of Fundamental Alterations:**
    - Evicting or breaking the lease of another tenant to create a vacant apartment for a person with a disability
    - Soundproofing an apartment for a tenant with schizophrenia
    - Requesting maintenance staff take out the garbage for a tenant who uses a wheelchair on a daily basis when maintenance staff is only onsite two days per week.
  - Again, documentation important.

# Reasonable Accommodations

- What do you do if you believe a reasonable accommodation request is unreasonable?
  - **Start an interactive process.**
  - Discuss alternative accommodations with the requester.
- What if you cannot reach an agreement through the interactive process?
  - The accommodation has effectively been denied. The requester has the right to file a fair housing complaint and have the Department conduct an investigation.

# Reasonable Accommodations

- What do we look for in cases of alleged denial of reasonable accommodations?
  - The Department analyzes the request utilizing the following elements:
    - The complainant is a person with a disability under the Law.
    - The respondent knew that the complainant has a disability.
    - The complainant specifically requested an accommodation in respondent's housing-related rules, policies, practices, or services because of a disability.
    - The requested accommodation was necessary to afford the complainant an equal opportunity to use and enjoy the subject property.
    - The respondent denied or **unreasonably delayed** the accommodation request.

# Reasonable Accommodations

- Reasonable Accommodation Safe Zone
  - Implement formal policies and procedures for reviewing reasonable accommodation requests.
  - Inform residents about the availability of reasonable accommodations as a standard part of the application process.
  - If a requested accommodation is believed to be unreasonable, enter into an interactive process with the requester.
  - Ensure your policies and procedures are adaptable to accept alternative forms of requests.

# Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- HUD Notice Issued April 25, 2013;
- Discusses Fair Housing Act, Section 504, and the ADA;
- Located at [http://portal.hud.gov/hudportal/documents/huddoc?id=se\\_rvanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=se_rvanimals_ntcfheo2013-01.pdf)



# Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504

- Assistance animals are not pets.
- Assistance animals include service animals and emotional support/therapy and comfort animals.



# Assistance Animals...

- Are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more symptoms or effects of a person's disability.
- Are not just dogs and may include cats, birds, guinea pigs, miniature horses, capuchin monkeys, snakes, etc.



# Assistance Animals...

- Must be permitted for individuals with disabilities, as defined by the Fair Housing Act and Section 504 when...
- There is a relationship between a person's disability and the assistance provided by the animal.



# Assistance Animal Conditions

- Pet policies must clearly state that the policy does not apply to assistance animals.

## HOUSING PROVIDERS...

- Must not charge a pet deposit or fee.
- May encourage licensing in accordance with any local laws.
- Must not require verification of licensure or inoculations as a condition of approval.
- May apply reasonable health and safety concerns, including ensuring that **INDIVIDUAL** animals are not a threat or nuisance.
- May require owners to clean-up after animals and maintain control of animals.

# Assistance Animal Conditions

## HOUSING PROVIDERS MAY NOT...

- Deny access to housing or indoor and outdoor public and common use areas associated with housing.

OR

- Impose breed, weight, or size limitations.



# Lawful Bases for Denial or Exclusion

## A HOUSING PROVIDER MAY DENY A REQUEST FOR AN ASSISTANCE ANIMAL IF...

- A specific animal poses a direct threat to the health or safety of others or would result in substantial physical damage to the property. (An individualized assessment must be based on recent credible, objective evidence related to the specific animals actual conduct, not speculation about the type or breed of the animal.)
- The housing provider can demonstrate there is an undue financial and administrative burden. (This is a very high standard to meet and generally is not applicable.)
- It would create a fundamental alteration. (This is also a very high standard and typically is not applicable.)

# Visiting Service Animals

Housing providers must allow visiting service animals.

In Reno, NV, a housing provider was charged with repeated harassing and attempted eviction of a couple who had a friend visit with a service animal. The tenant provided the landlord with documentation showing the friend's dog was a service animal. But the landlord would not make an exception to the property's "no pet" policy. After the eviction was dismissed in court, the landlord continued to harass the tenant and posted a sign by the tenants' door.



# “Service Animals” under the ADA

## Americans with Disabilities Act (ADA) Application

- Title II of the ADA applies to public entities that provide housing (e.g. public housing agencies, state and local government housing, housing provided at state universities and other places of education.)
- Title II of the ADA applies to places of public accommodation, such as rental offices, shelters, some types of multifamily housing, assisted living facilities, and housing at places of education.



# ADA Definition of a “Service Animal”

- DOJ’s revised ADA regulations define “service animal” narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or mental disability.
- In some cases, the ADA definition also includes miniature horses.
- The provision of emotional support, well-being, comfort, or companionship does not constitute work under this ADA definition.



# ADA Inquiries

The ADA has different requirements than the Fair Housing Act/Section 504.

Entities covered by the ADA may only make two inquiries to assess requests under the ADA:

- 1) “Is this a service animal that is required because of a disability?”
- 2) “What work or tasks is the animal trained to perform?”

# ADA Inquiries, Continued

- Covered entities may not ask about the “nature or extent of a person’s disability.”
- Covered entities may not require documentation or proof.
- Covered entities may not ask the two questions if it is “readily apparent that the animal is trained to do work or perform tasks for a person with a disability.” (EXAMPLE: A dog seen guiding a person with a visual impairment.)

# Bases for Denial or Exclusion under the ADA

- The animal is out of control and its handler does not take effective action to control it.
- The animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination).
- The animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices, and procedures.

# ADA Not Applicable in Housing

- Recent amendments to ADA regulations do not impact reasonable accommodation requests under the Fair Housing Act and Section 504.
- Under the Fair Housing Act and Section 504, individuals with disabilities may request assistance animals as reasonable accommodations, including all animals, NOT just dogs or miniature horses.



# ADA Not Applicable in Housing, Continued

- Housing providers must meet broader Fair Housing Act/Section 504 standard in evaluating requests for assistance animals as reasonable accommodations.
- Under the Fair Housing Act/Section 504, assistance animals include companion/therapy/comfort animals and do not require any specialized training.



# Familial Status

## Covers:

- Families with children under 18 years of age who are living with a parent or a legal guardian or another adult with the consent of the parent
- A pregnant woman
- Someone seeking custody of children under 18 years of age

# Discrimination based on Familial Status

- The Fair Housing Act, with few exceptions, prohibits discrimination in housing against **families with children** under 18.
- In addition to **prohibiting an outright denial of housing to families with children**, the Act also **prevents housing providers from imposing any special requirements or conditions** on tenants with custody of children.
- For example, landlords may not locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants.

# Limited English Proficiency (LEP)

- The U.S. Census Bureau defines Limited English Proficiency as speaking English “less than very well.”
- The entire LEP population grew by 52% between 1990 and 2000, from 14 million people to 21.3 million people.
- LEP population growth is fastest in states with the greatest immigrant population growth.

# LEP and The Fair Housing Act

The Fair Housing Act makes it unlawful to discriminate because of race, color, religion, national origin, sex, disability, and familial status in the sale, rental, or advertising of housing.

- ❖ Discrimination against LEP persons can violate the Fair Housing Act when LEP results from a person's national origin.

# LEP and Title VI of the Civil Rights Act of 1964

- HUD LEP Guidance issued in 2007 pursuant to Executive Order 13166 and Title VI applies to recipients of federal financial assistance.
- Provides four factors to assess the needs of LEP persons:
  - The number or proportion of LEP persons served or encountered in the eligible service area
  - The frequency with which LEP individuals come into contact with program
  - The nature and importance of the program, activity, or service provided by the program
  - The resources available to the recipient

# HUD Equal Access Rule

## Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (24 C.F.R. 5)

- Effective March 5, 2012
- Applies to all HUD programs



# HUD Equal Access Rule, Continued

## DEFINITIONS:

- Sexual Orientation – Homosexuality, heterosexuality, or bisexuality.
- Gender Identity – Actual or perceived gender-related characteristics.



# HUD Equal Access Rule, Continued

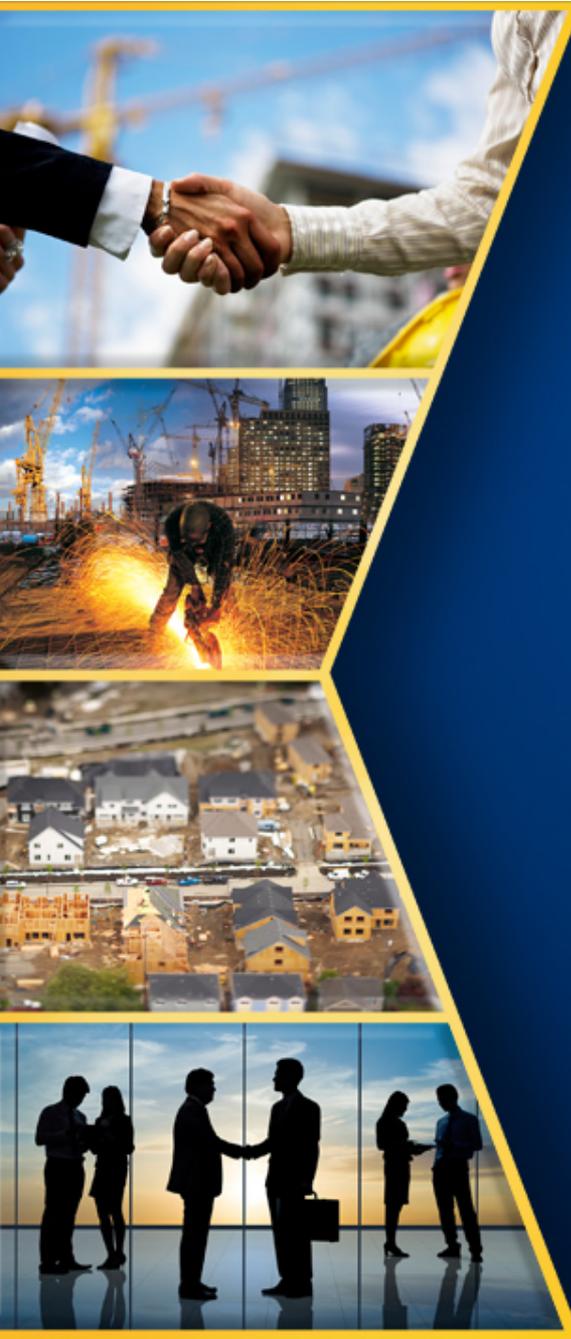
## THREE COMPONENTS:

- 1) **General equal access provision:** Housing assisted by HUD or insured by FHA must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- 2) **Definition of family:** Must include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.
- 3) **Inquiries:** Prohibits inquiries about an applicant's or occupant's sexual orientation or gender identity for the purposes of determining eligibility or otherwise making housing available.





# Announcing National Section 3 Business Registry



3/18/2015

U.S. Department of Housing and Urban  
Development

# What is Section 3

Section 3 of the Housing and Urban Development Act of 1968 ensures that employment, training and contracting generated by certain HUD financial assistance shall, **to the greatest extent feasible**, be directed to low- and very low-income persons...and to business concerns which provide economic opportunities to (those) persons.

24 CFR §135

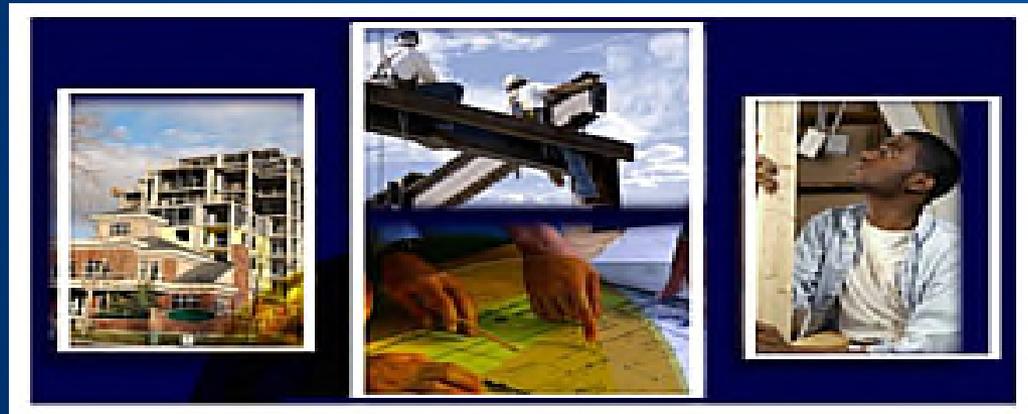
# What is Section 3 Business Registry?

- A National Registry of businesses that have self-certified to HUD that they meet one of the definitions of a Section 3 Business.

# How Does the Section 3 Registry Help HUD Grantees and their Contractors

- HUD grantees are required to notify Section 3 businesses about the availability of HUD-funded contracts to solicit bid proposals.
- The Section 3 Business Registry is a tool that helps locate prospective Section 3 businesses.
- The Section 3 Registry will only be successful if grantees encourage businesses to sign-up and grantees use the Registry to solicit bids.

# Section 3 Business Registry



**Businesses can sign up for the Section 3  
Business Registry at:**

**[www.hud.gov/sec3biz](http://www.hud.gov/sec3biz)**

https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome

HUD.GOV  
U.S. Department of Housing and Urban Development  
Secretary Shaun Donovan

Instructions | FAQs | Contact Us

OMB Approval No.2529-0052 (exp. 09/30/2014)

## What is the Section 3 Business Registry?

[What is the Section 3 Business Registry](#) | [Am I a Section 3 Business](#) | [Register a Business](#) | [Search for a Business](#)

### What is the Section 3 Business Registry

The Section 3 Business Registry is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts. The database can also be used by Section 3 residents to identify businesses that may have HUD-funded employment opportunities.

This registry is a helpful tool to assistant recipients of HUD funding (e.g., Public Housing Agencies, local units of government, property owners, etc), developers, and others locate Section 3 businesses within their community. It also enables HUD grantees to meet their Section 3 obligations by reducing some of the burden associated with locating eligible businesses.

It is important to note that Section 3 businesses are not entitled to receive contracts simply by being listed in HUD's Section 3 Business Registry database. Eligible businesses may need to demonstrate that they are responsible and have the ability to perform successfully under the terms and conditions of proposed contracts. Section 3 requirements at 24 CFR 135, then provides preference for contracts and subcontracts to these firms-but not a guarantee.

While the Department maintains the Business Registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, it is recommended that users perform due diligence before awarding contracts to firms that have self-certified on this registry by ensuring that they meet the definition of a Section3 business concern as defined by the Department's regulations at 24 CFR 135.5.

The general public can notify the Department through the Business Registry website if they believe a firm has potentially misrepresented themselves as a Section 3 business. In such situations, HUD will request documentation and additional information from the business to verify that they qualify for inclusion in the database. Businesses found to have misrepresented themselves will be removed from the database and penalized (see registry webpage for more information).

To search the database for self-certified Section 3 businesses, register your business for inclusion, or for more information on the Business Registry, please visit <http://www.hud.gov/Sec3Biz>.

Additional information on the requirements of Section 3, can be found at <http://www.hud.gov/section3>

U.S. Department of Housing and Urban Development 451 7th Street S.W., Washington, DC 20410 Telephone: (202) 708-1112 TTY: (202) 708-1455. [HUD](#)

# Search for a Business

[What is the Section 3 Business Registry](#)

[Am I a Section 3 Business](#)

[Register a Business](#)

[Search for a Business](#)

## Search for Section 3 Self Certified Businesses

Please select one or more items below for your search criteria

Select Your State	Select Your County	Select Your City	Select Your Zip
None Selected ▼	Select State First ▼	Select State and County First ▼	Select State, County and City First ▼

<input type="checkbox"/> Brick Masonry	<input type="checkbox"/> Carpentry	<input type="checkbox"/> Electrical	<input type="checkbox"/> General Contractor	<input type="checkbox"/> HVAC
<input type="checkbox"/> IT	<input type="checkbox"/> Janitorial	<input type="checkbox"/> Landscaping	<input type="checkbox"/> Lead Hazard Control	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Painting Dry Wall	<input type="checkbox"/> Plumbing	<input type="checkbox"/> Security	<input type="checkbox"/> Other	

Only Show Businesses That are Hiring:

Search For Business

Export results to Excel

Business Name	Business Address	Business Telephone	Business Type
---------------	------------------	--------------------	---------------

### Disclaimer:

HUD has not verified the information submitted by businesses listed in this registry and does not endorse the services that they provide. Users of this database are strongly encouraged to perform due diligence by verifying Section 3 eligibility before providing preference or awarding contracts to firms that have self-certified their Section 3 status with the Department.

### How Do I Notify HUD if I Suspect that a Business in this Registry Does Not Meet Section 3 Eligibility Criteria?

If you believe that a firm has misrepresented itself as a Section 3 Business, please submit an email to the U.S. Department of Housing and Urban Development by clicking here [Sec3Biz@hud.gov](mailto:Sec3Biz@hud.gov).

Your email should contain the following information:

- Your name, telephone number, and email address (this information will not be shared outside of HUD)
- Name, city, and state of firm that has allegedly misrepresented their status as a Section 3 business.
- Any narrative explanations describing why you believe that this firm does not meet the Section 3 Business eligibility criteria.

# Section 3 Proposed Rule

- Proposed rule is out for 60 day public comment.
- The proposed rule can be accessed at the federal register or [HUD's website](#).
- Please comment on the proposed rule and encourage your grantees to comment too.

# What Questions Do You Have?

