

Policy Manual



# Planning, Infrastructure, and Economic Revitalization (PIER) Policy Manual

Version 2.0



**Got Questions?**

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## Use of this Document

This document is a policy manual for the Planning, Infrastructure, and Economic Revitalization (PIER) program for subrecipients and/or grantees and grant administrators. This program is funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds from the U.S. Department of Housing and Urban Development (HUD). Additional resources for subrecipients and/or grantees and grant administrators can be found on the [ReOregon: Recover. Rebuild. Revitalize website](#), including a CDBG-DR Subrecipient Manual.

# Version History and Version Policy

The version history of the policy manual is tracked in the table below, with notes for each change. The dates of each publication are also tracked in the table.

Oregon Housing and Community Services (OHCS) will publish a new version after making substantive changes that reflect a policy change. The updated policy manual will be assigned a new primary version number, such as 2.0, 3.0, etc.

After making non-substantial changes, such as minor wording and editing or clarification of existing policy that do not affect the interpretation or applicability of the policy, OHCS will publish a version of the document with a sequential number increase behind the primary version number, such as 2.1, 2.2, etc.

Amendments made to policy may go into effect on the date of the revision or may be applied retroactively, depending on the applicant pipeline and status of applicants in the program intake and recovery process. Whether a policy will be applied proactively or retroactively will be detailed in the version history below and/or within the relevant program sections.

Version Number	Date Revised	Key Revisions
1.0	March 2023	Original PIER Program Guidelines
1.1	September 2023	Clarified the project types for which nonprofits can apply (Economic Revitalization & Mitigation). Established protocol for excusing a required Selection Committee member organization.
1.2	October 2023	Document title changed from Guidelines to Policy Manual. Added selection committee conflict of interest language, clarified the use of public services as an eligible activity, and added language about federalizing a project.
1.3	May 2024	Added activity bundling criteria to meet project minimum value threshold, added language for subrecipient selection, added deadline for selection committee formation, removed references to 24 CFR Part 70 in Table 2, and updated OHCS's Compliance Review and Approval Process.
2.0	November 2024	Expanded the explanation of the economic revitalization program description, added in the allowability of OHCS to award the 30% reserve from the selection committee

Version Number	Date Revised	Key Revisions
		allocations for project activity delivery costs for subrecipients and project overruns, change language for selection committees actions in project selection from approval to recommend.

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# Program Overview

# 1 Program Description

The Planning Infrastructure and Economic Revitalization (PIER) program will provide direct grant allocations to counties, municipalities, nonprofit organizations, school districts, public housing authorities, special districts, or other public or quasi-public entities in the eight counties most affected by the 2020 Labor Day wildfires and straight-line winds.<sup>1</sup> Projects or programs will address the unmet planning, infrastructure, and economic revitalization recovery and mitigation needs that fall within their counties. Budgetary allocations have been made at the county level; counties and organizations within the affected areas will work together to define the specific projects or programs to be funded.

The program allows for a wide range of Community Development Block Grant Disaster Recovery (CDBG-DR)-eligible infrastructure, economic revitalization, and planning and mitigation activities (i.e., projects or programs that will reduce the impact of anticipated future natural disasters or hazards).

- A. Any **recovery activity** must clearly relate to the recovery needs resulting from the 2020 Labor Day Disasters **and** directly or indirectly support new housing and/or replacement of damaged housing. OHCS intends this language to be read broadly to include economic revitalization activities and creation of public facilities, such as parks, to the extent the local partners determine that these actions are important to supporting demand for housing in the affected area.
- B. **Mitigation activities** can be more forward looking and must reduce the expected loss of life or property in the face of identified natural hazards. Sample mitigation activities include developing community resilience plans, applying ignition-resistant materials to public facilities, and engaging in other infrastructure projects that clearly result in increased resilience to future disasters.

PIER is designed to promote sound, sustainable long-term recovery and projects that account for the unique hazards, opportunities, land use restrictions, urban grown boundaries, underserved communities, and disaster impacts within Oregon’s affected communities. Applicants are required to describe the data and/or planning analysis of hazard risk, including climate-related natural hazards, that they used in the design of their projects and programs.

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<sup>1</sup> The U.S. Department of Housing and Urban Development (HUD) requires funding to be used for costs related to unmet needs in the most impacted and distressed (MID) areas resulting from qualifying disasters. Oregon is required to spend at least 80%—or \$337,828,800—of all CDBG-DR funds to benefit the HUD-identified MID areas. The PIER program will help meet this requirement through the dedication of \$42,117,170 to the HUD-identified MID areas.



Eligible counties for the PIER program are:

- Clackamas County
- Douglas County
- Jackson County
- Klamath County
- Lane County
- Lincoln County
- Linn County
- Marion County<sup>2</sup>

The total program allocation is \$42,117,170, as shown in the table below.

Budget	HUD-Identified MID Budget (Clackamas, Douglas, Jackson, Lane, Lincoln, Linn, Marion)		Grantee MID Budget (Klamath)	
\$42,117,170	\$40,414,073	96%	\$1,703,097	4%

## 1.1 Method of Distribution and County Allocations

In response to local feedback received during the public comment and public hearing period of OHCS’s initial CDBG-DR action plan (April-June 2022), OHCS modified its approach to funding local planning, infrastructure, and economic revitalization projects and

<sup>2</sup> HUD provided Oregon with the following **HUD-identified MID areas** in the Allocation Announcement Notice:

- Clackamas County
- Douglas County
- Jackson County
- Lane County
- Lincoln County
- Linn County\*
- Marion County

\* For Oregon, HUD identified a ZIP code (97358) in Linn County as a MID area. Within the Consolidated Notice, HUD allows grantees to expand eligibility to the whole county when HUD designates a ZIP code as a HUD-identified MID area. Oregon has expanded eligibility to include all of Linn County as a HUD-identified MID area.

Through its consultation and data analysis process, OHCS has included Klamath County as a **grantee- identified MID area**. Klamath County will receive 4%, or \$1,703,097, of the program’s allocation.

programs. In the first draft of the action plan, OHCS planned on selecting local recovery and mitigation infrastructure projects through a competitive process, with a focus on the infrastructure needed for housing recovery and mitigation against future disasters. However, given the varied statuses of recovery, the spectrum of recovery and mitigation needs, the need to reduce further delays for local organizations and governments as they plan their projects, and the overwhelming need for economic revitalization in certain communities, OHCS modified the PIER method of distribution to make regional allocations at the county level.

For each county allocation, a regional body (selection committee, or SC) will be established with representatives, at a minimum, of the municipal and county governments, the economic development district (or identified substitute), and the long-term recovery group to select projects for OHCS approval.

Table 1: County PIER Allocations

MID County	Percentage of Total PIER Program Allocation	PIER Allocation
Clackamas	5.7%	\$ 2,415,826
Douglas	5.7%	\$ 2,399,446
Jackson	32.9%	\$ 13,849,117
Klamath	4.0%	\$ 1,703,097
Lane	18.8%	\$ 7,926,980
Lincoln	6.4%	\$ 2,684,967
Linn	7.4%	\$ 3,110,691
Marion	19.1%	\$ 8,027,045
Total of MIDs	100.0%	\$ 42,117,170

See the appendix for the data analysis that informed these allocations.

## 1.2 Project and Subrecipient and/or Sub-Grantee Award Amounts

The maximum award per project is subject to a review of duplication of benefits (DOB) and necessary and cost reasonableness. No individual project or program award shall exceed the amount of the applicable county allocations. The SC will review and recommend project or program costs to OHCS.

The county allocations include the costs necessary to carry out the programs or projects (activity delivery costs). Activity delivery costs may include staff time, grant management services for subrecipients, project administrator (PA) subrecipients or subgrantees, insurance policies, and other costs necessary for the successful administration and implementation of the CDBG-DR project or program. No additional CDBG-DR funds will be made available to PIER subrecipients beyond the total amount allocated through county allocations.

**PIER is intended to support large projects because of the cost of federal compliance. Small projects, defined as those with a total cost of less than \$500,000, are not eligible.** OHCS may approve exceptions to this threshold for planning projects and other projects on a case-by-case basis if the activity delivery costs are reasonable compared to the value of the project or program.

Project activities can be bundled into a larger project to meet the threshold. However, all the activities together must have:

- Similar objectives
- Similar beneficiaries
- Similar scope of work
- The same unmet need or mitigation objective response
- Projects that are in the same geographic vicinity
- One project lead/subrecipient who will manage all projects as a single project

When SCs choose projects, they should factor in the activity delivery costs when making project and/or programmatic allocation decisions; federal funds, in general, incur significant administrative costs that may mean that they are not an efficient method of funding smaller projects. SCs should also be aware, when considering mixing PIER awards with other monies, that they are likely to “federalize” the entire project; i.e., compliance with the various federal requirements (such as the National Environmental Policy Act (NEPA) and Davis-Bacon prevailing wage rules) is likely to be required for all aspects of the program or project, not just the proportion or element for which PIER funds are paying.

All construction projects must include at least a 15% contingency within their budgets. All planning projects must include a 5% contingency within their budgets.

If subrecipients and/or subgrantees are administering a program (e.g., local economic revitalization or microenterprise program), the subrecipients and/or subgrantees shall describe their award calculation methodology and any program maximum or minimum awards in their project description form and program policy guidelines.

## 2 Roles and Responsibilities

### 2.1 Direct Awards to Subrecipients and Subrecipient Awards with Subgrantees

There are two methods of contracting that are available under PIER:

- A. Direct awards to subrecipients from OHCS
- B. Subrecipient awards with subgrantees

Under direct award scenarios, OHCS is responsible for all administration, monitoring, and compliance of the subrecipient.

When using subrecipient awards with subgrantees, the subrecipient assumes the role of PA for all subgrantees. When OHCS determines that a PA subrecipient will be the most cost-effective manner to deliver projects, OHCS designates each respective county as the PA subrecipient. If a county declines the role of PA subrecipient, OHCS may pursue a public competitive process to determine the most efficient and qualified PA. OHCS will select among the respondents based on prescribed criteria, such as experience administering similar funds and working experience with the subgrantees. Proposed costs to administer projects will be subject to a cost-reasonableness evaluation.

PAs will be governmental, quasi-governmental, or nonprofit entities with experience and capacity to administer federal grants. Under all scenarios, OHCS retains the responsibility for monitoring the subrecipient, but this will primarily be limited to monitoring and oversight of the subrecipient itself (i.e., monitoring activities directly carried out by the subrecipient and/or ensuring that the subrecipient is carrying out appropriate administrative controls, monitoring, and compliance of their subgrantees). OHCS reserves the right to make monitoring visits or take other actions to monitor subgrantees. Any such monitoring will take place in addition to subrecipient monitoring of subgrantees and does not eliminate the subrecipient's obligations to monitor and oversee subgrantees.

Projects will be selected by the SC. To the extent feasible, OHCS will limit the number of subrecipients to maximize use of subrecipient awards with subgrantees, particularly if SCs are funding multiple projects. OHCS reserves the right to select subrecipients and structure projects as direct awards to subrecipients or as subgrantees to PA subrecipients.

Activity delivery costs associated with PA subrecipients are negotiated and approved by OHCS. Activity delivery costs associated with PA subrecipients are included in county allocations (see Initial Project Selection Maximum section).



## 2.2 OHCS and Subrecipient Roles

As the HUD grantee, OHCS serves as lead agency and will contract subrecipients to (a) implement and manage individual projects or programs and/or (b) contract with and administer subgrantees. OHCS's roles and responsibilities include:

- Monitor subrecipients.
- Prior to award, review all projects and programs (including those that may ultimately become subgrantee led) for CDBG-DR compliance and eligibility, ensuring they comply with federal requirements, the action plan, and policy manual. The subrecipient shall not enter into any agreements for administration of programs or projects without prior written notice to OHCS.
- Perform pre-award budget review and additional budget reviews as needed in the event of change orders and/or performance or contractual amendments. This applies to both subrecipient- and subgrantee-led projects.
- Perform risk assessments of all subrecipients to ensure they have the capacity, expertise, and authority to implement the PIER project or program.
- Review and approve all subrecipient project or programmatic amendments, contract changes, and exception requests prior to execution.
- Coordinate and consult with state partners, such as the Oregon Department of Emergency Management (OEM), Oregon Department of Transportation (ODOT), Business Oregon, Department of Land Conservation and Development (DLCD), and Department of Environmental Quality (DEQ), when applicable, to ensure that recovery and mitigation projects are coordinated with related projects and programs.
- Cancel and recapture funding from subrecipients when projects are noncompliant with federal or programmatic rules or requirements.

When the subrecipient has subgrantees, the subrecipient's roles and responsibilities include:

- Monitor subgrantees.
- Perform risk assessments of all subgrantees to ensure they have the capacity, expertise, and authority to implement the PIER project or program.
- Perform pre-award budget review and additional budget reviews as needed in the event of change orders and/or performance or contractual amendments.
- Provide OHCS with all subgrantee project or programmatic amendments, contract changes, and exceptions requests for review and approval prior to execution. The subrecipient shall not enter into any contracts with any agency or individual in the

performance of this Agreement without the written consent of OHCS prior to the execution of such Agreement.

- Coordinate and consult with state partners, such as OEM, ODOT, Business Oregon, DLCDC, and DEQ, when applicable, to ensure that recovery and mitigation projects are coordinated with related projects and programs.
- Cancel and recapture funding from subgrantees when projects are noncompliant with federal or programmatic rules or requirements.

## 2.3 Selection Committees

Each SC will be responsible for selecting eligible projects or programs for their communities. The SC will review and score or prioritize projects at the local level based on a process defined by the SC. The SC or designated project lead agencies submit selected project description forms to OHCS for their review and approval. SCs also recommend project and program budgets to OHCS.

The SCs may include voting members and non-voting, *ex-officio* members.

The SCs may draw upon prior public discussions or public engagement processes and experience needed to determine the needs of their community in order to recover from the 2020 Disasters and/or mitigate against future disasters for some or all project selections. The SCs may also choose to carry out additional public engagement activities, either jointly or separately, to inform the selection of some or all projects. Projects may be selected in one or more rounds. The selection process for each round does not have to be the same. Representative(s) from OHCS must be present during any SC meeting when proposed projects are discussed or project selection decisions are made.

The designated entities must make a best effort<sup>3</sup> to include one voting representative from each of the following entities on the SC:

- Each general-purpose local government within the fire perimeter (one representative per county and disaster-impacted municipality)
- Long-term recovery group (LTRG)
- Economic development district or other OHCS-approved alternate economic development entity

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<sup>3</sup> A best effort to include representatives from the listed entities is defined as a minimum of two written attempts and one in-person or phone attempt over a three-week period. Once those attempts have been made and no resolution has been reached, the designated entities should document efforts and confirm with OHCS that the SC can move forward without representation from that entity.

- Federally recognized tribe, if applicable. The required tribal participants, respectively, are:
  - Douglas County: Cow Creek Band of the Umpqua Tribe of Indians
  - Klamath: The Klamath Tribes of Oregon
  - Lincoln County: Confederated Tribes of the Siletz Indian Representation
  - Marion/Linn: Confederated Tribes of the Warm Springs Indian Reservation of Oregon
- Organization that directly supports historically underserved community members

The voting members may add voting members from government (e.g., special districts) or other organizations and/or *ex-officio* non-voting members. No entity may have more than one voting member on the SC. SC members must be in good standing with the community, and not under investigation for criminal or ethical misconduct.

Each SC must designate a primary point of contact for OHCS to communicate questions and information related to SC roles, responsibilities, and matters (refer to the Local Project Selection by Selection Committees section).

SC Timeline:

Milestone	Completion Date
SC Formation	December 31, 2024
First Round of Projects Selected	June 30, 2025
Final Round of Projects Selected	June 30, 2026
Project Completion	February 02, 2028
Project Closeout	February 2, 2029

If a SC does not meet the timeline above, OHCS may reallocate funding or consider an alternative deadline.

## 2.4 Subrecipients

Funding from PIER will be awarded to eligible subrecipients. Subrecipients are defined as the agencies or organizations that OHCS awards CDBG-DR funds to carry out agreed-upon activities on its behalf (see 24 CFR 570.500(c)). By administering CDBG-DR activities and meeting the federal administrative requirements, subrecipients provide OHCS and Oregon with flexibility in accomplishing its recovery and mitigation goals, and they help to strengthen its ties with the community. Subrecipients may contract vendors to assist with the

subrecipient responsibilities laid out in this policy manual. However, the compliant administration of CDBG-DR funds is still ultimately the responsibility of the subrecipient, and they should be aware of and manage progress on all these responsibilities. Subrecipients should be capable and qualified to manage federal funding. Additional information on the roles and responsibilities of CDBG-DR subrecipients can be found in [HUD's Playing by the Rules: A Handbook for CDBG Subrecipients on Administrative Systems](#).

Subrecipients are required to:

- Comply with all applicable federal requirements, including:
  - Financial management
  - Procurement and contracting
  - Property management and disposition
  - Record-keeping and reporting requirements
  - Other administrative and program requirements
  - Audits
  - Closeout
- Provide monthly performance and progress reports.
- Submit all required documents.
- Follow effective management practices.

Each subrecipient must designate a primary point of contact for OHCS to communicate questions and information related to subrecipient roles, responsibilities, and matters.

## 2.5 Conflict of Interest

The conflict-of-interest procedures are applicable to any person who is an employee, agent, consultant, officer, or elected/appointed official of OHCS, an SC, or a subrecipient receiving CDBG-DR funds and if any of the following conditions apply to that person's role or duties:

1. Exercise functions or responsibilities regarding CDBG-DR funded/assisted activities.
2. Are in a position to participate in decision-making or gain inside information on activities.

A conflict of interest occurs when a covered person:

1. May obtain financial interest or benefit from a CDBG-DR funded activity contract, subcontract, or agreements; or



2. May receive proceeds for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

The conflict of interest CDBG regulation that CDBG-DR follows can be found in 24 CFR 570.611 Conflict of interest, which prohibits: “obtain[ing] a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.”

The State of Oregon Government Ethics Law in Oregon Revised Statutes’ (ORS) Chapter 244 also has requirements regarding conflict of interest.

Members of SCs would be defined as public officials (ORS 244.020 (15)) in their capacity of soliciting and ranking projects for funding.

A public official is met with a conflict of interest anytime they make a decision or recommendation, or take action in which the effect would (actual conflict of interest) or could (potential conflict of interest) have a financial impact, positive or negative, on themselves, their relatives, or a business with which they or their relatives are associated [ORS 244.020(1) and (13)].

SC members will have conflicts if the applicant entities are a business with which they or their relatives are associated.

A “business” is defined in ORS 244.020(2) as any legal entity operated for economic gain but excluding a nonprofit 501(c) corporation with which the person is associated only as a member, or on the board, or in an unpaid capacity. If paid as an employee, then a conflict would be present.

According to ORS 244.020(3), “to be associated with a business” includes:

- A. A private business or closely held corporation for which one is a director, officer, owner, employee, or agent, or in which one owns (or has owned in the prior calendar year) stock, stock options, equity interests, or debt instruments worth \$1,000 or more; or
- B. A publicly held corporation for which one is a director or officer, or in which one owns (or has owned in the prior calendar year) stock, stock options, equity interests, or debt instruments worth \$100,000 or more.

If there is a conflict of interest, the SC member must recuse themselves from both deliberation on the project application as well as the voting on that project application.

## 2.6 Federalizing a Project

Once an applicant submits a letter of interest or project description to the SC, the project is considered federalized and all work on the project that is choice limited must cease until a final determination on the award is made. Refer to the Environmental Review Records section for more information about choice-limiting actions.

If awarded, the project will be required to adhere to several federal requirements. These requirements can be time-consuming and add additional costs to a project. Please see the Project Delivery Phase section and Additional Federal Cross-Cutting Requirement section for more details on these federal requirements.

Projects considered by the SC for funding must be considered as a whole. For instance, even if the entity only requests funding for engineering expenses for environmental review and eligibility reasons, the entire project will be federalized, including acquisition and construction.

## 3 Program Eligibility

### 3.1 Eligible Project Lead/Applicant Entities

As the SC reviews and selects projects, it must identify which eligible entity will serve as the project lead. OHCS reserves the right to structure awards to project leads as direct awards to a subrecipient or to include the project lead as a subgrantee to a subrecipient. Subrecipients will enter into grant agreements directly with OHCS and will be responsible for the compliant implementation and maintenance of approved projects and programs, in line with program and federal cross-cutting requirements. Future operation of a project may be undertaken by another entity with their written agreement and commitment to do so.

Eligible entities should have the capacity, systems, and expertise in place to carry out the proposed project or program. Entities that are eligible to apply to serve as project leads include:

- Tribal, state, county, and municipal governments, agencies, districts, and authorities
- Schools (K-12)
- Public housing authorities
- Other public or quasi-public entities, including Councils of Government (COGs)
- Nonprofit entities with a specific public role described in an Oregon revised statute (e.g., soil and water conservation districts)
- Nonprofit entities of any kind (for Economic Revitalization or Mitigation projects only)

Privately owned for-profit utilities may be eligible to receive CDBG-DR funding. HUD updated its guidance about the eligibility of private utilities to receive CDBG-DR funds on December 12, 2022. The updated guidance can be found at [CDBG-DR-Private-Utility-Req-for-grants-Public-Law-117-43\\_final.pdf](#). HUD requires that any funding for for-profit utilities (which includes, by extension, any privately owned public facilities or infrastructure) must prioritize those utilities that serve or benefit populations that are predominantly low and moderate income (LMI).

### 3.2 Geographic Eligibility

Eligible projects and programs must be located in one of the Federal Emergency Management Agency (FEMA) Individual Assistance -declared counties for DR-4562:

- HUD-identified MID counties: Clackamas, Douglas, Jackson, Lane, Lincoln, Linn, and Marion
- Grantee-identified MID county: Klamath

### 3.3 Eligible Activities

PIER allows most CDBG-DR eligible activities for the purposes of recovery in the areas of planning, infrastructure, economic revitalization, and mitigation. Housing projects are not eligible under PIER.

The table below provides additional detail on eligible activities from the state (Housing and Community Development Act (HCDA)) and entitlement (24 CFR Part 570) CDBG regulations. CDBG-DR allows states to use both sets of regulations. The table also includes references to some of the applicable waivers within the [Allocation Announcement Notice and Consolidated Notice](#).

Table 2: CDBG-DR Regulatory Crosswalk for Eligible Activities

Eligible Activity	HCDA	Waiver (if applicable)
Acquisition of real property	105(a)(1)	
Public facilities and improvements	105(a)(2)	
Privately owned facilities, utilities, or infrastructure	105(a), as modified by HUD private utility waiver	<a href="#">CDBG-DR-Private-Utility-Req-for-grants-Public-Law-117-43_final.pdf</a>
Clearance rehabilitation, reconstruction, and construction of buildings and remediation activities	105(a)(4)	When a CDBG-DR grantee carries out a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance (87 FR 6364 Section II.B.1).
Removal of architectural barriers	105(a)(5)	
Disposition of real property	105(a)(7)	
Public services	105(a)(8)	This activity is only eligible if it is used in conjunction with another eligible activity.



Eligible Activity	HCDA	Waiver (if applicable)
Payment of non-federal share	105(a)(9)	
Relocation	105(a)(11)	<i>Waivers regarding relocation activities can be found in 87 FR 6364 Section IV.F.</i>
Planning and capacity building	105(a)(12)	
Provision of assistance (loans and grants) for activities carried out by public or private nonprofit entities	105(a)(14)	
Special activities by community-based development organizations/nonprofit development organizations	105(a)(15)	
Energy efficiency activities	105(a)(16)	
Special economic development activities	105(a)(17)	<i>Waivers on public benefit standards and alternative requirements for these activities are detailed in 87 FR 6364 Section II.D.</i>
Assistance to microenterprises	105(a)22	

### 3.3.1.1 All Activities

#### **Budget Sources and Uses**

All project description forms must include a proposed budget with a detailed description of anticipated costs by category, including support services and program management and administration. All project sources must be committed and demonstrate there is no DOB. See the Duplication of Benefits Process section for more details and guidance on the DOB requirements.

All project costs must be necessary and reasonable. Subrecipients and subgrantees must perform an independent cost estimate prior to procuring services, goods, or construction activities. See the Procurement section for additional information on the procurement requirements.

Additionally, for all mitigation projects, subrecipients and subgrantees are encouraged to perform a cost benefit analysis to confirm the cost-effectiveness of the proposed mitigation benefits from the project. Subrecipients and subgrantees may use the [FEMA Benefit-Cost Analysis](#) as a guide to calculate the benefit cost analysis.

### **Analysis of Effects on Members of Protected Classes, HUD-Identified Vulnerable Populations, and Historically Underserved Communities**

OHCS will require subrecipients and subgrantees to describe how their projects provide the essential public planning or infrastructure necessary for housing and/or will protect life and property, including for members of protected classes, HUD-identified vulnerable populations, and historically underserved communities. While there are not racially and ethnic concentrated areas of poverty from the affirmatively furthering fair housing mapping tools within the disaster areas, OHCS will work with subrecipients and subgrantees to review their projects to determine if the projects would have an unjustified discriminatory effect on members of protected classes, HUD-identified vulnerable populations, and historically underserved communities.

Questions to ask while conducting the analysis can include:

- Who are the vulnerable and other impacted populations in the affected areas?
- How many members of vulnerable communities live in disaster-affected counties and MID areas? When possible, data should be further broken down to include municipalities, ZIP codes, census tracts, neighborhoods, and other localities.
- Are there residents who meet multiple vulnerable community characteristics and thus may be in the greatest need of recovery resources?
- Where do people live relative to natural and man-made hazards?
- What are the communication needs and most-used communication sources of these populations? What languages or dialects are spoken?
- Which communication channels will be down versus operational after a disaster? Which are most likely to be restored first?
- What are the functional needs of people with physical, developmental, auditory, or visual disabilities for planning engagement events?
- To what extent are people in these populations eligible for income-targeted benefits?

### **Operations and Maintenance Beyond the Life of the CDBG-DR Grant**

To ensure the longevity of a federally funded project, applicants will be required to demonstrate how projects, programs, or plans will be operated, maintained, or

implemented beyond the life of the CDBG-DR grant. Different activities might have different life cycles and should be explained in the program application. For example:

- The useful life of an infrastructure project might be 30 years before requiring upgrades but would need regular annual maintenance and repairs, and ensuring the project is insured or adequate reserves are in place for future disaster events.
- A plan could go out 20 years but need to be presented, adopted, and updated every one or two years to ensure it is usable and current.
- For an economic revitalization program to be effective into the future, organizations will have portfolio management plans that will allow the funds to continue to provide community benefits in line with the organization's mission and applicable policies and procedures.

### **Additional HUD Requirements**

Generally, all subrecipients and subgrantees will be required to demonstrate how their proposed projects or programs meet all or most of the following requirements, depending on the activity type, through their project descriptions:

- Are designed to mitigate hazard risk, including climate-related natural hazards. Applicants are required to describe the data and/or planning analysis of hazard risk, including climate-related natural hazards they used in the design of their projects and programs.
- Protect public health.
- Conserve lands, waters, and biodiversity.
- Address environmental injustice.
- Spur economic growth and create jobs.

OHCS will work with subrecipients to define and track project and program performance metrics for each of these categories, as applicable. Subrecipients will work with their subgrantees to define and track the same, as applicable.

#### **3.3.1.2 Planning**

Project forms under this activity must describe the planning activity to be funded and address how and why it needs to be created, updated, or integrated to help affected communities recover and/or mitigate risks attributable to threats identified in the local or state hazard mitigation plans and/or the OHCS action plan mitigation needs assessment.

Examples of eligible planning activities include, but are not limited to:

- Housing recovery planning
- Regional mitigation plans
- Modernization and resiliency planning
- Comprehensive, capital improvement and community development planning related to disaster recovery
- Floodplain and wetland management plans
- Upgraded mapping, data, and other capabilities to better understand evolving disaster risks
- Education and outreach campaigns designed to alert communities and prospective beneficiaries to opportunities to further mitigate identified risks through insurance, best practices, and other strategies

### 3.3.1.3 Infrastructure

Eligible activities are related to rebuilding or replacing affected infrastructure and/or building infrastructure that will help communities rebuild housing or mitigate against current or future hazards.

Examples of infrastructure activities include, but are not limited to:

- Repair, replacement, or relocation of damaged public facilities, such as rehabilitation of schools, roads, and publicly or nonprofit-owned utilities.
- Rebuild or build new public facilities or improvements, such as water or wastewater facilities, emergency communication systems, drainage improvements, and/or other projects that address specific current or projected hazards.
- Match of FEMA's PA or Hazard Mitigation Grant Program, provided the FEMA-approved project meets all CDBG-DR eligible and applicable federal cross-cutting requirements.

In addition to meeting a CDBG-DR eligible activity, all infrastructure project description forms must address and meet the following requirements, where applicable:

1. How the project will address the construction or rehabilitation of disaster-related systems (e.g., stormwater management systems) or other disaster-related, community-based mitigation systems. This could be accomplished through using FEMA's community lifelines or by addressing an indispensable service.
2. How mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, will be integrated into rebuilding activities.



3. The extent to which funded activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk.
4. How the activity will align with other planned federal, state, or local capital improvements and infrastructure development efforts, and how it will work to leverage multiple sources of funding, including state and local capital improvement projects, and the potential for private investment.
5. How the project will employ adaptable and reliable technologies to prevent premature obsolescence of infrastructure.
6. How the project will support restoration of infrastructure and related long-term recovery needs within historically underserved communities who have lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster.
7. How the project will be designed and constructed to withstand chronic stresses and extreme events by defining and tracking resilience performance metrics from project approval through project closeout.

### **Critical Actions and Elevation Requirements for Non-Residential Structures**

Critical actions are defined as “any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.” For example, critical actions include hospitals, nursing homes, emergency shelters, police stations, fire stations, and principal utility lines.

All critical actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2% annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard) to the higher of the 500-year floodplain elevation or 3 feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the critical action is in the 100-year floodplain, then the structure must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard) at least 3 feet above the 100-year floodplain elevation.

### **Floodproofing for Non-Residential Structures**

Per 44 CFR 60.3(c)(3)-(4), non-residential structures must meet the following FEMA floodproofing standards:

1. Require that all new construction and substantial improvements of non-residential structures within Zones A1-30, AE, and AH zones on the community's firm

- a. have the lowest floor (including basement) elevated to or above the base flood level, or
  - b. together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
2. Provide that, where a non-residential structure is intended to be made watertight below the base flood level,
    - a. a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of [paragraph \(c\)\(3\)\(ii\)](#) or [\(c\)\(8\)\(ii\)](#) of this section, and
    - b. a record of such certificates, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained with the official designated by the community under [§59.22\(a\)\(9\)\(iii\)](#).

### **3.3.1.4 Economic Revitalization**

Economic revitalization or economic development activities promote economic recovery, improve long-term economic resilience, and address the unmet needs of vulnerable populations. In disaster-impacted areas, CDBG-DR funds economic revitalization programs to respond to the urgent needs of the community and support long-term economic development. After a disaster, attracting, retaining, and restoring the local economy is critical for recovery.

Economic revitalization programs goals include:

1. **Workforce Development:** Address gaps in the local economy and develop opportunities for job creation or advancement. For example, programs may fund training initiatives or job creation through a business rehabilitation or expansion project.
2. **Open for Business:** Expand or rebuild businesses in communities and demonstrate they are open for business. These activities encourage more investment in the community, promote tourism, and boost the local economy.
3. **Stabilize and Support Infrastructure:** Create or improve critical infrastructure to attract more business. For example, expanding or repairing sidewalks improves access and attracts more business and economic growth.

**Tie-back requirements:** CDBG-DR funds are also required to have a tie-back to the qualifying disaster, substantiating the activity addresses an unmet recovery need. Tie-backs must be included in the program guidelines and documented when evaluating applicants. An exception is assistance for a business not directly impacted by a qualifying disaster, but that wants to relocate or provide a service to an impacted community.

### **Eligible Activities for CDBG Economic Revitalization/Development**

The Housing and Community Development Act of 1974 provides guidance on economic development eligible activities using CDBG funds. Additional details and guidance are summarized below:

**Business Assistance:** Typically, programs under this category are grants, loans, and/or forgivable loans to for-profit businesses. Assistance to businesses is usually for working capital, acquisition, construction, repairs, or other business expenses. Other eligible activities can include job training, job placement services, technical assistance, and training. Examples of programs and activities include:

- Small Business Grant Program to provide working capital to a business that has been closed due to the disaster.
- Loans for façade improvements or expansion.
- Assistance to a restaurant to purchase equipment (destroyed in the disaster).

**Microenterprise Assistance:** Programs funded under this activity provide grants, loans, forgivable loans, and/or technical assistance to qualified microenterprises, businesses with five or fewer employees. Program examples include:

- Technical assistance for a start-up microenterprise for launching a business and marketing assistance.
- A grant to a microenterprise impacted by the disaster to hire or retain employees that meet eligibility requirement.

**Commercial Rehabilitation by Public or Private Non-Profit Entities:** Typically, programs under this category are grants, loans, and/or forgivable loans to public or private non-profit organizations. If funded as an activity, it will typically result in job creation or services that benefit an area. Please note, working capital and operating costs are not eligible expenses under this activity. Examples of programs and activities:

- Façade improvements to a commercial structure owned by a public/private non-profit.

- Rehabilitation for code violations.
- Assistance to a non-profit serving individuals experiencing homelessness for acquisition or rehabilitation of a building for a shelter.

**Public Facilities and Improvements:** Funding under this category is usually awarded to public entities (ex. jurisdictions) to construct or improve a public infrastructure to benefit one or more commercial businesses to create employment or economic opportunities. Although awards are made to the public entity, the businesses benefiting from the project must formally agree to meeting the national objective such as LMI Job Creation or Retention. Examples of projects include:

- Expand or repair sidewalks to increase pedestrian traffic in underserved commercial districts, improving business and creating new jobs.
- Installing sewage and water infrastructure on undeveloped land for new businesses that serve a low-income residential area.

#### **Economic Development undertaken by Non-profit Development**

**Organizations:** Under this program, funding is allocated to Community Based Development Organizations (CBDOs) and local Community Development Financial Institutions (CDFIs) to carry out economic development programs on behalf of the grantee. Typically, programs under this award provide grants, loans, and forgivable loans to eligible businesses.

#### **Technical Assistance to Entities Carrying Out Economic Development**

**Activities:** Under this activity, funding is slotted for public or nonprofit organizations to expand their expertise or support the implementation of economic development activities.

- Training series or technical assistance to increase capacity to carry out microenterprise programming.
- Technical assistance for non-profits to aid in managing a CDBG compliant economic development program.

**Ineligible Activities:** Examples of ineligible CDBG-DR Economic Development Activities include:

- Assisting privately-owned businesses serving predominantly higher-income households.
- Assistance to a business if the owner has an unresolved finding of non-compliance with previous CDBG programming or unresolved Federal or state tax obligations or delinquencies.

- Assistance to a business that does not have a Unique Entity ID or is not actively registered.
- Program does not meet national objective requirements or have a tie back to the disaster.
- Primary business activity is not eligible to receive Federal funding.

**Economic Revitalization Program documentation requirements:** Subrecipients must comply with documentation requirements for Economic Revitalization programs. Examples of documentation required for Economic Revitalization programs include:

- Written agreement between the Subrecipient and the beneficiary.
- Duplication of Benefits (DOB) Affidavit, DOB Certification, or Subrogation Agreement
- Income/payroll documentation to establish meeting the LMI jobs national objective.
- If applicable, documentation and records for crosscutting Federal requirements.

#### **3.3.1.4.1 Program Income Generated by Economic Revitalization Programs**

Program income is the gross income received by the subrecipients directly generated from the use of CDBG-DR funds. Program income generated under this program may be required to return to the state, subject to approval by OHCS in its sole discretion. See section 5.5 for OHCS's policy on Program income.

Program income generated by Economic Revitalization Programs can be:

- Payments of principal and interest on loans made using CDBG-DR funds when the subrecipient is not designated under HCDA 105(a)(15).
- Proceeds from the sale or long-term lease of property purchased or improved with CDBG-DR funds.
- Proceeds from the sale of obligations secured by loans made with CDBG-DR funds.
- Revolving Loan Fund income is considered program income when the subrecipient is not designated by OHCS under HCDA 105(a)(15).

Specific examples include:

**Rental Income:** If a CDBG-DR funded property is rented, the rental income is considered program income.



**Sale of Real Property:** Proceeds from the sale of real property acquired or improved using CDBG-DR funds are considered program income.

Program Income is an opportunity to reinvest income generated from CDBG-DR projects back into the community. HUD's [Economic Development Toolkit Manual](#) is an excellent resource for additional guidance on requirements.

### 3.3.1.4.2 Economic Revitalization Underwriting

Underwriting guidelines provide subrecipients with a framework for selecting CDBG-assisted economic development projects to ensure businesses are financially viable and effectively using CDBG funds. HUD outlines the Guidelines and Objectives for Evaluating Project Costs and Financial Requirements in Appendix A to Part 570 of the CFR. The use of underwriting guidelines is mandatory for some CDBG-DR Programs to prove:

- Project costs are reasonable.
- All sources of project financing are committed.
- To the extent practicable, CDBG-DR funds are not substituted for non-Federal financial support.
- The project is financially feasible.
- The return on the owner's equity investment will not be unreasonably high;
- CDBG-DR funds are disbursed on a pro rata basis with other finances provided to the project.

**Special Economic Development Activities:** Subrecipients must follow HUD's underwriting guidance when awarding Special Economic Development Activities, which includes most assistance to for-profit businesses. Examples include:

- Business grant, loan, or forgivable loan programs for working capital or repair of building/façade repair.
- Funding operating expenses for medical offices reopened post-disaster
- Technical assistance and/or training for businesses.
- Acquisition, rehabilitation, or construction of commercial buildings.

**Defining Underwriting Requirements:** The underwriting guidelines detailed below recognize that different levels of review are appropriate to consider differences in the size and scope of proposed projects. The objectives of the underwriting requirements are to ensure:

- **All project costs are reasonable.** Subrecipients must maintain an itemized list of all project costs and review each expense for cost reasonableness to avoid providing too much or too little CDBG-DR assistance.

- **All sources of project financing are committed.** Subrecipients must review all projected financing sources necessary to accomplish the proposed economic development project. This ensures financing is in place and subrecipients only fund projects that can be completed.

**To the extent practicable, CDBG-DR funds cannot substitute other non-Federal funding opportunities.** Subrecipients should be aware of other non-Federal funding available for the same purpose and ensure CDBG-DR funds do not replace non-federal assistance. For example, if the business has access to other local grants, these should not be substituted with CDBG-DR funds. However, if the business qualifies for a private market rate loan, but the project would not be financially feasible with the debt from that loan, then it may be appropriate to award CDBG funds.

**The project is financially feasible.** A project is financially feasible if all the assumptions about the market share, sales levels, growth potential, projections of revenue and expenses (cash flow), and debt service are realistic. Subrecipients should evaluate each of these areas to determine if there is a reasonable chance of success. Subrecipients risk their ability to meet a National Objective and the public benefit requirements if the project is not financially feasible, which could result in a recapture of CDBG-DR funds.

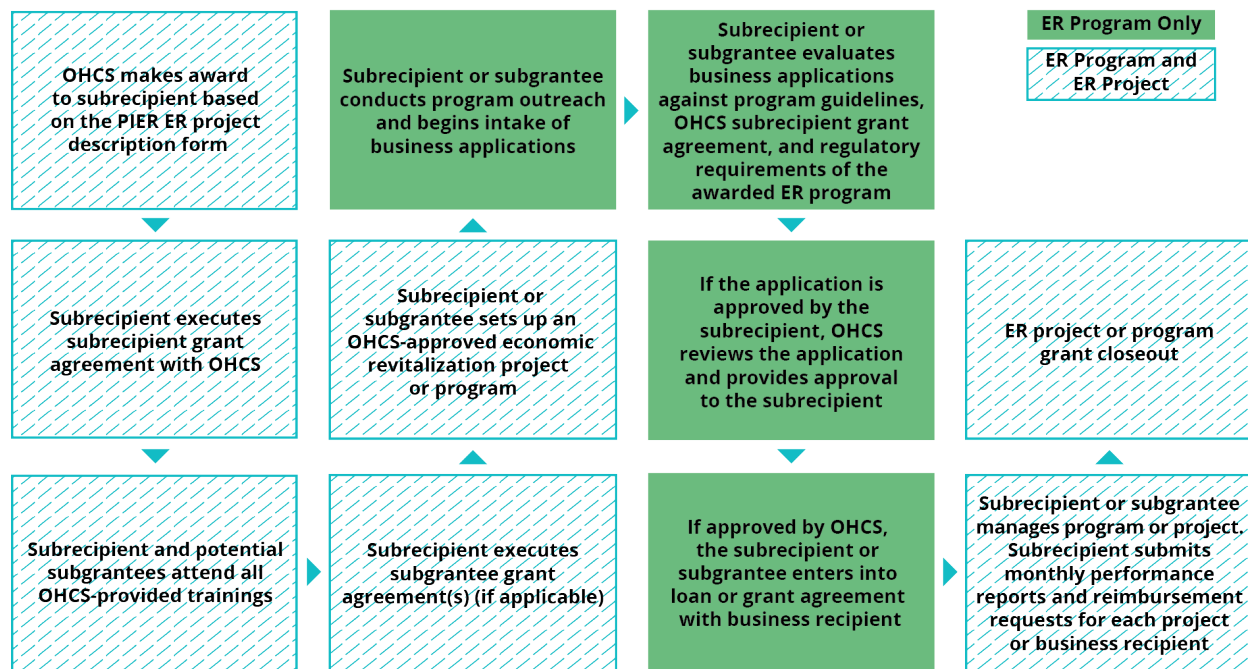
**To the extent practicable, the return on the owner's equity investment is not unreasonably high.** A CDBG-DR assisted activity should provide no more than a reasonable return on investment to the owner of the assisted enterprise, based on industry rates of return, local conditions, and project risk. Subrecipients should adjust the amount, type, and terms of assistance to give the business owner a reasonable return on their investment.

**To the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.** CDBG-DR funds used to finance economic development activities should be disbursed proportionally with other funding sources. The goal of this guideline is to put protections in place to keep the CDBG funds from being at greater risk than non-CDBG-DR project funds. The idea is that if all funders provide proportionate funding for the project, they are more likely to all be committed to ensuring the project is completed and successful. However, there may be some cases where it is not practicable (meaning it cannot be done or put into practice successfully) for CDBG-DR funds to go in on a pro rata basis, and Subrecipients should ensure files are clearly documented and supported for why it is reasonable to fund a project in a way other than on a pro rata basis.

### 3.3.1.4.3 Economic Revitalization Process Flow

To understand the program flow from the grantee to the subrecipient to the beneficiary, please see the process flow chart below.

### Economic Revitalization Flowchart



#### Process Flow Steps:

1. Once the Regional Selection Committee selects a project, OHCS will initiate an agreement with the project subrecipient. Once the agreement is executed, OHCS and the subrecipient must review reporting requirements and agreement expectations during an agreement kick-off meeting
2. The Subrecipient must attend all preliminary training and TA sessions before implementation.
3. The Subrecipient creates all program materials and develops a marketing plan. OHCS must approve all materials prior to program implementation.
4. The Subrecipient promotes the program and conducts outreach to disadvantaged communities to ensure equitable and accessible access for all community members. The Subrecipient should offer online/ in-person workshops, TA, and other resources to assist applicants before program implementation.
5. The Subrecipient launches the program and starts accepting applications on a first-come, first-served basis.

6. The Subrecipient conducts a preliminary application review to verify all pertinent documents are included and signed.
7. If applicable, the Subrecipient initiates the underwriting process to ensure the business meets all requirements.
8. If applicable, once the business/beneficiary is approved, the Subrecipient meets with the business to sign a legally binding agreement, review regulatory requirements, and report/meeting requirements. Once all required documents are executed, the Subrecipient disperses the assistance to the business according to the Subrecipient's OHCS-approved policy or payment schedule.
9. The Subrecipient meets with the business recipient/beneficiaries regularly to collect data and required documentation and assess beneficiary progress. The Subrecipient maintains contact with the beneficiary throughout the project/program.
10. The Subrecipient submits monthly performance reports and reimbursement requests to OHCS.
11. Before closeout, the Subrecipient may monitor business recipient/beneficiaries to prepare for future OHCS monitoring. This may include but may not be limited to monitoring:
  - Project completion
  - Payroll records to support the national objective
  - Insurance documents, if applicable
  - Documentation demonstrating use of award

### **3.4 National Objectives**

Assistance provided under this program will meet the national objectives of benefiting LMI persons or households or addressing an urgent need. Reasonable efforts should be taken to develop projects and programs that benefit LMI persons through LMI Area (infrastructure/public facilities), LMI Limited Clientele (public facilities, microenterprises), or LMI Job Creation or Retention (economic revitalization).

The urgent need national objective will only be used when an LMI national objective cannot be achieved through the project, but the project has demonstrable recovery or mitigation benefits within the HUD- or grantee-identified MID. Each approved project description form will describe the urgency, type, scale, and location of the disaster-related impact that will be addressed through the project.

For planning activities, in accordance with 87 FR 6364: “To assist state grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low and moderate-income or slum-and-bligh national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to states when funding disaster recovery-assisted, planning-only grants, or when directly administering planning activities that guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that states may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.”

### 3.4.1.1 Urgent Need

When using the urgent need national objective, subrecipients and subgrantees must:

- Describe the specific need and the related urgency the project is addressing and how the existing conditions pose a serious and immediate threat to the health or welfare of the community in which the project takes place, and
- Explain how the project responds to the urgency, type, scale, and location of the disaster-related impact as described in the OHCS unmet or mitigation needs assessments in the ReOregon [action plan](#).

### 3.4.1.2 LMI Area

There are multiple conditions that must be reviewed and documented to determine whether a project can qualify under LMI Area Benefit:

- The subrecipient must review and approve the geographic boundary (map) of the service area of the project.
  - The service area may align, but does not need to align, with census tracts or block grants.
  - Subrecipients and subgrantees may use either HUD-provided data comparing census data with appropriate LMI levels or survey data that is methodologically sound.

- When defining the service area, the subrecipient must consider comparable services provided by other projects in the service area and consider accessibility.
- The project services must be available to all residents in the defined service area.
- There must be documentation that the project is providing goods and services that are available to all residents in the service area.
- The service area must be primarily residential.
- At least 51% of the residents in the defined service area must be LMI persons.

#### 3.4.1.3 LMI Limited Clientele for Microenterprises

Assistance to microenterprises to meet the low/mod limited clientele benefit, micro-enterprise (LMCMC) national objective if the business meets the definition of a microenterprise and the owner of the business is LMI. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

- Use of national objective eliminates the need to review job creation or retention numbers and eliminates the need to review the income of the jobs created or the retained employees.
- A microenterprise owner is considered LMI for three years after the income is verified, so the subrecipient is not required to re-validate their income during that three-year presumption period.
- However, if additional financing is required, the business must still meet the definition of a microenterprise, as defined by HUD.
- More information on using CDBG-DR assistance to support microenterprises can be accessed at [HUD's CDBG Microenterprise Assistance Toolkit](#).

To document the LMCMC, the subrecipients and subgrantees must document that all owners of the microenterprise are LMI persons, based on their household size and income.

NOTE: If a microenterprise owner is **not** LMI, they may be able to meet another LMI national objective—LMI Jobs, LMI Area, or Urgent Need—provided they meet the conditions of those national objectives.

#### 3.4.1.4 LMI Job Creation and Retention

To use the LMI Job Creation or Retention national objective, HUD regulations require that at least 51% of jobs be held by or made available to persons who are low or moderate income.



Subrecipients and subgrantees may follow the “regular” CDBG requirements for documenting LMI Job Creation and Retention, or they may follow the process described below, which is allowable through a waiver provided by HUD. Subrecipients and subgrantees must follow a consistent methodology for each job created or retained by an individual business.

### ***Regular CDBG Process***

Generally, the CDBG LMI Job Creation or Retention national objective is met when an activity creates or retains jobs, and at least 51% of the jobs (computed on a full-time basis) will be made available to or held by LMI persons. This approach requires subrecipients and subgrantees and business owners to review the household income of their employees and job applicants to determine if their household makes the employee an LMI person.

For additional information on how to determine whether the position is made available to or is held by LMI persons, please see the chapter on LMI Job Creation and Retention in [HUD’s Economic Development Toolkit](#).

### ***CDBG-DR Waiver Process***

The waiver in the Consolidated Notice allows subrecipients and subgrantees to identify the LMI jobs benefit by documenting, for each person employed, the name of the business, type of job, and annual wages or salary of the job. OHCS will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which subrecipients and subgrantees must review the annual wages or salary of a job in comparison to the person’s total household income and size (i.e., the number of persons).

Only direct, permanent, full-time-equivalent jobs may be counted.

Subrecipients and subgrantees must define the number of hours worked in a week for a job to be considered full-time. Part-time jobs may be aggregated to calculate the total number of jobs created or retained.

#### **3.4.1.5 LM Job Creation**

Created jobs are only considered held by LMI persons when the job is filled by an LMI person, per the waiver requirements listed above.

Documentation on availability of jobs for LMI persons should include evidence of affirmative marketing efforts by the business (e.g., advertisements, flyers, postings, outreach). Recordkeeping requirements include documenting the financial status of the business, the projected total number of jobs created, and the projected number of total LMI persons benefiting from the activity.

The following is an outline of the documents that should be maintained by subrecipients and subgrantees:

- Written agreement specifying a commitment from the assisted business to hire LMI persons:
  - The type of job(s) and whether the job(s) will be full or part time
  - Actions that the business will take to ensure that at least 51% of the hires will be held by or made available to LMI persons
- For created jobs that will be held by LMI persons, the records maintained by subrecipients and subgrantees must contain:
  - A listing by job title of the jobs created and the jobs filled
  - The name of the person who filled each position
  - The full-time equivalency status of the jobs
  - The salary or annual wages of the job

#### 3.4.1.6 LMI Job Retention

For job retention activities, subrecipients and subgrantees must document that the jobs would be lost without CDBG-DR assistance. Businesses may meet this national objective if either or both of the following conditions apply:

- At least 51% of the jobs at risk are held by LMI persons.
- At least 51% of the jobs retained can reasonably be expected to turn over within the following two years, and steps will be taken to ensure that the jobs will be filled by or made available to LMI persons upon turnover.

There must be clear and objective documentation that permanent jobs will be lost without CDBG-DR assistance. For these purposes, “clear and objective” evidence would include:

- Evidence of a public announcement or publication regarding potential job reduction, or
- Documentation to support job retention claim, including financial statements, supplier statements, inventory records, or newspaper articles demonstrating that, in all likelihood, the business would need to reduce employees in the near future without the planned CDBG-DR intervention, or
- Evidence of notice issued to potentially affected employees.

There is an additional document that should be maintained by subrecipients and subgrantees:

- Written agreement specifying a commitment from the assisted business to retain a total number of jobs, of which at least 51% must be retained by LMI persons.
- The type of job(s) and whether the job(s) will be full or part time
- The name of the person who filled each position
- The full-time equivalency status of the jobs
- The salary or annual wages of the job
- Actions that the business will take to ensure that at least 51% of the jobs will be held by LMI persons

### **3.5 Activity Delivery Costs**

The costs to administer projects or deliver projects and programs are eligible expenses under the PIER allocations. SCs should discuss and decide upon the amount of funding that will be allocated for project activity delivery by project leads. If project leads anticipate using a portion of their PIER award for activity delivery costs, those should be included in the project description forms as a separate budget line item.

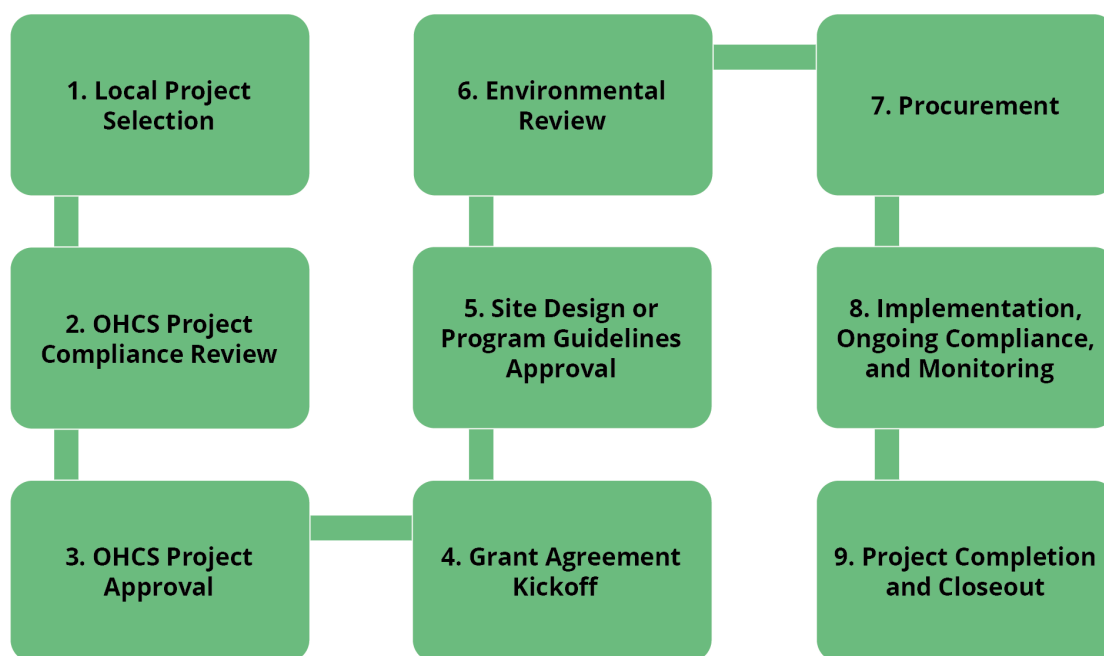
OHCS will provide technical assistance to project leads to determine a reasonable amount for activity delivery, given the scope of work and the nature of the project or program. For example, additional activity delivery costs may be considered for programs that require more substantial applicant processing and/or project activity delivery costs (e.g., small business loan or grant programs). Applicants must include a description and justification for activity delivery costs in their project description forms.



# **Selection Process and Project Review**

## 4 Process

This section outlines the process and associated requirements for PIER projects and programs from development to project completion. The diagram below reflects cases where subrecipients are serving as PAs. When subrecipients are serving as PAs, OHCS will conduct a preliminary review of project eligibility and budget prior to giving approval for a subrecipient agreement that includes the relevant subgrantee project. The subrecipient shall not enter into any contracts with any agency or individual (subgrantee) without OHCS’s written approval prior to the execution of such Agreement. In any case, the subrecipient remains responsible for project compliance review and project approval.



### 4.1 Local Project Selection

For each disaster-affected area, the designated entities will form an SC. In most areas, the SC will be by county.

The respective SC will be responsible for choosing eligible projects or programs for their communities, and establishing and recommending the award amount and which entity or organization will serve as the project lead.

The SC or designated project-lead agency will submit project description forms to OHCS for their review and approval. The forms will include the eligible entity that will be the project

lead responsible for implementing the project and the agency or organization responsible for operating and maintaining the project or program.

Additional information on the project description forms and the review and approval processes is included in this policy.

The voting members of the SC may establish whatever rules, processes, or structures (e.g., chair structure, voting procedures) they see fit; however, all rules, processes, structures, or procedures must also follow the guiding principles of the ReOregon Public Action Plan for CDBG-DR Rules. Processes or structures should be clearly documented and reviewed by OHCS once established by the SC and available to the public. Minutes of official meetings, including essential decisions (such as adding voting members, establishing project selection processes, or making project selections), will be kept and provided to OHCS.

Each SC must appoint one point of contact on the committee for communications with OHCS and provide OHCS with a list of all voting and ex-officio members and their affiliations. Should OHCS have any questions or information to share about project selections and programming, they will contact the SC main point of contact, and the appointed person will share the information and communications with the rest of the committee unless otherwise requested by the SC.

Final project selection decisions must be made by a minimum of the equivalent of two-thirds (2/3) of the voting members. Assent may be reflected by voice vote at a meeting or in writing after-the-fact.

#### 4.1.1 Initial Project Selection Maximum

It is expected that funds allocated to projects will cover project activity delivery costs. The SC may not be able to anticipate all project activity delivery costs and/or cost overruns,. Therefore, unless otherwise approved by OHCS, the SC shall allocate no more than 70% of funds in their first round of project selection.

OHCS is authorized to award the funding from the 30% reserve to project activity delivery costs for subrecipients and project overruns without seeking the selection committee's approval.

#### 4.1.2 Outreach and Engagement

Through the development of the action plan that ultimately led to the creation of the programs, OHCS and local stakeholders conducted a significant amount of research and robust outreach and public engagement.



Projects and program selection and design will, where feasible, be informed by a robust outreach and engagement process. **All SCs must document their project selection methodology.**

OHCS recognizes that some urgent recovery or mitigation needs may have been identified through prior work, including developing OHCS’s action plan, and through the unmet needs assessment process since the 2020 Disasters. SCs and applicants/subrecipients and subgrantees must document their outreach and engagement efforts—including those undertaken prior to the development of the PIER program—and make intentional efforts to specifically engage historically underserved or marginalized areas and locations. OHCS staff are available to advise and assist with such outreach efforts. For additional guidance and best practices, SCs and applicants are encouraged to review [HUD’s Citizen Participation and Equitable Engagement \(CPEE\) Toolkit](#).

#### 4.1.3 Citizen Participation Requirements

At a minimum, the SC and/or the project lead must post or publish public notices and hold a public hearing to discuss the project/program and encourage feedback from the public. Each comment received during the public comment period must be recorded and addressed. Every reasonable effort must be made to make the information accessible (e.g., physical access, language translations, published online). SCs and/or subrecipients and subgrantees may develop their own Citizen Participation Plan (CPP) that satisfies these requirements or may adopt the CPP available at [re.oregon.gov](http://re.oregon.gov).

SCs must use a current Language Access Plan (LAP) to determine in which languages materials need to be translated and must describe which documents will be translated. SCs may adopt the local government’s CDBG LAP or [OHCS’s CDBG-DR LAP](#). Reasonable accommodation must be given to those wishing to participate and give their input, including individuals living with disabilities.

**When a project is presented to the SC, the following information MUST be provided by the proposed project lead during a public hearing at least once before the project is selected. Each point must be reflected in the published public hearing minutes:**

- The nature of the proposed activities
- How the need for the proposed activities was identified
- How the proposed activities will be funded and the sources of funds
- Requested amount of federal funds
- Estimated portion of federal funds that will benefit persons of low- to moderate-income families

- Where the proposed activities will be conducted
- Plans to minimize displacement of persons and businesses because of the funded activity
- Plans to assist persons displaced (if applicable)

#### 4.1.4 Form Requirements

- Project title, primary contact name, address, and federal and unique entity identification numbers for lead agency.
- The national objective(s) that will be met by the described project and narrative justification, and all supporting documentation available to demonstrate the project meets a national objective.
- Short project description.
- CDBG-DR eligible activity and demonstration that the project meets the other applicable eligibility requirements described in the Program Eligibility section.
- Project location.
- FEMA's Flood Insurance Rate Map (FIRM) map of the project location. FIRM maps are available at the [FEMA Flood Map Service Center](#).
- Description of alignment and coordination with any existing or planned recovery or mitigation projects, plans, and goals.
- Indication of whether OHCS's CPP and LAP will be adopted and followed or if the subrecipient will use local adopted equivalent plans. If creating separate, unique plans, an outline should be included with the application.
- Engagement with underserved populations in project development (include both completed and planned activities).
- Record of required public hearing, including all required elements.
- Implementation plan (include key project tasks and milestones with dates).
- Development budget (include all sources and uses of funds). Written documentation of commitment of any non-CDBG-DR funds. In the case of most public entities, this would take the form of an approved budget document or Resolution passed by the governing body. All construction projects must include at least a 15% contingency. All planning projects must include a 5% contingency.
- List of all funding sources and certification to no DOB, and commitment to review each project for DOB prior to award of CDBG-DR funds and prior to closeout.

- Infrastructure: operations and maintenance budget and plan for the projected useful life of the project.
- Economic Revitalization: Plan for post-CDBG-DR activities, if applicable.
- Plan: strategy for adopting and/or implementing components of the plan and maintaining the plan after completion.
- List any public documents that identify or prioritize the project.
- Damage reports/engineering studies.
- Subrecipient agreement to comply with state and federal register regulations as outlined in 87 FR 6364 and all applicable federal, state, and local requirements.
- Most recent audited financial statements.
- Description of any outstanding HUD findings or concerns.
- Form that is signed and dated by the responsible entity/eligible applicant.

#### 4.1.5 Local Project Selection

1. SCs can select projects or programs for OHCS review on a rolling basis, pending funding availability and time remaining to implement projects. Refer to the Selection Committee Timelines section.
2. SCs evaluate potential PIER projects or programs as proposed by project leads. Each local SC can develop its own project evaluation process, including use of pass/fail requirements and/or weighted scoring. Projects can be included for consideration through a nomination or application process.
3. The SC must document its candidate list development process and any scoring, rating, or rankings completed by the committee. The SC is required to complete and document an analysis of several factors, per HUD CDBG-DR requirements:
  - a. Identify and describe the effectiveness of the proposed project within a defined service area in protecting the public, including members of protected classes, HUD-defined vulnerable populations, and historically underserved communities, from the risks in each of the respective affected communities.
  - b. Perform the analysis and demonstrate how the project or program supports historically underserved communities that lacked adequate investments in housing, transportation, water, wastewater, and/or other infrastructure systems prior to the disaster.

4. The SC will review the project's budget, including project activity delivery, indirect, and overhead. The SC will determine whether the non-direct amounts are reasonable considering the overall budget.
5. Final selection:
  - a. A quorum of at least more than 50% of voting committee members is required to conduct a project selection vote. Voting may be written or by proxy in situations when a voting committee member cannot be present during the vote.
  - b. At least two-thirds of the voting committee members must vote (or recommend by proxy or in writing) to move a project forward for OHCS compliance review and approval.
  - c. Any meeting of the SC that is held for the purpose of making a final selection must be open to the public, and notice must be provided to the public by the general local government entities participating.

## 4.2 Project Review and Approval

There are three project description templates for each activity category: planning, infrastructure, and economic revitalization. Most mitigation projects would fall into either a planning or infrastructure category.

Project description forms will be submitted to OHCS for preliminary review after a SC selects a project. Many of the components contained in each form must be substantiated with support documentation. This review is prior to and additional to screening by a subrecipient PA reviewing subgrantee projects for eligibility.

### 4.2.1 OHCS Project Compliance Review and Approval Process

1. OHCS grant administrator reviews the project description form for eligibility.
2. If needed, the OHCS grant administrator may request clarification and/or additional information from the project lead agency or the SC.
3. If the project lead will be the subrecipient, the OHCS compliance division will perform a capacity and risk assessment of the proposed lead project agency. If the plan to maintain the project after the CDBG-DR grant's life includes transferring it to another entity, that should be clearly indicated in the project description form and OHCS may conduct a risk assessment of that entity as well. If the project lead lacks capacity for the implementation and administration of the project, OHCS will

identify a PA subrecipient with capacity. The project lead would then become a subgrantee of the PA subrecipient.

4. If the project is determined to be CDBG-DR eligible, the project will be approved by the Disaster Recovery and Resilience Director at OHCS.
5. The OHCS grant administrator will issue an award letter to the subrecipient project lead or PA subrecipient and include information on award pre-conditions.

#### 4.2.2 Capacity and Risk Assessment

OHCS will perform a capacity and risk assessment of each subrecipient before signing a subrecipient agreement. Any PA subrecipient shall perform a capacity and risk assessment of any subgrantee. The purpose of the risk and capacity assessment is to ensure that the entity has minimum capacity required to carry out the proposed program or project. The risk assessment will also determine the level and frequency of monitoring and reporting that OHCS or the PA will require from subrecipients or subgrantees, respectively. OHCS will provide technical assistance in the form of tools and trainings to help subrecipients and subgrantees new to CDBG-DR projects and programs to lower the risks of noncompliance.

Capacity and risk assessments are useful tools in identifying ways to improve capability, efficiency, and effectiveness of disaster recovery operations prior to awarding CDBG-DR funds. The capacity and risk assessment report are conducted and prepared by the OHCS Compliance Unit. It provides the needed information by considering key functions such as:

- Grant management history (track record)
- Financial systems and capacity
- Subrecipient monitoring reports and history
- Internal and external audits
- Ability to comply with federal rules and regulations
- Staffing (new or experienced staff and turnover rate)
- Program and activity experience/knowledge of federal regulations
- Management of similar program activities

### 4.2.3 Approval, Grant Award, and Project Set-Up

1. OHCS issues a grant award letter to approved subrecipients.
2. OHCS provides pre-project compliance technical assistance to subrecipients. In addition, technical assistance from OHCS on project compliance is available on an ongoing basis throughout the life of the CDBG-DR grant to both subrecipients and subgrantees.
3. OHCS and subrecipient agree upon key elements of the grant agreement, including project budget, a program schedule (and milestones), performance metrics, and reporting requirements.
4. Subrecipient identifies the authorized representatives to clearly designate separation of duties, including those individual(s) who have:
  - a. Authority to sign documents and request reimbursements on behalf of the subrecipient
  - b. Authority to represent the organization on matters of grant compliance
5. Subrecipient and OHCS execute the grant agreement. And, where necessary, the PA subrecipient and subgrantee execute the respective grant sub-agreement.
6. Subrecipient or subgrantee develops program guidelines, if implementing a locally run program (e.g., economic revitalization). Guidelines will be submitted to OHCS for review and comment to ensure the guidelines are compliant with program and CDBG-DR requirements.
7. Subrecipient sets up project account in financial management module of OHCS System of Record (SOR).
  - a. Regardless of the financial management system used, separate accounting records must be maintained for CDBG-DR funds to distinguish them from all other funds. CDBG-DR revenues and expenditures must be readily identifiable within accounting records.
  - b. For activity delivery costs, all entities are required to charge actual time and materials to OHCS for reimbursement. OHCS will provide forms, training, and technical assistance to ensure that subrecipients report time and other costs accurately.
  - c. Subrecipient (and subgrantees) must follow financial management procedures that comply with 2 CFR Part 200, including ensuring adequate internal control of funds.
  - d. All financial transactions must be documented so they can be clearly tracked in an audit.

8. Subrecipient is set up in OHCS SOR.
9. Subrecipient is required to adopt a CPP. Subrecipients can develop their own or adopt the [State of Oregon's](#) CPP. Subrecipients should review the "requirements for Local Governments Receiving CDBG-DR Funds" of the State of Oregon's CPP for information on the public hearing requirements that will apply to subrecipients even if they are not local governments. To read more about the CPP process that the SCs used when selecting projects, please review the Citizen Participation Requirements section.
10. Subrecipient is required to adopt an LAP. Subrecipients can use the LAP that the SC used or the local government's LAP for which the project is located, develop their own, or adopt the State of Oregon's LAP. To read more about the Language Access process that the SCs used when selecting projects, please review the Citizen Participation Requirements section.

## 4.3 Project Delivery Phase

### 4.3.1 Environmental Review Records

All CDBG-DR funded activities are subject to an environmental review. Each grant recipient is responsible for carrying out its project in accordance with 24 CFR Part 58.

**After there is intent to apply for federal funds and before the environmental review record is complete, no choice-limiting actions can be committed by the unit of general local government, subrecipient, subgrantee, or any partners.** These include actions to commit or spend CDBG-DR or non-HUD funds for activities including:

- Purchase of property or structures (including executing an option agreement)
- Bidding (or advertisement of bids)
- Execution of any contracts that are needed to complete the work contained in the environmental review
- Construction, demolition, rehabilitation, repair, conversion, site improvements, and any phase of construction activities
- Platting and rezoning land (can work on preliminary plats and rezoning needs)
- Application for building permits

If there are any questions about whether an action constitutes a choice-limiting action, please contact OHCS before undertaking the action.



#### 4.3.1.1 Levels of Environmental Review

The different levels of environmental review that must be completed depend on the overall nature of the project. A first step in the environment review process will be the subrecipient and/or OHCS's determination of the level of review needed. The five levels of review and their applicable rules are:

1. Exempt—24 CFR 58.34(a)
2. Categorical exclusions not subject to 24 CFR 58.5—24 CFR 58.35(b)
3. Categorical exclusions subject to 24 CFR 58.5—24 CFR 58.35(a)
4. Environmental Assessment (Finding of No Significant Impact)—24 CFR 58.36
5. Environmental Impact Statement (Finding of Significant Impact)—24 CFR 58.37

Refer to the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance. Subrecipients need to reach out to OHCS to learn more about the environmental review processes.

**VERY IMPORTANT NOTICE!** No federal or local project funds may be committed until the environmental review is complete (with the exception of activities allowable under environmental clearance; see below). Failure to properly complete the required environmental review prior to commitment of project funds will result in severe consequences (e.g., the state being federally prohibited from providing grant funds for part of or the entire project).

#### 4.3.1.2 Environmental Clearance for Design, Planning, and Non-Construction Activities

1. Subrecipients and subgrantees may obtain environmental clearance for design and soft costs to help pull together the information needed to define the scope of work of a construction-related project. In such cases, the environmental clearance will allow the subrecipient to enter into design and soft cost contracts to complete only those design and related planning and permitting activities. This information is then used when completing the environmental review record for the planned construction activity.
2. If the subrecipient or subgrantee will carry out a program (e.g., economic revitalization) or a planning activity and the program or plan does not include construction activities, the entire program can be cleared through a programmatic environmental review. OHCS will review the program policy guidelines to confirm there are no construction or construction-related activities allowable within the subrecipient's program design.

#### 4.3.1.3 Responsible Entity for Environmental Review Record for Construction Activities

Whether the environmental review is approved by OHCS or by HUD will depend on if the project will be completed by a unit of general local government. Units of general local government can assume the role of responsible entity (RE) and prepare the appropriate environmental review record (ERR) to be submitted to OHCS for review and approval. Subrecipients that are not a unit of local government cannot assume this responsibility, and instead work closely with OHCS to complete the ERR. OHCS, acting as RE, will then submit the ERR to HUD for review and approval. An environmental review is an analysis of the impacts of a project on the surrounding environment and the environment's impact on the project itself. Subrecipient award contracts will specify the RE for each project or program.

#### 4.3.1.4 Adopting Other Federal Environmental Reviews

When other federal funds are already involved in a project, the activity has already been reviewed for environmental compliance by another federal agency (such as FEMA), and CDBG-DR funds will be used for a portion of the same activity, in accordance with the Consolidated Notice, the OHCS subrecipient will obtain a copy of the prior environmental review. **The subrecipient must verify that the prior review matches the current project scope.** They will submit to OHCS a Request for Release of Funds (RROF), including the name of the federal agency, the name of the project, and the date when the project was reviewed by the other federal agency. No other public review or comment period will be required.

See [Section IV.D.2 Adoption of another agency's environmental review within the Consolidated Notice](#) for additional information on the requirements and conditions of adopting other federal environmental reviews.

### 4.3.2 Procurement

1. For all subrecipients and subgrantees, all services and goods must be procured per the requirements at 2 CFR 200.318-326 and the requirements described in the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance. Subrecipients and subgrantees are also encouraged to review [HUD's Buying Right CDBG-DR and Procurement: A Guide to Recovery](#) for additional guidance.

2. Subrecipients and subgrantees must perform the applicable price and/or cost analysis on each procurement. Procurements requiring an independent cost analysis must have the independent cost analysis performed prior to receiving bids, proposals, and contract modifications.
3. Procurement methods are based on full and open competition, with very limited exceptions. Competitive methods of procurement (e.g., micro-purchases, informal quotes/proposals, and formally advertised sealed bids/competitive proposals) are specified in state procurement laws. Cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited by federal standards. Recipients, subrecipients, and subgrantees are prohibited from using geographical preferences in evaluating bids or proposals. A subrecipient's or subgrantee's policies and procedures must include standards of conduct governing employees engaged in the award or administration of contracts. In their purchase orders and contracts, subrecipients must include all clauses required by federal statutes, executive orders, and implementing regulations.
4. The need for audits, bonding, conflict of interest regulations, debarment checks, and prevention of fraud, waste, and abuse is covered by 2 CFR 200.
5. Subrecipients and subgrantees are encouraged to submit procurement documents to OHCS or the PA, respectively, for pre-advertisement compliance review and approval.
6. Local procurement records must include copies of all procurement documents, provide justification for the contractor's selection, and document the basis for the cost if negotiated.

### 4.3.3 Implementation, Ongoing Compliance, and Monitoring

1. All subrecipients are required to maintain their project or program files within the OHCS SOR per OHCS instructions and reporting requirements. OHCS will provide subrecipients with training on the SOR. These records are to be maintained by the subrecipient. All OHCS-required project-related documents, correspondence, and records must be in the file.
2. Subrecipients must have monitoring plans in place for overseeing their projects, contractors, and any subgrantees, as applicable. The monitoring plans must include the milestones and frequency of desk reviews, site visits, and interim inspections. OHCS will monitor subrecipients for compliance with their published monitoring plans. OHCS reserves the right to conduct monitoring of subgrantees or contracts. This does not alleviate the subrecipient of any monitoring requirements.

3. All construction projects must include at least a 15% contingency. All planning projects must include a 5% contingency. Economic revitalization programs must operate within the approved program budget. Subrecipients and subgrantees must have clear processes for reviewing and approving budget adjustments and change orders.
4. OHCS will work with subrecipients to establish a schedule of regular calls and/or meetings to discuss compliance or performance challenges or support needs.
5. Subrecipient submits reports through the OHCS-provided SOR or other means, as required by OHCS, including:
  - Regular progress reports measuring performance metrics
  - Quarterly reports for HUD QPR reporting
  - Financial and Uniform Administrative Requirements (2 CFR 200) reporting
  - Reporting demonstrating subrecipients meet their contracting requirements.
    - Section 3 reporting
    - MBE-WBE-DBE (contracting)
    - Excluded parties (debarment and suspension of contractors)
  - Davis-Bacon and Oregon prevailing wages reporting
  - Other compliance reports as needed, including:
    - Asset management
    - Civil Rights Act and non-discrimination
    - Uniform Relocation Act
    - Lead Safe Housing Rule
    - Uniform Relocation Act
    - Section 504
    - Affirmatively Furthering Fair Housing
    - Duplication of benefits
  - Program income reports, if applicable
6. Monitoring will be performed per the outcomes of each subgrantee's or subrecipient's capacity and risk assessment and the respective PA or OHCS monitoring and compliance plan. Refer to the CDBG-DR subrecipient manual on the ReOregon: Recover. Rebuild. Revitalize website for more information and guidance.

#### 4.3.4 Record Keeping Requirements and Retention

All applicants, sub-recipients, or subgrantees of grant/loan funds shall be required to conduct all aspects of the program in an open manner with access to records on the proposed and actual use of funds for all interested persons. All records of applications and grants must be kept at the entity's offices and be available during normal business hours. Any activity of OHCS regarding the CDBG-DR project, except for confidential matters relating to housing and economic development programs, will be made public upon request.

Subrecipients and subgrantees must maintain records for a minimum of six years from closeout of the program, and 10 years from completion of construction projects. Access to all records must be given to representatives of OHCS and other state representatives. Policies and procedures must include a record retention plan indicating where records are kept and who has access.

For additional information regarding these requirements, see [HUD's Playing by the Rules: A Handbook for Subrecipients on Administrative Systems, Chapter 5: Recordkeeping and Reporting Requirements](#), and the ReOregon Subrecipient Manual.

#### 4.3.5 Project Completion and Closeout

1. Subrecipient performs final inspection and submits a grant completion report.
2. Subrecipient performs a final report on program income and returns any final program income, as applicable.
3. OHCS reviews grant completion report.
4. Files must be retained by subrecipient for a minimum of six years after the date of grant closeout between OHCS and HUD. Please note that HUD or OHCS may monitor projects after project closeout.

A decorative graphic consisting of three vertical bars of equal height, colored green, brown, and orange from left to right.

# **Additional Requirements**



## 5 Additional Federal Cross-Cutting Requirements

### 5.1 Duplication of Benefits Process

Identifying all applicable DOB is one of the core components of calculating an eligible CDBG-DR award. The DOB requirements ensure CDBG-DR funds are used as intended, as funds of last resort. Compliance with DOB regulations also protects subrecipients from making unnecessary and unreasonable expenditures and providing a person or entity with more than the cost to repair their damages or complete a mitigation project.

Subrecipients and subgrantees that do not develop adequate DOB policies and procedures risk audit findings and recapture of funds. SCs and subrecipients should adopt DOB policies and procedures prior to issuing any awards. OHCS can provide model language for a DOB policy. The application of DOB requirements is generally consistent across jurisdictions, so materials can be shared and adapted to fit each local context. DOB requirements apply to state, local, and Indian tribal governments, as well as any public funding sources provided by those entities for the same purposes.

Subrecipients and subgrantees are required to ensure their disaster recovery programs comply with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), which has been clarified by HUD through the requirements provided in [84 FR 28836](#) and [84 FR 28848](#) and should be used as a basis for developing effective policies and procedures.

When making an award determination for an eligible activity, subrecipients and subgrantees should factor in the total unmet need and all available assistance before completing a DOB analysis; after completing the activity, subrecipients and subgrantees should follow up with beneficiaries or project managers to confirm that they did not receive additional assistance for the same activity. The process for verifying whether there is or is not a DOB is outlined below:

1. Assess unmet need
2. Identify available assistance
3. Exclude non-duplicative funds
4. Calculate award
5. Subtract any funds that duplicate the same purpose as the CDBG-DR funds
6. Make award



7. Post award:

- a. Confirm eligible use of CDBG-DR funds
- b. Re-evaluate available assistance and recapture DOB, if applicable.
  - Assistance is duplicative when two sources exceed need for the same recovery item. Assistance would not be duplicative when two sources contribute to the same need but the total assistance did not exceed the total need. OHCS or the PA will require the following information from each subrecipient or subgrantee, respectively; Follow a consistent documentation and award calculation process for each award determination.
  - Perform a DOB analysis before issuing any award and at award closeout.
  - Document every award calculation, with proof of verified assistance and expenditures.
  - A signed affidavit that indicates (1) the applicant acknowledges the DOB requirements and their obligation to report all funding that has been received, and (2) the subrecipient PA or OHCS may inquire about other assistance received (for example: from an insurance company or FEMA), and
  - A signed subrogation agreement. Any business or subgrantee receiving awards must sign a subrogation agreement as part of their contract or loan/grant agreement with the subrecipient or subgrantee.

When the subrecipient is carrying out a project directly, OHCS will work with the subrecipient to review the total project sources and uses prior to subrecipient award and contract execution and prior to closeout.

## 5.2 HUD Section 3 Compliance

Section 3 (Section 3 of the Housing and Development Act of 1968) projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development with financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs.

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting, and other economic opportunities to low- and very low-income persons, especially recipients of government

assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

OHCS will provide technical assistance and training to local organizations to help them achieve Section 3 goals to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, ensure that employment and other economic opportunities be directed to low- and very low-income persons and business concerns that provide opportunities to low- or very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the federal assistance is spent.

Refer to the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance.

### 5.3 Labor Standards/Prevailing Wage

All laborers and mechanics employed by the contractors and subcontractors in the performance of construction work exceeding \$2,000 that is financed in whole or in part with CDBG assistance shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

Refer to the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance.

### 5.4 Fair Housing and Section 504

**Fair housing.** 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 OHCS has a minimum specific action requirement (see Chapter 7, link provided below), it is important for recipients to be aware of this commitment to understand every individual's fair housing rights and ensure that all local policies and practices do not hinder fair housing and, when appropriate, they actively further fair housing.

Information about fair housing can be obtained by contacting the Fair Housing Council of Oregon (FHCO) at 1-800-424-3247 (Hotline) or at <http://www.fhco.org/>. 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.

**Section 504 nondiscrimination against individuals with disabilities.** Section 504 of the Rehabilitation Act of 1973 is a federal law, codified at 29 U.S.C. § 794, that prohibits discrimination based on disability in federally assisted programs or activities. Specifically, Section 504 states: “No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving federal financial assistance.” This means that Section 504 prohibits discrimination based on disability in any program or activity that receives CDBG-DR financial assistance from HUD.

Refer to the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance on 3.5 Uniform Relocation Act (URA).

In accordance with 49 CFR 24.2(a)(22), the URA requirements apply to any project in which federal financial assistance is received or anticipated in any phase for acquisition, rehabilitation, or demolition. This includes the acquisition of both temporary construction and permanent easements, and long-term leases of 50 years or more for CDBG-DR assisted projects. The purpose of the URA is to ensure the fair, equitable, and consistent treatment of owners and occupants of real property assisted with federal funds.

Refer to the CDBG-DR subrecipient manual on the [ReOregon: Recover. Rebuild. Revitalize website](#) for more information and guidance. In addition, OHCS is requiring its subrecipients to minimize the displacement of households wherever possible when using CDBG-DR funds. Additional information is included in OHCS’s Residential Anti-Displacement and Relocation Assistance Plan. If a subrecipient plans any activities that include the displacement of residents or businesses, OHCS will provide technical assistance and guidance on the URA, and applicable waivers and alternative requirements required to protect displaced persons.

## 5.5 Flood Insurance

Subrecipients with an Economic Revitalization program that is providing loans or grants to businesses located within a 100-year floodplain and awarded funds for mortgage assistance, inventory or equipment expenses must require those businesses to maintain building or contents flood insurance for the life of the loan or grant agreement.

## 5.6 Program Income

The action plan says the following: “Unless otherwise specified, all program income shall be remitted to OHCS.”

OHCS is considering alternative policies and procedures for subrecipient-operated loan programs to allow subrecipients to retain repayments of loan principal and interest, provided the subrecipient qualifies under 105(a)15 of the Housing and Community Development Act (HCDA).

### 5.6.1 Program Income: Introduction

Program income is gross income generated from the use of CDBG-DR funds received by a state, a unit of general local government, or a subrecipient of a unit of general local government. See the Program Income Calculation section for the formula for calculating program income. The following Federal Register Notice provides grant-specific definitions on program income: [87 FR 6364 III.E](#). For OHCS and its units of general local government, HUD has waived all applicable program income rules at [42 U.S.C. 5304\(j\)](#), [24 CFR 570.489\(e\)](#), [24 CFR 570.500](#), and [24 CFR 570.504](#) and provided new alternative requirements that are detailed below.

Program income can include:

1. Proceeds from the sale or long-term lease of real property purchased or improved with CDBG-DR funds
2. Proceeds from the disposition of equipment purchased with CDBG-DR funds
3. Gross income from the use or rental of **property acquired** by the grantee or subrecipient with CDBG-DR funds, less the costs incidental to the generation of such income
4. Gross income from the use or rental of **property owned** by the grantee or subrecipient that was constructed or improved with CDBG-DR funds, less any costs incidental to the generation of such income
5. Payments of principal and interest on loans made using CDBG-DR funds
6. Proceeds from the sale of loans made with CDBG-DR funds
7. Proceeds from the sale of obligations secured by loans made with CDBG-DR funds
8. Interest earned on program income, pending the disposition of such program income; including interest earned on funds held in revolving fund account

9. Funds collected through special assessments made against properties owned and occupied by households not of LMI, where such assessments are used to recover part or the entire CDBG portion of a public improvement
10. Gross income paid to a state, local government, or subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance

When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used. If CDBG funds are used with CDBG-DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Consolidated Notice.

Program income does NOT include:

1. Income received in a single program year by the recipient and all its subrecipients if the total amount does not exceed the **\$35,000** threshold. Once the threshold is exceeded, all the money is considered program income, including the first \$35,000.
2. Amounts generated by activities eligible under Section 105(a)(15)<sup>4</sup> of the HCDA and carried out by an entity under the authority of Section 105(a)(15) of the HCDA.

### 5.6.2 Program Income Calculation

Revenue is essential in that it can allow OHCS, units of general local government, or subrecipients to defray program costs where appropriate. The regulations at [2 CFR §200.307](#) specify what can be deducted from gross income to calculate real program income.

Below is a formula to be used to calculate program income from gross income received.

**+ GROSS INCOME EARNED ON A PUBLIC FACILITY**

- REBATES
- CREDITS
- DISCOUNTS
- GOVERNMENT REVENUES (taxes, special assessments, levies, fines, etc.)
- EARNED INTEREST ON ADVANCES

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<sup>4</sup> Section 105(a)(15): assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of the communities in non-entitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization, community economic development, or an energy conservation project.

- Costs of generating program income (e.g., costs to operate and maintain the facility or activities that generate program income)

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**PROGRAM INCOME**

- = (includes, but is not limited to, service fees, use or rental of acquired property, sale of commodities, license fees, or principal and interest on loans)

### 5.6.3 Program Income Policy

OHCS does not anticipate any program income from its programs; however, the use of CDBG-DR funding may generate program income. If applicable, any program income that is recognized by the unit of general local government, subrecipient, or subgrantee can either be reinvested into existing activities,<sup>5</sup> transferred to a CDBG entitlement community, or transferred to the state's CDBG program administered by Business Oregon. Subrecipients must submit their program income plan to OHCS for review and approval prior to obligating any program income.

OHCS, the units of general local government, and the subrecipients must follow specific policy guidelines around how to treat and apply program income. These following guidelines must be adhered to:

- Program income must be accounted for and spent in accordance with federal and state requirements.
- Any program income received must be reinvested into eligible activities at the local level.
- Any program income received must be used first to meet immediate cash needs for grant activities before using grant funding (before additional withdrawals from the U.S. Treasury). Program income must be used for CDBG-DR eligible activities that meet a national objective and is subject to all cross-cutting federal requirements.
- Program income is subject to CDBG spending caps. Up to 5% of the grant (plus 5% of program income generated by the grant) can be used for administrative costs by the grantee, units of general local government, or subrecipients. Thus, the total of

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<sup>5</sup> If the program income is retained by the unit of general local government or subrecipient to be reinvested into a PIER approved activity, there is no need to go through reapprovals for the use of program income. The activity will need to comply with national objective and MID requirements such that if an activity generates large amounts of program income, OHCS may require funds to be invested into activities that primarily benefit LMI persons.

all costs classified as administrative for a CDBG-DR grant must be less than or equal to the 5% cap (plus 5% of program income generated by the grant).

#### 5.6.4 Subrecipient Accounting System

Subrecipients or subgrantees that receive approval to use program income locally must develop and follow written procedures explaining how they will account for and manage program income and assuring OHCS that all federal and state requirements will be met, particularly those relating to eligibility and national objectives.

Subrecipients or subgrantees must also establish a process to identify and account for program income. It is not necessary to establish a separate bank account, although it could be helpful. A subrecipient may include program income cash in their bank account with other cash, provided their accounting records can adequately distinguish the program income portion of each cash balance.

#### 5.6.5 Subrecipient Reporting

As part of the quarterly performance reporting (QPR), OHCS will require its subrecipients to submit a report certifying that they or their subgrantees have or have not generated program income. If program income is reported, the subrecipient will be asked to identify how they plan to treat the program income. If the report is not received at the time requested, OHCS will consider withholding further draw requests until the subrecipient responds.

The report should include the following:

1. Information about the program income recipient
2. Amount of program income to be reinvested at the local level or turned over to either a CDBG entitlement community or the state's CDBG program. If the program income is turned over, OHCS will require subrecipients or subgrantees to pass the program income directly to a CDBG entitlement community or the state's CDBG program administered by Business Oregon.

OHCS will also conduct annual program income assessments with subrecipients to verify that the total amount of gross income received has not passed the \$35,000 threshold. Subrecipients will conduct a similar or equivalent verification process for subgrantees. To track program income and "miscellaneous income," the annual reporting period shall begin on July 1 and end on June 30 of each year.



1. At the end of the annual reporting period, if the income does not exceed \$35,000, it is not program income and not subject to the requirements. Subrecipients or subgrantees shall not expend any income anticipated to be less than \$35,000 until after the end of the applicable annual period.
2. If program income has passed the \$35,000 threshold, a determination must be made by the subrecipient and OHCS on whether the program income will be reinvested at the local level or turned over to either a CDBG entitlement community or the state's CDBG program. The annual assessment may include provision of technical assistance and on-site monitoring of activities and local records by OHCS or the subrecipient, as appropriate.

When applicable, program income earned and received is reported by OHCS to HUD through HUD's Disaster Recovery Grant Reporting (DRGR) system. Subrecipients will be required to report program income to OHCS in a manner that allows OHCS to report to HUD within DRGR and on OHCS provided forms with instructions. Once receipted into the DRGR system, the DRGR system requires grantees to use program income before drawing additional grant funds.

### 5.6.6 Treatment of Program Income at Closeout

Program income received before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG-DR funds subject to the requirements of the Consolidated Notice. Closeout agreements governing the use of program income will be entered into by the state and subrecipients that have, or expect to receive, program income. Subrecipients are responsible for ensuring a similar or equivalent practice is in place for any subgrantees for future expected program income. The following rules will apply:

1. OHCS may transfer program income to the state's CDBG program **before closeout** of the grant that generated the program income or to any annual CDBG-funded activities carried out by a local government within the state.
2. Program income received **after closeout** of the grant that generated the program income may also be transferred to the state's annual CDBG award.
3. Program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of the Consolidated Notice. Rather, those funds will be subject to the regular CDBG program rules.
4. Any other transfer of program income not specifically addressed in the Consolidated Notice may be carried out if the grantee first seeks and then receives HUD's approval.

### 5.6.7 Designating an Organization under 105(a)15.

PIER allows subrecipients or subgrantees to carry out activities under Section 105(a)(15) of the HCDA. Section 105(a)15 provides assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of disaster-affected communities to carry out neighborhood revitalization or community economic development activities.

The process OHCS will follow to designate an entity under Section 105(a)15 to allow for such activities is described below:

**Step 1: Determine that the entity selected qualifies as a nonprofit development group under HCDA Section 105(a)(15).**

1. Can it be established that the organization is considered to be a nonprofit organization serving the development needs of a particular target community?
  - a. Note: There is nothing to prevent a regional or even a statewide entity from qualifying, on the condition the services provided by the organization in the context of the CDBG-DR program are isolated to a particular target community.
2. Does the nonprofit development group have the capacity to carry out complex development activities without substantial involvement from the state grant agency?

**Step 2: Determine whether the project(s) that the nonprofit development group will undertake qualifies under HCDA Section 105(a)(15). It should fit within one of the definitions listed below:**

**Neighborhood revitalization:** Activities undertaken under this provision must be of sufficient size and scope to have an impact on the decline of a designated geographic location within the jurisdiction of the community. The activities to be considered for this purpose are not limited to those funded (or to be funded) with CDBG-DR assistance.

**Community economic development:** This type of project must include activities that increase economic opportunity, principally for LMI persons, or that are expected to create or retain businesses (including microenterprises) or permanent jobs within the community.

**Energy conservation:** Activities carried out under this provision are clearly designed to conserve energy for the benefit of residents within the grant recipient's jurisdiction. An example of this type of project may involve the construction of energy-efficient housing where substantial savings in heating and/or cooling costs can expect to be realized.

**Step 3: Determine that the nonprofit development group will be "carrying out" the activities.**

1. Will the nonprofit development group undertake the activity directly or through contracts with an entity other than the state grant subrecipient? The litmus test is whether the entity has the authority, independent of the state grant recipient or other involved/related entities, to stop the project if something is going wrong.

**Step 4: Determine if the nonprofit development group is *not* carrying out an activity that is specifically ineligible under the CDBG-DR program.**

1. The documentation from the organization that proves they have been designated as a Community Housing Development Organization (CHDO), Community Development Financial Institution (CDFI), or other designation
2. Organization's mission statement
3. A copy of the organization's bylaws
4. Documentation proving their **current** designation from the Internal Revenue Service (IRS) of nonprofit status or other status
5. Their certificate of incorporation

**Step 5: Review and Determine Eligibility:**

1. OHCS will review and consider the documentation necessary to support the designation of an entity under Section 105(a)15.
2. The determination will be based on the following criteria:
  - a. Are all documents submitted valid?
  - b. Is the entity community development based?
  - c. If the nonprofit is associated with another entity (governmental or nongovernmental entity), can they display their ability to make decisions independently from the other entity?
  - d. Has this entity been designated previously by the state as a 105(a)15 agency?
    - i. If yes, is the entity in good standing with the state?
    - ii. In previous relations with the state, was the entity able to fulfill all monitoring and reporting goals?
3. Once a determination has been made in a timely manner, OHCS will notify the requesting entity in writing and retain a copy in the appropriate program file.

### 5.6.8 Revolving Loan Funds

A revolving fund is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving

fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund.

Such program income is not required to be disbursed for nonrevolving fund activities. A revolving fund established by a CDBG-DR subrecipient shall not be directly funded or capitalized with CDBG-DR grant funds, pursuant to 24 CFR 570.489(f)(3).

Any revenue (such as loan repayments) paid to a nonprofit development organization and generated by an activity carried out by that nonprofit under HCDA Section 105(a)(15) is not considered to be CDBG-DR program income. The nonprofit organization may use these repayments to carry out activities in line with their organization's mission, bylaws, and policies and procedures. If, for example, the organization administers a regional revolving loan fund, the repayments could be used to fund additional loans in communities other than the one to which the state's grant was awarded.



# Appendix

## County Allocation Methodology

OHCS assessed the relative infrastructure, small business, and housing damages in each of the eight MID counties (Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn, and Marion), using the best available data as of the second quarter of 2022.

### Infrastructure

To assess relative infrastructure damages, OHCS relied on FEMA Public Assistance (FEMA PA) categories C-G data. FEMA PA Categories C-G represent the permanent infrastructure and public facilities work needed to recover from DR-4562, as assessed by FEMA. There are known limitations to this information, as there are infrastructure costs ineligible for FEMA PA, including those related to deferred maintenance, and to upgrade or expand damaged systems to meet current demands.

The FEMA PA data include figures on the number of damaged sites and the value of the damages of projects eligible under Categories C-G. Additional counties affected by DR-4562 were eligible for FEMA PA Categories C-G, but the table below is limited to the relative damages across the eight MIDs based on the FEMA PA number of sites and the value of recovery costs.

MID County	Factor A		Factor B	
	# FEMA PA C-G Damaged Sites	% FEMA PA C-G Damaged Sites	Sum of FEMA PA Best Available Cost	% of FEMA PA Cost
Clackamas	21	7%	\$ 333,271	0%
Douglas	12	4%	\$ 890,386	1%
Jackson	49	16%	\$ 6,178,438	8%
Klamath	2	1%	\$ 119,941	0%
Lane	60	20%	\$ 35,625,221	45%
Lincoln	10	3%	\$ 232,138	0%
Linn	34	11%	\$ 8,116,531	10%
Marion	109	37%	\$ 27,049,247	34%
Total of MIDs	297	100%	\$ 78,545,172	100%



## Housing Damages

To assess relative housing damages, OHCS relied on figures from FEMA Individual Assistance, local damage assessments, OEM damage assessments, and updated assessments from local governments. The numbers below include single-family, multifamily, and manufactured homes. These figures do not include recreational vehicles or boats and may not include all accessory dwellings or other noncompliant structures that served as a primary residence at the time of the disaster.

MID County	Factor C	
	Damaged or Destroyed Homes	% of Damaged Homes
Clackamas	62	1.43%
Douglas	138	3.19%
Jackson	2,508	57.98%
Klamath	11	0.25%
Lane	615	14.22%
Lincoln	288	6.66%
Linn	71	1.64%
Marion	633	14.63%
Total of MIDs	4,326	100%

## Small Business Damages

To assess relative economic damages, OHCS reviewed the number of small business applications to the Small Business Administration (SBA). The following includes all applications, regardless of whether they were approved or executed.

MID County	Factor D	
	Number SBA Business Applications	Percentage of MID SBA Applications
Clackamas	7	5.3%
Douglas	6	4.5%
Jackson	65	48.9%
Klamath	4	3.0%
Lane	21	15.8%
Lincoln	6	4.5%
Linn	6	4.5%
Marion	18	13.5%
Total of MIDs	133	100%

## Mitigation Needs

All affected counties have significant mitigation needs to address current and future hazards, including wildfires, earthquakes, flooding, tsunamis, extreme weather events, and volcanoes. As such and as demonstrated in the table below, the allocation methodology assigns equal weighting to mitigation needs across each of the eight counties.

	Factor E
MID County	Mitigation Even Divide Across 8 MIDs
Clackamas	12.5%
Douglas	12.5%
Jackson	12.5%
Klamath	12.5%
Lane	12.5%
Lincoln	12.5%
Linn	12.5%
Marion	12.5%
Total of MIDs	100%