

ReOregon

Subrecipient Manual

Version 1



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Commonly Used Terms and Acronyms

Acronym	Description
ACS	American Communities Survey
ADA	Americans with Disabilities Act
ADC	Activity Delivery Costs
AFFH	Affirmatively Furthering Fair Housing
AGI	Adjusted Gross Income
AI	Analysis of Impediments
AMI	Area Median Income
AP	Action Plan
APA	Action Plan Amendment
AUGF	Authorization to Use Grant Funds
Beneficiaries	Persons to whom assistance, services or benefits are provided
BCA	Benefit-Cost Analysis
CAFR	Comprehensive Annual Financial Report
CDBG	Community Development Block Grant
CDBG-DR	Community Development Block Grant Disaster Recovery
CENST	Categorical Exclusion Not Subject To
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
COI	Conflict of Interest
COO	Certificate of Occupancy
CPD	(HUD) Community Planning and Development
CPR	Certified Payroll Report
DBA	Davis-Bacon Act
DBRA	Davis-Bacon and Related Acts
DOB	Duplication of Benefits
DOL	U.S. Department of Labor

Acronym	Description
DRGR	Disaster Recovery Grants Reporting (system)
DRR	OHCS-Disaster Recovery & Resilience
DRRA	Disaster Risk Reduction Area
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EO	Executive Order (federal)
EPA	U.S. Environmental Protection Agency
ER	Environmental Review
ERR	Environmental Review Record
ESA	Endangered Species Act
FAC	Federal Audit Clearinghouse
FAIN	Federal Award Identification Number
FEMA	Federal Emergency Management Agency
FFATA	Federal Funding Accountability and Transparency Act
FHCO	Fair Housing Council of Oregon
FHEO	Fair Housing and Equal Opportunity
FMV	Fair Market Value
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FRN	Federal Register Notice
FWA	Fraud Waste and Abuse
GAAP	Generally Accepted Accounting Principles
GASB	Governmental Accounting Standards Board
HCDA	Housing and Community Development Act
HEROS	HUD Environmental Review Online System
HMGP	Hazard Mitigation Grant Program

Acronym	Description
HMP	Hazard Mitigation Plan
HUD	U.S. Department of Housing and Urban Development
IFB	Invitation for Bid
LAP	Language Access Plan
LEP	Limited English Proficiency Plan
LMI	Low to Moderate Income
LTRG	Long-Term Recovery Group
M/WBE	Minority- and Women-Owned Business Enterprise
MID	Most Impacted and Distressed
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NOI	Notice of Intent
NOFA	Notice of Funding Availability
NTP	Notice to Proceed
OAR	Oregon Administrative Rule
OBDD	Oregon Business Development Department
OHCS	Oregon Housing and Community Services
OMB	Office of Management and Budget (federal)
ORS	Oregon Revised Statutes
P&P	Policies and Procedures
PAC	Program Administration Costs
QA/QC	Quality Assurance/Quality Control
QPR	Quarterly Performance Report
RARAP	Residential Anti-Displacement and Relocation Assistance Plan
RE	Responsible Entity
RFI	Request for Information

Acronym	Description
RFP	Request for Proposal
RFQ	Request for Qualifications
ROF	Release of Funds
RROF	Request for Release of Funds
SAM	System for Award Management
SBA	Small Business Administration
SFHA	Special Flood Hazard Areas
SHPO	State Historic Preservation Office
SOPs	Standard Operating Procedures
SR	Subrecipient
SRA	Subrecipient Agreement
TA	Technical Assistance
TDD	Telecommunication Devices for the Deaf
THPO	Tribal Historic Preservation Office
UFAS	Uniform Federal Accessibility Standards
UN	Urgent Need
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act
USC	United States Code
USACE	U.S. Army Corps of Engineers
VOAD	Voluntary Organizations Active in Disaster

Version History and Version Policy

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

The State 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, the State 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 chapters.

Version Number	Date Revised	Key Revisions
0.1	November 2023	DRAFT for review
1.0	December 2023	Complete Manual



1 Introduction

1 Introduction

1.1 Oregon Housing and Community Services

Oregon Housing and Community Services (OHCS) is Oregon’s housing finance agency. OHCS provides financial and program support to create and preserve quality, affordable housing. The Agency primarily serves Oregonians of lower- and moderate-income families across the housing continuum, including preventing homelessness, providing housing stability supports, financing the building and preservation of affordable housing, and encouraging homeownership.

OHCS is designated as the lead state agency to provide the administration of Community Development Block Grant Disaster Recovery (CDBG-DR) grant programs. The specific division designated to operate and manage the CDBG-DR program is the OHCS-Disaster Recovery & Resilience (DRR) division.

1.2 New CDBG-DR Funding

Oregon is the recipient of \$422,286,000 in CDBG-DR funds. The funding will be used to address long-term recovery and hazard mitigation efforts in response to the 2020 Labor Day wildfires.

1.3 Use of this Document

The purpose of this handbook is to:

- Assist subrecipients in the day-to-day administration of CDBG-DR projects.
- Help subrecipients of CDBG-DR funding complete their projects in compliance with program regulations.
- Provide tools to assist in CDBG-DR project implementation. The tools include tips, lists, forms, and sample documents that are attached to each chapter.

This handbook includes the basic information that cities and counties need to begin, manage, and close out a CDBG-DR funded project. This handbook does not address how to determine eligibility for CDBG-DR activities nor how to apply for a CDBG-DR grant. Specific CDBG-DR Program Guidelines, posted on the [OHCS CDBG-DR website](#), addresses eligibility and application. ReOregon Program staff will assist you with questions about eligibility, project development, and the application process.

It is important that subrecipients understand and adhere to the federal and state requirements that apply to projects involving CDBG-DR funds. Failure to meet these requirements can result in severe consequences, including but not limited to the state being forced to rescind or recapture the grant award in whole or in part. The ReOregon Program staff is there to help you complete your project successfully, so remember to keep them informed about your progress and ask questions.

This handbook is designed with each chapter describing a specific area of the federal and state requirements that apply when CDBG-DR funds are used for a project. Also included with most chapters are checklists and tools that can be used to keep track of progress addressing key requirements discussed within the chapters.

In summary, this handbook provides most, but not all, of the information necessary to successfully implement a CDBG-DR project. It is very difficult to capture every nuance of the many and varied program requirements in one publication. Therefore, in specific chapters, the document may reference other program-specific documents where further details beyond the scope of this handbook can be found.

You are encouraged to keep your handbook bookmarked so that you can quickly access additional information being added and updated, grant procedures and forms, and updated materials. Suggestions and comments on this handbook are welcome. Please direct them to ReOregon@hcs.oregon.gov.

1.4 Chapter Matrix

The following matrix is a helpful guide for subrecipients implementing an activity for a particular program to know which chapters are applicable for reading.

Sections of the CDBG-DR Manual	HARP	HOP	IHA	PIER	Public Services	Planning
Overview and Project Administration	✓	✓	✓	✓	✓	✓
Environmental Review	✓	✓		✓		
Financial Management	✓	✓	✓	✓	✓	✓
Procurement	✓	✓		✓		✓
Labor Standards (DBRA)	✓	✓	✓	✓		
Fair Housing, EEO, 504, Section 3	✓	✓	✓	✓		
Acquisition and Relocation	✓	✓		✓		
Duplication of Benefits	✓	✓	✓	✓	✓	✓
Green Building Requirements	✓	✓				
Mitigation	✓	✓		✓		✓
Monitoring and Audit	✓	✓	✓	✓	✓	✓
Fraud, Waste, and Abuse	✓	✓	✓	✓	✓	✓
Project Reports/Closeout	✓	✓	✓	✓	✓	✓



2 Project Administration

2 Project Administration

2.1 Applicability of CDBG-DR Requirements

The U.S. Department of Housing and Urban Development (HUD) allocates CDBG-DR funds through a Federal Register Notice (FRN) based on specific disaster events and develops implementation requirements specific to each FRN. The FRN details the amount of funds being allocated, the recipients of the allocations, guidance, requirements for submitting an Action Plan detailing how the state will use the funds for disaster recovery and mitigation purposes, and any modifications or waivers of basic CDBG requirements found in 24 CFR 570. The rules and requirements may vary from disaster to disaster and require compliance with the specific FRN allocating the funds.

The FRN allocating the CDBG-DR funds to Oregon, titled *Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice*, were issued on May 24, 2022 (referenced as 87 FR 31636).

The list below highlights key changes in the FRN to the basic CDBG requirements. Each additional section of this manual or specific policies developed for CDBG-DR funded activities will provide specific directions for these and other requirements in the Consolidated Notice. Key changes resulting from [87 FR 31636](#) include:

- **Most Impacted and Distressed (MID) Areas:** The Consolidated Notice identifies the “most impacted and distressed” areas based on the amount of damage to those cities or counties resulting from the qualifying major disaster. The Consolidated Notice requires that 80% to 100% of the CDBG-DR funds must be used in HUD-identified MIDs: Clackamas County, Douglas County, Jackson County, Lane County, Lincoln County, Linn County (ZIP code 97358), and Marion County. The remaining 20% can be used in a state-identified MID that received a presidential disaster declaration but did not meet HUD’s criteria for a HUD MID. Oregon has identified Klamath County as having significant unmet needs and eligible to receive CDBG-DR funding as well.
- **National Objectives:** The FRN modifies the Urgent Need (UN) national objective allowing its use for CDBG-DR activities for 36 months after the applicability date of the FRN (i.e., in basic CDBG, UN can only be used within 18 months of the emergency). The FRN also adds the Low to Moderate Income (LMI) national objective that can be used when providing incentives to LMI households who have had their property purchased through a buyout program (i.e., in basic CDBG,

buyout acquisitions are not an eligible activity and there is no such activity as an “incentive”).

- **Mitigation Set-Aside:** The Appropriations Act required that HUD provide an additional 15% of CDBG-DR funds as a mitigation set-aside to fund mitigation activities. The Consolidated Notice defines mitigation as “those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.” Projects can have both a recovery need (based on impacts during the disaster) and a mitigation need (based on lessening impacts from future disasters). The FRN requires incorporating mitigation measures into the recovery activity when undertaking construction, reconstruction, or rehabilitation of both residential and non-residential structures. Alternatively, an activity can be funded entirely for the purpose of mitigation and must have a quantifiable mitigation outcome when completed.

See **Chapter 12**, in this manual, for more details on mitigation requirements.

- **Duplication of Benefits (DOB):** A DOB may happen when a disaster-impacted person, business, or local government receives disaster assistance from more than one entity. When more than one source of funds is intended for the same purpose, an analysis of the funds must be undertaken to see if any funds “duplicate” the intended purpose for the CDBG-DR funds. Any other assistance found to duplicate the CDBG-DR intended use must be subtracted from the CDBG-DR award to ensure that the same need is not paid for twice.

See **Chapter 10**, in this manual, for more details on duplication of benefits requirements.

- **Housing and New Construction:** Damaged properties that require rehabilitation or reconstruction must meet HUD’s elevation and Green Building standards. If housing cannot safely be rebuilt, there may be a need for new housing to be constructed. CDBG-DR allows new housing construction and imposes affordability requirements which are typically not required under basic CDBG.
- **104(d) Relocation and One-for-One Replacement:** CDBG-DR funded activities that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) reduces the 104(d) 60 months of assistance for LMI households to 42 months. The one-for-one replacement requirement under 104(d) is also modified to exclude substantially damaged housing and housing “not suitable for rehabilitation” from the replacement requirement.
- **Acquisition:** HUD has added an acquisition activity for the purpose of creating open space and mitigating high-risk properties from future impacts that is called a

“buyout.” To encourage residents to sell their high-risk property and move to a safer living environment, HUD has allowed the use of incentives, which can encourage the sale of the property and assist the buyout participant with replacement housing.

- **Infrastructure:** All infrastructure projects must be designed and constructed to withstand extreme weather events and the impacts of climate change. An infrastructure activity includes any activity or group of activities (including acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public.
- **Nonresidential Elevation:** Nonresidential structures, including infrastructure, assisted with CDBG-DR funds must be elevated to the standards described in the FRN or floodproofed in accordance with Federal Emergency Management Agency’s (FEMA) floodproofing standards.
- **Match:** CDBG-DR funds may be used as the “local match” for other Federal programs when used to carry out an eligible CDBG-DR activity. This includes activities funded by FEMA and the U.S. Army Corps of Engineers (USACE). Note: Match for USACE activities is capped at \$250,000.
- **Economic Revitalization:** Economic revitalization varies somewhat from standard CDBG economic development. Economic revitalization includes activities that demonstrably restore and improve the local economy through job creation and retention or by expanding access to goods and services. The Public Benefit Standards are waived, and activities now require alternative measures to document benefits to the public.
- **Section 3:** CDBG-DR funded activities must follow Section 3 as codified at 2 CFR Part 75. The updated Section 3 regulations change the way that Section 3 workers and Targeted Section 3 workers are defined and reported, and goals that must be achieved for each class.

See **Chapter 7**, in this manual, for more details on Section 3 requirements and procedures.

- **Environmental Review:** All activities funded by CDBG-DR must comply with applicable federal and state environmental rules and regulations, which generally require an evaluation of the environmental impacts of proposed projects and the identification of mitigation measures to minimize or prevent adverse impacts. All projects funded by HUD CDBG-DR funds will require an Environmental Review Record (ERR) to be completed in compliance with HUD 24 CFR Part 50, 51, 55, and 58; and all applicable state and local regulations.

When CDBG-DR funds are being used to match or supplement FEMA-assisted activities under sections 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act, that agency's environmental review can be adopted without review or public comment. The other agency's environmental review must cover all project activities funded by the CDBG-DR recipient for each project.

See **Chapter 3**, in this manual, for more details on environmental requirements and procedures.

- **Expenditure Timelines:** HUD has imposed a 6-year timeline on Oregon for expending 100% of its CDBG-DR grant. To comply with this expenditure timeline, each program policy states an expenditure timelines requirement for completion of funded activities and mechanisms for extending timelines, if needed and allowable.

2.2 Subrecipients

A subrecipient may be a public or private nonprofit agency, authority, or organization that receives CDBG-DR funds from OHCS to undertake eligible activities. The definition of a CDBG subrecipient can be found at 24 C.F.R. § 570.500(c). It is further defined at 2 C.F.R. § 200.1 as a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal award. Unless otherwise noted, the term “subrecipient” is used throughout this manual to denote organizations that have executed a Subrecipient Agreement (SRA) with OHCS to carry out defined eligible activities and who are or will be receiving CDBG-DR funds as a result thereof (2 C.F.R §200.331).

In addition, faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity, considering any permissible accommodations, particularly under the Religious Freedom Restoration Act¹. According to [24 C.F.R. § 5.109](#), OHCS or subrecipients must not discriminate on the use of a religious faith-based organization.

2.3 Selection Process Criteria

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. Prior to any award to subrecipients, OHCS will review all projects and programs (including those that may ultimately become subgrantee led) for CDBG-DR eligibility, ensuring that they comply with federal requirements, the Action Plan, and program guidelines.

¹ Refer to [24 C.F.R. § 570.480\(e\)](#) and [§ 570.200\(j\)](#) for more information.

When administering a CDBG-DR Program, HUD permits Grantees (OHCS) to make program administration decisions regarding method of distribution of funds for carrying out their disaster recovery activities. OHCS may use any reasonable criteria to select a subrecipient, including but not limited to:

- Issuing a Request for Qualifications
- Issuing a Notice of Funding Availability (NOFA)
- Issuing an application process
- Selecting a qualified non-profit organization serving a specific geography
- Selecting a Unit of General Local Government
- Selecting a Governmental Agency or Organization
- Direct Selection
- Other method(s), as applicable

Subrecipients shall not enter into any agreements for administration of programs or projects without prior written notice to OHCS. Refer to applicable program policies for more details on submitting applications.

2.4 Formal Application

Depending on the selection criteria, prospective subrecipients may be required to submit formal applications to OHCS. These applications shall describe proposed activities, implementation schedule, budget, staffing structure, related experience, and assure compliance with program regulations. OHCS shall then evaluate the applications according to the selection criteria, CDBG-DR Programs priorities, and the Action Plans. A formal application process may be followed when:

- You have identified a specific need with defined goals or outcomes.
- Project activities are numerous and/or complex.
- There is a pool of potential applicants with varying degrees of expertise and capacity.
- The cost and level of potential program failure are high.
- There are limited funds and many competing needs and/or approaches for addressing these needs.

2.5 Direct Selection

OHCS has the discretion to directly identify and select a prospective subrecipient to carry out the desired CDBG-DR program/activities and approach them directly to determine their interest and suitability for the work. Direct selection may be followed when:

- An entity is uniquely qualified due to having sole jurisdiction over project or complete control/ownership over a project site.
- There is reasonable basis to conclude that it will result in increased efficiencies and produce quicker results, thereby more quickly addressing the unmet need.
- It can be reasonably concluded that the minimum needs of the Program project can only be satisfied by the selected subrecipient.

2.6 Subrecipient Agreement

Understanding the terms of your executed SRA is critical for understanding your responsibilities as a subrecipient. The SRA is the basis for the contractual obligation between OHCS and the subrecipient to fund and implement the awarded activity or program as required by 24 C.F.R. § 570.503. The agreement denotes responsibilities attributable to each party and outlines in exact measure the scope of services provided under the agreement, methods of accountability, and a schedule for payment. Execution of the agreement binds the subrecipient for a specified period of time (term) and may be revised only upon written authorization from OHCS. OHCS utilizes a standardized SRA template, which may be amended from time to time. It is important to note that this manual is supplemental to the SRA and applicable federal and state regulations, standards, policies, and procedures. You, as a recipient of federal grant funds, must follow and understand basic Program regulations applicable to the management and financial systems for CDBG-DR found in Code of Federal Regulations Title 24 (24 C.F.R.) and Title 2 (2 C.F.R.). The executed SRA between your organization and OHCS contains a comprehensive statement of the general rules applicable to your management and implementation of the program, scope of work, timelines and performance goals, objectives, budgets, staffing and special conditions, if any, applicable to the specific services or project to be provided by your entity. Further, the agreement specifies the reports and documentation required for verification of compliance. This document aims to assist your organization in complying with the provisions of the SRA. However, because the contents of this manual represent the minimum requirements regarding your compliance with federal regulations and the SRA, it is not meant to be used as the single document that rules the administration of the SRA. Further, this document is meant to be used as a supplement to the SRA and does not replace the SRA provisions.

You can view the Subrecipient Agreement template at

<https://www.oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-Guidance.aspx>.

2.7 What happens once you sign your SRA?

Once you have signed your SRA with OHCS, the ReOregon Program Staff will contact your organization's representative to schedule an "on-boarding" to the CDBG-DR or CDBG Mitigation (CDBG-MIT) Program where performance goals, expected outcomes, and work plans will be reviewed and discussed. Your organization may also be contacted by:

- DRR Finance Division to discuss matters pertaining to invoicing and reimbursement requests
- DRR Procurement Division to discuss matters pertaining to procurement of services or goods
- DRR Compliance Division to provide detailed guidance on resources available, pending documents/forms and any other initial onboarding topics

In the event that you need programmatic and/or budget changes, you will need to contact your assigned ReOregon Program Staff for review and approval. Your SRA contains specific provisions on what can lead to or cause an amendment. However, any changes in the SRA dispositions or its exhibits may trigger an SRA amendment process.



3 Environmental Review

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3 Environmental Review

3.1 Introduction

The purpose of the environmental review process is to analyze the effect a Community Development Block Grant Disaster Recovery (CDBG-DR) funded project may have on the people in and the natural environmental features of a project area.

This chapter will cover the environmental regulations and requirements that must be followed on all CDBG-DR funded projects. A basic overview and instructions are provided.

OHCS will be responsible for conducting the environmental reviews for each project. Subrecipients will provide the project work descriptions and other information as requested to OHCS's contractor in order for the environmental review of the project to be completed.

If subrecipients would like to undertake the environmental review themselves, they will provide advance notice to OHCS. In those cases, OHCS and their contractor will assist the subrecipients to make sure they understand requirements and conduct the environmental review process correctly.

Once a subrecipient or a project partner applies for CDBG-DR funds to the selection committee the project is considered federalized and must refrain from starting or continuing work ("stop work") on the project until the subrecipient receives environmental clearance from OHCS. (Note: not all activities are prohibited, but any "choice limiting" decisions taken after a stop work notice is provided would endanger federal funding for the project.)

Please see a diagram of the environmental review process on the last page of this document.

3.2 Basic Federal Requirement

The policies of the National Environmental Policy Act of 1969 (NEPA) are implemented in connection with the expenditure of funds under the Housing and Community Development Act, including any CDBG-DR funds. Implementing regulations issued pursuant to section 104(g) of the Housing and Community Development Act are contained in 24 CFR part 58.

There are several reasons that HUD requires recipients to conduct environmental reviews of federally assisted projects. These reasons include:

- Avoiding or mitigating environmental effects that may cause harm to humans
- Avoiding or mitigating any harm to the surrounding environment
- Reducing the chances of legal action halting projects on environmental grounds
- Securing the value of public investment.

3.3 Responsible Entity (RE)

HUD uses the term the RE to describe the entity that is responsible for conducting and certifying the environmental review. OHCS is the RE and will conduct the environmental review, certify the results of the review, and submit the Request for Release of Funds form to HUD. Once HUD sends the Authority to Use Grant Funds (AUGF) form to OHCS, OHCS will inform subrecipients that the project can begin. (In some cases, projects with no foreseeable environmental effects may be classified as exempt. In such cases, OHCS will provide evidence to the subrecipient that the project has been found to be exempt.)

3.4 Commencing Work Prior to OHCS Environmental Clearance

No project funds, either federal or local, may be committed until the environmental review is complete.

Failure to properly complete the required environmental review prior to commitment of project funds will result in severe consequences, such as OHCS being federally prohibited from providing grant funds for part of or the entire project.

According to the NEPA (40 CFR 1500-1508) and 24 CFR 58.22, the RE, subrecipient, and project partners are required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and an Authority to Use Grant funds has been issued by HUD.

The RE, subrecipient, and project partners may not spend either public or private (non-federal or other federal funds) or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until the environmental clearance has been achieved.

The RE, subrecipient, and project partners must avoid any and all actions that would preclude the selection of alternative choices before environmental clearance is provided. The purpose is to ensure that such decisions are based upon an understanding of the environmental consequences and the identification of any required project actions to avoid, minimize, or mitigate such impacts.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the RE's or other project participant's own funds, prior to obtaining environmental clearance.

For purposes of the environmental review process, "commitment of funds" includes:

- Execution of legally binding agreement
- Expenditure of CDBG-DR funds
- Use of CDBG-DR or non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating, ground disturbing activities)
- Use of CDBG-DR or non-CDBG-DR funds on actions that would be "choice limiting" (e.g., bidding the project, acquisition of real property, leasing property, rehabilitation, demolition, construction of buildings or structures, relocating buildings or structures, conversion of land or buildings/structures)

3.5 The Environmental Review Record (ERR)

The RE is required to establish and maintain an ERR for each project, according to §58.38. The purpose of this record is to document the environmental review decision-making process and all actions taken during the course of the environmental review, regardless of the funding source of the activity. At a minimum, the ERR must include the following:

- Description of the project and all related activities
- All environmental review documents
- Documentation of Public Involvement/Public Notices
- Public comments and responses to them
- Written determinations and findings
- Verifiable source documentation and relevant data
- Request for Release of Funds and Certification
- Release of Funds issued by the state

The ERR must contain copies of all paperwork associated with the environmental review including a well-organized written record of the process and determinations.

The ERR is a legal document that may be subpoenaed. It serves as the RE's proof of compliance with the procedural provisions of federal environmental law and as defense against such challenges to the project based on environmental grounds. The ERR must be available for public review.

3.6 Applicability of Environmental Review Procedures

HUD environmental review procedures and requirements apply to all activities related to a project funded with CDBG-DR funding, including those activities that are paid for entirely with local or other funds.

3.7 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 RE's determination of the level of review needed. The five (5) levels of review and their applicable rules are:

- Exempt — 24 CFR 58.34(a)
- Categorical exclusions not subject to 24 CFR 58.5 — 24 CFR 58.35(b) (CENST)
- Categorical exclusions subject to 24 CFR 58.5 — 24 CFR 58.35(a) (CEST)
- Environmental Assessment (Finding of No Significant Impact) — 24 CFR 58.36 (EA/FONSI)
- Environmental Impact Statement (Finding of Significant Impact) — 24 CFR 58.37 (EIS)

3.7.1 Related Federal laws and authorities (24 CFR 58.5)

A main component of the environmental review process is to determine if the project must comply with the Related Federal laws and authorities. The RE must consider the criteria, standards, policies, and regulations of these laws and authorities. The Related Federal laws and authorities are listed in 24 CFR 58.6 of the regulation:

Historic properties

- The National Historic Preservation Act of 1966 ([16 U.S.C. 470](#) et seq.), particularly sections 106 and 110 ([16 U.S.C. 470](#) and [470h-2](#))

- Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 ([36 FR 8921](#)), [3 CFR 1971](#)–1975 Comp., p. 559, particularly section 2(c)
- Federal historic preservation regulations as follows:
 - [36 CFR part 800](#) with respect to HUD programs other than Urban Development Action Grants (UDAG)
 - [36 CFR part 801](#), but only as it relates to UDAG
- The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 ([16 U.S.C. 469](#) et seq.), particularly section 3 ([16 U.S.C. 469a-1](#))

Floodplain management and wetland protection

- Executive Order 11988, Floodplain Management, May 24, 1977 ([42 FR 26951](#)), [3 CFR](#), 1977 Comp., p. 117, as interpreted in HUD regulations at [24 CFR part 55](#), particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in [24 CFR part 55](#) and this part, see [§ 55.10](#) of this subtitle A.)
- Executive Order 11990, Protection of Wetlands, May 24, 1977 ([42 FR 26961](#)), [3 CFR](#), 1977 Comp., p. 121, as interpreted in HUD regulations at [24 CFR part 55](#), particularly sections 2 and 5 of the order

Coastal Zone Management

- The Coastal Zone Management Act of 1972 ([16 U.S.C. 1451](#) et seq.), as amended, particularly section 307(c) and (d) ([16 U.S.C. 1456\(c\)](#) and [\(d\)](#)).

Sole source aquifers

- The Safe Drinking Water Act of 1974 ([42 U.S.C. 201](#), [300\(f\)](#) et seq., and [21 U.S.C. 349](#)) as amended; particularly section 1424(e) ([42 U.S.C. 300h-3\(e\)](#))
- Sole Source Aquifers (Environmental Protection Agency — [40 CFR part 149](#))

Endangered species

- The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 ([16 U.S.C. 1536](#)).

Wild and scenic rivers

- The Wild and Scenic Rivers Act of 1968 ([16 U.S.C. 1271](#) et seq.) as amended, particularly section 7(b) and (c) ([16 U.S.C. 1278\(b\)](#) and [\(c\)](#))

Air quality

- The Clean Air Act ([42 U.S.C. 7401](#) et. seq.) as amended; particularly section 176(c) and (d) ([42 U.S.C. 7506\(c\)](#) and [\(d\)](#))
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency — [40 CFR parts 6, 51, and 93](#))

Farmlands protection

- Farmland Protection Policy Act of 1981 ([7 U.S.C. 4201](#) et seq.) particularly sections 1540(b) and 1541 ([7 U.S.C. 4201\(b\)](#) and [4202](#))
- Farmland Protection Policy (Department of Agriculture — [7 CFR part 658](#))

HUD environmental standards

- Applicable criteria and standards specified in [part 51 of this title](#), other than the runway clear zone notification requirement in [§ 51.303\(a\)\(3\)](#).
- Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
- The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in [paragraph \(i\)\(2\)\(i\)](#) of this section.
- Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous waste.
- The RE shall use current techniques by qualified professionals to undertake investigations determined necessary.

Environmental Justice

Executive Order 12898 — Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859

3.7.2 Other Requirements (24 CFR 58.6)

The RE remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless the level of review. The RE must comply with the following requirements.

1. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by FEMA as having special flood hazards, unless:
 - The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than 1 year has passed since the FEMA notification regarding such hazards.
 - Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
2. Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the RE is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.
3. Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.
4. Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
 - The person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance.
 - The person failed to obtain and maintain flood insurance.
5. Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

6. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the RE shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

3.7.3 Environmental Assessment Process (24 CFR 58.40)

If the project is does not meet the requirements to be classified as exempt, categorically excluded subject to (CEST) or not subject to (CENST), then an Environmental Assessment (EA) must be performed, the RE must:

1. Determine existing conditions and describe the character, features, and resources of the project area and its surroundings and identify the trends that are likely to continue in the absence of the project.
2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.
3. Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.
4. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.
5. Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
6. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.

3.8 Levels of Environmental Review: Definition and Process

3.8.1 Exempt Activities

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are exempt from 24 CFR Part 58.22. Exempt activities as listed in §58.34(a) include:

- Environmental studies, plans, and strategies
- Information and financial services
- Administrative and management expenses, including subgranting funds
- Public services without any physical changes
- Inspections and testing of properties for hazards or defects
 - Purchase of insurance
 - Purchase of tools
- Engineering or design costs
- Technical assistance and training
- Payment of principal and interest on HUD loans

Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair, or arrest the effects of disasters or imminent threats to public safety, including those resulting from physical deterioration.

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional information as needed.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete the registration and recordation of the exempt finding in HEROS.
- Subrecipient will receive a notification from OHCS that the project is exempt and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.8.2 Categorically Excluded Activities Not Subject to §58.5

Categorical Exclusion refers to activities that normally would not alter any conditions that would require an EA or EIS except in extraordinary circumstances. This is described in §58.35. While these activities may not be subject to all NEPA procedural requirements, the RE must present evidence that the project activities meet the environmental requirements contained in other related laws, regulations or Executive Orders. Evidence is documented through the completion of the appropriate Statutory Checklist discussed within this handbook.

Activities determined to be Categorically Excluded under §58.35(b) require compliance with regulations at §58.6 only and are considered Exempt from NEPA and other related laws. Refer to Exhibit 3E for the Determination of Categorical Exclusion (not subject to 58.5) checklist. Such activities include:

- Tenant-based rental assistance
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government benefits and services
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations (For Economic Development Revolving Loan Fund projects, please see Chapter 4 for more guidance.)
- Activities that assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buy-downs, and similar activities that result in the transfer of title
- Affordable housing pre-development costs including legal, consulting, developer, and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under §58.5(b) of this part, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional information as needed.
- OHCS will request additional project information to assist in complying with the required certifications of the other requirements as listed in 24 CFR 58.6.
- OHCS will complete the registration and recordation of the exempt finding in the HUD Environmental Review Online System (HEROS).
- Notification from OHCS that the project is Categorically Excluded Activities Not Subject to §58.5 and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.8.3 Categorical Exclusions Subject to §58.5

Activities and projects that consist solely of the kinds of activities listed in 24 CFR 58.35(a) are categorically excluded from NEPA review because they do not individually or collectively have a significant impact on the environment. However, compliance with other applicable federal environmental laws listed in §58.5 is required for activities designated under this part. Such activities include:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities are in place and will be retained for the same use without change in size or capacity of more than 20% (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
- Special projects for the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities
- Rehabilitation of buildings and improvements when the following conditions are met:
 - Multifamily residential buildings: (a) unit density is not changed more than 20%, (b) the project does not involve changes in land use from residential to non-residential, and (c) the estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation

- Non-residential structures, including commercial, industrial, and public buildings: (a) the facilities and improvements are in place and will not be changed in size or capacity by more than 20% and (b) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
- An individual action on one-to-four family dwelling units or an individual action on a project of five or more units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site
- Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use
- Combinations of the above activities

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional project description information as needed.
- Subrecipient will receive a notification from OHCS that the project is Categorically Excluded Activities Subject to §58.5.
- OHCS will request additional project information to assist in complying with the required certifications of the related laws and authorities as listed in 24 CFR 58.6.
- OHCS will complete its review, enter the project into HEROS, and publish the Notice of Intent to Request Release of Funds from HUD. The public will have 7 days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the Request Release of Funds. The public will have 15 days to comment to HUD.
- After the public comment has ended and if there is no follow-up action needed, HUD will send to OHCS the Authority to Use Grant funds form.
- OHCS will notify subrecipient that the project can begin.

3.8.4 Environmental Assessment (EA)

An EA must be prepared for projects with activities that are neither Exempt nor Categorically Excluded (unless the RE immediately identifies an EIS is required). The EA is the basis for a determination by the RE that the proposed project is or is not a “major federal action which will significantly affect the quality of the human environment.” This is called a “level of clearance” finding.

The EA includes both a review of the related laws and authorities as listed in 24 CFR 58.5, the other requirements as listed in 58.6, and preparing the EA as listed in 58.40. The assessment also includes examining and recommending feasible ways to eliminate or minimize adverse environmental impacts and examining alternatives to the project itself, if appropriate. The EA will result in either a FONSI or a Finding of Significant Impact. If the EA results in a Finding of Significant Impact, the RE must proceed with an EIS.

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description and request additional project description information as needed. For construction projects, 30% design plans may be requested.
- Subrecipient will receive a notification from OHCS that the project needs an Environmental Assessment.
- OHCS will complete the registration and recordation of the exempt finding in HEROS for the design component of the project. OHCS will request additional project information to assist in complying with the certifications of the related laws and authorities as listed in 24 CFR 58.5, the other requirements as listed in 58.6, and preparing the Environmental Assessment as listed in 58.40.
- OHCS will complete its review, enter the project into HEROS and publish the Finding of No Significant Impact/Notice of Intent to Request Release of Funds from HUD. The public will have 15 days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the Finding of No Significant Impact/Request for Release of Funds. HUD will hold a 15-day public objection period.
- After the public comment has ended and if there is no follow-up action needed, HUD will send to OHCS the Authority to Use Grant funds form.
- OHCS will notify subrecipient that the project can begin.

3.8.5 Environmental Impact Statement (EIS)

An EIS is required when the project is determined to have a potentially significant impact on the human environment. It is not anticipated that any CDBG-DR projects will reach this level of review. Any required EIS would begin with a scoping exercise to identify the essential components of that individual EIS.

3.9 Sample Project Information Requested

Once OHCS completes their determination for the level of review required, they will provide a checklist to the subrecipient for additional project information to assist with the preparation and completion of the ERR. Information to be requested may include the following, in addition to other needs identified by OHCS:

Description of the Proposed Project [24 CFR 50.12 and 58.32; 40 CFR 1508.25]: A project description to include any land ownership transfers/purchases, land-use changes, address, assessor parcel number(s), as well as a description of any planned excavation, construction and demolition activities; existing and proposed use(s); site development features such as setbacks, height and general design, number of parking spaces; project sustainability features; and planned best management practices for construction and/or operations.

Construction details should include period of construction, types of activity involved, as well as foundation type, excavation depth, and cut/fills estimates. Depending on noise and air quality conditions identified during review, there may be additional construction details requested, such as construction haul truck trips. A proposed development site plan may also be requested.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]: Basic statement of the purpose and need of the project, which may require follow-up.

Existing Conditions and Trends [24 CFR 58.40(a)]: Summary of existing uses on site including building age and utility connections (e.g., septic vs. sewer, etc.), current occupancy status, and any completed reports (e.g., geotechnical, arborist).

Funding Information [24 CFR 58.32(d)]: Grant number, HUD program title, and funding amount. Estimated total HUD funded amount, as well as total project cost (HUD and non-HUD funds).

Clean Air: If the project is located in an air basin/district that is in marginal or non-attainment for criteria pollutants additional construction details may be requested.

Contamination and Toxic Substances [24 CFR Part 50.3(i) and 58.5(i)(2)]: Dependent on the nature of the proposed project, including site acquisition, a Phase 1 Environmental Site Assessment may be needed.

Explosive and Flammable Hazards [24 CFR Part 51 Subpart C]: If the project involves new above ground storage tanks (e.g., fuel oil, gasoline, propane), additional details may be requested.

Noise: If an existing exterior level of above 65 to 75 decibel (dBA) day-night average sound level is identified for residential projects, sound attenuation measures in design of the building(s) are required and additional information may be requested to assure a maximum interior level of 45 dBA.

3.10 Starting the Project

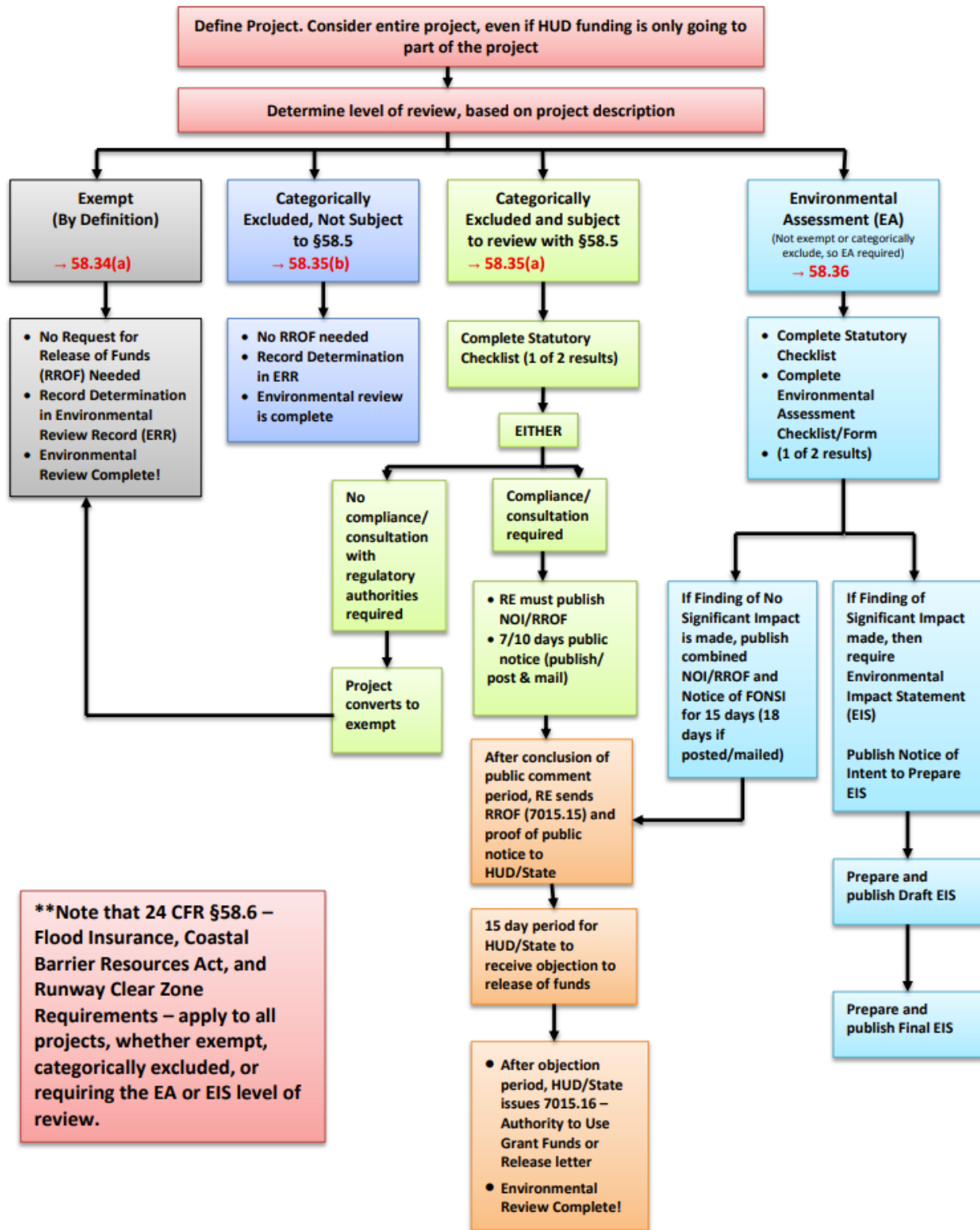
Once the RE has received the notice to proceed from OHCS, they may begin implementation of the project and may incur expenses.

In cases in which OHCS has given notice that a project can proceed, but subsequently learns that the subrecipient or project partner violated 58.22 or otherwise failed to comply with the applicable environmental authority, OHCS is required to impose appropriate remedies and sanctions in accord with the law and regulations for the CDBG-DR program, under which the violation was found, in accordance with 58.72(c).

3.11 Compliance Monitoring

Each CDBG-DR subrecipient will be monitored to determine if project information requested was accurately given to OHCS to prepare the ERR. The monitoring will involve a review of the documentation provided as well as an on-site monitoring.

Environmental Review Process (To Be Conducted by Responsible Entity)





4 Financial Management

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4 Introduction

4.1 Financial Management

Financial management is the process of using funds effectively, efficiently, and transparently. It is the path to establish, implement, and follow policies, procedures, and rules of conduct to meet the federal financial management requirements and cost principles, and then, second, through methods and standards, ensure that all integral functions stay on track.

Adequate and effective financial systems must be implemented and followed to ensure that the management of federal funds meets the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) found in [2 CFR Part 200](#). This includes the following:

- Record all financial transactions.
- Relate expenditures to the activity.
- Ensure compliance with laws and regulations.

4.2 Establish CDBG-DR Financial Management

4.2.1 Ensure that effective financial management system is in place

Subrecipients should be able to meet these financial management requirements with existing financial systems; however, it may be necessary to augment existing systems by developing special procedures that bring the systems in compliance with the requirements for post federal award, including the cost principles, outlined in the Uniform Guidance. OHCS encourages its subrecipients to work with their own financial staff, accountants, and auditors to develop the systems and expertise needed to ensure control of the subrecipient's financial affairs to meet the federal requirements. Financial management training is provided by OHCS, with technical assistance offered upon the subrecipient's request or otherwise determined beneficial by OHCS or HUD.

The requirements for financial management systems are found in the Uniform Guidance at 2 CFR Part 200.302 (b)(1-7). Additionally, the subrecipient should refer to the subrecipient agreement executed with OHCS for contractual expectations of adequate financial management systems and the scope and frequency of financial reporting.

Additional information on requirements of a CDBG-DR financial system can be found later in this chapter in the [Required Elements of a Financial System section](#).

4.2.2 Execute required forms

The subrecipient is responsible for executing the required forms required by OHCS. This includes:

Automated Clearing House (ACH):

- The completed ACH form must be returned to HCS.ACHWIRES@hcs.oregon.gov. To avoid processing delays, please make sure to include a voided check or letter from the bank confirming the account information. The ACH form is password protected. The OHCS contract administrator will communicate the protected password by phone or separate email.
- Payments made to the subrecipients will be paid electronically.

W-9:

- A 1099 will be issued to appropriate entities each year as required by the Internal Revenue Service to report the award(s) payments that are received from OHCS.
- The subrecipient must return the completed W-9 to the OHCS contract administrator in order to begin the setup process.

4.2.3 Submit subrecipient budget form

Subrecipients will be required to complete a subrecipient budget form that details how budget categories (e.g., personnel, contracts, travel, project delivery costs, facilities, and administration costs) are calculated. If a subrecipient is managing multiple projects or activities, then a separate budget form is needed per each project/activity. Subrecipients will provide justifications for why certain costs are needed or provide supporting documentation with the budget form to substantiate the budget amount requested.

OHCS will review budget forms and may respond with questions that need to be addressed before the budget and subrecipient agreement is approved. Once approved, the budget form will be updated on a quarterly basis to capture any changes in the budget. If there are no changes, subrecipients can report a “no change” to OHCS. OHCS is tracking two main budget categories: Program Delivery (Direct) Costs and Facilities & Admin (Indirect) Costs. Any budget changes within either budget category can be reported to OHCS without having to amend the subrecipient agreement. The subrecipient agreement budget will need to be updated if there is a budget change between the two budget categories, a need to increase/decrease the overall budget, or if there is a need for time extension.

4.3 Required Elements of Financial Systems

The requirements in [2 CFR Part 200.302\(b\)\(1-7\)](#) specify standards to ensure that a non-federal entity receiving federal funds has an adequate financial management system that conforms with the Uniform Guidance in Part 200 and:

1. Provides effective internal control over and accountability for all CDBG-DR funds, property, and other assets
2. Adequately safeguards these assets and confirms the assets are used for authorized purposes
3. Follows established policies and procedures
4. Follows the terms and conditions of the subrecipient agreement with OHCS
5. Identifies the source and application of the CDBG-DR funds
6. Verifies allowable costs in consideration of cost reasonableness, cost allocability, and the composition of costs as either direct or indirect
7. Documents through effective recordkeeping the accurate, complete, and timely disclosure of financial results using generally accepted accounting principles (GAAP) in accordance with the reporting requirements of OHCS or HUD
8. Reduces the time elapsed between the transfer of funds from the U.S. Treasury and proper disbursement

4.3.1 Relevant Federal and State Regulations and State Policies

The CDBG-DR regulations include but are not limited to:

- [CDBG-DR Consolidated Notice and Allocation Announcement Notice](#), 87 FR 6364 published Thursday, February 3, 2022
- CDBG-DR Program, [24 CFR Part 570 \(Subpart I, 570.480-407\)](#), State CDBG Program
- Per the Consolidated Notice waiver and alternative requirement that a state may carry out activities directly, including through assistance provided under agreement with subrecipients: 24 CFR 570.503 (b)(4) contains the applicability of the uniform administrative requirements (24 CFR 570.502) for subrecipients
- [2 CFR Part 200](#), Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Cost Principles and Audit Requirements)
 - This regulation, which applies to government agencies, sets forth uniform requirements for financial management systems, fiscal controls, cost principles, allowable costs, audit requirements, reports and records, grant close-outs for recipients of federal grant funding, etc.

4.3.2 Financial Management Requirements

The following sections are provided to assist in understanding the minimum federal requirements for financial management and identify specific areas in need of upgrades and improvement. The federal regulations contain requirements to guide adequate financial management systems in eight specific areas:

1. Internal controls, [200.303](#)
2. Accounting records, [200.302\(b\)\(3\)](#)
3. Allowable costs, [200.402-406](#)
4. Source documentation, [200.302\(b\)\(3\)](#)
5. Budget controls
6. Cash management, [200.305](#)
7. Financial reporting, [200.329](#); Consolidated Notice
8. Audits, [2 CFR Part 200, Subpart F – Audit Requirements](#) (See Chapter 15 Project Reports and Closeout.)

4.3.3 Internal Controls (200.303)

The Uniform Guidance in 2 CFR 200.303 requires non-federal entities to maintain a system of internal controls that provide for reasonable assurance that the entity is managing the award in compliance with federal statutes, regulations, and the terms and conditions of the award. Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records that create accountability within an entity's financial management system, safeguard all grant property (whether cash or other assets), and assure that it is used solely for authorized purposes. All grant recipients must establish and maintain internal controls to protect the integrity of the grant funds. The internal control framework should be in place before grant expenditures are incurred; however, entities must perform ongoing evaluations to determine if internal controls are operating as intended. Per the requirements of 2 CFR 200.332, OHCS conducts a risk assessment of the subrecipient's capacity to comply with the minimum federal regulations internal control environment in order to determine the appropriate level of subrecipient monitoring; however, OHCS may inquire of processes or specific documents prior to the subrecipient agreement being executed. OHCS conducts monitoring of subrecipients to ensure that each of the CDBG-DR funds are used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subrecipient agreement, and that performance goals are achieved. See the OHCS monitoring chapter for more information.

Each entity is responsible for reviewing its practices and processes to determine where risk exists and where and how controls can be established to mitigate them.

Note: The single audit objectives include the auditor making the determination that the grant recipient established an accounting system with adequate internal controls that provide full accountability for revenues, expenditures, assets, and liabilities.

Control is enhanced when the duties of personnel (entity/organization members) are divided so that no one person handles all aspects of a transaction from beginning to end. One person should not have control of more than one of the following:

- Authorization to execute a transaction
- Recording the transaction
- Custody of the assets involved in the transaction

Many of the most effective techniques for providing internal controls are very simple. Some examples are:

- Current organizational chart that clearly indicates the individuals involved in approving or recording financial transactions and their responsibility
- Written description of the functions of key staff
- Establishing and following written conflict of interest policies
- Recording cash receipts immediately
- Ensuring that someone other than the person who signs the checks will reconcile bank accounts monthly
- Ensuring that checks to vendors are only issued in payment of approved invoices, and the supporting documents are marked as paid
- Assigning a separation of duties for the personnel responsible for the physical custody of an asset and the personnel keeping the records related to that asset

The Uniform Guidance in 200.303 provides guidance to establish and maintain internal controls with two options for compliance:

- [Standards for Internal Control in the Federal Government](#), known as the Green Book, issued by the Comptroller General of the United States
- [Internal Integrated Framework](#), issued by the Committee of Sponsoring Organizations of the Treadway Commission

There are a few basic internal controls that all grant recipients should prioritize. The following table includes recommended actions that subrecipients can employ to reduce the risk of both grant mismanagement and fraud.

Internal Control	Actions
<p>Formal written policies and procedures to establish control components</p>	<ul style="list-style-type: none"> □ Designate authority for who can request and approve grant spending. □ Evaluate the procedures for procuring goods and services. □ Establish a process to minimize the time between requesting grant funds and paying suppliers and contractors.
<p>Segregation of duties to mitigate against fraud, waste, and abuse</p>	<ul style="list-style-type: none"> □ Determine the proper level of authorization for purchases. □ Limit access to inventory, equipment, and banking accounts to personnel authorized to use the assets.
<p>Adequate internal monitoring to ensure that the entity is following the internal control components in place</p>	<ul style="list-style-type: none"> □ Ensure that existing policies and procedures are understood and followed. □ Conduct, at minimum, an annual review and update to policies and procedures. □ Review performance of allowable cost review checklists to ensure that charges to the CDBG-DR award are reasonable, allocable, and not otherwise limited or excluded by the subrecipient agreement, OHCS Subrecipient Financial Management Policy, or excluded by the federal cost principles regulations.
<p>Reconciliation of grant expenditures to the budget</p>	<ul style="list-style-type: none"> □ Schedule account reconciliations to ensure that financial information is current and updated in a timely manner.
<p>Appropriate controls to secure and safeguard assets and ensure that controls are only used for authorized purpose by the award</p>	<ul style="list-style-type: none"> □ Protect property from loss, damage, or theft. <ul style="list-style-type: none"> ○ Establish a control system that will detect/investigate when assets go missing. ○ Match property record to financial records and supporting documentation. ○ Conduct unscheduled periodic physical inventory of assets. □ Utilize written job description to illustrate personnel roles and job responsibilities to mitigate the misuse of assets, including bank accounts.

Formal system of authorization and supervision to provide accounting control over assets, liabilities, receipts, and expenditures

- Follow updated policy manual that identifies approval authority for financial transactions and detailed guidelines for controlling expenditures.
- Follow written accounting procedures for recording deposits and expenditures.
Best Practice: Create a step-by-step guide for each of your financial and program management procedures, specifying the steps in the procedure, the position responsible, the action to be taken, and the standard of prompt action for each step.
- Engage effective supervisory review and approval prior to spending to provide checks and balance for proper authorization.

Adequate source documentation produced and retained

- Review documentation policies to ensure that there is enough detail:
 - What was the purchase, what is the basis for the (cost)expenditure?
 - Who spent the funds and who authorized the spending?
 - When was the expenditure authorized and when did it occur?
 - Where should the cost be allocated? Provide pathway to separate costs between the CDBG-DR award and non-federal activities.
- Be prepared to defend the cost months and even years from the time of purchase.
- Provide adequate project documentation. Include a detailed narrative explaining the objectives of the project and how the project activities and costs are supporting those objectives.
- Ensure appropriate manager review for related documentation review.
 - A purchase request/requisition is signed by the manager with direct (relevant) budgetary responsibility.

4.3.4 Accounting Records

Accounting records must adequately identify the source and application of the CDBG-DR funds.

Subrecipients may manage multiple federal, state, and local grants, as well as other sources of cash. Each grant and source of income is unique — it has its own fund, own chart of accounts, and own specific list of eligible activities. The costs incurred for a specific grant award must be properly allocated to each fund/grant source. Incurred costs are only eligible for federal reimbursement when those costs are allocated to the specific fund source, based on proper supporting documentation.

Additionally, you should have effective control over, and accountability for all CDBG-DR funds, property, and other assets in your possession (acquired/assisted by CDBG-DR funds). In order to meet these requirements, your financial management system must provide for the following:

Chart of Accounts. This is a list of names, classifications, and the numbering system for your individual accounts containing basic information about specific financial transactions for the organization.

Identify the CDBG-DR project award information:

- Federal program and Assistance Listing Number: HUD CDBG-DR, 14.228.
- Federal Award Identification Number for the OHCS CDBG-DR award:
 - B-21-DZ-41-001
 - OHCS as the pass-through entity/awarding entity
 - Project number assigned by OHCS to the subrecipient agreement

Accounting Records. Records must contain information for the CDBG-DR award: authorizations, financial obligations, unobligated balances, assets, expenditures, and be supported by source documentation.

- Identify and provide reliable, up-to-date information on the sources and uses of the CDBG-DR funds.
- Provide accurate, current, and complete disclosure of the financial results of the CDBG-DR award. Report on actual expenditures against the budget. 2 CFR 200.328 (See Chapter 15 Project Reports and Closeout for quarterly reporting requirements.)
- Keep project spending separate from other types of spending.
- Tie actual spending to the financial records and source documentation. Provide explanations for cost overruns and underruns.

- Correct errors as soon as possible. Use adjusting journal entries and correction memos to explain the adjustments.¹
- Keep financial records and statements up to date.
- Keep written procedures for requesting the funds from OHCS.
- Keep written procedures for accounts payable.
- Track the flow. Report the source and application of the CDBG-DR funds.
 - Copies of all requests for payment to OHCS
 - Payment to all suppliers, vendors, and contractors
 - Reimbursement for personnel time and effort

Reconciliation. Provide documentation of comparison of CDBG-DR expenditures with CDBG-DR budget amounts.

Documentation. Ensure that the CDBG-DR funds have been used according to the terms and conditions of the subrecipient agreement, OHCS Subrecipient Implementation Policy, and all relevant federal statutes and regulations.

4.3.5 Allowable Costs

Most CDBG-DR appropriations acts require funds to be used for “. . . necessary expenses for activities . . . related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization and mitigation in the most impacted and distressed areas.”

The costs of carrying out project activities include not only goods and services provided by third parties, such as construction contractors, but also include the costs incurred by subrecipients in connection with the use of their own staff and other resources to carry out the activity(s).

The activities budgeted under the subrecipient agreement are deemed eligible to comply with the [OHCS CDBG-DR Action Plan](#). Costs incurred by the subrecipient to carry out these activities occur within the period of performance for the award and comply with all federal requirements as explained in this section.

Note: The appropriate environmental review clearance must be completed before funds are obligated or expenses are incurred for any project activity cost, whether paid for with CDBG-DR or non-CDBG-DR funds.

¹ [HUD OIG Integrity Bulletin: Key Components of Financial Management for CPD Grants, Winter 2017](#)

4.3.5.1 CDBG-DR Eligible Activity

The Housing and Community Development Act of 1974 (HCDA) provides the basic framework for the CDBG-DR appropriation. Generally, if an activity is not specified in the HCDA, it is not considered eligible under the state CDBG program. However, if the entitlement (cities and counties that automatically qualify for the CDBG program) regulations provide for an interpretation that an activity is eligible under the HCDA, that eligibility interpretation is applicable to the state CDBG program and state CDBG-DR grantees. For CDBG-DR funds, the Consolidated Notices provide several waivers and alternative requirements for OHCS and its subrecipients to carry out activities in a similar manner to a CDBG entitlement grantee.

The CDBG-DR appropriations acts require an extra layer for eligibility; activities must be related to the disaster and long-term recovery, and tie-back to the disaster must be documented.

CDBG-DR assisted activities must meet standards for determining eligible costs per [24 CFR Part 570.200](#), or otherwise subject to a waiver or alternative requirement under the Consolidated Notice. With the exception of grant administration and planning activities, CDBG-DR assisted activities must meet at least one of these three national objectives:

1. Benefit low-and moderate-income (LMI) persons.
2. Aid in the prevention or elimination of slums or blight.
3. Meet a need having a particular urgency (referred to as urgent need).

Additionally, a CDBG-DR activity must:

- Be included in the approved ReOregon CDBG-DR action plan.
- Comply with other applicable federal requirements.

The CDBG-DR award may include terms and conditions to satisfy requirements for mitigation activities. (See Chapter 12 Mitigation.)

4.3.5.2 Period of Performance

The period of performance for the subrecipient grant agreement is stated within the terms and conditions of the award. Subrecipients may only charge allowable costs to the CDBG-DR program within the period of performance stated in the agreement. All requests for payment must be for services rendered within the contract period of the subrecipient grant agreement.

4.3.5.3 Cost Principles

Cost principles are those common principles that help determine the costs for specific activities and the costs that are chargeable to grants, awards, and other agreements. Although the cost principles for the CDBG-DR award may be similar to cost principles for local governments or for nonprofit organizations, the most stringent requirements apply. As a subrecipient, you must ensure that you are using the appropriate Office of Management and Budget (OMB) guidance and that you're also in compliance with all applicable state and local requirements (follow the stricter of these requirements).

The OMB has established cost principles for federal grant programs, detailed in 2 CFR Part 200.400 (Subpart E – Cost Principles). Your financial management system must provide for written procedures to determine the allowability of costs as provided in Subpart E. Writing internal procedures for applying cost principles requires understanding and defining four key terms:

- **Necessary** — [200.403\(a\)](#)
The very first consideration is if the good or service is necessary to carry out the project scope and objectives relevant to the CDBG-DR award.
- **Reasonableness** — [200.404](#)
The reasonable cost standard means assessing if the amount of expenditure exceeds the amount a prudent person would have spent under the same circumstances and at the time the decision was made to purchase the item. Note that the decision is considered under the circumstances in place at the time the decision was made.
- **Allocable** — [200.405](#)
Allocable means that the costs can be allocated to a cost objective, in this case, in accordance with relative benefit received by the activity under the CDBG-DR award. It also means that costs are treated consistently with other costs incurred under like circumstances.
- **Allowable and Unallowable** — [200.403](#)
If costs are reasonable and allocable, then an allowability assessment follows. Federal cost principles outline costs that are allowed under the terms and conditions of federal awards. Additionally, refer to the terms and conditions of the subrecipient agreement. For costs to be allowable, you must apply policies uniformly to all activities, not just the CDBG-DR award. Unallowable costs are costs that cannot pass the reasonable and allocable test, and likely include costs that are explicitly excluded from the list of permissible costs under the federal cost principles.

- **Documented** — [200.403\(g\)](#); [200.300-309](#)

Perhaps the most important element for understanding the application of cost principles is that every detail must be documented; no detail is too small or unimportant to document. **For costs to be allowable, they must also be adequately documented.** Documentation requirements apply to every aspect of grant management — the term “over-documentation” does not exist in the post-federal award environment.

4.3.5.4 Determination for Allowable Costs

No accounting system can make cost allowability or reasonableness determinations. Staff must be trained in the requirements and have a go-to person who knows the program regulations. There is a simple aid in determining what is eligible for reimbursement and why it is eligible as well as how to document compliance with financial management standards.

4.3.5.4.1 When costs are reasonable, allowable, documented and allocable (RADAR), then they are reimbursable

This so-called RADAR test is applied to ensure that when costs are charged, they are limited to those that are (only) allowable and reimbursable.

Refer to the project budget in the subrecipient agreement to identify the approved project activities on a line-item basis. Any questions about eligible costs during the implementation of the project should be discussed with OHCS before the expense is incurred or approved.

Examine the cost to be:

Requirement	Consideration
Authorized by OHCS	<ul style="list-style-type: none"> <input type="checkbox"/> Does the cost directly relate to an activity or line item in the project budget? <input type="checkbox"/> Does the cost meet any stipulations in the subrecipient agreement relevant to the activity?
Necessary (200.403(a))	<ul style="list-style-type: none"> <input type="checkbox"/> Is the cost necessary to carry out the program/project activity?
Reasonable (200.404)	<ul style="list-style-type: none"> <input type="checkbox"/> Have purchasing or procurement procedures been followed? <input type="checkbox"/> Is the cost in line with fair market prices (at the time of procurement) for comparable goods or services? <input type="checkbox"/> Would a “prudent person” agree that the item is reasonable?

<p>Allowable — Conforming to limitations or exclusions (200.403(b))</p>	<ul style="list-style-type: none"> □ Is the cost permissible and NOT disallowed under the 55 specific items of cost found in the Uniform Guidance in 200.420-475? <ul style="list-style-type: none"> ○ Specific costs always unallowable for federal funding are lobbying, fund-raising, bad debts, contingencies, fines and penalties, losses on other awards, unnecessary travel costs, contributions and donations, and certain depreciation or use allowances. □ Is the cost permissible under the program statute and regulations? □ Is the cost permissible under the terms and conditions of the subaward, the subrecipient grant agreement? □ Is the cost permissible under state statute, if applicable? □ Is the cost permissible under local policies?
<p>Consistent with policies and procedures</p>	<ul style="list-style-type: none"> □ Do the entity’s policies and procedures apply the same rules for federal programs as they do for state (applicable to state agency partners) and local programs (applicable to local units of general local government)? □ Would the cost be the same amount if it were funded by a state or local program?
<p>Allocable (200.405(a))</p>	<ul style="list-style-type: none"> □ Is the cost incurred specifically for the CDBG-DR award? □ If the cost benefits the federal program and other work of the entity, was the cost distributed in proportions that may be calculated using reasonable methods? □ Was the cost NOT incurred because another grant ran out of funds?
<p>Determined in accordance with GAAP (200.403(e))</p>	<ul style="list-style-type: none"> □ Is the cost determined in accordance with GAAP or as otherwise provided for in the Uniform Guidance (applicable to the CDBG-DR award)?
<p>Be net of applicable credits (200.406)</p>	<ul style="list-style-type: none"> □ Have any credits such as purchase discounts or price adjustments been deducted from the total costs charged?
<p>Adequately documented (200.403(g) and 200.302(b)(3))</p>	<ul style="list-style-type: none"> □ Do you have the documentation demonstrating the need, the purchase, and use of the item? □ Do you have records that identify the source and application of funds and contain information regarding authorizations, obligations, unobligated balances, assets, and expenditures that are supported by source documentation?

4.3.5.5 CDBG-DR Cost Types

The costs directly linked to a specific project include the costs associated with undertaking a specific type of project and the costs incurred by the grant recipient to deliver the specific project or service to a beneficiary. These activities will need to be properly categorized when you submit the **reimbursement request** for CDBG-DR funds to OHCS.

Note: Subrecipients may be awarded subrecipient agreements that contain a budget for both project costs and activity delivery costs, which means the subrecipient is the responsible organization to carry out the project and to report project accomplishments and performance measures. For other program activities, OHCS will be the responsible organization and directly administer activities with the assistance of subrecipients. For the latter, these subrecipient agreements will only contain a subrecipient budget for program delivery costs. Consult specific program guidelines for additional guidance in regard to cost reasonableness for project costs and project delivery costs.

Project costs are the direct costs of undertaking a project and can be tied to a final cost objective and eligible activity that meets a national objective. Some examples of projects costs are:

- Acquisition costs
- Construction hard costs
- Demolition and site clearance costs
- Developer fees, contractor overhead, and profit
- Costs to deliver public services, including staff time and other direct costs
- Payments to homeowners for reconstruction activities
- Loans to businesses to assist with repairs or provide working capital

Activity delivery costs (ADCs) are like administrative costs but are used specifically to meet the requirements to complete a particular project, especially as it applies to meeting CDBG-DR requirements. These are costs incurred that are directly related to the delivery of a specific CDBG-DR project or service to a beneficiary. Some examples of eligible ADCs when paid directly by subrecipients or conducted by staff include:

- Activity-specific construction oversight
- Project-specific accounting and payments
- Activity-specific monitoring, oversight, and management
- Activity-specific legal services (drafting contracts)
- Activity-specific staff and contracted services

- Project-specific environmental review, design, and engineering (completed by the subrecipient or subrecipient’s contractor)
- Developing activity specific policies and procedures
- Marketing and outreach to applicants and contractors for a specific activity
- Applicant intake
- Processing applications for assistance

Note that specific projects may include one or more DRGR activities, and you must be able to appropriately allocate staff and contractor costs to the activities.

4.3.5.6 Direct vs. Indirect Costs

Direct costs are those that can be identified specifically with a particular final cost objective, such as construction-related costs for an infrastructure project under the CDBG-DR award, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Identification with the CDBG-DR award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs for the purpose of cost allocation to the award. Typical direct costs chargeable to the CDBG-DR award are:

- Cost of materials or services, such as professional services or construction services, especially for the purpose of the award
- Compensation of employees for time that can be identified specifically for the performance of the award

Under the cost principles, the rules of necessary, reasonable, allocable, and allowable still apply to direct and indirect costs.

Indirect costs (facilities and administration) are those incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted. Indirect costs include costs that are frequently referred to as overhead expenses such as rent and utilities as well as general and administrative costs.

There are three methods or options for charging indirect costs under [2 CFR 200.332](#). The first is the 10% de minimis rate option, the second is the negotiated indirect cost rate agreement, and the third is through the use of a cost allocation plan.

If subrecipients encounter the need to charge indirect costs to the CDBG-DR award, the entity should contact OHCS for more information and guidance.

4.3.6 Source Documentation — Allowable Costs

The general standard is that all accounting records must be supported by source documentation ([2 CFR 200.302.\(b\)\(3\)](#)). Adequate documentation should provide the means to verify that all project costs are properly segregated to the correct cost objective, in consideration of the CDBG-DR funds and non-federal sources of funds. If documentation cannot establish whether a cost was an allowable cost or an unallowable cost, then it is not adequate source documentation. Be mindful of the independent auditor’s perspective: “If a cost is not documented, it didn’t happen!”

Source documentation must accompany each reimbursement request. (See Subrecipient Reimbursement Request section in this chapter). For all non-payroll costs, as applicable prior to contract execution, source documentation must include a check of the federal SAM database to determine if a proposed contractor is debarred. (See Chapter 5 on Procurement for more information on the federal SAM database.)

Supporting Document Checklist. OHCS provides this checklist for subrecipients to detail the supporting documentation that should be provided in the *Reimbursement Request* package. The checklist can be found in the [appendix](#) of this chapter.

4.3.6.1 Non-Payroll (Non-Personnel) Source Documentation

All costs must be appropriately approved and supported by source documentation (refer to the definition of [improper payments](#) and [questioned costs](#) in 2 CFR 200, [2 CFR § 200.302\(b\)\(3\)](#), [2 CFR § 200.400\(d\)](#), and [2 CFR § 200.403\(g\)](#)). Documentation must demonstrate that costs charged against CDBG-DR funds were:

- Incurred during the contract period dates of the subrecipient grant agreement with OHCS
- Incurred during relevant contract periods with contractors
- Verifiably paid out, or adequately accrued
- Expended on eligible costs and within approved budgets
- Approved by the appropriate official(s) within the organization

All invoices should include all necessary supporting documentation and clearly and accurately detail all the following required information at a minimum:

- Vendor/subrecipient payee information
- Contract number of the grant agreement with OHCS
- Contract period with OHCS
- Invoice/reference number (assigned by the subrecipient)

- Invoice date and service period (applicable to the reimbursement request)
- Itemization of the reimbursement request detailing, at minimum, all the following:
 - The total amount of the contract or purchase requisition
 - The amount billed to date
 - The amount currently requested by budget line-item
 - The remaining balance of the contract
 - A description of the cost and what is being paid for
- Signature by authorized point of contact

Source documentation must also explain the basis of the costs incurred and the actual dates and amount of the expenditure. Source documentation for supplies includes purchase orders, requisition forms initiated by an authorized representative of the subrecipient, invoices from vendors, and evidence of incurred costs and payment, such as a copy of the canceled check.

Subrecipients must ensure that their accounting records and supporting documentation include reliable, up-to-date information on the sources and uses of CDBG-DR funds, including:

- Amount of federal grant awards received
- Current authorizations and obligations of funds
- Unobligated balances
- Assets and liabilities
- Program Income
- Actual expenditures

For a guide on how to provide supporting documentation for various costs, please find the Supporting Document Checklist located in the [appendix](#) of this chapter.

4.3.6.2 Payroll (Personnel) Source Documentation

One of the most important aspects of allocating direct project costs that benefit more than one grant or program area is the documentation of the cost, regardless of whether it is a personnel or non-personnel cost. Correct allocation of personnel costs, however, often requires more extensive protocols than non-personnel costs. Staff time supporting CDBG-DR funded activities and non-CDBG-DR funded activities must be prorated according to the degree to which the activities benefit the CDBG-DR grant award.

Some best practice examples follow:

- Cost reasonableness as it applies to personnel costs is typically established in an organization's human resource records that establish pay ranges and job descriptions.
- These documents need to demonstrate that the pay scales and benefits for each position are within the range of similar positions in the labor market area and therefore are reasonable.
- For nonprofit organizations, assistance in establishing and evaluating pay ranges can be obtained from other local nonprofit organizations that exist in many areas of the country.
- Personnel costs (i.e., staff salaries and benefits) are reimbursable under a CDBG-DR grant when staff time is spent conducting the CDBG-DR funded and approved activities and providing services to grant-eligible clients.
- Labor allocations require an effective time recording system that not only supports the personnel costs charged to the CDBG-DR grant but also divides the time among other program areas for the organization. If an employee's time is split between CDBG-DR and another funding source, there must be time distribution records supporting the allocation of charges among the sources. Timesheets should reflect the activity for which the employee is being compensated and not exceed 100% of total compensated activities.

4.3.6.2.1 Subrecipients Fringe Benefits

Fringe benefits are defined as "...allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages."² Fringe benefits include, but are not limited to, cost of leave (sick leave, vacations, military leave, administrative leave, family leave, and others), employee insurances (e.g., medical insurance, retirement, worker's compensation, social security, Medicare), and unemployment benefits (e.g., state unemployment and disability insurance). Costs of fringe benefits for employees of subrecipient agencies are allowable expenditures provided that the benefits are reasonable and required by law, established employee agreements, or established policy.

On the subrecipient budget form, subrecipients can enter both salary and fringe information per staff. In addition, the second tab of the spreadsheet allows subrecipients to also track how salary raises and changes to the fringe rate affect the expected costs charged over the life of the grant.

² 2 C.F.R. § 200.431 Compensations — Fringe Benefits: https://ecfr.io/Title-02/se2.1.200_1431

4.3.6.2.2 Requirements for Reimbursement

Subrecipients may include reimbursement for their employee's compensation,³ including allowable fringe benefits, for implementing and carrying out specific eligible CDBG-DR activities. To support the allowability of fringe benefits included in agreements, subrecipients must submit applicable fringe benefit policies or employee agreements. The [2 C.F.R § 200.431](#) Compensation — Fringe Benefits outlines federal regulations related to the allowability of some specific types of fringe benefits. Benefits outlined in subrecipient policies or employee agreements that are not explicitly addressed in 2 C.F.R § 200.431 are subject to the approval of OHCS.

To be reimbursed for fringe benefits, subrecipients must have a budget line item in their agreement with OHCS for staffing reimbursement (and fringe benefits) and must request employee compensation for their CDBG-DR program. All requests for reimbursement of employee compensation, including fringe benefits, by the subrecipient must have been allocated to the specific time and percentage dedicated to the CDBG-DR program and adequately supported by documentation. Fringe benefits may be presented in various reports; the most common are payroll distributions reports, payroll stubs, or any custom form that includes the breakdown of hours worked, hourly rates, and/or salaries.

Invoices submitted that contain fringe benefits must include the following supporting documents:

- Timesheets of employees with specific work performed on a daily basis, allocated time per day, employee name, position, and a total of hours worked for the period. All activities must fall within an allowable cost category (administration, planning, and/or activity delivery) included in the contract.
- Evidence of fringe benefits invoiced for the employees or a certification that indicates benefits have been paid or are scheduled for payment.

As a subrecipient, you are responsible for maintaining evidence of payments (e.g., canceled checks, bank statements) to staff within the organization's accounting records. Evidence shall be made available to OHCS upon request for monitoring and/or auditing.

Additional information on payroll support can be found in [2 CFR § 200.430\(i\)](#). OHCS guidance on timekeeping can be found in the [appendix](#) for this chapter.

³ CPD Notice 23-06 — <https://www.hudexchange.info/news/notice-cpd-23-06-on-allocating-costs-between-program-administration-activity-delivery-and-planning-for-cdbg-dr-cdbg-mit-and-cdbg-ndr-grantees/>

4.3.7 Budget Controls

The project budget, approved by OHCS, becomes your guide for all expenditures. Your CDBG-DR assisted project budget outlines anticipated funding from all sources and establishes boundaries for all expenditures. Subrecipients must have a budget control system that makes it possible to compare actual expenditures with the budgeted amounts for each supported activity. This includes being able to identify and understand variances and proactively plan for necessary revisions. Attention to budget control is an ongoing process throughout the project lifecycle and is performed every time invoices are reviewed for payment. Sufficient funds remain in the line-item budget to cover current and projected requests for CDBG-DR funds from OHCS. Additionally, the financial management system must make it possible to relate financial information to performance or productivity.

To compare and control expenditures to approved budgets, you must:

- Maintain in your accounting records the amounts budgeted for eligible activities; these records must sufficiently identify the source and use of funds.
- Include unexpended/unobligated balances for budgeted categories and obligations and expenditures.
- Periodically compare actual obligations and expenditures to date against planned obligations and expenditures and against projected accomplishments from such outlays.
- Report deviations from budget and project plans and request approval for budget and project plan revisions.

Note: For every purchase/procurement over the simplified acquisition threshold, you must perform an independent cost or price analysis. See Chapter 5 on Procurement.

4.3.8 Cash Management

Subrecipients must monitor cash management to ensure that systems comply with post federal award requirements. See Internal Controls section in this chapter for recommended actions to achieve the internal control environment.

4.3.8.1 Methods of Payment

The Uniform Guidance states that subrecipients must have procedures in place to minimize the time between receipt of funds from OHCS and disbursement to vendors. The Internal Controls section in this chapter makes consideration for how to comply with this requirement.

There are three general methods available to OHCS to transfer CDBG-DR grant funds to its subrecipients:

The **reimbursement method** (see [2 CFR 200.305\(b\)\(3\)](#)). The reimbursement method is a transfer of grant funds to your organization based on actual expenditures and supported by adequate source documentation. All subrecipients must submit a reimbursement request through the Neighborly system and provide evidence that all invoices and costs incurred were paid by the subrecipient and the work was inspected by the subrecipient, as applicable to the project. If a payment request is complete with supporting documentation, OHCS reimburses the subrecipient for eligible incurred costs. If the payment request does not accurately correspond to the source documentation or the source documentation is found to be inadequate, OHCS will return the reimbursement request to the subrecipient.

The **working capital advance method** (see [2 CFR § 200.305\(b\)\(4\)](#)). The working capital method involves the advance of cash to a subrecipient to meet its estimated disbursements for an initial period. After the initial period, the subrecipient will receive cash on a reimbursement basis. This method is used when subrecipients lack sufficient working capital in the early stage of project launch. The working capital method involves the advance of cash to subrecipients to meet their estimated disbursements for an initial period. After the initial period, the subrecipient will receive cash on a reimbursement basis.

Working capital advance may be used for initial payroll costs (e.g., a subrecipient needs to bill for payroll in advance of the month to ensure that checks go out on time but doesn't have actual costs or cash on hand to pay for those costs). OHCS would front the funds to the subrecipient, then reimburse the actual invoice when provided by the subrecipient, which replenishes the original advance. This advance acts like a “float” for the subrecipient to address cash needs until the end of the grant or when reconciled.

If subrecipients are aware of any initial funding needs that exceed their working capital, they should contact their OHCS contract administrator.

The **cash advance method** (see [2 CFR 200.305\(b\)\(3\)](#)). The cash advance method is the transfer of CDBG-DR funds from OHCS based upon your organization's request (and information on obligations — incurred costs) before the actual cash disbursements have been made. In other words, services are rendered, costs are incurred, but the invoice received has not been paid yet.

OHCS does not anticipate issuance of cash advances to any subrecipients. If a cash advance is issued by OHCS to a subrecipient, these funds are considered expended by HUD and do not require an interest-bearing account. These funds must be substantiated with supporting documentation that clearly identifies the costs incurred. After the subrecipient receives the funds and makes payment of the invoice, the project file must be documented

with the payment information. Payment of invoices must take place within three (3) business days of the CDBG-DR funds deposit.

4.3.8.2 Cash Management Requirements

Requirements concerning cash management include the following:

- Subrecipients must include accurate information for the reimbursement request to OHCS.
- Funds erroneously requested and received must be returned to OHCS in a timely fashion; an erroneous reimbursement request exists when it is determined that the funds transfer from OHCS resulted in more funds being drawn down than what was required by your organization's immediate disbursement needs. Subrecipients must contact their grant manager for the appropriate process to return funds to OHCS.
- Disbursement of funds must occur in a timely manner; the general rule is that payment (applies to cash advance method) must take place within three (3) business days of the CDBG-DR funds deposit. If payment takes longer than three (3) business days, written justification should be maintained in the project file.
- If the subrecipient places CDBG-DR grant advances in an interest-bearing account, the subrecipient must return the interest income to OHCS for OHCS to return to the U.S. Treasury per 24 CFR 570.502(b)(3)(i), as applicable, and 24 CFR 570.500(a)(2)). The interest earned on deposit of the amount of the working capital advance is not considered program income.
- For revolving loan fund accounts under the CDBG-DR funds, subrecipients must deposit funds in an interest-bearing account, and all interest earned on funds on deposit must be returned to the U.S. Treasury via OHCS no less frequently than annually (24 CFR 570.500(b)).

4.3.8.3 Improper Payment

An improper payment is any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. These situations may include but are not limited to a payment to an ineligible party; a duplicate payment; a payment unsupported or inadequately supported by invoices, contracts, or purchase orders to discern if the payment was proper; payments for an ineligible good or service; advances without prior approval; or payments for services not received. If a reimbursement request is submitted to OHCS and is determined to be an ineligible expense, OHCS will notify the subrecipient and revise (decrease) the reimbursement request to exclude the ineligible expense.

As a result of monitoring or audit review, if OHCS discovers that CDBG-DR dollars have reimbursed ineligible costs or activities, the total amount of the CDBG-DR reimbursement determined ineligible must be repaid in full (includes project costs and activity delivery costs).

Take prompt and corrective action If an improper payment is identified through your reconciliation process.

4.3.9 Program Income

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 the state or a unit of general local government.

OHCS does not anticipate any program income from its programs; however, the use of CDBG-DR funding may generate program income. ReOregon programs that could generate program income include, but are not limited to, the Homeowner Assistance and Reconstruction Program (**HARP**); Homeownership Opportunities Program (**HOP**); Planning, Infrastructure, & Economic Revitalization (**PIER**), and Intermediate Housing Assistance (**IHA**); Housing Recovery Services; and Legal Services. Programs likely to generate program income will be managed at the subrecipient level by municipalities and any other subrecipient.

Any program income received must be reinvested into eligible activities at the local level. Guidelines for the CDBG-DR programs mentioned above will specify if program income may be retained by the local government. Please refer to the OHCS website for specific program guidelines for program income tracking and reporting requirements.

4.3.9.1.1 CDBG-DR Program Income Rules

The following Federal Register Notice provides grant-specific definitions on program income: [87 FR 6364 III.E](#). For OHCS and its unit of general local governments, 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](#) provided new alternative requirements that are detailed below.

Note: If annual program CDBG (state formula) 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 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 low- and moderate-income, 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

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 of the money is considered program income, including the first \$35,000.
2. Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

4.3.9.1.2 Revolving Loan Funds

Revolving loan funds (RLFs) are pools of capital that are continuously replenished as loans are repaid by borrowers. RLFs are designed to support a range of activities, including community development, economic revitalization, housing rehabilitation, and disaster recovery. RLFs are typically established to support self-sustaining programs or initiatives that generate revenue or cost recoveries. These funds can be used for a wide range of purposes, such as infrastructure projects, loans, grants, or services that benefit a specific sector or community. RLFs allow the government or organization to maintain a consistent

source of funding for ongoing operations without relying solely on traditional appropriations.

While OHCS does not plan on establishing any RLFs as grantee, it may allow subrecipients to establish RLFs on a case-by-case basis.

4.4 Subrecipient Reimbursement Requests

4.4.1 Reimbursement Requests

The subrecipient should coordinate with OHCS and complete all necessary forms and training prior to submitting the first reimbursement request. Necessary documentation includes:

- Submitting subrecipient budget form
- All reimbursement requests to include:
 - Subrecipient invoice
 - OHCS invoice coversheet
 - Supporting document checklist ([see appendix](#))
- Reimbursement request submitted to OHCS
 - **Reimbursement Requests — Neighborly:** If subrecipients have access to Neighborly and have been instructed to submit reimbursement requests in the system, subrecipients will log into the [participant portal](#) to view their awarded projects. Subrecipients will create a draw request, enter a description (include any info pertinent to this draw), and submit. If the draw is returned, subrecipients will address issues and make corrections. If you have any questions, contact your OHCS contract administrator. OHCS provides initial and ongoing training to all vendors on how to properly complete CDBG-DR invoice forms and use Neighborly.
 - **Reimbursement Requests — Reimbursement Request Form:** If subrecipients don't have access to Neighborly, they will be instructed to use the [subrecipient reimbursement request form](#). Subrecipients will enter relevant information, upload the reimbursement request, and submit.

Additional OHCS guidance on invoicing can be found in the [appendix](#) for this chapter.

Effective source documentation supports all CDBG-DR grant expenditures (e.g., purchase orders, invoices from professionals, time sheets, construction pay applications). Reimbursement requests submitted to OHCS must include copies of all source

documentation that supports the full expenditure amount. Payments for incurred costs should never be made prior to an invoice review and approval process to document allowable costs. This process includes review of adequate documentation that can tell the story that:

- Explains the basis of the costs incurred (properly accrued), how the funds are used:
 - Identifies why the specific task/activity/item being billed
 - Identifies who performed the service or provided materials
 - Identifies why specific project management activities were performed and when they were performed (reporting number of hours and when they were worked is relevant to contract time)
 - Easily defends the expenditure to HUD, the Office of Inspector General, or an independent auditor
- Demonstrates eligible expenditures for an eligible activity; reasonable and necessary
- Provides the actual dates of the expenditure; incurred during effective period of agreement
- Properly determines the cost allocation to the federal award
 - Identifies why and how costs are eligible
- Provides the financial system has effective controls to safeguard cash, property and other assets

Supporting Document Checklist. OHCS provides this checklist for subrecipients to detail the supporting documentation that should be provided in the *Reimbursement Request* package:

- Invoices and documentation that do not meet the minimum requirements established in this chapter will be declined.
- Make sure that the costs were incurred during the period of performance for the subrecipient agreement.
- Adequate documentation should exist for all costs making up the reimbursement request.
- Source documentation establishes the “basis of cost.”

4.5 Recordkeeping

Accurate recordkeeping for reporting compliance is crucial for the successful management of your CDBG-DR funded project activities. Failure to document costs and other compliance requirements leads to monitoring findings that are much more difficult to resolve when records are missing, inaccurate, or otherwise deficient.

As discussed in this chapter, you must have internal controls to produce and retain adequate source documentation, and accounting records must adequately identify the source and application of the CDBG-DR funds. Additionally, your subrecipient grant agreement states the recordkeeping requirements relevant to your award. The universal CDBG recordkeeping standard is that all records must be *accurate, complete, and orderly*.

4.5.1 Financial Source Documentation

Financial source documentation is required with every reimbursement request and will be monitored by OHCS according to the Monitoring Policy (Chapter 13 Monitoring and Audit); therefore, you need to maintain records sufficient to adequately and accurately report on the financial status of your operations, include the following:

- Funds budgeted
- Funds already received to date
- Funds obligated in the current period and to date
- Funds expended in the current period and to date, with backup source documentation for any reimbursement request
- Cash on hand (if applicable to agreement with OHCS)
- Previous reimbursement request requested of OHCS but not yet received

Financial Documents to Be Maintained:

- Current approved application
- Subrecipient agreement (most current amendment/budget), including special conditions if applicable
- Resolve of special conditions/dates — if applicable to subrecipient agreement
- Current approved budget
- Current authorization letter/signatures
- Financial management systems (accounting books, software, reporting systems)
- Chart of accounts
- List of source documents to be maintained
- Policies and procedures for procurement (all purchasing/procurement policies and procedures that are applicable to the subrecipient agreement)
- Evidence of cost and price analysis, if applicable
- Verification that the vendor is not on the SAM.gov debarred list
- Financial status report (total budget, amount expended, unliquidated obligations, obligations, unobligated balance)

- Reimbursement request reports — requested of OHCS
- Board minutes for approval of contracts or bids
- Copy of most recent audit report
- Certification of insurance coverage/bonding
- CDBG-DR payroll records
- Certified construction payroll records (Davis-Bacon applicable) for construction-related costs
- Approved cost allocation plan or approved indirect cost rate plan — approved by cognizant agency
- Relevant financial correspondence
- Property inventory, if applicable
- Record of equipment purchases, if applicable
- Disposition/sales procedures for equipment purchased with CDBG-DR funds

4.5.2 Record Retention Requirement

The subrecipient agreement is the contractual document that details the financial and recordkeeping requirements and standards for entities granted funds to carry out specific, eligible activities for the CDBG-DR project (activities). The agreement includes the reporting and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist OHCS in meeting HUD's recordkeeping and reporting requirements.

The State of Oregon's requirements for record retention are more stringent than the requirements in the Uniform Guidance (2 CFR Part 200.334) and the CDBG requirements (24 CFR Part 570.490 (d)).

The State of Oregon requires the subrecipient agreement and all grant records to be retained for six (6) years after the final expenditure report is accepted. For CDBG-DR, this means from the date that the closeout report for the subrecipient award is executed by OHCS.

OHCS has the right to access all subrecipient financial records pertinent to the CDBG-DR award for monitoring and audit purposes.

4.6 Appendix/Attachments

4.6.1 Supporting Document Checklist

OHCS provides this checklist for subrecipients to detail the supporting documentation that should be provided in the *Reimbursement Request* package. This checklist is organized by type of cost: personnel and non-personnel.

4.6.1.1 Definitions of Types of Costs

Category	Description
Supplies and Materials \$200.453	Assets acquired with CDBG-DR funds with a per-unit cost of less than \$5,000.00
Equipment \$200.439	Assets acquired with CDBG-DR funds that have a useful life of at least one year and a per-unit cost of \$5,000.00 or more
Operating Expenses \$200.465	Rent, utility, and insurance costs for facilities being used to carry out eligible CDBG-DR program activities
Professional Services \$200.459	Services rendered by a consultant or contractor that specializes in a trade necessary to implement the CDBG-DR activity
Capital \$200.439	Expenditures to acquire, renovate, convert, rehabilitate, lease existing Real property to carry out eligible CDBG-DR activities

4.6.2 Personnel Costs | Supporting Document Checklist

4.6.2.1 Personnel Costs

Documentation submission frequency: every reimbursement request. Timesheets must be submitted for each employee who worked on the CDBG-DR project or activity.

<input checked="" type="checkbox"/> Required Contents	Purpose
<input type="checkbox"/> Specify the period (date range) of the pay period and must correspond with the employee's paycheck for that pay period.	To establish the pay period date range that corresponds with the employee's total costs for that period
<input type="checkbox"/> Reflect all hours worked during the pay period, regardless of funding source.	To account for all hours the employee worked during the pay period
<input type="checkbox"/> Identify the number of hours and percentage of total hours worked for each project/activity by funding source.	To account for each hour, or fraction thereof, attributable to the individual projects or activities by funding source
<input type="checkbox"/> Be signed and dated by the employee and supervisor or otherwise authorized electronically.	To demonstrate the employee and immediate supervisor certified that the timesheets are accurate and complete

4.6.2.2 Proof of Personnel Cost Incurred or Paid

Submission frequency: every reimbursement request. Payroll reporting documentation must be submitted for each employee who worked on CDBG-DR project or activity.

<input checked="" type="checkbox"/> Required Contents	Purpose
<input type="checkbox"/> Payroll report form itemizing the wages and benefits for the employee for each pay period, multiplied by the proportion of hours worked on the CDBG-DR project or activity	To demonstrate the allocability of direct personnel costs to the CDBG-DR project or activity

Category	Description
Personnel §200.430 and §200.431	Personnel costs (salary including fringe benefits) of employees implementing and administering CDBG-DR program

4.6.3 Non-personnel Costs | Supporting Document Checklist

Non-personnel costs include project hard and soft costs, consultants, supplies, materials, equipment, and other operating costs such as rent and utilities.

4.6.3.1 Invoice or Receipt

Submission frequency: Every reimbursement request includes invoices and/or receipts that must clearly show the costs incurred for the CDBG-DR project.

☑ Required Contents	Purpose
<input type="checkbox"/> Identify the date of purchase or period of performance of services.	To establish if the goods or services were purchased within the period of the subrecipient agreement with OHCS; and if applicable the contract period between the subrecipient and the vendor
<input type="checkbox"/> Itemize the goods or services purchased (quantity and amount). Time and Materials contracts must include the name/position, rate, and hours worked per day along with a description of the task(s) performed for each time entry being invoiced.	To identify the cost per unit (e.g., goods purchased, hours worked)
<input type="checkbox"/> Reflect the total cost net applicable credits or discounts.	To identify how the sum of costs per unit equals the amount requested for payment, less any deductions, discounts, or credits

4.6.3.2 Proof of Non-personnel cost incurred or paid

Submission frequency: With every reimbursement request, submit copies of each internally processed invoice package for each cost.

☑ Required Contents	Purpose
<input type="checkbox"/> Invoice package processed at subrecipient level marked with required approvals (e.g., signatures) compliant with local payment processing requirements whether the entity is a unit of local government or a nonprofit organization.	To demonstrate that the requested payment was first processed and approved for payment locally

4.6.4 QA/QC Checklist

Submission frequency: every reimbursement request (for use by subrecipient)

Checklist Item

- Acceptable and legible supporting documentation for each type of cost incurred, with clear indications that costs were approved for payment in accordance with local payment procedures
- Acceptable and legible supporting documentation for each type of cost incurred by sub-tier subrecipients, with clear indications that costs were approved for payment in accordance with local subrecipient and sub-tier subrecipient payment procedures
- The amounts on the supporting documentation sum to the amount requested for reimbursement on the required invoice coversheet
- Costs are eligible, do not exceed budgets by type of cost, have not already been reimbursed by CDBG-DR or another funding source, and were incurred during the period of performance
- Costs otherwise treated as indirect costs are not being treated as direct costs
- The indirect cost rate (if applicable) was properly applied to modified total direct costs

4.6.5 Subrecipient Timekeeping Guidance

4.6.5.1 Purpose

This document provides OHCS subrecipients with guidance on how to track time spent supporting CDBG-DR activities so that labor costs can be properly and adequately documented. In addition, this guidance describes requirements and best practices for timesheets in order to support the eligibility and allocability of costs.

General Requirements

Subrecipient payroll records used in support of federal projects should:

- A. Accurately reflect an after the fact accounting of all hours, activity, and work performed, inclusive of paid leave
- B. Be supported by a system of internal controls that provides reasonable assurances that charges to both federal and non-federal sources are recorded accurately and allocated properly
 - a. E.g., a documented process for weekly timesheet approvals by a supervisor
- C. Comply with internal accounting policies and practices
- D. Be incorporated into official payroll records and reconciled accordingly

Subrecipient payroll records used in support of federal projects should not:

- E. Be based on a pre-determined estimate or allocation between cost objectives.⁴
- F. Include uncompensated time

4.6.5.2 Timekeeping Procedures

Subrecipients with staff working on multiple federal cost objectives, working on a federal and non-federal cost objective, or working on a direct and an indirect cost objective should maintain detailed timesheets on either a weekly, biweekly, or monthly basis. Detailed timesheets should accurately record an after the fact accounting of all employee hours, activity, and work performed, inclusive of paid leave. Hours recorded should reflect actual hours worked, even if work exceeds 40 hours in a given calendar week.

If staff are working across multiple cost objectives, the subrecipient needs to use the number of hours worked on a particular federal grant's cost objective to calculate the *pro*

⁴ Cost objective: a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc. In this example, the CDBG-DR grant or a CDBG-DR program would be a cost objective.

rata share and determine how much of a salary is charged to that grant. See below for an illustrative example of this calculation using 1 week's payroll.

	Total	CDBG-DR	Program 1	Program 2	Program 3	Program 4
Employee Wkly Timesheet	40 Hours	20	5	1	2	12
% Distribution of Hours	100%	50%	13%	3%	5%	30%
Allocation of Wkly Salary	\$2,000	\$1,000	\$250	\$50	\$100	\$600

In this example, an employee worked 50% (20 hours of the total 40 hours worked) of his/her time on a CDBG-DR program. The result is that \$1,000, or 50% of his/her \$2,000 weekly salary, is charged to the CDBG-DR program.⁵

4.6.5.3 Timekeeping Codes

To ensure the calculation is accurate, subrecipients need to have an adequate personnel compensation process that provides reasonable assurance that the charges are accurate, allowable, and properly allocated. Employees and their supervisors will review the timesheet for accuracy and sign the timesheet to certify that the hours are correct.⁶ In addition, to the extent possible, it is a best practice that timesheets submitted as backup contain comments and descriptions with sufficient detail regarding the tasks the individual has performed that day for the hours reported.

Staff should use discretion when apportioning time to multiple cost objectives but should not select just one cost objective for a block of time unless the vast majority of the topic or activity relates to that cost objectives. OHCS relies on subrecipients to use their best judgment when allocating hours.

4.6.5.4 Special Considerations

One-time payments not accrued for during the pay period in question (e.g., severance pay or year-end bonuses) should only be charged to a federal cost objective to the extent allocable. For example, an employee worked 2,160 hours in the calendar year and receives a year-end bonus of \$1,200. Of the total worked, 180 hours (or 1/12) were charged to the particular federal cost objective. The *pro rata* share of the year-end bonus that can be charged would therefore be \$100.

⁵ If a subrecipient works on multiple CDBG-DR programs (e.g., HARP, HOP, IHA), the subrecipient would need to track hours to each program separately in order for OHCS to know how to charge costs to the grant correctly.

⁶ Digital signatures are also allowable.

4.6.5.5 Best Practices

The following best practices may help your organization maintain compliance and meet your performance goals and objectives.

- Supervision — Personnel designated to supervise time and effort reporting should certify that time and effort recorded is accurate, allowable, and submitted in a timely fashion and confirming proper alignment with cost objectives.
- Internal Control — Incorporate policies and procedures for measuring, documenting, and reporting time and effort expended on federal awards.
- Communication — Have organizational charts delineating responsible personnel and process flows to communicate the processes effectively.

4.6.5.6 Monitoring by OHCS

As a reminder, OHCS staff will monitor subrecipients to ensure that they have good internal controls. Regarding timekeeping, OHCS will review policies and payroll files to verify that subrecipients are documenting activities and how costs are being charged to the grant. During review, OHCS may review files such as the organizational chart, staffing and hiring plan, job descriptions, timesheets, general ledger, and subrecipient policies.

4.6.6 Subrecipient Invoicing Guidance

4.6.6.1 Summary

For OHCS and subrecipients to be reimbursed for CDBG-DR activities, HUD requires that all costs are assigned by OHCS in HUD's Disaster Recovery Grant Reporting system (DRGR) to the appropriate Action Plan Program, HUD eligible activity, National Objective, and Most Impacted and Distressed category.

To ensure that costs are allocated to the correct DRGR activity, subrecipients will complete an invoice coversheet that allocates invoiced costs by DRGR "activity." The instructions below provide guidance on how to complete and appropriately categorize costs when completing the invoice coversheet.

4.6.6.2 Procedure: Completing the Coversheet

For every reimbursement request, subrecipients will fill out the invoice coversheet.

- The first section will identify the subrecipient's name and address and specify the applicable contract number, contract period, invoice number, invoice date, and invoice service period.
- The second section will confirm the contract budget, prior billings, current billings, and remaining balance.
- The third section will require subrecipients to allocate invoice costs to DRGR activities (see below for more details).
- Subrecipients will print and sign their name, provide a phone number, and date.

In addition, the second tab of the invoice coversheet includes a log of all past and current invoices for the contract. This log provides transparency to both the subrecipient and OHCS on invoice history and any remaining submitted, but unpaid invoices.

In addition to the invoice coversheet, subrecipients will provide their invoice and any other documentation to support the invoiced costs. Subrecipients can refer to the Supporting Document Checklist above for guidance on requirements.

4.6.6.3 Procedure: Allocating to DRGR Activities

DRGR Activities designate which HUD eligible activity and national objective is being invoiced by the subrecipient. Within each program, the subrecipients must identify the appropriate DRGR Activity(ies) on their invoice. For outreach, each subrecipient will be benefiting two national objectives: Low- and Moderate-Income (LMI) populations and Urgent Need populations.

For outreach contracts, subrecipients are paid for their time spent on the contract plus allocable portions of additional costs for supplies, travel, services, and other items necessary to perform the work. These costs are not tracked by specific beneficiaries (e.g., supplies are purchased or travel costs are incurred in support of all beneficiaries in some undefined proportion, not just for those that are LMI, for example). For this reason, the invoice amount must be allocated to DRGR Activities using some percentage. **OHCS will provide this percentage to the subrecipient on a quarterly basis in order to know what dollar amount to include for LMI DRGR Activity and Urgent Need DRGR Activity.**

As OHCS develops and updates DRGR Activities, subrecipients will be provided with updates to ensure that they are using the latest information at the time of invoicing.

All determinations and proration should be adequately documented in the invoice along with the invoice coversheet for OHCS to be able to assess the process each subrecipient used for allocating costs and its appropriateness and accuracy.



5 Procurement Guide for Subrecipients and Subgrantees

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5 Procurement Guide for Subrecipients and Subgrantees

5.1 Background

CDBG-DR subrecipients procuring goods and services with their grant funds must ensure that they are following all program procurement statutory and regulatory requirements. The urgency in post disaster recoveries often leads state and local officials to work to quickly restore infrastructure and public services and help private companies and citizens make repairs. However, grantees and subrecipients that do not follow all CDBG-DR program requirements may be forced to repay federal funds.

This chapter establishes standards and guidelines for procurement of supplies, equipment, construction, engineering, activity administration, architectural, consulting, and other professional services for CDBG-DR programs. Subrecipients are required to follow the federal procurement requirements found in 2 CFR 200.318 through 200.326 and should have their procurement policies reflect these requirements.

The following standards and guidelines are being furnished to ensure that subrecipients of CDBG-DR funds procure materials and services in an efficient and economical manner that complies with the applicable provisions of federal and state laws and executive orders.

The foregoing standards do not relieve CDBG-DR subrecipients of any contractual responsibilities under its contracts or local, state, or federal law. Subrecipients are responsible, with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement entered into in support of the grant.

5.2 Application of Federal Regulations

OHCS administers CDBG-DR funding received from HUD. Any activity financed in whole or in part with funding from these federal programs are subject to compliance with 2 CFR 200.318 through 2 CFR 200.327 and any other applicable federal or state requirements for the CDBG-DR programs. Contracting entities including subrecipients must follow the provisions as described in 2 CFR 200.318 through 2 CFR 200.327.

OHSC policies and procedures for subrecipients implement requirements of 24 CRF 570.489(g) for its subrecipients including:

- Full and open competition

- Identification of methods of procurement and their applicability
- Prohibition of cost plus a percentage of cost
- Assurance that all purchase orders and contracts include any clauses required by federal statutes, executive orders, and implementing regulations
- Subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.331

At a minimum, the subrecipient must understand and adhere to the current regulations and associated advisories governing procurement when utilizing CDBG-DR funds.

5.3 Procurement Policies Requirements

Subrecipients should determine whether their procurement policies and procedures comply with all federal requirements contained in 2 CFR 200.318-326. If the policy does not contain all federal requirements (and the subrecipient intends to use CDBG-DR funds to pay for such services), the policy must be amended accordingly. The subrecipient must design a policy that meets requirements as prescribed in 24 CFR Part 570.489 and State of Oregon Procurement laws.¹

Administration and Oversight: Subrecipients must conduct administration and maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Standards of Conduct: Every subrecipient must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-DR assistance, or the management of federally assisted or purchased property.

Conflict of Interest: For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the parties indicated herein have a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. For more

¹If Oregon procurement regulations and requirements are more stringent or have additional conditions not required by federal procurements standards at §200.318-326, then the state may utilize its own procurement requirements.

information on conflict of interest, see page 16 at 2 CFR 200.318(b) 2 2 CFR 200.318(c)(1) (24 CFR 570.489(g), 2 CFR 200.318(c) (1))

Gifts and Gratuities: The officers, employees, or agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.

Avoidance of Unnecessary or Duplicative Items: Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items by considering consolidating or breaking out procurements to obtain a more economical purchase.

Value Engineering Clauses: Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

Awarding to Responsible Contractors: Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Record Keeping: Subrecipients must maintain records sufficient to detail the history of procurement. These records shall include, but are not limited to, the following:

- Rationale for the method of procurement
- Selection of contract type
- Independent cost estimate
- Request for proposals/quotations/bids
- Documentation of distribution of opportunity
- Responses to procurement
- Bid evaluations
- Contractor selection or rejection
- The basis for the contract price

Time and Materials Contracts: Subrecipients may use these types of contracts only when no other contract is suitable, and the contracts includes a ceiling price that the contractor exceeds at its own risk. (2 CFR 200.318(j))

Dispute Resolution: Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement.

5.4 Procurement Procedures and Standards (2 CFR 200.318-326)

Subrecipients must have written procedures for procurement transactions that ensure that all solicitations align with federal requirements. Subrecipients should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other important requirements of procurement. The specific features of the named brand that must be met by offerors must be clearly stated.

Clearly set forth all requirements which the offerors must fulfill:

- The procurement must identify the source(s) of funds being used for the project (e.g., CDBG-DR).
- Subrecipient should identify all other factors to be used in evaluating bids or proposals.
- Awards shall be given only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors who develop or draft specifications, requirements, statements of work, or invitations for bids or request for proposals must be excluded from competing for such procurements.

Free and open competition should be encouraged by utilizing the following best practices:

- Avoid use of “brand names” in procurement.
- Avoid geographic preferences.
- Avoid use of retainer vendors that have not been specifically procured for this project.
- Post opportunity in newspaper of general circulation on grantee and subrecipient website.
- Provide response time that is sufficiently long to provide for adequate responses (30 days is typical minimum).

Some situations considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Non-competitive pricing practices between firms or between affiliated companies
- Non-competitive contracts to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying only “brand name” products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement
- Any arbitrary action in the procurement process

When using prequalified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not preclude potential bidders from qualifying during the solicitation period.

Proposed procurement actions must be reviewed by subrecipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical practical procurement. Consideration should be given to consolidating or breaking out to obtain a more economical CDBG-DR project.

To foster greater economy and efficiency, grant recipients are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goals and services.

Regulation 2 CFR 200.323 indicates that cost plus the percentage of cost method of contracting shall not be used. In addition, contracts with other public agencies will only allow actual cost to be paid. No profit is allowable when contracting with other public agencies.

Recipients must perform an independent cost analysis in advance of procurement. This includes contract modifications and change orders. Only allowable costs may be included.

Recipients must maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase order.

5.4.1 Time and Materials Contracts

The non-federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at his/her own risk. Time-and-materials type contract means a contract whose cost to a non-federal entity is the sum of:

- The actual cost of materials
- Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price, which the contractor exceeds at his/her own risk. Further, the non-federal entity awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Subrecipient's are also encouraged to take the following steps to further open and fair competition and cost savings:

- Use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

5.4.2 Separation of Duties

One of the checks and balances to limit fraud in procurement is through the separation of duties of staff. The person delegated to order the goods or manage the procurement process should be different from the person receiving and accepting the goods and the person paying for the order. When this is not possible due to the limited size of staff, additional rules should be used, such as limiting dollar authorizations and periodic reviews by an independent individual. The grantee should ensure that only designated individuals have the authority to make binding contracts.

Procurement procedures should outline:

- The positions involved in the procurement process and the responsibilities of each person
- A formal system of authorization and review
- Separation of duties

The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he/she should not touch the books.

5.4.3 Public Website

In recent appropriations acts, Congress has required that a website be developed and maintained that provides information to the public on proposed purchasing with CDBG-DR funds and the status of those actions. This provides transparency to the public and allows for maximum accountability for the work performed, contractor selected, and status of the work.

The types of information that should be available on the website include:

- The grantees procurement policies
- The status of procurements projected, underway, and completed
- A copy of the solicitation
- A copy of the executed contract that grantees have procured directly
- A standard contract template as a good tool to maintain and keep current on the public website

5.5 Methods of Procurement²

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Dollar Thresholds - Federal
Micro-Purchase Requirements	No solicitation required	Price analysis	1. Fixed Order 2. Fixed Price	Supplies, Produced Items, Single Task Service	Under \$2,000 for construction, Under \$10,000 for all other purchases
Small Purchase	Price or rate quotations - an adequate number (at least 3) Submitted bids	Price analysis	1. Fixed Order 2. Fixed Price	Supplies, Produced Items, Single Task Service	\$250,000 or less for produced items, 150,000 or less for non-construction services
Sealed Bid Formal Advertising	Submitted bids	Price analysis, Cost analysis	Fixed Price	Construction Items, Produced or Designed Items	All construction contracts including less than \$150,000, Produced or designed items over \$150,000

² The table breaks down thresholds by type of procurement. Refer to [2 CFR 200.320](#) and the [Federal Acquisition Regulation \(FAR\)](#) for details.

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Dollar Thresholds - Federal
Competitive Proposals	Submitted proposals	Price analysis, Cost analysis	1. Cost Reimbursement 2. Fixed Price 3. Time and Materials	Professional Services, Multi-Task Services, Designed Items	Professional services and/or multi-task services over \$150,000 Designed items over \$150,000 when sealed bids are not appropriate
Non-Competitive Proposals	Submitted proposals	Cost analysis	1. Cost Reimbursement 2. Fixed Price 3. Time and Materials	Professional Services, Single Task Service, Multi-Task Services, Designed Items	No particular threshold, but may only be used when other methods are not feasible

5.5.1 Informal Procurement Methods

When the value of the procurement for property or services under a federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1 or a lower threshold established by a non-federal entity, formal procurement methods are not required. The non-federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

5.5.1.1 Micro-purchases

- **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (varies depending on item to be procured, consult state policy for most recent amount). To the maximum extent practicable, the non-federal entity should distribute micro-purchases equitably among qualified suppliers.
- **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-federal entity considers the price to be reasonable based on research, experience, purchase history, or other information and documents accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved pursuant to their policy by the subrecipient.
- **Micro-purchase thresholds.** See chart above for applicable micro-purchase thresholds.

5.5.1.2 Small Purchases

- **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-federal entity.
- **SATs.** The non-federal entity is responsible for determining an appropriate SAT based on internal controls, an evaluation of risk, and its documented procurement procedures, which must not exceed the threshold established in the Federal Acquisition Regulation (currently \$250,000). When applicable, a lower SAT used by the non-federal entity must be authorized or not prohibited under state, local, or tribal laws or regulations.

5.5.2 Formal Procurement Methods

When the value of the procurement for property or services under a federal financial assistance award exceeds the SAT, or a lower threshold established by a non-federal entity, formal procurement methods are required. Formal procurement methods require the following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section.

The following formal methods of procurement are used for procurement of property or services above the SAT or a value below the SAT the non-federal entity determines to be appropriate.

5.5.2.1 Sealed Bids

The sealed bids method is a procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction.

- In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available.
 - Two or more responsible bidders are willing and able to compete effectively for the business.
 - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- If sealed bids are used, the following requirements apply:
 - An independent estimate of cost must be provided by qualified staff of the procuring agency or an outside third party that will have no role in the contract to be awarded, in advance of the award.
 - Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised.
 - The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.

- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- Any or all bids may be rejected if there is a sound documented reason.

5.5.2.2 Request for Proposals (RFPs)

A proposal is a procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- An RFP must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- An independent cost estimate must be provided in advance of the award. This can be done by qualified staff of the procuring agency or a qualified third party. No one involved in the development of the independent cost estimate (ICE) or the RFP may participate in the awarded contract. Development of the ICE is preferably done in advance of procurement.
- The non-federal entity must have a written method for conducting technical evaluations of the proposals received and making selections. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-federal entity, with price and other factors considered.
- The non-federal entity may use competitive proposal procedures for qualifications-based procurement referred to as a request for qualifications (RFQ) for architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

5.5.2.3 Non-competitive Procurement

There are specific circumstances in which noncompetitive procurement can be used. Non-competitive procurement can only be awarded if one or more of the following circumstances apply:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
- The federal awarding agency or pass-through entity expressly authorizes a non-competitive procurement in response to a written request from the non-federal entity
- After solicitation of several sources, competition is determined inadequate.

Independent cost estimates are still required for non-competitive procurements and the procurement files must be well documented with the rationale for selecting this type of procurement.

5.6 Phases of Procurement

There are phases of procurement that include pre-award through post award and reporting and administration. So, before buying goods and services with CDBG-DR to assist in recovery efforts, subrecipients should keep the following in mind:

1. Contractor versus subrecipient determination
2. Subrecipient agreement/subgrantee/intergovernmental agreements
3. Environmental review clearance
4. Authority to use grant funds
5. Use of funds
6. Price and cost analysis
7. Profit negotiation
8. Written system of contract administration
9. Pre-qualified contractor or vendors
10. Suspension and debarment

5.6.1 Contractor/Subrecipient Determination Form

Subrecipients must document prior to procurement that a determination has been made that the relationship into which they will enter is contractual. See example of Determination Form.

5.6.2 Subrecipient Agreement, Subgrantee Agreement, and Intergovernmental Agreements

Subrecipients must have fully executed agreement with required federal and state provisions prior to the starting procurement action and/or executing any project.

5.6.3 Environmental Review Clearance

Environmental review responsibilities are a general condition of all CDBG-DR grants and must be completed prior to the implementation and committal (obligation) of any funds for the approved project to align with the National Environmental Policy Act requirements. Any funds committed, awards made, contracts executed, or projects started (implemented) prior to the completion and approval of the environmental review and receipt of Authorization to Use Grant Funds (AUGF) is considered a “choice limited action.”³ For more information on the process for completion of the environmental review, subrecipients should refer to the Environmental Review Chapter of the subrecipient manual.

5.6.4 Authority to Use Grant Funds

The subrecipient must have received authority to use grants funds from the grantee. This must be on file. Once the Part 58 environmental requirements have been met, the responsible entity (for subrecipients and units of general local government this is the state)

³ HUD defines a choice limiting action as one that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, signing a lease agreement, real property acquisition, rehabilitation, repair, demolition, disposition, or new construction. Real property acquisition, new construction, disposition, and demolition are not eligible Emergency Solutions Grant (ESG) Program costs; however, for the purposes of environmental review, projects are based on the aggregation of all activities that are included in the scope of the environmental review. So even if ESG Program funds are only used to pay for a portion of the overall project, recipients and subrecipients should still be aware of the non-ESG eligible activities involved that are considered choice limiting actions. Activities listed at [24 CFR 58.35\(b\)](#) that are Categorically Excluded Not Subject To 58.5 (e.g., Tenant-Based Rental Assistance, provision of services) are not choice limiting actions.

the state will issue an “Authorization to Use Grant Funds” (AUGF). This means that an entity can enter into a procurement action.

In no event should a “**choice limiting action**” be entered into prior to receiving the AUGF. Entering into any contract, announcing the selection of a contractor and entering into an unconditional purchase agreement would be examples of “choice limiting actions.” Taking this form of action has the potential for tainting a procurement, requiring the procurement be redone, or it can disqualify the entire project for CDBG-DR funding. Environmental reviews must be completed and approved by the certifying entity. For more information on the process for completion of the environmental review, subrecipients should refer to the Environmental Review Chapter of the subrecipient manual.

5.6.5 Use of Funds

Use of funds must respond to need. Subrecipients must first identify and document a need for goods and services before undertaking procurement. CDBG-DR subrecipients need to make clear the connection between disaster relief, recovery, and related investments in housing, infrastructure and those made to businesses in support of the local economy. Subrecipient agreements should detail the project to be undertaken, the national objective(s) to be achieved, the eligible uses of CDBG-DR funds, and any other funding anticipated for the project.

5.6.6 Independent Cost Estimate

HUD and 2 CRF Part 200 require that the procuring entity conduct an independent cost estimate **in advance of procurement**. This is an estimate of goods/services to be acquired under a contract or a modification. It serves as a yardstick measure in determining price/cost reasonableness, for budgetary purposes, and to help determine procurement method.

It is prepared **before** solicitation (or modification) and may not be necessary for micro-purchases (< \$10,000). If a significant period of time elapses or market conditions change between the time ICE was prepared and offers received, the ICE may need to be updated.

In developing the ICE, the procuring entity may use:

- Price last paid for similar procurement
- Catalog price or other advertised offers
- Personal experience
- Other historical information

- Detailed analyses performed by qualified party

These estimates may be developed in-house or using outside parties (or both). Depending on the type of project to be undertaken, this independent cost estimate can be done by any individual or entity with the proper certifications relevant to the procurement. Appendix A of this document has a sample form that can be utilized for cost estimates.

For a multifamily project or an infrastructure project, this can be an architect or engineer. For single family rehab, a widely recognized cost estimating software (Xactimate or RS Means) can be used. Entities with engineers on their staff may use a staff engineer to provide the independent cost estimate.

When using outside parties *avoid conflicts of interest* and ensure that the outside party does not obtain a competitive advantage from advance knowledge of the cost estimate. For this reason, it is important that the entity providing the independent cost estimate be **precluded from bidding** on the contract and have no financial interest or involvement in the firm ultimately selected.

5.6.7 Price and Cost Analysis

As specified in 24 CFR 85.36(f), a cost analysis or price analysis must be performed for every procurement action, including contract modifications (e.g., "change orders"). The degree of detail required varies with the procurement method and contracting circumstances. These are addressed below.

5.6.7.1 Price Analysis

Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements. It must be used in all cases where a cost analysis is not performed.

5.6.7.2 Cost Analysis

Cost analysis is a review and evaluation of the separate elements of cost that make up the contractor's cost proposal.

It requires that the cost principles be used to determine the allowability and reasonability of costs. A cost analysis is required when:

1. The competitive proposal method of contracting is used (see 24 CFR 85.36(d)(3)), (e.g., acquisition of professional, consulting, A/E services). For procurement of these services, offerors are required to submit cost proposals breaking down the elements of their proposed costs.

2. You are negotiating a contract with a sole source, as justified under 24 CFR 85.36(d)(4). You must request a complete cost breakdown and use these cost principles to establish a fair and reasonable price or established cost.
3. After soliciting sealed bids, you receive only one bid in response, which differs substantially from your independent estimate. If you find that bid unreasonable and you elect not to seek further competition, then you may cancel the solicitation and negotiate a contract price with the sole bidder. If so, you must request a cost breakdown of his/her price and use the cost principles to determine price reasonableness.
4. You are negotiating a modification (including change orders) to any contract that changes the work previously authorized and impacts the price or estimated cost, upwards or downwards. You must request a cost breakdown of the contractor's proposed cost. NOTE: Modifications that change the work beyond the scope of the contract must be justified as a non-competitive action per 24 CFR 85.36(d)(4).

If none of those conditions apply, the work must be procured competitively.

The only circumstances under which you do not need to conduct a cost analysis when adequate price competition is lacking is if the price can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or the price is set by law or regulation. (An item is “sold in substantial quantity” when the quantities regularly sold are sufficient to constitute a real commercial market. For services to be sold in substantial quantities, they must be customarily provided by the contractor, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely to provide the services).

5.6.8 Conducting a Price and Cost Analysis

Subrecipients should include the following in their analysis:

- Check the accuracy of the prices submitted.
- Evaluate the necessity of the proposed cost items.
- Evaluate the separate elements of cost.
- Review proposal for potential cost overruns, taking into consideration the vendor’s past performance.
- Compare proposed prices to the subrecipient’s independent cost estimate.
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work.

5.6.9 Profit Negotiation

Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. All of the following criteria must be considered when negotiating profit:

- Complexity of the work to be performed
- Amount of risk the contractor may be exposed to (performance and/or cost)
- Contractor's investment and resources dedicated to performing the contract (e.g., labor, oversight)
- Use of subcontractors by the prime contractor and the nature of the work to be performed
- Quality of the contractor's past performance for similar work
- Industry profit rates in the surrounding area for similar work

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation.

5.6.10 Written System of Contract Administration

Subrecipients must have a system of contract administration in place, which will be based upon the management of federal funds but may reflect additional state and local laws and regulations.

5.6.11 Pre-Qualified Contractors or Vendors

If there is a list of pre-qualified contractors or vendors, preferably, subrecipients have created these lists prior to any federal appropriation to accelerate procurement. Subrecipients should open the list again when they have received notice of CDBG-DR appropriations to allow additional qualified vendors to join the list.

The non-federal entity must ensure that all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-federal entity must not preclude potential bidders from qualifying during the solicitation period.

Even with such a list, the non-federal entity must accept proposals from qualified bidders not listed in addition to ensuring compliance with federal requirements such as Section 3,

Historically Underutilized Businesses, Small Minority Businesses, and Women Business Enterprises. The subrecipient must take additional affirmative steps.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises
- Establishing delivery schedules, where the requirement permits, that encourage participation by small and minority businesses and women's business enterprises
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce as well as HUD's Section 3 Business Registry

5.6.12 Suspension and Debarment

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Subrecipients must ensure, **prior to award**, that all contractors receiving CDBG-DR funds have met all the eligibility requirements outlined in state and federal law. At a minimum, the following steps must be taken to ensure contractor eligibility for all services procured.

All contractors, including professional consulting and engineering firms, must be cleared via a search of the Federal System of Award Management (SAM) to ensure that the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov>. A copy of the SAM search result must be kept in the subrecipient's file on that contractor/vendor.

Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements. It should be noted that if any of the above-listed parties

are deemed ineligible to receive CDBG-DR funds after award of contract, the contract will be immediately terminated. The matter must be reported to the OHCS for further action.

Prior to award, subrecipients should also check the State of Oregon debarred contactors list, which can be located at <https://www.oregon.gov/boli/employers/pages/pwr-ineligible-contractors.aspx>. Pursuant to ORS 279C.860, contractors on this list are ineligible to receive public works contracts subject to the Prevailing Wage Rate Law.

5.6.13 Conflicts of Interest

Subrecipients of CDBG-DR programs must avoid, neutralize, or mitigate actual or potential conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the subrecipient agreement or impact the integrity of the procurement process. Subrecipients must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-DR assistance, or the management of federally assisted or purchased property. Subrecipients must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489.

For the procurement of goods and services, no employee, officer, or agent of subrecipients may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g))

For all other cases, other than the procurement of goods and services, non-procurement conflict of interest provisions are applicable to any person or entity including any benefitting business, utility provider, or other third-party entity that is receiving assistance, directly or indirectly, under a subrecipient agreement that might potentially receive benefits from CDBG-DR awards.

In such instances (non-procurement), the general rule is that no person/entity described above who:

- Exercises or have exercised any functions or responsibilities with respect to CDBG-DR activities
- Is in a position to participate in a decision-making process

- Is in a position to gain inside information with regard to such activities may obtain a financial interest or benefit from a CDBG-DR-assisted activity, or have a financial interest in any vendor contract, subcontract, or agreement with respect to a CDBG-DR-assisted activity, or with respect to the proceeds of the CDBG-DR-assisted activity, either for themselves or those with whom they have family or business ties

In addition, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements (see 2 CFR 200.319).

For example, an administrative consulting firm that participates in developing or distributing the RFP may not then submit a proposal in response to that RFP.

Some examples of conflicts of interest:

- The same individual or firm has an interest in both a benefitting business identified in the subrecipient agreement performance statement and any consultant or construction contracts required to complete the project.
- Elected officials vote on awarding of funds to organizations where a family member is on the staff or where the elected official is on the subrecipient's board.
- Local officials enter into vendor contracts with companies they are affiliated with through employment of, or ownership by, themselves or their relatives.
- Subrecipient officials or staff have relatives who may benefit from a subrecipient's programmatic activities.

5.7 Allowable Contract Types

Types of contracts that a subrecipient can utilize include:

- Purchase orders
- Fixed priced contract
- Cost reimbursement contracts
- Time and materials contracts

5.7.1 Purchase Orders

Purchase orders are a form of contract utilized for the purchase of supplies, single task services, and produced items procured through the small purchase method.

A Purchase order should contain, at a minimum, the following:

- Agency name and address
- Agency contract or purchase order number
- Date of the order
- Term of contract (delivery period after receipt of order or beginning and end dates)
- Contractor's name, payee/vendor identification number, and address, including ZIP code
- National Institute of Governmental Purchasing class/item for each item
- Purchase code category
- List of contract documents and their order of precedence
- List of awarded items with quantity, unit of measure, and unit price with extended totals
- Signature of authorized/certified purchasing representative

5.7.2 Fixed Price Contract

A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.

This contract type:

- Places maximum risk and full responsibility for costs and resulting profit loss on the contractor
- Provides maximum incentive for the contractor to control costs and perform effectively
- Imposes and minimum administrative burden upon the contracting parties

5.7.3 Cost Reimbursement Contract

A cost reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to establish a fixed contract price. These types of contracts establish an estimated total cost for the purpose of obligating funds and establishing a ceiling that contractors may not exceed (except at their own risk).

5.7.4 Time and Materials Contract

Time and materials contracts specify the scope of a project but are open-ended. They set out prices for materials and other indirect costs (ODC's) and hourly rates for labor, and the client is billed at those rates for as many hours and as much material as is required to complete the project. All time and materials contracts must include a "not to exceed" amount. This type of contract is most appropriately used for professional services contracts.

5.7.5 Changes/Amendments to an Executed Contract

When changes to an executed contract are necessary that would result in a change to the Subrecipient Agreement, the subrecipient should request an adjustment to both the Subrecipient Agreement and the subrecipient contract. When changes to an executed construction or contract are necessary, the subrecipient must submit follow their policy on documenting the requirements for a change order or amendment. The subrecipient must ensure that all items listed on the change order are eligible and comply with the Subrecipient Agreement as outlined and all environmental review requirements. Change orders for construction contracts will require additional documented analysis of determination that added costs are necessary, reasonable, and eligible. Changes or additions to scopes of work for subrecipient agreements must also be documented.

5.7.6 Bonding Requirements and Insurance

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of OHCS and the State of Oregon, provided the awarding agency has made a determination that the federal interest is adequately protected.

If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100% of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100% of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. The State of Oregon bond requirements can be found at <https://www.oregon.gov/ccb/pages/ccb%20license.aspx>. Subrecipients should comply with bond requirements as directed by OHCS.

Note: If state or local procurement policies require higher or additional bonding and insurance requirements, they must be followed for CDBG-DR procurement.

5.7.7 Required Contract Provisions (contract provisions for non-federal entity contracts under federal awards)

All contracts using federal funds must contain the following provisions:

- Specific period of performance/project schedule
- Specific amount (can be “not to exceed amount”)
- Specific milestones or deliverables
- Liquidated damages provisions
- Termination for cause or convenience (if over \$10,000)
- Records of non-federal entities
- Record retention
- HUD clauses (a complete copy of clauses can be found in Appendix D)
 - Equal Opportunity
 - Davis-Bacon Act
 - Section 3 (if construction over \$200,000)
 - Contract Work Hours and Safety Standards
 - Rights to Inventions Made under Contract or Agreement
 - Clean Air Act
 - Debarment and Suspension
 - Byrd Anti-Lobbying Amendment

- Solid Waste Disposal Act⁴

Subrecipients must ensure that contracts do not contain any cost plus or incentive savings provisions.

Please see Appendix C for clauses that should be included in every procurement, along with wage determinations, if applicable.

5.8 Procurement Documentation Requirements

Any project requiring procurement should maintain a complete procurement file for each procurement. This file must be retained consistent with the record retention requirements of the state's CDBG-DR grant and be available for review and monitoring upon request.

Each procurement record should contain the following information:

- A copy of the Authorization to Use Grant Funds
- An independent cost estimate for the project or services being procured
- A complete copy of the procurement documents, which must include as relevant:
 - A complete copy of the technical proposal
 - Evaluation criteria
 - Submission timeline and details
 - Proof of advertisements, if applicable
 - Proof that an adequate number of firms were directly contracted
 - Copy of bidding/proposal packages received
 - Copy of bid evaluations and tabulations
 - Minutes of award or hiring resolutions (if applicable)
 - Debarment verification
 - All submission requirements
 - All HUD riders
 - Davis-Bacon Act/prevaling wage determination

⁴ A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- Labor standards requirements
- Section 3 requirements
- Inclusion of a sample contract is also recommended (not required)
- Copy of notice to award

Any relevant documentation related to the communication of the procurement including responses to questions concerning the procurement must be included. This documentation can be critical especially when written rationale must be provided for extenuating circumstances.

5.9 Appendices

5.9.1 Appendix A — Form for Independent Cost Estimates

Note: This example form lends itself better to ICE for A/E, other professional services, and contracts for “Time and Materials.” For construction projects, a licensed engineer or architect can provide an ICE based on the technical specifications provided. For residential construction, a qualified inspector can provide an ICE based on nationally recognized construction cost software (e.g., Xactimate or RS Means).

Grantee Estimated Cost Sheet

Project Name	Due Date of RFP/RFQ		
Street Address			
City, State, ZIP	Total Price \$		
A. <u>Direct Labor</u> Attach a copy of the scope of services identified in the RFP/RFQ. Each task identified in the scope of services should be assigned an estimated amount of time for completion. The total			
Job Title (e.g., Architect, Draftsman,	Est. No. of Days	Daily Rate	Est. Cost
1.			
2.			
3.			
4.			
5. Total Direct Labor			
B. <u>Overhead/Indirect Costs</u>	<u>Rate</u>	<u>Base</u>	<u>Est. Cost</u>
C. <u>Other Direct Costs</u>			
Transportation	Est. # of site visits	Rate	Est. Cost
Per Diem	Est. No. of Days	Daily Rate	Est. Cost
Reproduction	Est. No. of Pages	Page Rate	Est. Cost
Other (specify)			\$
1.			\$
2.			\$
3.			\$
4.			\$
5. Total Other Direct Costs			\$
D. Subcontracts			
Type of Subcontractor(s)	Est. No. of Days	Daily Rate	Est. Cost
1.			
2.			
3. Total Subcontractor Costs			
Total Estimated Costs (Line A5+B+C5+D3)			\$
Profit			\$
TOTAL ESTIMATED PRICE			\$

5.9.2 Appendix B — Award Form



DATE:

PROJECT INFORMATION

Grant

Loan

Contract

Program Funding Name:

Service Area(s):

SUBRECIPIENT/CONTRACTOR INFORMATION

Name:

Address:

Chief Financial Officer:

**Unique Entity Identifier
(SAM.gov)**

COMMUNITY DEVELOPMENT INFORMATION

Contact Person:

Email Address:

Telephone Number:

FEDERAL FUNDS INFORMATION

Federal Award Number:

Federal Award Date:

**Catalogue of Federal Domestic Assistance
(Number):**

**Total Federal Award
Amount:**

**Total Federal Funds Award to
Recipient:**

Award for Research and Development: Yes No

Indirect Cost Rate Approved/Allowed: Yes No

GRANT/LOAN AWARD PERIOD

**Grant/Loan Award
Period:**

Length of Award Period:

FEDERAL AWARD PROJECT DESCRIPTION

5.9.3 Appendix C — Required Contract Clauses for Use when Procuring Projects Using Federal Funds (2 CFR [Part 200 — Appendix II])

- Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- **Equal Employment Opportunity.** Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by U.S. Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the U.S. Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by U.S. Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by U.S. Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by the awarding agency.
- **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the federal

awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in SAM, in accordance with the Office of Management and Budget guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- **Solid Waste Disposal Act.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.



6 Labor Standards

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6 Labor Standards

6.1 Introduction

Subrecipients implementing projects involving construction contracts are required to comply with applicable labor-related laws and regulations. The responsibilities, applicable statutes, and steps to ensure compliance are included within this chapter.

Communities implementing projects involving construction contracts for public facilities, public works, infrastructure, or multifamily housing of eight units or more than \$2,000 must comply with the following laws and regulations:

1. Federal Fair Labor Standards Act; 29 USC (United States Code) Chapter 8
2. Davis-Bacon and Related Acts (DBRA); [40 USC Chapter 31, Subchapter IV](#)
3. Copeland Anti-Kickback Act; [18 USC §874](#), [40 USC §3145](#)
4. Contract Work Hours and Safety Standards Acts (CWHSSA); [Field Operations Handbook, Chapter 15](#)
5. State of Oregon Labor Standards and local laws and regulations

Information about each requirement can be found on HUD’s website at the following link: https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process. Activities financed by CDBG that are not “construction work” do not trigger Davis-Bacon requirements, for example:

- Real property acquisition
- Architectural and engineering fees
- Other professional services (legal, accounting, testing**)
- Other non-construction items (furniture, business licenses, real estate taxes)

Davis-Bacon requirements apply to the **entire** construction contract, even if CDBG funds finance only a **portion** of a construction contract.

**Note: Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to the U.S. Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.

Subrecipients are encouraged to contact the ReOregon Program Staff assigned to its agreement to discuss any questions regarding the applicability of labor standards, their interpretation, or the associated record keeping requirements.

6.2 Subrecipient Administration of Labor Standards Requirements

The subrecipient should take the following steps to ensure compliance with required labor standards. Each of these tasks are described in detail in the following pages.

Pre-Construction Tasks

1. Designate a Labor Compliance Officer
2. Obtain the Effective Wage Determination
3. Confirm the Recommended Construction Contractor's Eligibility Status
4. Document Wage Determination
5. Award the Construction Contract
6. Hold a Pre-Construction Conference

Post Start of Construction Tasks

1. Perform Field Inspections for Labor Compliance
2. Conduct Payroll Verification Interviews
3. Maintain Compliance Records

6.2.1 Designate a Labor Compliance Officer

The subrecipient must designate an appropriate staff person to act as labor officer to ensure compliance with all requirements and to be the primary contact person for OHCS. The designee may be an employee of the subrecipient or a private consulting firm. The primary qualification of this role is to have a good understanding of HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded CDBG programs.

6.2.2 Obtain the Effective Wage Determination

A wage determination, also referred to as “wage decision,” is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in each area for a particular type of construction. Wage determinations can be found under the [Wage Determinations page at Sam.gov](#) by selecting the project type (Public Buildings or Works), and then filtering by state and county of the project location. Subrecipients should also consult Oregon Bureau of Labor & Industries (BOLI) website (<https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>) for state prevailing wage rates, as the higher rate will apply to each project.

DOL does not wish for contract estimators to consider the constantly changing rates when preparing bids. DOL allows the wage decision in effect **10 days** before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be “locked-in” and is also called the “effective” wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the “effective” wage decision.

6.2.2.1 Provide Additional Classifications

A wage determination will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the wage decision will be employed on the project, the contractor must request an additional classification.

The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or subcontractor) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received.

Example: A prime contractor installing sewer lines may find that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator.

6.2.2.2 Force Account Labor

CDBG force account labor refers to the use of laborers or mechanics employed by the grantee as a contractor for the CDBG-DR construction project. In such cases, the grantee/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay

the rates normally paid to employees on staff. The amounts paid to workers on force account labor projects are allowable costs of the CDBG-DR program.

Force account labor is work conducted by the subrecipient's employees and is generally exempt from the federal prevailing wage requirements. Please contact OHCS for assistance if force account work is anticipated and to receive pre-approval from OHCS and HUD if necessary.

6.2.2.3 Construction Categories

Federal wage determinations are issued for four construction categories: Building, Residential, Heavy, and Highway, by location and include special characteristics.

In determining which rate category to choose, it is important to understand the differences to avoid paying wages from the wrong category. It is possible that more than one wage determination may apply. Use of the wrong category may leave the subrecipient responsible for restitution and penalties. The construction categories are described as follows:

- **Building** — Construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. This includes all construction within and including the exterior walls, both above and below grade, as well as incidental grading, utilities, and paving.
- **Residential** — Projects involving the construction, alteration, or repair of single-family houses (on single or contiguous parcels) or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. (Remember the exemption for residential structures containing not less than eight units.)
- **Highway** — Projects for the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to residential, building, or heavy construction.
- **Heavy Construction** — All construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

6.2.2.4 The Process of Updating Wage Determinations

DOL gathers information on a year-round basis regarding wage decisions and will often issue an update of a particular wage decision. An update of a wage decision is referred to as a “modification” or “mod.” Less frequently, DOL will issue an entire new series of wage decisions, called “supersedeas decisions,” having a new wage decision number based on a new series year.

6.2.2.5 Ten Day Responsibility

It is the subrecipient’s responsibility to ensure that the wage decision(s) that is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on the updated wage decision(s).

The subrecipient may search the DOL website at <https://sam.gov/content/wage-determinations> to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date.

If there has been an update, the subrecipient must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

The Davis-Bacon requirement to “lock-in” a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.

- For housing: Wage decision “locks-in” at construction contract award or start of construction, whichever occurs first.
- For infrastructure: Wage decision “locks-in” at bid opening provided construction contract is awarded within 90 days. The labor compliance officer must confirm the wage decision if the construction contract is awarded beyond 90 days of the bid opening.

If, after the bid opening, the award of the contract is delayed by more than 90 days, the subrecipient must determine if any wage decision updates have been made by searching the Sam.gov website.

If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.

6.2.3 Confirm the Recommended Construction Contractor’s Eligibility Status

Prior to awarding and executing any construction contract, the subrecipient must ensure that all prime contractors (and their subcontractors) are registered with the Oregon Construction Contractors Board (CCB) and not listed as “debarred” in the System for Award Management (SAM). The subrecipient must maintain records of these verifications from the CCB and SAM website in local files.

6.2.3.1 Oregon CCB

All persons working on CDBG-funded construction projects must be registered with the CCB or be the employee of a contractor or subcontractor. Recipients must have evidence that all persons on the job as “subcontractors” are in fact “independent contractors” registered with the CCB. Registrations may be checked at the website <http://www.oregon.gov/ccb/Pages/index.aspx>

Oregon’s Construction Contractors Registration Act, ORS Chapter 701, requires that all persons engaged for compensation in any construction activity involving improvements to real estate must be registered with the Oregon CCB. This includes partnerships, corporations, and self-employed individuals, whether working by the hour, week, job, or “cost plus” and whether by written contract or oral agreement.

Registration is required for any individual or business entity which advertises, offers, bids, or arranges to do, or does, any construction, alteration, remodeling, or repair involving residential, commercial, industrial, or public works improvements. Violations can result in civil penalties, imposed by the CCB.

Anyone can call the CCB to verify the registration of a contractor.

6.2.3.2 Parties Excluded from Federal Procurement (SAM)

Federal regulations require verification of general (prime) contractor eligibility. To be “eligible” a contractor must not be listed on the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the General Services Administration. Recipients must call their regional coordinator at the department to clear the general contractor before awarding the construction contract. The regional coordinator will check the SAM website and document the contractor’s eligibility in the project file. Recipients can search the list themselves by using the following Internet address: www.sam.gov

In the state level, BOLI also maintains a List of Contractors Ineligible to Receive Public Works Contracts, which is available at http://www.oregon.gov/BOLI/WHD/PWR/docs/Debar_List.pdf

6.2.3.3 Independent Contractors

Independent contractors registered as “exempt” (those with no employees of their own) are not considered subcontractors on a job covered by the Davis-Bacon Act and HUD regulations.

Those individuals, who may be referred to as “owner operators,” cannot certify their own wages and must be shown on:

- The payroll reports for their general contractor, or
- The payroll reports for another subcontractor that is not exempt, or
- The “owner operator” can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.

More information is contained in the Labor Standards Compliance Requirements at: https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_9301

6.2.4 Document Wage Determination

Before awarding a construction contract to any prime contractor, the subrecipient must obtain verification of the wage decision choice. An inquiry made earlier is not sufficient as verification of the wage decision choice. The CDBG-DR program requires that the wage decision verification be obtained after the bid opening and before the award of the construction contract. The subrecipient remains responsible to ensure the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

The subrecipient must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low bidder and the subrecipient.

6.2.4.1 Failure to Include or Use of Incorrect Wage Determination

Failure to include the effective wage decision in bid documents or contracts will not relieve the subrecipient or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the subrecipient must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract which makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement:

1. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation — especially if the wage rate changes are minor.
2. The contractor will require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible CDBG-DR cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

6.2.4.2 Notification of Subcontractor Awards

The subrecipient's labor compliance officer should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the labor compliance officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

6.2.5 Award the Construction Contract

Each construction contract subject to Davis-Bacon labor standards requirements must include provisions containing labor standards compliance clauses and a Davis-Bacon wage decision. The labor standards compliance clauses:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages;
- Obligate the construction contractor to comply with the labor requirements;
- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages;
- Enable enforcement of labor standards applicable to the project; and
- **Best Practice:** Incorporate HUD Labor Standards Form 4010 in the construction contract and provide to contractor with pre-construction information.

If the construction contract has not been awarded within 90 days after bid opening, any wage decision modification published prior to the award of the construction contract shall be effective for that construction contract.

6.2.5.1 Responsible Bidder Forms

Oregon state law requires that all public entities awarding public improvement contracts to the lowest responsible bidder complete and submit a Responsible Bidder Determination form to the CCB within 30 days of the award. The CCB has developed a web-based entry system that includes this form and other information. The Public Contracts Responsible Bidder Determination website is at

https://ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/

6.2.5.2 Public Works Bond

All independent contractors working on public works projects in Oregon must obtain and file with the CCB a Public Works Bond of \$30,000. This bond is for the exclusive purpose of paying wage claims and must be filed before starting work on a contract or subcontract for a public works project. It must be obtained from a corporate surety authorized to do business in Oregon. A form is attached as Exhibit 6D and is on the web at

https://www.oregon.gov/ohcs/disaster-recovery/pages/reoregon.aspx?utm_source=OHCS&utm_medium=egov_redirect&utm_campaign=http%3a//re.oregon.gov

The provision requiring the Public Works Bond must be contained in the construction contract and in every subcontract. The general contractor is required to verify that the subcontractors have filed a Public Works Bond before permitting a subcontractor to start work on a project. Recipients should verify that the contractor and subcontractors have filed the Public Works Bond.

Certified disadvantaged, minority, women, or emerging small business may elect to be exempt during the first year of certification from the Office of Minority, Women and Emerging Small Business (OMWESB). To find out more about the OMWESB program, go to www.oregon.gov/biz/programs/COBID. If a business elects to utilize the OMWESB exemption for the Public Works Bond, the firm must submit the application form to the CCB. The request may be downloaded from

https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB_Application_Exemption.pdf

6.2.5.3 Retainage

The recipient must ensure compliance with the most current Oregon Retainage and Prevailing Wage Law, and the recipient must retain at least twenty-five percent (25%) of any amount owed to a contractor if the contractor has not submitted the required Certified Payroll Reports (CPR). The recipient will pay the contractor within 14 days after the proper CPR is submitted. Likewise, the prime contractor may retain funds from a first-tier subcontractor until the subcontractor has submitted the required CPR.

6.2.6 Hold Pre-construction Conference

Subrecipient should hold a preconstruction conference with the prime contractor and all available subcontractors before construction starts, when they would be advised of their responsibilities and obligations concerning labor standards. Jobsite signage requirements should be identified and mandated use of electronic payroll submissions is highly recommended.

If the subrecipient should opt to not have a preconstruction conference, then the subrecipient must utilize some method of its own choosing to advise contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the following paragraphs.

6.2.7 Perform Field Inspections for Labor Compliance

The subrecipient should understand that the enforcement of labor standards is as important as other requirements of the contract specifications and that failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors. Failure to comply may result in the imposition of serious sanctions and penalties.

Subrecipients are required to conduct compliance reviews to ensure compliance with labor standards. The reviews must include:

- Verifying that required notices are appropriately posted
- Reviewing all contractors' and subcontractors' Certified Payroll Reports to verify that the correct wages are being paid, and they are signed by the authorized person
- Conducting hourly wage and rate determination including overtime payments
- Verifying wages through worker interviews
- Reviewing the use of apprentices, trainees, and helpers
- Being alert for some common falsification indicators such as the ratio of laborers to mechanics, too few or irregular hours, discrepancies in wage computations, and extraordinary deductions
- Maintaining documentation of compliance reviews and inspections in the project files

6.2.7.1 Required Notices

The subrecipient should be checking that the project Wage Determination and the Davis-Bacon Poster provided by OHCS are displayed at the job site in an area easily accessible to all employees. The DOL poster is available in English and Spanish. The poster is available through the Office of Labor Relations website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf> under Resources, Labor Relations Forms.

6.2.7.2 Certified Payroll Submission

Each contractor or subcontractor engaged in work covered by the labor standards must submit to the recipient a weekly CPR for all weeks in which workers are on the job. Revised Davis-Bacon posters (WH-1321) and payroll form (WH-347) are available through the Office of Labor Relations website at <https://www.hudexchange.info/resource/2664/wh-347-payroll/>

Each CPR must be filled in correctly and completely. If there are errors, the form must be resubmitted. The use of electronic forms is highly recommended for ease of transmission, review, and retention.

DOL revised regulations concerning the information reported on payrolls for Davis-Bacon covered projects often includes personally identifiable information. Payroll reports should not include employee addresses and full Social Security numbers. Instead, payrolls need to include the employee(s) name and an individually identifying number, for example, the last four digits of the employee's Social Security number. Employers (prime contractors and subcontractors) must maintain the current address and full Social Security number for each employee and must provide this information upon request to the contracting agency or other authorized representation responsible for federal labor standards compliance monitoring.

6.2.7.2.1 No Work Performed Report

For week(s) in which no work is performed, document that fact.

During the project, labor standards compliance will be monitored, and written records will clearly establish that there are no missing payroll reports. This can be done by writing “no work” on the weekly payroll report.

6.2.7.2.2 Certified Payroll Reviews

The subrecipient is responsible for reviewing all weekly certified payroll reports, ensuring wages are paid weekly in an amount no less than identified in the federal prevailing wage determination, applicable to the project, in addition to the following:

- Submitted on time within 7–10 business days after the reported working week, signed with original signature in ink.
- Completed properly with names, individual identifying numbers, and job classifications for each employee were included.
- Reported on prime contractors' CPRs all "self-employed owner/operator" subcontractors, with no employees.
- The payroll reports for their general contractor; or
 - The payroll reports for another subcontractor that is not exempt; or
 - The "owner operator" can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.
- Generally, when the owner of the construction company is working with their employees and is performing work (less than 20% of the total time on-site) covered by the Davis Bacon wage decision, the owner does not have to be listed on the CPR, other than supervisor/owner with their name. It is recommended to show the total hours worked on-site per week and the number of hours spent performing work covered by the Davis Bacon wage decision, to document the amount of time spent working in the covered classification was less than 20%.
- Generally, when the owner of the construction company is working with their employees and is performing work (more than 20% of the total time on-site) covered by the Davis Bacon wage decision, the owner must list the following information for themselves: name, individual identifying number, classification of work being performed, daily hours worked on-site, total hours worked on-site per week, rate of pay, fringe benefits, etc.
- The CPRs contain the proper wages, fringe, and zone pay for each employee.
- The proper trade classifications are listed on the CPR for each employee.
- The CPRs contain only permissible deductions such as: Social Security (SSI), federal tax, state tax, bona fide pre-payment of wages, court-ordered payments, safety requirements, reasonable costs of board and lodging not provided by the contractor (advances). The first time a certified payroll shows voluntary deductions have been taken out of the employee's wages, a copy of the employee's written authorization to the contractor authorizing the deduction(s) must be provided with the CPR.
- Where fringe benefits (life insurance, health insurance, pension) are paid into plans, block 4(a) on the back of the CPR must be marked.

- When the hourly wage rate paid is the same as or greater than the hourly wage rate plus fringe required for the applicable decision and the “Fringe Benefit Paid Into Plan” box on the back of the CPR is marked, the fringe benefit requirement is complete.
- However, any time a contractor indicates fringe benefits being provided are used to compensate for not paying hourly wages in cash equal to the amount required in the applicable wage decision, the contractor should be required to provide documentation explaining the nature of the hourly dollar value of all fringe benefits being provided.
- If a recipient has a reason to question whether the contractor is paying fringe benefits as claimed, documentation should be requested from the contractor and verified.
- Where apprentices and trainees are identified on the CPR, documentation must be received with the CPR showing they are officially under an Oregon BOLI, Federal Bureau of Apprenticeship program, or union program. The documentation must list the employee’s name, classification, and rate of pay.
- Ensure that zone pay, if required by the applicable wage decision, is paid to the employee. Each category in the wage decision is established by union negotiation or survey. To calculate zone pay, the recipient must refer to the actual union agreement applicable to each section of the wage decision.

6.2.7.2.3 Hourly Rate and Wage Determination

Payrolls must be checked against the applicable wage decision(s), engineer’s inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and “time and a half” rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

6.2.7.2.4 Project Wage Rate Sheet

The Project Wage Rate Sheet can be used as an easy reference for all work classifications and wage rates that apply to a specific project. It is available for download at <https://www.hudexchange.info/resource/2496/hud-form-4720-project-wage-rate-sheet/>

6.2.7.2.5 Fringe Benefits and Zone Pay

The Davis Bacon prevailing wage is made up of three components: Davis Bacon basic hourly wage, hourly fringe benefit, and hourly zone pay.

Note: Fringe benefits and, if applicable, zone pay must be paid for all hours worked including overtime hours. Fringe benefits and zone pay are not subject to the halftime premium due as overtime pay.

Fringe Benefits — Along with the basic hourly rate, a fringe benefit amount will be listed for any classification in which fringe benefits were found to be prevailing. This hourly fringe benefit amount may be met by any combination of cash, bona fide third party benefit plans or unfunded plans. Funded plan fringe benefits generally include life insurance, health insurance, and pension plans. Unfunded plan benefits generally include vacation, sick leave, and holiday pay.

Contributions to fringe benefit plans must be made quarterly.

- **Cash** — Payment of the required hourly fringe benefit amount in cash to the employee.
- **Funded Plans** — Contractors' fringe benefit contributions made irrevocably to a trustee, third party, or union pursuant to a fund, plan, or program can be credited toward meeting this requirement, without prior state approval.
- **Unfunded Plans** — Fringe benefit plan or program under which the cost a contractor may reasonably anticipate in providing benefits that will be paid from the general assets of the contractor (rather than funded by payments to a trustee or third party) is generally referred to as an unfunded plan. Fringe benefits to these types of plans must be made in cash, as approval of these unfunded plans can take a long time.

Zone Pay — When a trade requires zone pay, this typically means cash to the employee in the amount the hourly zone pay required.

Each category in the wage decision is established by union negotiation or survey. To calculate zone pay, the recipient must refer to the actual union agreement applicable to each section of the wage decision.

Fringe Benefit and Zone Pay for Apprentices — Every apprentice must be paid at not less than the rate specified in the registered apprenticeship program for apprentice's level of progress, which is expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentice shall be paid fringe benefits in accordance with the written provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the applicable wage determination for the applicable classification.

6.2.7.2.6 Federal Overtime Requirements

The Contract Work Hours and Safety Standards Act requires that persons performing the work of laborers or mechanics under contracts that exceed \$100,000 must be paid no less than one and one-half times the basic rate of pay for weeks in which they work more than 40 hours (required Davis Bacon base rate (no exceptions) x 1.5 + fringe benefits + zone pay = overtime rate). The federal Fair Labor Standards Act (FLSA) requires weekly overtime pay for contracts under the \$100,000 threshold.

6.2.7.2.7 State Overtime Requirements

State of Oregon law for overtime pay is different from federal law. The state's statutes (ORS 279C.520, 279C.540 and 279C.800 et seq.) do not exempt federally funded projects from the state overtime law. State overtime law requires payment of overtime to workers that are employed more than 8 hours per day, when working on a 5/8s schedule or in excess of 10 hours per day when working a 4/10s schedule or for hours worked over 40 hours in any 1 work week. Overtime is also required to be paid for work on Saturday, Sunday, and six legal holidays. This is required to be paid regardless of whether 40 hours have been worked in a week.

Note: Oregon's overtime laws do not apply if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

6.2.7.2.8 Compliance with Overtime Laws

The Oregon Business Development Department is not responsible for monitoring and enforcing the state overtime laws.

However, recipients who do not understand or ignore the law are liable for substantial additional costs and/or lawsuits from contractors or workers. Federal rules prohibit the use of grant funds to pay any costs resulting from violations of, or failure to comply with federal, state and local laws.

Questions about State Law should be directed to:

Oregon Bureau of Labor and Industries Wage and Hour Division

800 NE Oregon Street Suite 1045

Portland, OR 97232

Email: mailb@boli.state.or.us

(971)673-0761, or at :

<http://www.oregon.gov/BOLI/pages/index.aspx>

6.2.7.2.9 Investigating Overtime Violations

When a subrecipient determines that a contractor has violated CWHSSA requirements by failing to compensate a worker appropriately for overtime, the following steps must be taken:

- Determine the number of occurrences per employee and calculate the amount due to each employee.
- Inform the prime contractor (who is responsible for the correction of all violations) in writing of the violation(s) specifying that the violations must be corrected within 30 days and what documentation will be accepted as proof of payment to the underpaid employees. The contractor will be required to report the restitution paid on the corrected/amended CPR, with a signed statement of compliance. The amended CPR must include for each employee to whom restitution was due: name, work classification, total number of hours involved, the adjustment rate (difference between the rate that was paid and the required rate), the gross amount of restitution, deductions, and the net amount paid. Each employee who has received restitution must sign and date the corrected/amended payroll as receipt of payment.
- Calculate the amount of liquidated damages due (i.e., \$10 per violation, per employee, per day, and inform the prime contractor in writing of the amount of the computations.
- The contractor shall have 60 days to file a written request for a waiver or reduction of liquidated damages; any such request shall be accompanied by a written statement of the reasons why the waiver or reduction is justified.
- Note: The only grounds for requesting a waiver or reduction are that the computation of the liquidated damages is incorrect or that the violation occurred inadvertently notwithstanding the exercise of due care; and that absent a timely waiver or reduction request, the determination is final. HUD handbook 1344.1, Rev 1, Change 1, Section 3-4(f).
- If the amount of the violation is under \$10, the violation does not need to be reported to OHCS.
- Amounts more than \$10 per worker require copies of corrected/amended CPRs, with the employee's signature and date.
- If over \$10, the violation must be reported in writing to OHCS. Anytime the violation is \$10 to \$999.99, the recipient should use this form (<https://www.oregon.gov/boli/workers/Pages/wageclaim.aspx>) to make the report to OHCS.

- If \$1,000.00 or more, the recipient must prepare and submit a labor standards enforcement report, described later in this chapter.
- Any waiver of fines must be reported to OHCS.

6.2.8 Conduct Payroll Verification Interviews

During construction, the subrecipient must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Employee interviews must be conducted by the subrecipient or grant administrator, not the project engineer. Interview forms must be completed for a representative sample of all worker classifications on the job and must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any.

Interviews should be recorded on the Employee Interview form found here:

<https://www.hudexchange.info/resource/2487/hud-form-11-record-of-employee-interview/>

6.2.8.1 Minimum Interview Requirements

Employees of the following contractors must be interviewed:

1. All prime contractors
2. Subcontractors whose contract award is \$100,000 or more
3. Any subcontractor where there are a large number of payroll problems

One interview session will sometimes be sufficient to meet minimum interview requirements for the above listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above, must be conducted if they are on the jobsite on the day of the visit.

Example: A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than \$100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than \$100,000. Employees of all three prime contractors must be interviewed. Employees of the subcontractor whose contract is \$100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required contractors must be interviewed.

If a subcontractor having a subcontract for less than \$100,000 is not present on the day of an interview, that subcontractor will not have to be interviewed — unless there are payroll

problems. If awarded a subcontract for less than \$100,000, the future fence subcontractor will not have to be interviewed — unless there are payroll problems.

6.2.8.2 Place of Interview

The following guidelines should be followed when deciding on the place to conduct the interview:

- Care must be taken to arrange the session at a time convenient to the employer and employees.
- Workers currently employed may be interviewed during working hours on the job if it can be properly and privately conducted on the premises.
- Interviews may also be conducted at other public places.
- Employees and former employees may also be interviewed by mail.
- An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview form.
- The remaining items on the Record of Employee Interview form should be completed by the subrecipient with items 1 and 2 to be completed before initial mailing and items 13 through 17 completed after the employee returns the document by mail.
- In off-site interviews or interviews by mail, the number of interviews required must be like the estimated amount that would have been obtained during an on-site session.

6.2.8.3 Initiating the Person-to-Person Interview

The interviewer must confirm their identity to the worker. The interviewer must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the interview's purpose is to determine if the required wages are being paid. If a worker does not want to give information, the interviewer should not insist.

6.2.8.4 Worker Complaint Form

Employees of federally funded projects subject to the requirements of the federal labor standards provisions may file a complaint using the “Federal Labor Standards Complaint Form HUD form 4731” form located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.pdf>

Worker complaints must be kept confidential and be given priority as required by 29 CFR (Code of Federal Regulations) Part 5.6(3).

6.2.8.5 Using the Interview Information

After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.

6.2.8.6 Corrections

The payroll format contains the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must contain the necessary information as on WH-347. If a contractor's alternate form is not sufficient, the contractor will need to provide the necessary information on an acceptable form or provide a supplementary statement.

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

6.2.8.7 Handwritten Corrections

The subrecipient, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. The reason is that such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the subrecipient wishes to provide written clarification of a minor payroll item, a note with the reviewer's name and date may be attached.

6.2.9 Maintain Compliance Records

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract, if applicable:

- Appointment of Labor Compliance Officer
- Copy of Wage Rate Decision(s)
- Ten-Day Confirmation Form(s)
- Additional Classification request(s)
- Eligibility Verification printouts from CCB (for each prime contractor and/or subcontractor)
- Eligibility Verification printouts from SAM (for each prime contractor and/or subcontractor)
- Pre-construction conference report minutes and sign-in sheet(s)

- Labor Standards Record (LSR)
- Supplemental LSR, if any
- Financial Interest Report
- Section 3 Contractor Reports for contracts over \$100,000
- Payrolls, with evidence of compliance review
- Employee interviews
- Compliance with Section 3, Fair Housing construction, Equal Employment Opportunity, and Historically Underutilized Businesses) mandates
- Interim inspection reports
- Wage violations (amount of restitution, number of hours and days)
- Liquidated damages fees and documentation (if any)
- Certificate(s) of Construction Completion
- Final Wage Compliance Report(s)

6.3 Prime Contractor Responsibilities

The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the grantee and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions. If the required provisions are not included in the subcontract, the prime contractor remains responsible for underpayments and liquidated damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the subrecipient will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

6.3.1 Weekly Payroll Submission Requirements and Payroll Numbering

It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the subrecipient numbered weekly payrolls from the time work begins on the project until the work is completed. Contractors must use the payroll form, DOL publication WH-347 found here (<https://www.hudexchange.info/resource/2664/wh-347-payroll/>). The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance, although the document is no longer officially designated with the title of "Statement of Compliance." The Statement of

Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use their own payroll form or other computer-generated form if all required items of the form are included, but the wording of the Statement of Compliance must be verbatim.

For week(s) in which no work is performed, document that fact. During the project, labor standards compliance will be monitored, and written records will clearly establish that there are no missing payroll reports. This can be done by writing “no work” on the weekly payroll report.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the subcontractor’s payrolls and may require corrections. The prime forwards the payroll(s) to the subrecipient. Payrolls may be collected by the project engineer for subcontractor’s submission to the subrecipient; however, this does not relieve the prime contractor of responsibility for review of payrolls.

6.3.2 Addresses and Social Security Numbers

The first and last name of each worker and last four digits of each worker’s Social Security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker’s privacy, the address and full social security number are not a required element of payrolls. However, the office or place of record keeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information. Worker address information will be required to comply with Section 3 reporting.

6.3.3 Signature on the Statement of Compliance:

The Statement of Compliance, which is now the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit a written authorization signed by an officer of the company.

6.3.4 Prompt Submission of Payrolls

The subrecipient should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor within 7 working days after the payroll ending date. Payrolls must be examined promptly by the subrecipient so that any problems discovered can be corrected early while contractors are still on the job. Particular

attention should be given to payroll review during initial stages of construction to ensure that the prime contractors understand and are fulfilling their responsibilities concerning payrolls. If acceptable payrolls are not submitted promptly, the subrecipient may withhold contractor payment until acceptable payrolls are submitted.

6.3.5 Subcontractor Communication

The subrecipient's contractual relationship is with the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, there is not a direct relationship between the subrecipient and subcontractor. As such, the subrecipient should only communicate with the prime construction contractor.

6.3.6 Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on the CDBG-DR project. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

6.3.7 Wage Rates and Proper Classification

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

6.3.8 Employees Performing Work in More Than One Classification

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called "split" payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in each workday.

Example: Joe, a backhoe operator, gets off his backhoe to try to find a buried water line. He uses a shovel most of the morning — which is the work of a laborer — and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line previously located. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.

6.3.9 Working Foreman Requirements

A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The “working foreman” if paid a flat salary with “salary” designated on the payroll, must be making prevailing wages for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet Davis-Bacon and CWHSSA requirements.

6.3.10 Classifications

Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: “Operator” is a generic classification; however, “backhoe” is on the wage decision and would be a proper classification.

6.4 Summary of Applicable Laws

6.4.1 Federal Fair Labor Standards Act

The FLSA (29 U.S.C. §201 et seq.) establishes standards for employment and employee pay by business organizations. The FLSA is relevant to the construction industry.

A business in the construction industry must have two or more employees and have an annual gross sales volume of \$500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states (“interstate commerce”). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities

of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

If an employer performs work on a federally financed project or a project in which the federal government has provided assistance in financing the project, a different and somewhat stricter set of labor standards applies. Typically, this would require that employees performing on such contracts be paid a “prevailing wage rate.”

6.4.2 Section 110 of the HCDA of 1974

Section 110 of the Housing and Community Development Act (HCDA) of 1974, as amended and as implemented in 24 CFR §570.603 extends coverage of DBRA to construction programs and projects financed by CDBG-DR funds, including new construction.

6.4.3 Davis-Bacon

Davis-Bacon applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon also applies to residential construction that consists of projects involving the construction, alteration, or repair of eight or more separate, contiguous single-family houses operated by a single entity as a single project or eight or more units in a single structure. Davis-Bacon does not apply to the rehabilitation or reconstruction of residential structures containing less than eight units or force account labor (construction carried out by employees of the grantee or subrecipient).

All laborers and mechanics employed by the contractors and subcontractors in the performance of construction work financed in whole or in part with CDBG-DR or CDBG-MIT 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 or by the Oregon’s prevailing wage rates as determined by BOLI (whichever is higher).

HUD has published guidance on the applicability of Labor Standards to CDBG-funded activities. The guidance can be found here:

<https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF>

The principal requirements of Davis-Bacon are:

- Recipients must include a copy of the prevailing wage rate determination and the federal labor standards provisions (HUD 4010) in the Invitation to Bid. Wage Determinations may be downloaded at <http://www.dol.gov/> and <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>
- Recipients may only award construction contracts to eligible contractors/subcontractors. These contractors must agree to comply with the labor standards provisions.
- Contractors must pay laborers the wage rate determined by the Secretary of Labor or the Oregon BOLI. The appropriate determination must be made at the time of procurement.
- Contractors must pay wages at least once a week.

Exceptions to the requirements:

1. Construction contracts at or below \$2,000. Note that arbitrarily separating a project into individual contracts below \$2,000 to circumvent the Davis-Bacon and Copeland Act requirements is not permitted.
2. Rehabilitation or construction of residential structures containing less than eight units.
3. Simple water and sewer line extensions without pumps, tanks, etc. may also be exempt, but water and sewer line construction will typically be categorized as heavy construction.
4. Separate and distinct projects. Contact OHCS for guidance.
5. Contracts solely for demolition, when no federally funded construction is anticipated on the site.

When in doubt regarding the applicability of DBRA, consult ReOregon Program Staff.

Davis-Bacon Act (40 U.S.C. §3141, et seq., 276a to 276 a-7 as implemented in 29 CFR Part 5) provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title (in this case the CDBG-DR and CDBG-MIT programs) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

Construction contracts for public buildings, public works, and infrastructure more than \$2,000 awarded by subrecipients under Oregon's CDBG-DR program shall include a

provision for compliance with Davis-Bacon and associated DOL regulations. The principal requirements are:

1. The subrecipient must include a copy of the current prevailing wage rate decision in each invitation for bids, request for proposal and purchase order when applicable.
2. The subrecipient may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis, and who will comply with other labor standards.
3. Contractors must pay laborers the wage rate determined by DOL or Oregon BOLI to be the prevailing rate in that labor market.
4. Contractors must submit weekly payrolls.

Three special classes of employees may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon prevailing wages.

These classes are:

1. Apprentices — Provided they are individually registered in a bona fide apprenticeship program in which the contractor participates, and which is approved by the DOL. Apprentices must also satisfy other conditions as specified in the Labor Standards Contract Provisions.
2. Trainees — Provided they are in a DOL-approved training program, and they satisfy other conditions as specified in the Labor Standards Contract Provisions.
3. Volunteers — The use of volunteers on a CDBG-DR project must meet the criteria found in 24 CFR (Code of Federal Regulations) Part 70.

When any of these employee classes appear on the contractor's weekly payrolls, it is the contractor's responsibility to provide the documentation necessary to permit the subrecipient to determine that there is compliance with the Davis-Bacon wage rate determination.

State requirements regarding the use of apprentices and trainees, licensing, procurement requirements, and wage standards must be researched and complied with, including local code and regulations.

6.4.4 Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person

employed in the construction, reconstruction, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which the person is entitled under the person's contract of employment. The Act also provides for the submission of weekly CPRs by all contractors and subcontractors.

All contracts for construction, reconstruction, or repair (over \$2,000) must include the following prohibition:

“No contractor or subcontractor shall induce, by any means, any person employed in such publicly funded construction, reconstruction, or repair to give up any part of the compensation to which the person is otherwise entitled except for authorized payroll deductions.”

Subrecipients should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor must maintain payroll records and submit weekly certified payrolls documenting compliance.

6.4.5 Contract Work Hours and Safety Standards Act

The CWHSSA Act (40 U.S.C. §327 et seq.) and FLSA provide that no contract work, which may require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate pay for all hours worked in such workweek, whichever is greater. In the event of violations, the contractor or subcontract shall be liable to any affected employee for unpaid wages as well as to the United States for liquidated damages.

All construction contracts more than \$2,000 and other contracts in excess of \$2,500 involving the employment of mechanics or laborers must comply with the following provisions of this law:

1. Contractors shall compute the wages of each laborer and mechanic based on a standard workweek of 40 hours.
2. Work more than this standard is permitted if compensation for the amount in excess of the standard is calculated at a rate not less than one and one-half the basic rate of pay.
3. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety or health standards promulgated by DOL.

6.4.6 State Law and Local Law and Regulations

6.4.6.1 Use of Oregon Prevailing Wage

The Oregon prevailing wage rate (PWR) apply to all construction projects of \$50,000 or more including those that are federally funded. The Oregon PWR apply to public works projects subject to ORS 279C.800 and Davis-Bacon Act (40 U.S.C. 276a). For each specific job classification:

1. If the Oregon PWR is higher than the federal prevailing wage rate, the contractor and every subcontractor on the project shall pay at least the Oregon PWR (as required by ORS 279C.800 and 279C.870).
2. If the federal Davis-Bacon wage rate is higher than the Oregon PWR, the prime and every subcontractor on the project shall pay at least the federal PWR of wage as required by Davis-Bacon.

Both Davis-Bacon rates¹ and the Oregon PWR must be included in the construction contracts funded, in whole or in part, with CDBG-DR funds.

Additionally, the subrecipient must see that the posters "Your Rights Under the Fair Labor Standards Act," "Notice to All Employees," and "Equal Opportunity is the Law" are posted at the job site. Posters are available to be downloaded from the internet at <https://www.dol.gov/general/topics/posters>

DBRA Final Rule (Effective October 23, 2023)

On August 23, 2023, DOL published the final rule, "[Updating the Davis-Bacon and Related Acts Regulations.](#)" Below is a brief summary of the updates in the final rule. Many of the amendments are regulatory changes that codify DOL's current practices and interpretations of existing regulations; as a result, such changes do not, in practical terms, impose new obligations on contractors or contracting agencies. The following link provides a comparison of the "old" versus "new" rule for reference purposes: <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>

Please note the following updates included in the regulations are applicable to contracts entered into after October 23, 2023.

¹ Making Davis-Bacon Work (2006): https://www.hud.gov/sites/documents/21811_4812-LR.PDF

6.4.7 Updating Wage Rates After Award

Section III.B.1.vi(B) of the final rule clarified circumstances in which a project would be required to adopt Davis Bacon wage rates updated after a contract had been awarded. Typically, wage rates apply for the duration of construction; however, the final rule identified three scenarios in which this is not the case:

1. A **new out-of-scope construction**, which refers to instances in which a contract is modified to include “additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract.”
2. **Additional time period not originally obligated** (i.e., when a contract is changed to “require the contractor to perform work for an additional period not originally obligated, including where an agency exercises an option provision to unilaterally extend the term of a contract.”). The new section instructs subrecipients to review contract change orders to determine if they fall into either category. If so, subrecipients must include the current wage decision in the change order and contractors must comply with the current wage rates.
3. Long-term, as-needed contracts, including blanket purchase agreements (BPAs) and indefinite delivery indefinite quantity (IDIQs), DBRA wage rates apply to BPAs and IDIQs, and wage rates for contracts procured through BPAs and IDIQs must be updated annually. Task orders issued under these types of contracts must incorporate the most recent wage determination modification in the master contract at the time the task order is awarded.

6.4.8 Frequently Conformed Rates

Section III.B.1.xii of the final rule introduced the category of Frequently Conformed Rates to Davis Bacon wage determinations. Previously, DOL was constrained in its ability to issue wage rates by strict thresholds of data availability. If there weren’t enough data available in an area for a particular classification, DOL could not issue a wage rate for that classification in its general wage decision. This led to frequent Requests for Additional Wage Determination for certain wage classifications in those areas. The final rule gave DOL the ability to issue wage determinations for these frequently requested classifications with less data. From a compliance standpoint, Frequently Conformed Rates will be treated the same as “normal” rates in a wage decision, and contractors will be required to comply with them.

6.4.9 Fringe Benefits

Section III.B.3.xii of the final rule revised several provisions related to fringe benefits and Davis Bacon Credits, including the annualization of contributions to certain fringe benefit plans for workers engaged in both DBRA and non-DBRA work, criteria for categorizing non-funded benefit plans, and requirements for crediting the cost of apprenticeship programs against fringe benefit obligations.

6.4.10 Omission of Required Clauses and Wage Determinations and “Operation of Law”

Section III.B.3.iii(F) of the final rule added language to 29 CFR 5.5 to “make effective by operation a contract clause or wage determination that was wrongly omitted from the contract.” This rule should be considered with the language added to local DBRA policy to not supersede HUD or DOL regulations, and where the two contradict, the regulations will prevail.

6.4.11 Withholding

Section III.B.3.xxiii of the final rule clarified DOL’s withholding remedy for underpayments. Under the final rule, cross-withholding is allowed on any contract held by the same prime contractor, even if the contract was awarded or assisted by a different agency than the agency that awarded or assisted the contract on which violations necessitating the withholding occurred. The final rule also established the ability to cross-withhold from entities other than the entity that directly entered the contract with the contracting agency. Under the final rule, when a prime contractor uses a single-purpose entity, joint venture, or other similar vehicle to secure DBRA-covered contracts, DOL may pursue cross-withholding on any other contract held by one of the related entities. Lastly, the final rule added a provision explaining that withholding for workers’ back wages takes priority over various other competing claims.

6.4.12 Anti-Retaliation

Section III.B.3.xix of the final rule added new anti-retaliation provisions to 29 CFR Part 5 in the form of 29 CFR 5.5(a)(11) and (b)(5) and 5.18. These provisions prohibit retaliation against workers or job applicants for engaging in protected activities such as making a complaint or cooperating in a DOL Wage and Hour Division investigation under the DBRA, including the CWHSSA, and add remedies to make whole workers and job applicants who

have been discriminated against in any manner for engaging in, or being perceived to have engaged in, certain protected activities.

6.4.13 Trainees

Section III.B.3.ii(E) of the final rule removed references to trainees from 29 CFR 5.2(n).

6.4.14 Demolition

Section III.B.3.ii(C) of the final rule clarified the circumstances under which demolition work is exempt from DBRA wage requirements. Under the final rule, demolition is only exempt from DBRA when the demolition work does not constitute construction or repair and when no future construction or repair is planned or contemplated. Demolition is always subject to DBRA when performed under the same contract as construction or when future construction is anticipated on the same site.

6.4.15 Recordkeeping

OHCS policy requires record retention of 6 years after closeout. Section III.B.3.iii(B)(1) of the final rule clarified the list of project records that must be retained for 6 years after closeout of the entire grant. Subrecipients will be held to the 6-year retention period.

6.4.16 Payroll Signatures

Section III.B.3.iii(B)(2) codified DOL's longstanding policy that certified payrolls may be submitted electronically, "provided that the electronic submission system requires a legally valid electronic signature...and the contracting agency or prime contractor permits other methods of payroll submission in situations where the contractor is unable or limited in its ability to use or access the electronic system." The final rule further clarified that, "to be valid, the contractor's signature on the certified payroll must either be an original handwritten signature or a legally valid electronic signature. Both methods are sufficient for compliance with the Copeland Act."

6.4.17 Updated Contract Provisions

Due to the changes made by the final rule, HUD has updated form [HUD 4010](#) to be reflected in contracts effective October 23, 2023.

6.5 Helper, Apprentices, Trainees, and Prisoners

6.5.1 Helpers

Helpers, workers who use tools in assisting mechanics and who are also paid below the minimum rates for mechanics, are generally not acceptable as a job classification. Since apprentices and trainees are recognized as the individuals who perform less skilled craft work during their training period. If “helpers” are to be employed on the project, they must be identified in a request for authorization of additional classification and rate for wage determination and paid the rate deemed appropriate by DOL.

6.5.2 Apprentices

Apprentices will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with DOL, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of the person’s apprenticeship papers with the first payroll on which that worker appears.

Any worker listed on a payroll at an apprentice wage rate who is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work performed.

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

6.5.3 Trainees

Trainees will be permitted to work at less than the predetermined rate for the work performed only if they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the federal Bureau of Apprenticeship and Training or the Apprenticeship and Training Division of Oregon BOLI.

Trainees must be paid at not less than the rate specified in the approved program for their level of progress or a percentage of the associated mechanics rate as listed on the wage decision.

6.5.4 Prisoners

There is no prohibition against the use of prison inmate labor on federally funded projects, but they do not qualify as volunteers. The Davis-Bacon wage requirements would apply.

6.6 Terminology and Associated Davis-Bacon Requirements

Cleaning — Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.

Contractor's Guide to Davis-Bacon — The HUD guidebook, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not a required) publication which the subrecipient may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients, construction contractors, and those who prepare contractor payrolls. It gives a brief explanation of issues associated with labor standards and Davis-Bacon. The guide may be downloaded from HUD's website at www.hud.gov. Once at the HUD website, type in "Contractor's Guide to Davis-Bacon" in the search box. The search results should include the desired publication.

Debarment — An Action taken by a debarring official under 9.406 to exclude a contractor from federal contracting and federal-approved subcontracting for a reasonable, specified period; a contractor that is excluded is "debarred."

Demolition — Standalone demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages. If subsequent construction work is subject to Davis-Bacon requirements, then the demolition would likewise be covered by Davis-Bacon requirements. Refer to Labor Relations Letter LR 2009-01 dated August 12, 2009, for further information at <https://www.hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.pdf>

Drilling — Exploratory drilling is not covered by the federal labor standards requirements. However, drilling of wells for water or oil is covered by the federal labor standards requirements.

Equipment Installation — In rare instances, for small prime construction contracts for just the purchase of installation of a single piece of equipment, if the cost of the installation of the equipment does not exceed 13% of the purchase price of the equipment, generally

Davis-Bacon does not apply. Be careful though, as the purchase of most equipment will trigger Davis-Bacon, such as the purchase of an elevator and then installation.

Family Members (as it relates to contractor payrolls) — There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.

Force Account — Work conducted by the grant recipient's employees is generally exempt from the federal prevailing wage requirements. Please contact the Department's CDBG regional project manager for assistance if force account work is anticipated for pre-approval from OHCS and HUD if necessary.

Investigation — Non-routine examinations resulting from credible allegations of serious violations.

Items to be Posted at the Job Site — The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as Exhibit 7-1.

Laborers and Mechanics — Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that are not normally thought of as a recognized trade. On a wage decision, a classification that is not "laborer" is automatically considered as a "mechanic" classification.

Overtime Pay — There are no exceptions to this rule. Overtime pay equals the federally required base rate of pay x 1.5 + fringe benefits + zone pay.

Piece Rate Work — Lump sum construction contracts. These contracts are usually found in subcontractors, especially owner/operator contracts. To determine compliance, divide the total hours worked by the contract price to determine the hourly rate of pay.

Precutting and Prefabrication — Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.

Prevailing Wages — Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by DOL in a document called a wage decision. See Subsection 4.2 for further discussion on wage decisions.

Site of Work — The site of work is limited to the physical place or places where construction occurs and to adjacent or nearby property used by the contractor or subcontractor that can reasonably be included because of proximity. This area is where the Davis-Bacon wage rates apply.

Supply and Installation— The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. For construction work involving installation of equipment, if the cost of installation is 13% or less of the total cost of the CDBG-DR financed equipment, this is an incidental cost, and the installation is not subject to Davis Bacon wage rates (HUD Office of Labor Relations notice dated November 15, 1988).

Truck Drivers — Truck drivers of a contractor or subcontractor are covered by Davis Bacon when performing work on the “site of work” or transporting materials and/or supplies between the construction site and a facility deemed to be part of the “site of work.” Truck drivers are not covered when the driver of a contractor or subcontractor is hauling materials to or from a Davis Bacon job from a commercial supply facility when they are off the “site of work.”

Work Week —

- The federal workweek is a 7-day period. Overtime pay must be paid for hours worked more than 40 hours per week.
- The Oregon BOLI workweek is a 5-day period unless the schedule of work is for 10- hour days. For a 5-day workweek, overtime must be paid for all hours worked more than 8 hours per day. For a 4-day workweek, overtime must be paid for all hours worked more than 10 hours per day. Regardless if 40 hours have not been worked in the week, the state requires overtime to be paid for all work on Saturday, Sunday, and six legal holidays.

6.7 Useful Resources

- Federal Fair Labor Standards Act; [29 USC Chapter 8](#)
- Davis-Bacon and Related Acts; [40 USC Chapter 31, Subchapter IV](#)
- Copeland Anti-Kickback Act; [18 USC §874](#), [40 USC §3145](#)
- CWHSSA; [Field Operations Handbook, Chapter 15](#)
- State of Oregon Labor Standards and local laws and regulations

- Labor Standards requirements: https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441
- Federal Prevailing Wage determination: [Wage Determinations page at Sam.gov](#)
- Oregon Prevailing Wage determination: <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>
- Oregon Construction Contractors Board: <http://www.oregon.gov/ccb/Pages/index.aspx>
- Oregon Debarred Contractors Listing: http://www.oregon.gov/BOLI/WHD/PWR/docs/Debar_List.pdf
- Responsible Bidders Form: https://ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/
- Public Works Bond: <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>
- OMWESB Public Bond exemption: https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB_Application_Exemption.pdf
- Certified Payroll Form (WH-347): <https://www.hudexchange.info/resource/2664/wh-347-payroll/>
- Project Wage Rate Sheet: <https://www.hudexchange.info/resource/2496/hud-form-4720-project-wage-rate-sheet/>
- For questions regarding Oregon State Labor Law: <http://www.oregon.gov/BOLI/pages/index.aspx>
- Employee Interview Form: <https://www.hudexchange.info/resource/2487/hud-form-11-record-of-employee-interview/>
- Worker Complaint Form: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.pdf>
- HUD Guidance regarding Davis Bacon for CDBG projects: <https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF>
- Required Job Site Posters: <https://www.dol.gov/general/topics/posters>
- Comparison chart for recent changes in Labor Standards: <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>
- Updated DBRA: [Updating the Davis-Bacon and Related Acts Regulations](#)
- Form for reporting violations of Overtime Payment: <https://www.oregon.gov/boli/workers/Pages/wageclaim.aspx>

- Updated Labor Standards Provisions to be included in all construction contracts:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/4010.pdf>

6.8 Checklist for Labor Standards Compliance

Ensure that the State has issued the Environmental Clearance — Release of Funds — notice for this project prior to awarding any construction contracts.

Note: Any form contained as an Exhibit to this Chapter that states submit to HUD MUST be interpreted as submitting the form to OHCS, not HUD.

1. OHCS has reviewed and approved bid documents; this must be done 10 days before the bid advertisement.
2. Include Labor Standards Provisions (HUD 4010) and applicable wage rates (higher of either Davis-Bacon rates or the Oregon BOLI rates) in all bid and contract documents.
3. Verify wage rates through Sam.gov 10 days prior to bid opening; notify plan holders of any modifications.
4. Prior to awarding the construction contract:
 - i. Verify with OHCS the general contractor eligibility (registration with the CCB and not on the Excluded Parties List).
 - ii. Verify with Oregon BOLI's Ineligible List.
5. Assure that general contractor has filed \$30,000 public works bond with CCB.
6. Submit a Responsible Bidder Determination form to the Construction Contractors Board.
7. Contact OHCS representative at least 10 days before scheduled date of preconstruction conference/meeting with general contractor to discuss labor standards compliance.
8. Request materials for preconstruction conference/meeting from OHCS at least 10 days before scheduled conference.
9. Hold preconstruction conference/meeting attended by general (prime) contractor and subcontractors.
10. Obtain signature of general contractor on preconstruction conference notes; contractor and OHCS receive copies; recipient keeps original in local project file.

11. Submit Notice of Construction Contract Award and Start of Construction and preconstruction conference notes/minutes, certified payroll reports, and all necessary first draw requirements have been sent to OHCS prior to requesting grant funds for construction.
 12. Post at the job site:
 - i. Federally Required Wage and hour poster, Lock-in Davis Bacon wage determination along with the DOL-approved additional classification(s)
 - ii. Applicable Oregon BOLI's wage rate
 - iii. Project sign (if required)
- Copies of these posters are available at:
<https://www.oregon.gov/boli/employers/Pages/required-worksite-postings.aspx>
13. Contractor/Subcontractor Agreement and Fringe Benefit Summary forms received by the subrecipient prior to release of grant funds to prime contractor for work performed by the subcontractors.
 14. Information collected about “unfunded” fringe benefit plans prior to contractors showing fringe benefit payments on payroll reports.
 15. Weekly certified payroll reports (on approved forms) submitted as required and reviewed for correct wages (including overtime pay).
 16. Apprenticeship documentation submitted with first payroll on which apprentice is shown.
 17. Employee interviews are conducted at least once per month during construction and with no less than one employee for every trade at the site. Information compared on interview forms must agree with the corresponding payroll report.
 18. Payroll violations and employee complaints investigated and resolved.

6.9 Additional Resources

- HUD — Contractors Training materials:
<http://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/olr/trainingcontractors>



7 Section 3

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7 Section 3

This subsection outlines the requirements and procedures to be followed to ensure that the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) — colloquially “Section 3” — are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to Low- and Very Low-Income Persons, particularly those who are either grantees or subrecipients of government assistance for housing or residents of the community in which the federal assistance is spent.

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and Very-Low-Income Persons and Section 3 Business Concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

This subsection addresses the requirements outlined in 24 CFR Part 75 (the “Final Rule”), and subrecipients or contractors seeking any further guidance, clarification, or context regarding any topics covered in this subsection should refer to that specific regulation. Any contracts or agreements executed, or projects for which assistance or funds were committed, prior to the Final Rule Effective Date of November 30, 2020, are still required to adhere to all requirements outlined in 24 CFR Part 135 (the “Old Rule”).

7.1 Applicability of Section 3

A “**Section 3 Project**” is any project that involves housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total HUD-funded amount of assistance to the project exceeds a threshold of **\$200,000**. The “project” is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing; and applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in 24 CFR 75.3. Section 3 requirements do not apply to (1) Materials Supply Contracts (24 CFR 75.3(b)); or (2) Indian and Tribal Preferences (24 CFR 75.3(c)).

7.2 Other Requirements of Section 3

To the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, subrecipients must ensure that, within the metropolitan area (or nonmetropolitan county) in which the project is located: (1) *employment and training*

opportunities arising in connection with Section 3 Projects are provided to Section 3 Workers; and (2) *contracts for work* awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers.

Once their respective plan has been fully developed, it is recommended that subrecipients formally adopt the resulting Section 3 plan and maintain a signed copy within the project files.

7.2.1 Employment and Training

Where feasible, priority for *opportunities and training* should be given in the following order to:

1. Section 3 Workers residing within the Service Area or Neighborhood of the Project; and Employed by a Section 3 Business Concern
2. Participants in U.S. Department of Labor [YouthBuild programs](#)

7.2.2 Contracting Requirements

Where feasible, priority for *contracting opportunities* should be given in the following order to:

1. Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the Service Area or Neighborhood of the Project
2. YouthBuild programs

7.2.3 Labor Hours and Worker Categorizations

One of the principal features rolled out as part of the Section 3 Final Rule was that tracking and reporting would be now focused upon labor hours rather than new hires. This change was designed to prioritize local employment and promote employee retention. As a result, subrecipients and contractors are expected to track and report upon the total number of **labor hours worked** by: (1) Section 3 Workers, (2) Targeted Section 3 Workers, and (3) All workers overall.

A “**Section 3 Worker**” is an individual that currently (or at time of hire in the past 5 years) fits at least *one* of the following criteria: (1) Low- or Very Low-Income as established by HUD’s income limits, (2) Employed by a Section 3 Business Concern, or (3) a YouthBuild participant.

A “**Targeted Section 3 Worker**” is a Section 3 Worker who meets any of the three aforementioned criteria and *in addition* also meets one of the two following criteria:

1. Is employed by a Section 3 Business Concern
2. Currently (or at time of hire in the past 5 years) fits at least one of the following categories:
 - a. Living within the Service Area or the Neighborhood of the Project
 - b. A YouthBuild participant

To this end, the workers for a Section 3 project can be categorized or grouped in the following diagram:



7.2.4 Section 3 Measurement Ratios and Benchmarks

Contractors and subrecipients must attempt to reach the Section 3 benchmarks and targets as established by 24 CFR Part 75.23(b)(3) and Federal Register Notice 2020-19183:

- Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Section 3 Workers:

$$\frac{\textit{Section 3 Worker Labor Hours}}{\textit{Total Labor Hours}} \geq 25\%$$

- Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 Project are Targeted Section 3 Workers, as defined at §75.21(a):

$$\frac{\textit{Target Section 3}}{\textit{Total Worker Labor Hours}} \geq 5$$

In the absence of evidence to the contrary, subrecipients and contractors of covered funding will be considered in compliance with Section 3 Safe Harbor (24 CFR 75.23) if the established benchmarks regarding the above ratios are reported to be met. Subrecipients that fail to meet the minimum numerical goals outlined above must also report upon the specific qualitative efforts that they have employed in pursuit of the numerical goals.

7.3 Section 3 Reporting

7.3.1 Section 3 Measurement Ratios and Benchmarks

Per 24 CFR 75.25(a), for Section 3 Projects, the following metrics must be reported on:

1. The total number of labor hours worked
2. The total number of labor hours worked by Section 3 Workers
3. The total number of labor hours worked by Targeted Section 3 Workers

Eligibility of Labor Hours Reported — Section 3 Workers’ and Targeted Section 3 Workers’ labor hours may be counted for 5 years from when their status as a Section 3 Worker or Targeted Section 3 Worker is established. (24 CFR 75.25(a)(2))

Inclusion of Hours Reported — The labor hours reported must include the total number of labor hours worked on a Section 3 Project, including labor hours worked by any subrecipients, contractors, and subcontractors. The subrecipient or contractor may also elect to include any hours for Professional Services in the report (see below). (24 CFR 75.25(a)(3))

Basis of Hours Reported — OHCS and subrecipients may report their own labor hours related to the Section 3 project based on a good faith assessment of the labor hours of a full-time or part-time employee that meets Section 3 Worker qualifications based on the employer’s existing salary or time- and attendance-based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting. (24 CFR 75.25(a)(5))

Frequency of Reporting — Reports will be submitted to OHCS as part of project reporting. OHCS must provide these metrics to HUD through the Disaster Recovery Grants Reporting system when reporting on activity progress, at minimum annually or at the time of project completion. (24 CFR 75.25(c))

Professional Services — Professional Services contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours.

However, subrecipients, contractors, and subcontractors may report labor hours from Section 3 Workers and Targeted Section 3 Workers (the numerators in the outcome ratios) from Professional Services without including Professional Services in the Total Labor Hours worked (the denominator in both of the outcome ratios). The effect of this reporting structure is to give the subrecipient or contractor a bonus if they are able to report Section 3 hires in the Professional Services context.

It should also be noted that if a contract covers both Professional Services and other work and the subrecipient/contractor/subcontractor chooses not to report labor hours from Professional Services, the labor hours under the contract that are not from Professional Services must still be reported. (24 CFR 75.25(a)(4))

7.3.2 Additional Reporting Requirements/Qualitative Effort

If the subrecipient's reporting indicates that the Section 3 Benchmarks are not met, the subrecipient must report on the qualitative nature of its activities and those that its contractors and subcontractors pursued. Examples of such qualitative efforts include, but are not limited to, the following:

1. Applicant Outreach — Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers
2. Training and Apprenticeship — Providing training or apprenticeship opportunities
3. Employment Assistance — Providing technical assistance to help Section 3 Workers compete for jobs (e.g., resume assistance, coaching), or providing or connecting Section 3 Workers with assistance in seeking employment, including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services
4. Job Fairs — Holding one or more job fairs or sponsoring a job informational meeting in the Service Area/Neighborhood of the Project

5. Work Readiness & Retention — Providing or referring Section 3 Workers to services supporting work readiness and retention, such as work readiness activities, interview clothing, test fees, transportation, and child care
6. Educational Assistance — Providing assistance to apply for or attend community college, a 4-year educational institution, or vocational/technical training
7. Financial Literacy — Assisting Section 3 Workers to obtain financial literacy training and/or coaching
8. Business Concern Outreach — Engaging in outreach efforts to identify and secure bids from Section 3 Business Concerns
9. Competition Assistance — Providing Technical Assistance to help Section 3 Business Concerns understand and bid on contracts
10. Contract Sizing — Sizing, splitting, or dividing contracts into smaller jobs to facilitate participation by Section 3 Business Concerns, particularly where economies of scale or efficiency of delivery are not factors (2 CFR 200.321(b)(3))
11. Bidder Viability Support — Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 Business Concerns
12. Business Registries — Promoting use of business registries designed to create opportunities for disadvantaged and small businesses
13. One-Stop Outreach — Providing outreach, engagement, or referrals with the state One-Stop System as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act of 2013

The above listing is not intended to be all inclusive. Subrecipients are encouraged to develop and tailor their specific qualitative efforts with the end goal of Section 3 benchmark achievement in mind. Clear, affirmative steps to achieve the established numerical goals must be taken and documented to adequately corroborate all efforts and attempts. Documented justifications should describe the efforts that were taken; any barriers, roadblocks, or impediments encountered; and any other relevant information that will enable OHCS to make the most accurate, informed compliance determination.

7.3.3 Record Keeping to Support Section 3 Worker Categorizations and Certifications

7.3.3.1 Workers

Subrecipients must maintain documentation or ensure that a contractor or subcontractor that employs any Section 3 Worker maintains documentation to show that workers meet the definition of a Section 3 Worker, or a Targeted Section 3 Worker, at the time of hire or the first reporting period, as follows:

1. **Section 3 Worker** — For a worker to qualify as a Section 3 Worker, one of the following must be maintained:
 - a. Self-Certification of Income — A worker's self-certification that their income is below the income limit from the prior calendar year
 - b. Self-Certification of Program Participation — A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing
 - c. Program Management Certification of Program Participation — Certification from a Public Housing Agency, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs
 - d. Employer Certification of Income — An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis
 - e. Employer Certification of Section 3 Business Concern Employment — An employer's certification that the worker is employed by a Section 3 Business Concern
2. **Targeted Section 3 Worker** — For a worker to qualify as a Targeted Section 3 Worker, one of the following must be maintained:
 - a. Employer Confirmation of Worker Residence — An employer's confirmation that a worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census

- b. Employer Certification of Section 3 Business Concern Employment — An employer's certification that the worker is employed by a Section 3 Business Concern
- c. Self-Certification of YouthBuild Participation — A worker's self-certification that the worker is a YouthBuild participant

Subrecipients and contractors may report on Section 3 Workers and Targeted Section 3 Workers for 5 years from when their certification as a Section 3 Worker or Targeted Section 3 Worker is established. The 5-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 workers hired prior to November 30, 2020, may be certified for a 5-year period beginning November 30, 2020.

OHCS, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate an individual's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements include but are not limited to evidence of receipt of federal housing assistance; evidence of receipt of other federal subsidies or participation in federal assistance programs; federal tax returns; or proof of residence in a neighborhood, ZIP code, census tract, or other area that has officially been identified by HUD.

7.3.3.2 Business Concerns

A **Section 3 Business Concern** is defined as a business concern that meets at least one of the following criteria, documented within the last 6-month period:

1. It is at least 51% owned and controlled by Low- or Very-Low-Income Persons.
2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers
3. It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-Assisted housing.

Subrecipients, subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate a business concern's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements may include federal tax returns for workers, owners, or businesses; payroll data; employee statements of self-certification; articles of business organization, ownership, or incorporation; partnership or operating agreements; or evidence that owners or employees received housing or other federal subsidies.

Section 3 standards are both race and gender neutral. A women’s business enterprise (WBE) and/or minority business enterprise (MBE) must provide evidence that it meets at least one criterion of a Section 3 Business Concern as outlined above in order to receive preference under Section 3. More information regarding WBE or MBE programs can be found through HUD’s Office of Small and Disadvantaged Business Utilization at the following website: https://www.hud.gov/program_offices/sdb.

The documentation outlined in this subsection must be maintained for the time period required for records retention in accordance with applicable program regulations and 2 CFR 200. For further guidance regarding Section 3 Recordkeeping — including additional considerations specific to Public Housing Agencies — see 24 CFR 75.31.

7.4 Section 3 Contracting Requirements

7.4.1 Contract Provisions

Per 24 CFR 75.27, OHCS must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 Project. Additionally, CDBG-DR subrecipients with projects where Section 3 applies must also require contractors and subcontractors to meet the overall requirements regardless of whether Section 3 language is included in the subrecipient agreements, program regulatory agreements, or contracts.

7.4.1.1 Recommended Section 3 Contract Clause

All Section 3 covered contracts and subcontracts must include the following clause:

- I. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC.1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance, or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- II. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

- III. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- IV. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- V. The contractor will certify that any vacant employment positions, including training positions, that are filled:
 - 1) after the contractor is selected but before the contract is executed, and
 - 2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- VI. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- VII. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

7.4.2 Contract and Subcontracting Strategies

The following examples are provided to help subrecipients ensure that the contracting objectives of Section 3 are met and that the established Section 3 Benchmarks are ultimately achieved. These methods and strategies can be undertaken to assist in reaching Section 3 Workers and Section 3 Business Concerns for contracting opportunities; and when utilized effectively, can supplement some of the qualitative efforts outlined in the Additional Quality Efforts section above. This list should not be considered all inclusive; for additional information regarding contracting, see Chapter 5 Procurement.

1. Small Purchase Procurement — The use of small purchase procedures (contract may not exceed the Simplified Acquisition Threshold) such as soliciting quotations from a minimum of three qualified sources. At the time of solicitation, inform the parties of the Section 3 Covered Contract to be awarded with sufficient specificity, the time within which quotations must be submitted, and the information that must be submitted. A valid attempt to obtain at least three quotes from qualified sources must be made and documented.
2. Section 3 Compliance History — In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract.
3. Contractors Associations and Community Organizations — Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4. Housing Development Publicity — Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. Formalized Notices — Provide written notice to all known Section 3 Business Concerns of the contracting opportunities.
6. Maintain Contact — Follow up with Section 3 Business Concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7. Pre-Bid Meetings — Coordinate pre-bid meetings at which Section 3 Business Concerns could be informed of the upcoming contracting opportunities.
8. Section 3 Workshops — Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 Business Concerns can take advantage of upcoming contracting opportunities.

9. Assisting with Barriers to Entry — Advise Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
10. Bidding Facilitation — Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 Business Concerns.
11. Contract Sizing — Break out contract work items into economically feasible units to facilitate participation of Section 3 Business Concerns.
12. YouthBuild Programs — Contact agencies administering HUD YouthBuild programs and notifying these agencies of the contracting opportunities.
13. Advertisement / Publication — Advertise contracting opportunities through trade association papers and local media such as television, newspapers, radio, and websites.
14. Business Concern Listing — Develop and maintain a list of eligible Section 3 Business Concerns.
15. Advance Goal Setting — Establish concrete numerical goals (dollar amounts, and number of awards) for contracts to Section 3 Business Concerns.



8 Fair Housing & Civil Rights

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8 Fair Housing & Civil Rights

This section presents summaries of the key regulations and requirements of civil rights, fair housing, equal opportunity, and equal employment opportunity (EEO) laws applicable to the administration of the Oregon CDBG-DR funds.

The civil rights laws and related laws and regulations are designed to protect individuals from discrimination on the basis of:

1. Race
2. National origin
3. Religion
4. Color
5. Sex
6. Age
7. Disability

As they apply to federal programs, these laws protect individuals from discrimination in:

1. Housing
2. Benefits created by federal projects
3. Employment
4. Business opportunities
5. Population groups specifically protected by provisions of these laws include:
 - a. Minorities (specifically Blacks, Hispanics, Asians and Pacific Islanders, and American Indians and Alaska Natives)
 - b. Women
 - c. Groups distinguished by age
 - d. Persons with disabilities
6. Familial status

The applicable laws and regulations provide for:

1. Non-discrimination
2. Equal opportunity
3. Affirmative action (to reduce past discrimination)

Laws and Statutes: Civil Rights laws applicable to CDBG-DR programs that subrecipients must adhere to are set forth, but not limited to, the statutes and executive orders below:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	<p>No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of:</p> <ol style="list-style-type: none"> 1. Race 2. Color 3. National origin
Section 3 of the Housing and Urban Development Act of 1968, as amended, codified at 24 CFR Part 75	<p>To the greatest extent feasible, employment and other economic opportunities, should be directed to:</p> <ol style="list-style-type: none"> 1. Low and very low income persons 2. Business concerns that provide economic opportunities to low and very low income persons
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	<p>Prohibits discrimination in housing on the basis of:</p> <ol style="list-style-type: none"> 1. Race 2. Color 3. Religion 4. Sex 5. National origin <p>Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.</p>
Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended	<p>Requires subrecipients to certify that they will, among other things, affirmatively further fair housing.</p>
Section 504 of the Rehabilitation Act of 1973, as amended and Section 508	<p>No otherwise qualified individuals shall, solely, by reason of their handicap, be:</p> <ol style="list-style-type: none"> 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	<p>Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of:</p> <ol style="list-style-type: none"> 1. Race 2. Color 3. National origin 4. Sex

The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in: <ol style="list-style-type: none"> 1. Housing (and related facilities) provided with federal assistance 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of \$10,000.
Executive Order 13166	Improving access to services for persons with limited English proficiency.
Equal Access to HUD-assisted or Insured Housing 24 CFR 5.105 (a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status (new regulation effective 3/5/2012).
Americans with Disabilities Act (ADA)	Legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else.
Architectural Barriers Act of 1968	Requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and usable by persons with disabilities.

8.1 Citizen Participation Plan

Subrecipient must provide for and encourage citizen participation (see Section 104(a) (2) of the Housing and Community Development Act and 24 CFR 570.486) except where waivers or alternative requirements are provided. Subrecipient must:

1. Prepare and adopt an Outreach, Marketing, and Citizen Participation Plan. As part of this plan, procedures must include methods for encouraging citizen participation and should provide citizens the email, address, phone number, and times for submitting complaints.

2. Develop grievance procedures. The written complaint procedures shall also provide for a timely written response to complaints and grievances, within 15 working days where practicable.

Concerned citizens have the ability to file a complaint or appeal a decision to OHCS.

8.2 Citizen Participation Notification

Subrecipient must publish notices regarding Citizen Participation and Complaint Procedures, Section 504, and Affirmatively Furthering Fair Housing (AFFH) and the rights and responsibilities associated with federal grant funding received.

Initial civil rights notices should be provided to OHCS at project start-up once the executed Subrecipient Agreement with the OHCS is received.

The subrecipient must publicize in one of four ways:

1. Posting to subrecipient's website and keeping a screen shot of posting in program files
2. Newspaper advertisement (documented with tear sheet/full-page advertisement/photocopy with publisher's identification and date/publisher's affidavit)
3. Public posting at both the city hall/courthouse and at least one location within the target area (documented with affidavit of posting and copy of the notice)
4. Public posting in courthouse/city hall and on subrecipient's website during the term of the contract (documented with affidavit of posting and copy of the notice as well as screen shots of the posting)

8.3 Excessive Force Policy

Subrecipients receiving CDBG-DR funds must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations. (See also State's Certification Requirements at 24 CFR 91.325(b)(6)).

When subrecipients sign the Subrecipient Agreement, they certify that they will pass and enforce the following policies:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals or groups engaged in non-violent civil rights demonstrations

2. A policy enforcing applicable state and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction

8.4 Fair Housing

The Fair Housing Act requires all subrecipients and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, or marital status. OHCS complies with and enforces the Civil Rights requirements of Title I of the Housing and Community Development Act and the Fair Housing Law.

OHCS follows policies and procedures for compliance with AFFH during the design and implementation of all program activities. This includes an assessment of the demographics of the impacted residents, of proposed project areas, socioeconomic characteristics, environmental hazards or concerns, and other factors material to the AFFH determination.

Subrecipients must ensure that they annually submit reports to OHCS for all beneficiaries residing in CDBG-DR assisted units which include data on the racial, ethnic, and gender characteristics ([87 FR 31636](#)). OHCS will provide subrecipients with a form they can utilize in order to capture this information. This form should be submitted as part of the subrecipient's reporting requirements.

8.4.1 Affirmative Fair Housing

To ensure compliance with 24 CFR 5.151, OHCS, its designee, or subrecipient will work with landlords in order to take meaningful and specific actions to AFFH. If a project contains five or more units, OHCS will ensure that the landlord develops a project-specific Affirmative Fair Housing Marketing Plan (AFHMP) and a tenant selection Plan. The AFHMP is a defined marketing and outreach plan that strategizes how targeted outreach to minority groups in the community that are least likely to apply for housing will be conducted. The AFHMP is required for projects which contain five or more units.

HUD Handbook 8025.1 provides extensive guidance on AFHM plans and can be found at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80251

8.4.2 Fair Housing Activities Requirements

All subrecipients must undertake and complete at least one additional fair housing activity for each grant prior to the final draw for grant funds. Actions that the state will accept without further review include:

1. Develop and adopt a comprehensive fair housing action plan, identifying specific actions and timetables. Document the analysis and make it available to the public. Develop a fair housing action plan with corresponding steps to address actions the subrecipient will undertake to promote fair housing.
2. Conduct or participate in an analysis of impediments to fair housing in the community. Document the analysis and make it available to the public. Develop a fair housing action plan with corresponding steps to address actions the subrecipient will undertake to promote fair housing.
3. Undertake a review of existing fair housing ordinances, zoning, and land use practices for discriminatory policies and practices. Document the review and make it available to the public. Develop a fair housing action plan with corresponding steps to address discriminatory practices.
4. Support and participate in an educational program coordinated with local realtors, home builders, and/or mortgage lenders designed to provide information on fair housing rights.
5. Establish a fair housing complaint referral program that provides public information and assistance to persons who want to file a complaint with the federal government or the State of Oregon. Procedures for filing housing discrimination complaints are described on the HUD website at portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination and at the Fair Housing Council of Oregon by calling (503)223-8197 or 1-800-424-3247 (Voice and TTY).
6. Provide financial or other documented local support to state or local fair housing organizations that provide information, referral, and other assistance in the community. CDBG-DR administration funds can be used for this without receiving prior approval from the state.
7. Host an informal fair housing session for local employers to encourage cooperation in efforts to find housing for their employees and to promote equal housing choices within the community.
8. Speak to an elementary school class about the fair housing rights of the children and their families.

9. Host and invite the Fair Housing Council of Oregon to have a discussion with group leaders or rental property owners and managers about their fair housing responsibilities.
10. Adopt a resolution that supports government-assisted housing programs in the community and print a notice or advertisement that appears in a prominent location of the local newspaper that states that the subrecipient is an active supporter of fair housing laws. The notice or advertisement must include the contact information for the subrecipient's fair housing representative.
11. Develop a community fair housing webpage that prominently displays the community's commitment to further fair housing on the community website, including links to fair housing enforcement and education agencies.
12. Subrecipients may ask the state to approve other actions designed to further fair housing choice in their communities, such as implementing the actions identified within the subrecipient's fair housing action plan.

Oregon State Requirement Note: Subrecipients must meet the minimum requirements below:

1. All grant subrecipients must adopt and publish a Fair Housing Resolution (Exhibit 2B) and submit the affidavit of publication to OHCS within 6 months prior to the first draw for non-construction activities/funds.
2. All grant subrecipients must distribute and post the fair housing posters and brochures at City Hall and/or the County Court House and other locations within the community and submit documentation that this was completed within 6 months prior to the first draw for non-construction activities/funds. Brochures and posters can be found at: www.fhco.org or https://www.hud.gov/program_offices/fair_housing_equal_opportunity/marketing

Note for item 1 and 2 above: If the grant subrecipient's jurisdiction comprises 5% or more non-English speaking persons, the fair housing resolution, brochures, and posters must be disseminated in the applicable non-English language.

3. All grant subrecipients must undertake and complete at least one additional fair housing activity for each grant prior to the final draw for grant funds. The subrecipients must inform OHCS of the specific additional fair housing action they plan to undertake and clearly document within the project file that the action was completed. Documentation can include but is not limited to a copy of a newly adopted fair housing action plan, newspaper articles covering the additional fair housing activity, meeting and board minutes, contracts and agreements with workshop presenters, sign-in sheets, websites, and video files. Every subrecipient

must adopt and publish a Fair Housing Resolution prior to receiving the first drawdown of grant funds. A resolution adopted for a prior project is acceptable if it has been published within 6 months prior to the first grant drawdown. See **Exhibit 2B** for a model resolution.

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

8.4.3 Fair Housing Organizations and Resources

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

The FHCO also has resource packets with a host of materials summarizing the fair housing laws, resource lists, and contact information available upon request. Grant subrecipients 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.

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

- Community development corporations and other non-profits
- Boards of realtors
- Lender associations and financial institutions
- Legal aid programs
- Public housing authorities
- Community action agencies
- Fair Housing Council of Oregon (FHCO): The FHCO is a statewide non-profit organization that provides a wide range of resources to communities. They promote equal access to housing by providing education, outreach, technical assistance, and enforcement opportunities.

Their contact information is:

Fair Housing Council of Oregon
1221 SW Yamhill St., #305
Portland, OR. 97205
Phone: 503-223-8197
Statewide: (800) 424-3247 information@fhco.org

The State of Oregon has developed a 2016–2020 Fair Housing Action Plan, which provides a listing of resources and actions necessary to remove impediments to fair housing. A copy can be obtained here: <https://www.oregon.gov/ohcs/development/Documents/conplan/2020%20CAPER/2020-FHAP-Report-Draft.pdf>. Subrecipients can obtain copies of fair housing posters, brochures and videos for use from Oregon Housing and Community Services, FHCO, and from OHCS.

8.5 Section 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754), requires that subrecipients shall operate each program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps.

Section 504 provides that “No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The subrecipient is responsible for compliance with Section 504 by the developer in economic development programs.

8.5.1 Section 504 Requirements

In order to comply with Section 504, the following actions must be initiated:

1. **Assurance** — Each subrecipient agreement with OHCS includes compliance provisions that the CDBG-DR program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This provision within the agreement obligates the subrecipient for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with OHCS.
2. **Self-Evaluation** — Each subrecipient shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed within 6 months of receipt of any grant award after July 1988.
3. **Building Designation and Status** — The self-evaluation shall designate all buildings and structures as “new” or “existing” depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services for

the public can be approached, entered, and used by persons with disabilities. At minimum, the following items should be addressed in the self-evaluation: parking — spaces, curbs, ramps; routes and pathways — slopes, levels, ramps, notices, entrance ways — widths and heights; interiors — door grasp, pressure, pathways, elevators; service — counter heights, notices; and auxiliary services — telephones, restrooms, drinking fountains.

4. Policy Modifications vs. Structural Changes — Each subrecipient shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Compliance with 504 does not necessarily require a subrecipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a subrecipient to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. Therefore, a subrecipient may comply with the requirements of this section in its programs and activities receiving federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A subrecipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).
5. Visually or Hearing Impaired — Each subrecipient must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.
6. Benefit to Those with Disabilities — Each subrecipient must maintain data for OHCS showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

8.5.2 Other Section 504 Requirements, as Applicable

If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a subrecipient shall develop a transition plan with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, for those areas that cannot be made accessible administratively (24 CFR 8.21 (4)).

The construction activities identified in the transition plan must have been/must be completed within 3 years of completion of the self-evaluation that was done within 6 months of the first grant award made after July 1988 (24 CFR 8.21(c) 3). The transition plan must be made available for public inspection, and, at a minimum, it shall:

1. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities.
2. Describe in detail the method to be used in making the facility accessible.
3. Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then the subrecipient must identify the actions to be taken during each year of the transition period.
4. Identify the individual responsible for implementation of the plan.
5. Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless the grant subrecipient has recently acquired a facility that was constructed prior to 1988 that will house programs and services available to the public and intends to make physical alterations to this facility, the 3-year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

NOTE: New non-housing facilities (designed, constructed, or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps (24 CFR 8.32).

If the subrecipient employs 15 or more persons:

1. Designated 504 Coordinator — A responsible employee must be designated to coordinate the community's efforts to comply with Section 504.
2. Grievance Procedures — The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.
3. Statement of Compliance — The subrecipient shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the subrecipient. The notification shall state, where appropriate, that the subrecipient does not discriminate in admission or access to, or treatment or employment in its

federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.

A subrecipient shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with OHCS. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in subrecipient's publications, and distribution of memoranda or other written communications.

- Records Maintenance & Disclosure — The subrecipient must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted, (2) a description of areas examined in the self-evaluation and any problems identified, and (3) a description of any modifications made and of any remedial steps taken.

The regulation requires that you must have available a Telecommunication Device for the Deaf (or TDD) or equally effective method for communicating with hearing impaired persons. Oregon has an approved relay service, which may be utilized. In order to utilize the relay system, the subrecipient must have a policy indicating the use of the relay system by the subrecipient and publish the telephone numbers in the newspaper.

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

The Public Utility Commission encourages public agencies that receive more than one call a week from persons with hearing impairments to purchase a TTY rather than depend on the relay service, which was established to assist individual citizens.

8.5.3 Communicating with Persons with Hearing, Visual, and Manual Impairments

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

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

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

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

Subrecipients may use the following sample language for public meeting notices:

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

8.5.4 Section 504 Requirements for Complaints

The subrecipient will provide a timely written response to every citizen complaint. The subrecipient's response must be provided within 15 working days of the receipt of the complaint, or the subrecipient must document why additional time for the response was required.

The subrecipient must publicize how and to whom a complaint can be submitted.

Complaints must be received in writing. The subrecipient must respond in writing within 15 days of receipt of complaint or provide the complainant with a reason why the response cannot be completed within the 15 days.

The subrecipient must keep a complaint log that documents the following:

- Date complaint received
- Name of complainant and contact information
- Date subrecipient responded to the complaint
- The outcome of the complaint and final resolution
- Date complaint closed

8.6 Equal Employment Opportunities (EEO)

8.6.1 Equal Opportunities and Non-Discrimination Provisions

Subrecipients must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the CDBG-DR project on the basis of race, color, religion, sex, national origin, age, or disability.

8.6.2 Non-discrimination, Equal Opportunity, and Affirmative Action in Employment

Employment may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Steps that can be taken to prevent discrimination in employment include the following:

1. Maintain employment data that indicates staff composition by race, sex, disabled status, and national origin.
2. Review existing personnel policies to ensure compliance with non-discrimination and equal opportunity requirements.
3. Advertise locally as an equal opportunity employer.
4. Publish an annual statement of non-discrimination or include such statement in any CDBG-DR program communications/publications.
5. Develop a network of information points that serve minority, elderly, women, disabled, and ethnic groups, in addition to newspapers or public service channels, to advertise employment opportunities.
6. Develop and implement a Section 3 compliance plan.
7. Display equal opportunity posters prominently at all job sites.
8. Take affirmative action to overcome the effect of past discrimination.

8.6.3 Actions to Overcome Prior Discrimination

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

Oregon State Requirement Note: Subrecipients that have been the subject of formal compliance or court actions related to discriminatory practices must inform the state about their situation and describe actions resulting from the compliance order or court action. During the state's onsite monitoring of the program, the subrecipient must provide any such documentation for the preceding 5 years.

8.6.4 Non-discrimination, Equal Employment Opportunities, and Affirmative Action for Construction Contracts

Subrecipients must take all necessary steps to notify minority businesses, women's business enterprises, labor surplus area firms, and Section 3 businesses of bidding opportunities. Contractors may not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Steps that can be taken to prevent discrimination and monitor for compliance include the following:

1. Advertise as an equal opportunity employer in bid solicitations.
2. Include minority businesses, women's business enterprises, labor surplus area firms, and Section 3 businesses in bid solicitations whenever possible.
3. Document and maintain a list of locally owned businesses that were awarded contracts.
4. Include Section 3 and EEO clauses as part of bid packets and all applicable contracts.
5. Inform contractors of Section 3 and equal opportunity requirements at pre-construction conference or through other means of notification.
6. Require contractors to submit monthly utilization reports and monitor contractor's compliance at work site.

8.6.5 Non-discrimination, Equal Employment Opportunities, and Affirmative Action in Housing

The Fair Housing Act prohibits discrimination against protected class members in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. Steps that can be taken to prevent discrimination in housing include the following:

1. Develop and adopt a fair housing policy that includes methods of enforcement.
2. Disseminate information concerning housing services and activities through agencies and organizations which routinely provide services to protected groups.
3. Review contract documents used by subrecipient and lending institutions participating in local programs to eliminate any discriminatory intent or practice.
4. Evaluate criteria for selecting subrecipients of housing assistance for any discriminatory effect.
5. Offer assistance to persons experiencing discrimination in housing.
6. Provide housing counseling services to minorities and women seeking housing outside areas of concentration.
7. Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.
8. Work with local banks to post "equal lending opportunity" advertisements.
9. Use "equal housing opportunity" slogan and logo on subrecipient correspondence.
10. Sponsor fair housing seminars and campaigns.
11. Work with minority and women leaders in the area to promote housing development and increase minority and female participation.
12. Assist local housing developers in developing outreach programs to attract minorities and females.
13. Review zoning ordinances and comprehensive plans to ensure that they promote de-concentration of assisted housing units.
14. Create a local housing authority.
15. Publicly advertise the city as a "fair housing city."
16. Adopt a code enforcement ordinance that will compel landlords to keep their units in safe and sanitary condition.

8.6.6 LGBTQ Rule

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

Examples:

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

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

Additionally, if a person has experienced (or is about to experience) housing discrimination, they can contact HUD's Office of Fair Housing and Equal Opportunity for help at 800-877-0246. You may also file a housing discrimination complaint online at the following link: portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-

[complaint](#). HUD will thoroughly review the allegation to determine if the claims are jurisdictional under the Fair Housing Act.

8.7 Language Access Plan (LAP)/Limited English Proficiency (LEP)

8.7.1 Language Access Plan Requirements

OHCS and subrecipients are required to ensure meaningful access to agency services, programs, and activities for persons who have LEP. From intake to closeout, subrecipients must identify property owners or beneficiaries who have difficulty speaking or reading English and ensure that services are available to them in accordance with OHCS requirements.

In order to determine if language assistance is required by subrecipients of federal funds through OHCS, all subrecipients are required to follow the measures outlined below:

1. Conduct the four-factor analysis prior to advertising for application public hearing.
2. If the four-factor analysis reveals there are 1,000 or more LEP persons, or 5% or more LEP persons in the eligible population in the jurisdiction or among current beneficiaries, the applicant will provide appropriate language assistance by:
 - a. Translating all vital documents
 - b. Posting notices of application public hearings in areas frequented by LEP persons of the threshold population(s) in the language(s) spoken
 - c. Providing translation services at public hearings, if requested to do so by LEP persons
3. If the four-factor analysis reveals there are less than 50 LEP persons but 5% or more LEP persons in the eligible population in the jurisdiction or among current beneficiaries, the applicant will provide appropriate language assistance by:
 - a. Posting notices of application public hearings in areas frequented by LEP persons of the threshold population(s) in the language(s) spoken
 - b. Providing translation services at public hearings, if requested to do so by LEP persons

4. If the four-factor analysis reveals there are less than 50 LEP persons and fewer than 5% LEP persons in the eligible population in the jurisdiction or among current beneficiaries, the applicant will provide appropriate language assistance by providing translation services at public hearings, if requested to do so by LEP persons.

If an LAP is required, the subrecipient's LAP will include certifications that the LAP has been developed, adopted, and will be implemented for all CDBG-DR-funded projects. The subrecipient's LAP will include an identification of all LEP populations exceeding 1,000 or 5% of total jurisdiction population, whichever is less, the identification of materials to be made available to LEP persons, the means by which the materials will be made available to LEP persons, and the identification of any other translation services that may be necessary. Subrecipients will be monitored for implementation of their LAPs.

All agencies receiving federal funds through OHCS will report annually on services provided to LEP persons. Agencies will review their respective plans each year to evaluate their effectiveness and to make any needed changes. OHCS will assist agencies in finding appropriate translation resources, and disseminate translated federal program notices, brochures, posters, and other documents. OHCS will monitor the delivery of any required language assistance on an ongoing basis. OHCS will review the LAP, evaluate the effectiveness of its implementation, and update the LAP, on an annual basis, in order to ensure continued responsiveness to community needs. The LAP evaluation will consist of:

1. Revision of the LAP, as necessary, by monitoring changes in demographics and services provided, updating available resources and tools, modifying methods of implementation, and addressing any issues of concerns.
2. Analysis of language assistance usage, including the number of language service requests, surveying the languages most frequently encountered, identifying the primary modes of communication, and costs associated with services rendered.
3. Assessment of response to requests by LEP individuals and subrecipients regarding the delivery of language assistance services.

8.7.2 LEP Requirements

LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Subrecipients must take steps to provide meaningful access to federally funded programs for all LEP persons. Subrecipients should establish and adopt a plan, determining if there is a need for LEP services within the community and, if applicable, how appropriate language assistance will be given.

Program activities that should be made accessible to LEP persons include:

1. Public notices and hearings regarding applications for grant funding, amendments to project activities, and completion of grant-funded projects
2. Publications regarding environmental reviews, civil rights, and other program requirements
3. Other program documents as needed

To determine the local need for LEP services, subrecipients may use the American FactFinder (<https://data.census.gov/cedsci/>).

- Type in the federally funded project’s location (e.g., city or county name) and select “go.”
- Then, on the left side of the screen, choose “Origins and Language,” then “Selected Social Characteristics” (DP02).
- Next, scroll to “Language Spoken at Home” and review the number or percentage of “Speaks English less than very well” under the subcategories of Spanish, Other Indo-European languages, and Other languages.

The table below sets forth safe harbors for written translations.

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

8.8 Civil Rights Compliance Documentation

Subrecipients are required to document compliance with the key regulations and requirements of civil rights, fair housing, Section 3, and equal opportunity laws at the beginning of the program and continue to be diligent and consistent in implementing their civil rights responsibilities.

8.8.1 Documentation Required at Project Start-up

Prior to releasing any funds, the OHCS must receive the following documentation at project start up:

1. Appointment of civil rights officer
2. Appointment of Section 3 coordinator
3. Citizen Participation Plan including complaint and grievance procedures (Note: the Consolidated Notice for the CDBG-DR funds requires that complaints receive a response within 15 days)
4. Non-discrimination/EEO Policy
5. Policy and notice of non-discrimination on basis of handicapped status. Subrecipient may combine this policy with their Non-discrimination/EEO policy
6. Excessive Force Policy
7. Section 3 Policy
8. Section 504 Self-Evaluation Review
9. Section 504 Grievance Procedures
10. Civil Rights Resolution regarding Citizen Participation, Section 3, Excessive Force, Section 504 Policy and Grievance Procedures, and Fair Housing Policy
11. Public notices regarding civil rights (see [Section 6.2](#))
12. Fair housing activity documentation

8.8.2 Ongoing Compliance Documentation

During the course of the grant period, subrecipient must ensure that all CDBG-DR funded activities are conducted in a manner that ensures equal opportunity and access to all persons in accordance with civil rights, equal opportunity, and affirmative action laws, regulations, and requirements.

1. Fair housing: Document efforts to affirmatively further fair housing.
2. Section 3 Business Participation: Document efforts to solicit Section 3 businesses and maintain data concerning the number and dollar amount of contract awarded to locally owned businesses.
3. Minority Business Participation: Document efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses.
4. Maintain records of any monitoring trips to project site and any findings as well as copies of contractor's certifications and monthly utilization reports documenting contractor compliance.
5. Maintain records of program applicants as well as direct and indirect beneficiaries including race, color, sex, national origin, age and handicap status.
6. Record race, head of household, age, and income data of persons affected by displacement and/or relocation, if applicable.
7. Human resources documents regarding employment should be on file including training handbooks, policy and procedure manuals, resolutions, and ordinances regarding civil rights requirements.
8. Maintain documentation related to any complaints received and action taken to notify OHCS or HUD, if applicable.

8.9 Fraud, Waste, and Abuse of Government Funds

Complaints regarding fraud, waste, or abuse of government funds should be forwarded to:

U.S. Department of Housing and Urban Development Office of Inspector General Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov)



9 Acquisition & Relocation

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9 Acquisition & Relocation

9.1 Overview

This policy for acquisition and relocation will apply to housing and infrastructure programs that involve the voluntary participation of property owners that apply for assistance, and/or acquisition of real property using federal funds. If a property owner who applies to the program has tenants that must move due to a CDBG-DR program activity, the tenants are considered involuntarily displaced. The displacement may be temporary or permanent depending on the type of recovery activity. The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) will apply to both displaced residential and non-residential tenants.

In order to assist displaced households and businesses and achieve compliance with the URA of 1970, 49 CFR Part 24, as amended, and HUD's Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, OHCS has adopted a Residential Anti-Displacement and Relocation Assistance Plan (RARAP) that aligns with the URA policies. This chapter contains the policies regarding relocation assistance as required by federal regulations and HUD policies.

This policy will ensure, at a minimum, the following:

- To provide uniform, fair, and equitable treatment of persons whose real property is involuntarily acquired or who are involuntarily displaced in connection with federally funded projects
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement
- To ensure that no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means
- To help improve the housing conditions of displaced persons living in substandard housing
- To encourage and expedite acquisition by agreement and without coercion

Several federal laws apply to projects assisted in whole or in part with CDBG-DR funds that include any of the following activities:

- Acquisition of real property
- Acquisition of permanent and temporary easements
- Displacement of businesses, nonprofit organizations, and persons residing in the project area

- Personal property owned by someone other than the owner may also qualify as displaced (even if no person is residing on the site)
- Demolition or conversion of occupied and/or vacant occupiable low to moderate income (LMI) dwelling units
- Any federally assisted demolition projects
- Housing rehabilitation

This chapter provides an overview of the different guidelines but does not include exhaustive information on these subjects. For additional information, reach out to your contract administrator.

9.2 Applicable Regulations

There are four major types of requirements that cover relocation (and acquisition) activities in CDBG-DR programs:

1. The URA regulations, effective February 2005, implementing the URA of 1970, as amended (49 CFR Part 24)
2. Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.496(a)
3. 24 CFR 570.606 of the CDBG regulations, which requires compliance with the regulations listed above
4. Consolidated Notice for CDBG-DR (87 FR 6364, February 3, 2022), which waives or modifies requirements listed above for CDBG-DR funded activities.

9.2.1 HUD Acquisition and Relocation Guidance

HUD *Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014, and Part V of the U.S. Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 provides the information necessary to addresses any type of acquisition and contains detailed guidance on HUD's URA requirements. The Handbook and all sample guideforms are located at [CPD Handbook 1378.0 | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

9.3 Waivers, Modifications, and Alternative Requirements per the Consolidated Notice

9.3.1 Section 514 of the Stafford Act

This section typically requires persons displaced due to a disaster to be offered relocation assistance if federal funds are spent on their previous residence following a disaster. This requirement has been modified in the Consolidated Notice to apply only to activities funded with the CDBG-DR within the first year after the disaster declaration date. All CDBG-DR activities for the 2020 disasters will occur more than a year after the latest applicable disaster and the Section 414 requirement is waived.

9.3.2 Section 104(d)

HUD has provided the following alternative requirements for Section 104(d) compliance for the use of CDBG-DR funds allocated under the Consolidated Notice.

Term for Rental Assistance Payments: Section 104(d) typically extends housing replacement assistance from the standard 42 months under URA to 60 months for households determined to be LMI. This 60-month requirement for LMI households is waived in the Consolidated Notice and reduced to the standard 42-month URA requirement.

Applicability of One-for-One Replacement: The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG-DR assisted activity. This waiver exempts all disaster-damaged owner-occupied lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation," from the one-for-one replacement housing requirements of 24 CFR 42.375. Before carrying out activities that may be subject to the one-for-one replacement housing requirements, the subrecipient must define "not suitable for rehabilitation" in its policies/procedures governing these activities. More information can be found later in the chapter regarding rental units.

9.4 Definitions

The following words and terms used in this section have the following meanings, unless indicated otherwise. Additional applicable definitions may be found in 49 CFR Part 24 and HUD Handbook 1378 Chapter 5 (CH-5).

30-Day Notice to Vacate: A letter issued to a tenant that states the specific date, at least 30 days in advance, by which a beneficiary must vacate the property. The urgent need provisions described in 49 CFR 24.203(c)(4) permit an Agency (subrecipient) to require an occupant to vacate on less than 90 days' notice. However, an Agency may not artificially create an "urgent need" (e.g., by issuing a notice to proceed to a demolition contractor, then using the imminent demolition to substantiate a danger to the tenant's health and safety in order to cut short the notice period which is otherwise required).

90-Day Notice to Vacate: Required by 49 CFR § 24.203(c), this is a letter issued to a tenant, at least 90 days in advance, that informs the tenant of the date by which they will be required to relocate from the property.

Alien not lawfully present in the United States: The phrase "alien not lawfully present in the United States" means an alien who is not lawfully present in the United States as defined in 8 CFR 103.12 and includes:

- An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the U.S. Attorney General.
- An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Appeal: A written request from a tenant, regardless of form, for a review and revision of a determination made by any OHCS program.

Applicant: Any individual who submits an application for assistance to CDBG-DR programs.

Appraisal: The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Base Monthly Rent: The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. For a tenant who paid little or no rent for the displacement dwelling, the program will use the fair market rent as the base rent (unless its use would result in a hardship because of the person's income or other circumstances).

Business: Any lawful activity (except a farm operation) that is conducted:

- Primarily for the purchase, sale, lease, and or rental of personal and/or real property, and/or any other personal property
- Primarily for the sale of services to the public
- Primarily for outdoor advertising display purposes that have to be moved
- By a nonprofit organization that has established its nonprofit status under applicable state law

Citizen: The term “citizen” means both citizens of the United States and noncitizen nationals.

Community Development Block Grant Disaster Recovery (CDBG-DR): A federal program administered by HUD that provides grant funds to local and state governments to assist with eligible recovery efforts after a natural disaster, which may include such activities as homeowner and rental repairs and elevations, acquisition or buyout of damaged or at-risk properties, and infrastructure repairs.

Comparable Replacement Dwelling: Must be an unsubsidized unit available on the private market and within the financial means of the displaced person.

Decent, Safe, and Sanitary Dwelling (DSS): A dwelling which meets local housing and occupancy codes. However, any of the following standards that are not met by the local code shall apply unless waived for good cause by the federal agency funding the project. Minimum property standards as established by HUD and defined by 25 CFR 700.55:

- Be structurally sound, weathertight, and in good repair.
- Contain a safe electrical wiring system adequate for lighting and other divides.
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person.
- Be adequate in size with respect to the numbers and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed local housing codes or in the absence of local codes the policies or such Agencies.
- There shall be a separate, well-lit, and ventilated bathroom that provides privacy to the user and contains a sink, bathtub, or shower stall and a toilet all in good working order and property connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level; and

- For a disabled person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use the dwelling by such displaced person.

Department of Housing and Urban Development (HUD): The federal department through which the CDBG-DR Program funds are administered, monitored, and distributed to grantees.

Displaced Person (49 CFR 24.2(a)(9)): Any person (family, individual, business, or non-profit organization) who moves from real property or moves personal property from the real property as a direct result of an acquisition, rehabilitation, or demolition by a federally assisted program. This includes:

(A) As a direct result of a written notice of intent to acquire (see § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(B) As a direct result of rehabilitation or demolition for a project

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c) and moving expenses under § 24.301, § 24.302 or § 24.303.

Disability: For the purposes of the CDBG-DR program, the term “disability” is consistent with federal law under the Social Security Act, as amended, 42 U.S.C. 423(d), The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12102(1)-(3), and in accordance with HUD regulations at 24 CFR 5.403 and 891.505.

Dwelling: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family, or multipurpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a manufactured housing unit (or mobile home); or any other residential unit.

Easement: The right held by one property owner to make use of the land of another for a limited purpose (e.g., permanent easement or temporary construction easement).

Economic Displacement: If rents are increased after the CDBG-DR project is complete, and the new rent exceeds 30% of the tenant’s gross monthly income, they would be considered “economically displaced.” Generally, an increase in rent within the first year of

the project is seen as related to the federally funded project and may trigger “economic displacement” benefits.

Fair Market Rent: Fair market rents are used to determine payment standard amounts for HUD rental assistance programs and include the shelter rent plus all utilities and are used to determine comparable units for replacement housing payments in the URA.

General Information Notice (GIN): Required under 49 CFR 24.203(a), this required notice informs potentially displaced individuals that they may be displaced, not to move, and covers general URA requirements and rights.

Head of Household: The adult member of the family who is the head of the household for the purposes of determining income eligibility, rent, or participation in CDBG-DR programs, and as outlined in 24 CFR 5.504.

Household: All persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements. Upon identification of a tenant that may be eligible for temporary or permanent relocation assistance, all persons who reside in the household must be identified so that appropriate relocation resources and assistance can be provided.

HUD Housing Quality Standards (HQS): HUD’s housing quality standard as defined by 24 CFR 982.401.

Initiation of Negotiations Date (ION): The ION date is the trigger for issuance of the Notice of Eligibility for Relocation Assistance (“NORE”) or Notice of Non-displacement (“NND”).

Landlord: A person or organization that owns and leases apartments, building space, buildings, or land to others.

Limited English Proficiency (LEP): A designation for persons who do not speak English as their primary language and who have a limited ability to speak, read, write, or understand English because it is not their primary language.

Mobile Home or Manufactured Housing Unit (MHU): A dwelling unit is composed of one or more components substantially assembled in a manufacturing plant and designed to be transported to a building site on its own chassis for placement on a supporting structure. An MHU is constructed in accordance with the standards established in HUD’s building code for manufactured housing. An MHU is not constructed in accordance with the standards established in the state and local building codes that are applicable to site-built homes. The term “mobile home” may be used interchangeably with an MHU; however, the manual generally uses the term MHU to refer to both types of housing.

Modular Home: A dwelling unit composed of two or more components substantially assembled in a manufacturing plant and transported to a building site by truck for final assemble on a permanent foundation. A modular home must be constructed in accordance with the standards established in the state and local building codes that are applicable to site-built homes. Modular homes do not include mobile homes.

Person Not Displaced (49 CFR 24.2(a)(9)(ii): The URA regulations define very specific conditions under which a person is not considered a displaced person:

- Eviction for cause. In eviction cases, HUD expects the Agency files to substantiate that an eviction was not undertaken in order to avoid paying relocation costs. The Agency (or owner) is advised to obtain a court order for the eviction (even if the tenant has already moved). If the Agency believes the cost of obtaining a court order is prohibitively expensive, it should adequately document the cause of the eviction in its files.
- Persons temporarily relocated from their dwellings for less than 12 months during rehabilitation or demolition.
- Illegal aliens. The URA prohibits providing relocation assistance to persons not lawfully present in the United States.
- A person who moves before the initiation of negotiations (49 CFR 24.2(a)(9)(ii) unless OHCS determines that the person was displaced as a direct result of the program or project.
- A person who initially enters into occupancy of the property after the date of its acquisition for the project
- A person who has occupied the property for the purpose of obtaining assistance under the URA.

Notice of Relocation Eligibility (NORE)(49 CFR 24.203(b): The NOE must be issued promptly after the ION (see Paragraph 1-4 T.) and must describe the available relocation assistance, the estimated amount of assistance based on the displaced person's individual circumstances and needs and the procedures for obtaining the assistance. This notice must be specific to the person and their situation so that they will have a clear understanding of the type and amount of payments and/or other assistance they may be entitled to claim.

Notice of Non-Displacement (NND): A HUD term for notice provided to persons who will not be permanently displaced for a HUD-assisted project. Such persons may, however, be required to move to another unit within the project or relocate temporarily while the property is rehabilitated (terms of the move must be reasonable and costs for the move must be covered by the project). While this notice is not required by the URA, HUD policy requires that such notice be provided to adequately inform those persons within the

project who will not be permanently displaced but who may be impacted as a result of the project. A person who will not be displaced by the project may choose to leave the project site; however, they are presumed to be ineligible for relocation payments if an accurate and timely Notice of Non-displacement was provided before they chose to move.

Not Suitable for Rehabilitation: OHCS defines a residential property as “not suitable for rehabilitation” if any of these conditions apply:

- The property is declared a total loss.
- Repairs would exceed 50% of the cost of reconstruction.
- Repairs exceed \$50,000.
- Homes cannot be rehabilitated or reconstructed in place under existing agency policies and award caps due to legal, engineering, or environmental constraints, such as permitting, extraordinary site conditions, or historic preservation.

Power of Attorney (POA): An authorization to act on someone else's behalf in a legal or business matter.

Program or Project (49 CFR 24.2(a)(22): The term "project" means any activity or series of activities undertaken with federal financial assistance received or anticipated in any phase. When federal financial assistance is used for any activity or in any phase of a project, planned or intended, and the activities are determined to be interdependent, the statutory and regulatory requirements of the URA and the specific HUD funding source(s) are applicable. Interdependence is best determined by whether or not one activity would be carried out if not for another. As a result, any activity “in connection with” a federally funded project can be subject to all regulations of that funding source even though the activity may not be directly funded by that source. HUD "projects" are defined according to program rules.

Reconstruction: Demolition and re-building of a housing unit on the same lot in substantially the same footprint and manner.

Rehabilitation: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.

Reasonable Accommodation: In certain circumstances, displaced households require reasonable accommodation to fully benefit from temporary or permanent relocation activities undertaken in conjunction with housing assistance programs. Displaced households who require reasonable accommodation should notify their housing program staff immediately. All forms, written materials, and verbal messages used to communicate with displaced households are made available in the household’s primary language, should the household indicate that they have a Limited English Proficiency (LEP).

Replacement Unit: The replacement unit is the unit the person actually moves into and may or may not be one of the units provided as a comparable.

Review Appraisal: A qualified professional who meets the requirements of a review appraiser as determined by OHCS and required in 24 CFR 103(d)(1) and is responsible for reviewing and ensuring that all appraisals of property for the buyout programs meet professional standards.

Section 104(d): Under section 104(d) of the Housing and Community Development Act of 1974, as amended (HCDA) (Pub. L. 93-383, 42 U.S. C. 5301 et seq.) and the implementing regulations at 24 CFR part 42, a residential anti-displacement and relocation assistance plan is required and must provide for: 1) One-for-one replacement of occupied and vacant occupiable LMI income dwelling units demolished or converted to another use in connection with a development project assisted under Parts 570 and 92, and 2) provide relocation assistance for all LMI persons who occupied housing that is demolished or converted to a use other than for LMI housing.

***Note:** Section 104(d) has been modified under the Consolidated Notice and those modifications are detailed in the Section 104(d) section of this document.*

Temporary Relocation (49 CFR 24.2(a)(9)(ii)(D), Appendix A): The URA applies to permanent displacements and does not cover persons that are temporarily relocated in accordance with HUD regulations. While there are no statutory provisions for “temporary relocation” under the URA (the statute considers all eligible persons “displaced”), it is recognized in the URA regulations that there are some circumstances where a person does not need to be permanently displaced but may need to be moved from a project for a short period of time. The URA regulations require that any residential tenant who has been temporarily relocated for a period beyond 1 year must be contacted by the Agency and offered permanent relocation assistance. By regulation, HUD imposes additional conditions on temporary relocations.

Tenant: A person who has the temporary use and occupancy of property owned by another (24 CFR 24.2(a)(26)).

Tenancy: A situation that arises when one individual conveys real property to another individual by way of a lease. The relation of an individual to the land he or she holds that designates the extent of that person's estate in real property.

The Uniform Relocation Act (URA): Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA, Uniform Act, or Uniform Relocation Act), (Pub. L. 91-646, 42 U.S.C. 4601 et seq.), and the government wide implementing regulations found at 49 CFR part 24.

9.5 Acquisition

The CDBG-DR Consolidated Notice allows for two types of acquisition with CDBG-DR funds. Acquisition for redevelopment allows subrecipients to purchase real property for CDBG-DR eligible activities and redevelop them. A buyout acquisition is the purchase of real property for the purpose of reducing future risk of property damage by demolishing all structures on the property and leaving the property as open space or to be used for flood mitigation purposes. Requirements for implementing a buyout acquisition are included in Appendix A of this chapter.

The following general requirements apply to both forms of acquisition under CDBG-DR. Additionally, URA requirements apply equally to both forms of acquisition. For the purposes of this chapter, “property to be acquired” refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are also subject to all of the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner. Subrecipients should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

Acquisition rules must be followed whenever:

- The subrecipient undertakes the purchase of property directly.
- The subrecipient hires an agent, private developer, or other URA representative to act on their behalf.
- The subrecipient provides a nonprofit or for-profit entity organization with funds to purchase a property.

Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts pending environmental clearance.

9.6 Voluntary vs. Involuntary Acquisition

The URA regulations at 49 CFR Subpart B sets forth the real property acquisition requirements for federal and federally assisted programs and projects under the URA. The URA regulations have different requirements for acquisitions of a voluntary nature and for acquisitions under threat or use of eminent domain (condemnation).

9.6.1 Voluntary

Voluntary acquisitions (transactions with no threat or use of eminent domain meeting the criteria set forth in 49 CFR 24.101(b)(1) through (5)).

An acquisition will be considered “voluntary” when all of the following conditions in paragraphs (b)(1)(i) through (iv) are met:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See Appendix A, § 24.101(b)(1)(i).)

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner in writing of what it believes to be the market value of the property.

9.6.2 Involuntary

Involuntary acquisitions (acquisitions subject to threat or use of eminent domain). Under the URA, voluntary acquisitions that satisfy the requirements of 49 CFR 24.101(b)(1)-(5) are not subject to the acquisition requirements of 49 CFR Part 24 Subpart B. A common misconception is that a “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not necessarily true under the URA and the applicable requirements of 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered a “voluntary acquisition” for purposes of the URA.

URA requirements for voluntary acquisitions and involuntary acquisitions differ significantly for property owners. While there are protections for property owners in both circumstances, only involuntary acquisitions trigger the full URA acquisition and housing replacement requirements for homeowners found in 49 CFR Part 24 Subpart B.

9.6.3 Fair Market Value

The current fair market value should be paid for the property to be acquired. The fair market value for properties that are involuntarily acquired and are subject to Subpart B cannot exceed the fair market value that was determined through professional appraisal process unless there is clear evidence the acquisition will:

- Go to eminent domain proceedings.
- The additional cost above fair market value plus the cost of completing eminent domain proceedings is more than the negotiated price.

This MUST be clearly documented and should be a rarity.

9.6.4 Eminent Domain

HUD prohibits the use of HUD funds for eminent domain related activities that do not result in a public purpose. Therefore, CDBG-DR funds cannot be used for an eminent domain acquisition unless the final use of the property will serve the public interest.

9.6.4.1 Eminent Domain Purchases from the Federal Government

Note: If an agency does not have the authority to acquire property from the federal government through condemnation, the acquisition will meet the requirements of 49 CFR Part 24.101(b)(3). In accordance with this regulation, if the agency desiring to acquire the property from the Federal Agency does not have authority to acquire through condemnation, such acquisition is not subject to URA basic acquisition policies. Unlike voluntary acquisitions from a private party under 24.101(b)(2), there are also no seller notification requirements.

9.6.5 Basic Project Development Concepts

When developing your project, here are some basic concepts to keep in mind:

1. “Buy vacant” for CDBG-DR funded projects because relocation requirements are complicated and expensive.
2. If there is going to be a relocation during the project, the subrecipient is required to have a “relocation plan” in place.
3. One-for-one replacement does not necessarily have a time limit; replacement depends on whether the property meets the alternative 104(d) requirements and is vacant/occupiable (i.e., suitable for rehabilitation).

9.7 Acquisition Requirements

URA applies to acquisition of fee simple title; acquisition of fee title that is subject to retention of a life estate or a life use; acquisition by leasing where the lease term, including option(s) for extension, is 15 years or more; and to the acquisition of easements.

Handbook 1378 contains an Acquisition [Check List \(hud.gov\)](#) and [General Acquisition Process \(hud.gov\)](#) for grant recipients to use in adhering to these complicated requirements.

Prior to commencement (notices mailed to property owners), considered by the subrecipient to be “voluntary,” each acquisition must receive concurrence from OHCS that the acquisition is voluntary and “not subject to” the requirements of Subpart B of the Uniform Act.

9.7.1 Initiation of Negotiations

To assist subrecipients in complying with URA acquisition requirements, some sample initial notices and agreements with property owners regarding proposed acquisition are attached. These include:

1. [Voluntary Acquisition-Informational Notice-Agency with Eminent Domain Authority \(hud.gov\)](#)
2. [Involuntary Acquisition with Threat/Use of Eminent Doman \(hud.gov\)](#)
3. [When A Public Agency Acquires Your Property Brochure.DOC \(live.com\)](#)

Recipient’s file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail return receipt requested) and the date of delivery. If the letter was personally served, it is necessary to obtain a written receipt of delivery from the property owner at the time of delivery.

The state can also provide information booklets, sample notices, and other materials to assist subrecipients.

9.7.2 Appraisal Requirements

In most cases, the URA requires the subrecipient to obtain an independent appraisal of the property, permanent easement, or temporary construction easement prior to negotiating a sale with the property owner. Independent appraisals are necessary as documentation that acquisition costs are “reasonable and necessary” per federal regulations. An exception to

this requirement may be allowed for small, uncomplicated acquisitions with low fair market values of \$10,000 or less.

An appraisal is not required for voluntary transactions; however, the subrecipient must have on file evidence of how the fair market value of the property was determined by a qualified person knowledgeable in land/property valuation.

An appraisal is required for involuntary purchases. It is also required that the homeowner have an opportunity to be present during the appraisal process. When an appraisal is waived by a property owner for an involuntary transaction that is subject to Subpart B, the subrecipient must have on file a waiver valuation. Refer to [HUD Handbook 1378](#) for waiver valuation requirements.

All appraisals must meet the minimum appraisal requirements of the Uniform Act. Note that the URA requires an appraisal to be current; this means no more than 1 year (12 months) old at the time the offer of just compensation is made. Exhibit 7C contains a Guide for Preparing an Appraisal Scope of Work that can be used in meeting these requirements. Exhibit 7D contains a draft Agreement for Appraisal Services that can be used as a guide for entering into agreements with companies providing appraisal services. Exhibit 7E contains a Certificate of Appraiser that can be used for “subject to” acquisitions or other acquisitions where an appraisal is obtained.

Involuntary property owners that are subject to Subpart B, where the value of the land is estimated at \$10,000 or more, have the right to accompany the appraiser when the appraisal is conducted on their property. Exhibit 7F contains an example invitation to the property owner to accompany the appraiser.

Once the appraisal has been completed, a review of the appraisal is necessary to ensure that it meets applicable appraisal requirements. The review appraiser needs to determine that the appraiser’s documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser’s opinion of value.

9.7.3 Donations

The URA Act applies to donations. Subrecipients must not accept or negotiate donations of real property or easements unless the specific provisions of the URA are followed. Donated property does not have to be appraised if the requirements of the URA are met.

9.7.4 Purchase Options, Sales, Agreements and Other Agreements

Federal acquisition rules must be followed prior to negotiating permanent easements, purchase options, sales agreements, or donation agreements. In cases where there is an existing, true, option to purchase property for a project, all disclosures must be made to the property owner prior to exercising the option. When an option is exercised, a contract of sale is entered. An “earnest money agreement” is not an option to purchase. Grantees should also refer to the U.S. Department of Transportation’s Federal Highway Administration’s Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. It may be downloaded from the Federal Highway Administration’s website at <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm>

To assist subrecipients in complying with tenant access notification requirements, use of tenant access clauses in purchase options is recommended. Such a clause requires the property owner to allow the tenant access for the purpose of obtaining information and issuing notices.

9.7.5 Environmental Review Requirements

The subrecipient cannot enter into any legal binding commitment to a particular site before the environmental review is complete and an issuance of the Release of Funds (ROF) has been received from OHCS. Refer to Chapter 3 for more information on the Environmental Review Process. However, an option agreement on a particular proposed site or property is allowable prior to completion of the environmental review IF the option agreement is subject to a determination by the subrecipient of the desirability of the property for the project as a result of the completion of the environmental review, issuance of the ROF by the state, and the cost of the option is a nominal portion of the purchase price. Refer to Chapter 3 for more details.

9.7.6 Insurance Requirements

Recipients and subrecipients must at a minimum provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the recipient or subrecipient, respectively. Federally owned property need not be insured unless required by the terms and conditions of the federal award consistent with 2 CFR 200.310.

Recipients should familiarize themselves with all applicable regulations and work with their contract administrator to ensure that all requirements are met.

9.8 Section 104(d)

9.8.1 Alignment with the URA for CDBG-DR

Activities and projects undertaken with CDBG-DR funds may be subject to the URA, section 104(d) of the Housing and Community Development Act (HCDA) (42 U.S.C. 5304(d)), and CDBG-DR program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in the Consolidated Notice. HUD is waiving or providing alternative requirements in this section for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG-DR funds allocated under the Consolidated Notice.

9.8.2 Section 104(d) One-For-One Replacement Requirements for CDBG-DR

Section 104(d) requirements of the HCDA generally include:

- One-for-one replacement of all occupied and vacant occupiable LMI dwelling units that are demolished or converted to a use other than LMI permanent housing in connection with an activity assisted under the HCDA.

Per the Consolidated Notice, some components of the Section 104(d) requirements have been waived:

- This waiver exempts all disaster-damaged owner-occupied or occupiable lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation," from the one-for-one replacement housing requirements of 24 CFR 42.375.

9.8.3 Not Suitable for Rehabilitation

OHCS defines a residential property as "not suitable for rehabilitation" if any of these conditions apply:

- The property is declared a total loss.
- Repairs would exceed 50% of the cost of reconstruction.
- Repairs exceed \$50,000.

- Homes cannot be rehabilitated or reconstructed in place under existing agency policies and award caps due to legal, engineering, or environmental constraints, such as permitting, extraordinary site conditions, or historic preservation.

9.8.4 Section 104(d) Resources

Contact an OHCS contract administrator for the applicable federal regulations and assistance if your project involves demolition or conversion of housing units.

9.8.5 Section 104(d) Checklist

Relocation Assistance: The requirements for Section 104(d) Tenant Assistance are waived per the Consolidated Notice. Under the Notice, LMI persons and households will receive the same 42 months of benefits as persons and households under the URA. To determine if the Section 104(d) waiver applies, use the following checklist:

1. Are CDBG-DR funds used in the project?
2. If yes, the Consolidated Notice waiver will apply.

One-for-One Replacement: To determine if the unit is subject to one-for-one replacement use the following checklists:

1. Are CDBG-DR funds in the project?
2. Was the residential property substantially damaged by the disaster and meets the definition of “not suitable for rehabilitation”?
3. Will the unit be demolished or converted to another use?
4. If the answers to 1–3 above were all “yes” than the unit does not need to be replaced per the Consolidated Notice waiver.

If the residential dwelling does not meet the three criteria above, then the following checklist will need to be applied to determine if one-for-one replacement is needed.

1. Are CDBG-DR funds in the project?
2. Is the unit occupied or vacant-occupiable lower-income dwelling? *Note: Vacant Occupiable: The unit is standard, vacant, and suitable for rehab or dilapidated but has been occupied within the last 3 months.*
3. Will the unit be demolished or converted to another use?
4. If answers to 1–3 above were all yes, then the unit must be replaced.

24 CFR 42.375(b)(2) requires one-for-one replacement. Meaning a duplex containing two to one bedroom/one bathroom units cannot be replaced by a single-family dwelling containing three bedrooms and two bathrooms. The duplex must be replaced by a like duplex of two units containing one bedroom/one bathroom each or two similar sized one-bedroom units within a larger complex.

9.9 URA Requirements

The URA covers involuntary displacement and relocation assistance. A displaced person under URA is an individual, family, partnership, association, corporation, non-profit or organization that moves from their home, business, or farm, or moves their personal property, as a direct result of an involuntary acquisition, demolition, or rehabilitation for a CDBG-DR project. Displaced persons are eligible for relocation assistance under the URA.

HUD has developed several brochures for persons in need of relocation assistance. All are available online at the Housing and Urban Development website. They are:

- Relocation Assistance to Tenants Displaced From Their Homes
- Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms
- Relocation Assistance to Displaced Homeowner Occupants

The URA relocation requirements are triggered when persons are involuntarily displaced by a federally funded action. For example, anytime eminent domain is used to acquire a property that is owner-occupied, that is always considered “involuntary” displacement. Similarly, anytime a tenant is displaced by an activity (even if the activity is to repair the tenant’s unit) it is always considered involuntarily displacement.

A Voluntary displacement happens when the property owner agrees or applies for the federally funded action (e.g., acquisition, rehabilitation, or reconstruction) that requires them to move permanently or temporarily from their property. This does not trigger the URA relocation requirements because the property owner has the ability to agree to the action or not agree to the action, unlike a tenant who does not have authority over the property. For the purposes of this chapter, the term “displaced” means the owner or tenant was involuntarily displaced and eligible for URA assistance.

9.9.1 What if a project proponent already started a project?

URA acquisition rules apply any time an acquiring entity:

- Undertakes the purchase of property directly
- Provides a nonprofit or for-profit entity with funds to purchase the property

- Hires an agent or consultant to act on its behalf in acquisition
- Undertakes acquisition on or after a CDBG-DR application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity
- Undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent CDBG-DR activity

If a project proponent already started a project, the URA is not triggered as long as they are not receiving CDBG-DR or other federal assistance. However, if they are going to need CDBG-DR assistance, the grant recipient (OHCS) needs to ensure that the acquisition activities of the subrecipient are completed in conformance with the URA requirements.

If CDBG-DR assistance is used for any part of the project, the URA must be followed, even if local or other non-Community Development Block Grant funds are used to pay the acquisition costs.

9.10 Displacement

9.10.1 Residential Anti-displacement and Relocation Assistance Plan

All subrecipients are required to follow the State of Oregon Anti-displacement and Relocation Assistance Plan. If needed, reach out to OHCS for a copy of the plan.

9.10.2 Permanent vs. Temporary Relocation

Tenants and homeowners can be permanently or temporarily displaced depending on the type of activity that is displacing the tenant or homeowner and the length of time they will be out of the property.

A displaced person will be determined to be permanently displaced if the property the tenant or homeowner has been occupying becomes no longer available through an action that is funded in whole or in part with federal funds. If the tenant or homeowner must leave the property for a temporary amount of time (i.e., less than a year) and the tenant will be able to return to the property after the federal activity has ended, then the tenant would be determined to be temporarily displaced.

URA Advisory services and moving expenses are the same whether permanently or temporarily displaced.

Permanent Relocation	Temporary Relocation
<ul style="list-style-type: none"> • Relocation advisory services • Rental assistance differential for 42 months or down payment assistance to purchase home if residential tenant • Re-establishment cost if non-residential • Moving expenses 	<ul style="list-style-type: none"> • Relocation advisory services • Rental assistance differential for up to 12 months • Moving expenses from residence to new temporary residence • Storage while temporarily displaced • Moving expenses to move back to original unit

Note: If the tenant or homeowner is not able to return to their unit or another appropriate, affordable unit at the site within 12 months, they are considered permanently displaced and eligible for those benefits as defined by the URA. In this circumstance, the tenant or homeowner will be contacted by the relocation specialist and a revised notice of relocation eligibility will be issued, including the additional amount of 42 months of assistance that will be received.

9.10.3 Optional Relocation

OHCS may permit subrecipients to provide optional relocation services in accordance with 24 CFR 570.606(d) for persons displaced by CDBG-DR activities that do not trigger assistance under the RA. Specifically, homeowners who have voluntarily agreed to participate in a program that will displace them either on a temporary or permanent basis cannot receive relocation assistance under the URA but may be provided moving or relocation assistance under an optional relocation plan.

Per the CDBG-DR allocation notice, the regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the state level. This waiver makes clear that grantees receiving CDBG-DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies.

The optional relocation policy must be in writing and:

- Be available to the public.
- Describe the relocation assistance that the subrecipient has determined to provide.
- Provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

Optional Relocation Plans must be reviewed and approved by OHCS prior to implementation.

9.10.4 Relocation Steps

The following steps are required when relocating persons and/or entities displaced by disaster-recovery related activities.

9.10.4.1 Tenant Notices

All tenant occupants of property that will be acquired, rehabilitated, or demolished as a result of a CDBG-DR project must receive timely notices about their rights under the URA. The notices include:

General Information Notices (GIN): Informs the occupant(s) of a possible project and includes the appropriate HUD booklet. In this case, it would be HUD booklet 1042-CPD Relocation Assistance to Tenants Displaced from their Homes. This notice must be issued as soon as possible after it has been determined that CDBG-DR funds are intended to be used for the project.

Note: Unfound Displaced Tenants: If the tenants who were issued a GIN vacated for personal reasons before the initiation of negotiations (i.e., the date the CDBG-DR grant agreement is fully executed between the recipient and the state) they do not qualify as displaced. GINs should be issued as soon as feasible. Anyone who vacates a property after the subrecipient applies for funds but before receiving a GIN could claim to have been displaced by the project and may be due full URA benefits.

If there are unfound displaced tenants that qualify for benefits (relocation assistance) under the URA, there are two potential paths:

1. Grant recipient properly provided the GIN that advised the tenant not to move and used all reasonable procedures to locate said tenant(s); the regulations allow the tenant(s) 18 months to file a claim for URA benefits (the deadline may need to be waived if there are extenuating circumstances).
2. Grant recipient did not properly provide GIN: the tenant(s) now have extenuating circumstances and they can file a request to extend the 18 month window to file a claim for URA benefits, indefinitely.

If the tenant(s) files a valid claim for benefits they must be paid.

Notice of Eligibility: Informs occupants that they will be displaced and are eligible for URA benefits and includes levels of assistance to be provided under URA rules.

90-Day Notice to Vacate: This is a letter issued to a tenant, at least 90 days in advance, that informs the tenant of the date by which they will be required to relocate from the property.

9.11 Intake and Eligibility

An intake meeting should be scheduled with all affected displaced owner-occupants or tenants to discuss relocation benefits and eligibility. This meeting provides an opportunity for the owner-occupant or tenant to learn about the process, ask questions, and submit necessary income verification information. Owner-occupants or tenants should receive a written notification of their eligibility for benefits after it is confirmed they will be involuntarily displaced and after other eligibility items have been confirmed (e.g., living in property before NOI, citizenship/legal residency, or other eligibility criteria). The subrecipient must determine current occupancy and conduct owner-occupant or tenant interviews.

9.11.1 Certify Income and Determine National Objective

In addition to completing eligibility-related documentation, the owner-occupant or tenant household must complete an income certification so that national objective can be determined (LMI benefit or urgent need).

For displaced tenant-occupants that are LMI, their monthly rent cannot exceed 30% of the monthly household income. These households can receive replacement housing costs that pay rent amount above the 30% household income level.

9.11.2 Intake Negotiations

Once eligibility and national objective are determined, the owner-occupant or tenant file remains “on hold” pending the ION. In an acquisition program, this is generally immediately after the contract of sale date (when the buyer and seller have entered into an agreement for the property to be purchased).

9.11.3 Identify Comparable Dwellings

Once an occupant is found eligible for URA relocation assistance, the subrecipient must offer one or more comparable units to the displaced person. The comparable dwellings must be as similar to the home from which they are displaced as is feasible, which includes matching the size and function, containing the same principle features, and having a similar location (e.g., reasonable access to person’s employment, schools, medical facilities, general neighborhood characteristics). The comparable dwellings must also offer proper environmental conditions and meet DSS and HQS. The comparable unit must be available for use/occupancy.

The comparable dwellings are presented on HUD Form 40061 and a “most comparable dwelling” is chosen based on objective criteria. Benefits are calculated based on the rent of the “most comparable dwelling” and estimated utilities of the displacement dwelling and “most comparable dwelling.” Subrecipients must develop a methodology for determining estimated monthly utility costs, considering both utility costs at the displacement dwelling and at the replacement dwelling. The simplest way of doing this is looking at the utility allowance worksheets for local housing authorities or Section 8 agencies.

Note: If looking for comparable units for persons residing in public housing, using a comparable public housing unit is an eligible comparable. However, if the displacee is not a public housing recipient, they cannot be provided a public housing replacement unit as a comparable.

9.11.4 Send Notice of Eligibility and 90-Day Notice

Notices of eligibility and 90-day notice inform the occupants of the day by which they must vacate the property. Displaced persons may not be given LESS than 90 days to vacate their residence. However, 90-day notices may not be issued until residential tenants are referred to available, comparable replacement housing.

If, during project development stage, any potential tenant displacement is identified, the subrecipient must have documentation that the GIN was sent to the tenant when the grant application is submitted to the state by means of certified mail/return receipt-required or having the tenant sign to acknowledge receipt of the notice.

Tenants who did not receive their notices by the time required may be entitled to additional relocation benefits under federal law.

There are many notices, depending upon the details of the situation. The subrecipient must review the various notices required per HUD Handbook 1378.

Examples of the four most used notices are:

1. [General Information Notice for Residential Tenant Not Displaced \(hud.gov\)](#)
2. [General Information Notice for Residential Tenant to be Displaced \(hud.gov\)](#)
3. [Notice of Non-Displacement to Residential Tenant \(hud.gov\)](#)
4. [Notice of Eligibility for URA Relocation Assistance-Residential Tenant \(hud.gov\)](#)

If an owner or tenant did not receive the required notices, a complaint can be filed either by contacting the HUD Region X office or by filing a complaint online at the following link: <https://www.hud.gov/fairhousing/fileacomplaint>

9.11.5 Determine Eligibility and Amount of Assistance for Displacee

Specific instructions for meeting all federal relocation requirements are beyond the scope of this chapter. Subrecipients with projects that may result in any person or business moving, temporarily or permanently, must use HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, change 13, issued March 14, 2014, and Part V of the U.S. Department of Transportation regulation located at 49 CFR Part 24, updated January 4, 2005, and discuss the requirements with the contract administrator for their project at the beginning of the project.

If the displacee is found to be eligible for benefits, HUD Forms 40054 and 40058 are completed. These forms calculate the amount of assistance the tenant will receive. HUD Form 40054 calculates payments for the tenant's moving expenses. HUD Form 40058 establishes required relocation expenses equivalent to 42 months of the tenant's rent increase or 42 months of any monthly rent amount over 30% of the tenant's monthly income. The tenant and an authorized representative of the subrecipient both sign HUD Forms 40054 and 40058.

The income of the displaced person is not a factor in determining basic eligibility, but income of the displaced person is a factor in calculating the amount of assistance they are required to receive. There is no income cut-off for eligibility for relocation assistance. Anyone who is displaced may be entitled to URA assistance.

9.12 Relocation Advisory Services

In accordance with 49 CFR 24.205(c)(2)(ii), programs will provide relocation advisory services to displaced persons. In addition to providing the required notices, the relocation advisor will contact the impacted displaced household(s) to schedule an interview, to obtain tenant supporting documentation, and to ensure that tenants understand their

rights and responsibilities. During this interview, the program will inform the displaced household of advisory services.

These services include:

- Determining the needs and preferences of displaced persons
- An explanation of available relocation assistance (such as moving costs and replacement housing), eligibility requirements, and the process for obtaining such assistance
- An explanation of a tenant's right to appeal if they are not satisfied with program decisions, including written appeal procedures
- An offer to provide transportation to inspect the housing to which they are referred
- Information about other assistance (e.g., legal services, financial services, housing counseling)
- Information on current and ongoing listings of available comparable dwellings for residential displacements
- Informing the displaced person in writing of the comparable dwelling unit
- Informing the tenant that they cannot be required to move unless at least one comparable replacement dwelling is made available
- Inspection of the dwelling to determine if it meets DSS requirements
- Providing counseling and other assistance to minimize hardship in adjusting to relocation
- Other required and appropriate assistance

URA advisory services and moving expenses are the same whether permanently or temporarily displaced.

9.13 Moving Expenses

Moving expenses must be reasonable and necessary. The displaced person may choose to receive payment for moving expenses by commercial mover, reimbursement of actual expenses incurred by the displaced person, Federal Highway Administration fixed payment, or any combination of the aforementioned. At the date of this publication, the most current residential moving cost schedule can be found at:

https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.

Recipients should check the above referenced website to obtain the most current moving cost schedule.

9.14 Relocation Assistance and Payments

The URA provides for relocation assistance and payments to eligible persons displaced from their homes, businesses, and farms as a direct result of a federally funded program or project. Residential tenants and owner occupants of 90 days or more that are displaced from their dwellings may be eligible for a replacement housing payment, for rental assistance, or down payment assistance. Information regarding eligibility for this assistance is available at https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations

If the subrecipient has any questions about the calculation methods or other elements of relocation assistance requirements, they should request technical assistance through their contract administrator.

Cash rental assistance payments must be made in at least two installments. Relocation assistance payments for residential tenants must be disbursed in installments. Lump sum payments may be made to cover (1) moving expenses and (2) a down-payment on the purchase of replacement housing, or incidental expenses related to (1) or (2). Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

The frequency of these disbursements may be determined by the subrecipient. However, if not paid monthly, it is recommended that there be no less than three installment payments, except when the rental assistance payment is \$500 or less. Where the rental assistance payment is \$500 or less, it is recommended that payment may be made in two installments with no less than a 4-month interval between payments.

9.15 Rental Assistance Payment

Assistance can be provided as rental assistance or down payment assistance. Rental assistance is a replacement housing payment (RHP). The amount of RHP varies depending upon family income. The URA establishes a cap on payments at \$7,200. This cap can be exceeded in last resort housing situations if the current relocation limit is not sufficient to relocate the household. Information relating to last resort housing situations can be found in 24 CFR 24.404 and Chapter 3 of HUD Handbook 1378. Rental assistance must be provided in payments made to the displacee.

9.15.1 Housing of Last Resort

In accordance with the requirements found at 49 CFR 24.404(a)(2), this determination to exceed the monetary limits established under the provisions found at 49 CFR 24.401 or 24.402 and provide, as appropriate, additional assistance, is based on the following: In the counties that have been identified as disaster-eligible impacted areas, there is little, if any, comparable replacement housing available for households who will be deemed “displaced” from units receiving assistance.

Due to the damage and immediate impact relating to the loss of DSS, affordable rental housing, an assisted property cannot advance to completion and satisfy the timeliness requirements imposed by HUD in the CDBG-DR grant award without last resort housing assistance.

9.15.2 Conversion of Rental Payment to Down Payment for Home Purchase

A displaced tenant can choose to have the full amount of the 42-month rental assistance payment applied as a down payment for a home purchase in place of rent assistance. The entire purchase assistance payment must be applied, at closing, to the purchase of a DSS replacement dwelling.

9.16 Replacement Housing Payment

Homeowners that are involuntarily displaced are eligible for assistance with replacement housing. Replacement housing assistance to purchase a replacement home must be a lump sum payment made to the mortgage lender or seller.

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home triggering an involuntary acquisition are eligible for a replacement housing payment as “displaced persons” (90-day homeowner). The maximum payment is \$31,000. If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as “displaced persons,” but the calculation is made using the same method used for tenants.

Note: If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for URA relocation benefits.

For involuntary acquisitions, the ION is defined as the delivery of the written offer of just compensation by the subrecipient to the owner. The RHP made to a 90-day homeowner is the sum of:

- The lesser of the cost of the comparable identified by the program or the cost of the actual replacement unit that the homeowner chooses if not a comparable.
- Additional mortgage financing cost
- Reasonable expenses incidental to purchase the replacement dwelling

To calculate the RHP for a 90-day homeowner, subrecipients should use the HUD claim form 40057. If an owner elects to become a renter, the RHP can be no more than the amount they would otherwise have received as an owner.

The displaced homeowner must purchase and occupy the replacement unit in order to qualify for a RHP as a displaced owner-occupant.

9.17 Lawful Presence

Any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

The definition of an "alien not lawfully present in the United States" includes an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101) and whose stay in the United States has not been authorized by the U.S. Attorney General; and an alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
2. In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

3. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

Relocation payments or relocation advisory assistance cannot be provided to a person who has not provided this certification or who has been determined to be not lawfully present in the United States, unless ineligibility would result in exception and extremely unusual hardship to a qualifying spouse, parent, or child. An alien not lawfully present in the United States may claim an exceptional and extremely unusual hardship if the denial of relocation payments and advisory assistance to such a person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of a spouse, parent, or child
2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member
3. Any other impact that OHCS determines will have a significant and demonstrable adverse impact on such spouse, parent, or child

9.18 Relocate Tenant or Owner-Occupant

Displaced persons have no less than 90 days to relocate to a new dwelling. The displacee must coordinate closely with the subrecipient's acquisition staff to ensure that the unit is vacant at time of purchase. The tenants or owner-occupants can choose any dwelling they want; they are not required to select the most comparable dwelling or any of the comparable dwellings noted on the [HUD Form 40061](#). However, the unit they choose to occupy must be DSS and meet HQS in order for the displaced person to receive housing assistance. If the displaced person selects a unit that fails inspections for codes and standards and necessary corrections cannot be made, RHP cannot be made on that unit. The displacee may choose to move to one of the suggested comparable dwelling units or find another unit that can pass the DSS/HQS standards. If displacees want to move into the unqualified unit, they will not receive the housing assistance but can still get moving expenses reimbursed.

9.18.1 Inspect New Unit

In cases of residential relocation when the displacee selects a new unit, the unit is inspected to ensure that it meets DSS/HQS standards. The subrecipient must also verify that the unit is not located in a special flood hazard area (SFHA). The unit must not be in a SFHA, and it must meet DSS/HQS standards for the tenant or owner occupant to receive benefits.

9.18.2 Disburse Assistance Payment

Once an amount is determined, the moving expense payment to the tenant is disbursed. The rental assistance payment is made in no less than two parts over a 42-month period once a new unit is chosen.

9.19 Appeals

All tenants will have an opportunity to file an appeal in accordance with the URA regulations at 49 CFR 24.1. Written complaints and appeals must be submitted in writing. The time limit to file an appeal is thirty (30) days after written notification of a program determination.

9.19.1 Actions That May Be Appealed

Persons being displaced may file an appeal if they believe the program has:

- Made a mistake in determining eligibility for payment
- Made an error in figuring the amount of payment
- Been unfair in refusing to waive the time limit for filing a claim or the purchase and occupancy requirements
- Not provided a reasonable choice of comparable replacement housing
- Not properly inspected the replacement housing
- Failed to comply with the provisions concerning the notice of right to continue in occupancy

Appeals are limited to actions or decisions that the individual making the appeal (petitioner) believes to be in conflict with stated program policies or to be based on contestable facts. Program policies established by OHCS are not appealable.

9.19.2 Appeals Process

An appeal may be filed in any case in which the person believes that the subrecipient has failed to properly determine the person's URA award. Initial review of the appeal will be conducted by an established appeals team. This team is independent from the group that originally made the decision being appealed. Each appeal will be reviewed against program policies and URA requirements. The panel will make a recommendation to the ReOregon Program Staff who will make the final determination.

An appeal must be filed within 60 days after the person receives written notification of the subrecipient's determination of the person's claim. Appeals must be submitted by tenants in writing to the subrecipient's appeals team. The request must contain the following information:

- Tenant's name
- Tenant's mailing address
- Tenant's telephone number
- Tenant's email address (if available)
- The reason(s) the decision or action is being appealed
- Documentation that supports the request to overturn the decision or action.

9.20 Appendix A: Buyout Acquisition

9.20.1 Overview

Buyout acquisitions can only be undertaken if a buyout program is established in the action plan and funds are allocated for that purpose. Buyout acquisition activities are not interchangeable with standard acquisition activities.

The term “buyouts” means the acquisition of properties located in a floodway, floodplain, or other disaster risk reduction area that is intended to reduce risk from future hazards. An open space management plan (or equivalent) must be established before implementation that is fully transparent about the planned use of the acquired properties post-buyout.

Buyout activities are subject to all requirements that apply to a regular acquisition including but not limited to the URA and voluntary or involuntary acquisitions.

Buyout properties must be purchased voluntarily from the property owner(s) unless being purchased for a public benefit (i.e., public facility or public infrastructure). Targeted property being purchased for a specific public use cannot be considered a voluntary purchase if the purchasing party has power of eminent domain. If purchase is involuntary, any displaced persons or business (including both owners and tenants) is eligible for full URA benefits.

9.20.2 Disaster Risk Reduction Area (DRRA)

HUD has authorized the use of CDBG-DR funds to purchase high risk “buyout” properties through its Consolidated Notice. HUD initially only allowed an acquisition of a property to be termed a “buyout” if the properties were in a floodplain or floodway. In 2015, HUD expanded the eligible properties that could be purchased as a buyout by introducing the concept of a DRRA, which did not require the buyout properties to be only in floodplains or floodways.

The buyout activity must specifically be included in the CDBG-DR Action Plan to be an eligible activity. Subrecipients who will buy out properties in a DRRA must establish criteria in their policies and procedures to designate an area as a DRRA for the buyout, pursuant to the following requirements:

1. The area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG-DR allocation.

2. The hazard identified must be a predictable environmental threat to the safety and wellbeing of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (e.g., FEMA Repetitive Loss Data, EPA’s Environmental Justice Screening and Mapping Tool, HHS’s climate change related guidance and data) and science (e.g., engineering and structural solutions propounded by FEMA, USACE, other federal agencies).
3. The area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

9.20.3 Safe Housing Incentives

A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community’s comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, or those described in the Consolidated Notice.

The subrecipient may offer safe housing incentives in addition to the relocation assistance that is legally required. A subrecipient may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program, meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Subrecipients are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in Section II.B.12 of the Consolidated Notice.

9.20.4 Property Valuation

Per the Consolidated Notice the CDBG-DR funds can be used to purchase eligible buyout properties at either the pre-disaster fair market value or the post-disaster fair market value. However, only one method of valuation must be used for all properties in the buyout program.

9.20.5 National Objectives

Buyout properties must meet all requirements of the HCDA and demonstrate that a buyout meets the LMH national objective. A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential structure. Therefore, acquisition-only buyout programs have been determined by HUD not to satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs can be structured in one of the following ways:

1. The buyout activity combines the acquisition of properties with another direct benefit — LMI housing activity, such as down payment assistance — that results in occupancy and otherwise meets the applicable LMH national objective criteria.
2. The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51% of the residents are LMI persons. Subrecipients covered by the “exception criteria” as described in Section IV.C. of the Consolidated Notice may apply it to these activities. To satisfy LMA criteria, subrecipients must define the service area based on the end use of the buyout properties.
3. The program meets the criteria for the LMI and low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility to exclusively LMI persons and benefiting LMI sellers by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section II.B.7.a.(vi)).

Additionally, HUD has established a new LMI national objective criterion that applies to safe housing incentive activities that benefit LMI households. HUD has determined that providing CDBG–DR subrecipients with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that subrecipients and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a subrecipient uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. See the following National Objectives table to better understand how to apply the requirements for each national objective.

Activity	National Objective	Implementation Requirement
Purchase buyout property (may be pre-disaster FMV or post-disaster FMV)	LMH	<ul style="list-style-type: none"> Any assisted activity that involves acquisition of properties with another direct housing benefit that results in occupancy and meets LMH national objective criteria. Grantee must verify that the household secures new housing and provides additional assistance to secure it (must be permanent housing). Example of a direct benefit might be providing down payment assistance.
	LMA	<ul style="list-style-type: none"> If the buyout area and subsequent greenspace benefit all residents of an area that is primarily residential and 51% or more residents are LMI persons. Grantee must define service area based on end use of property.
	LMC	The activity is restricted to only LMI persons and benefits LMI sellers by acquiring the property for more than post-disaster value .
	UN	Buyout to households that are not at or below 80% AMI.
Safe Housing Incentive	LMHI	<ul style="list-style-type: none"> The activity is tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household for which the incentive is made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or The activity is for the purpose of providing or improving residential structures that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area. While recommended, the new housing is not required to be permanent housing.
	UN	Incentive to households that are not at or below 80% AMI

9.20.6 Buyout Property Requirements

Real property purchased as a buyout acquisition is restricted in the type of uses that can happen on the property once purchased and all structures removed. The following are the requirements contained in the Consolidated Notice.

- (i) Property to be acquired or accepted must be located within a floodway, floodplain, or DRRA.
- (ii) Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.
- (iii) No new structure will be erected on property acquired or accepted under the buyout program other than:
 - (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area),
 - (b) a restroom, or
 - (c) a flood control structure, provided that the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.
- (iv) After the purchase of a buyout property with CDBG-DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG-DR funded buyout unless the assistance is for an allowed use as described in paragraph (ii) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.
- (v) A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.
- (vi) Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The subrecipient must apply a valuation method for all buyouts carried out under the program. If the subrecipient determines the post-disaster value of a property is higher than the pre-disaster value, a grantee may provide exceptions to its established valuation method on a case-by-case basis. The grantee must describe the process for such exceptions and how it will analyze the

circumstances to permit an exception in its buyout policies and procedures. Each subrecipient must adopt policies and procedures on how he/she will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

- (vii) All buyout activities must be classified using the “buyout” activity type in the Disaster Recovery and Grant Reporting system.
- (viii) Any state subrecipient implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.



10 Duplication of Benefits

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10 Duplication of Benefits

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207) (Stafford Act), along with applicable CDBG-DR appropriation acts, require HUD and its grantees to coordinate with other federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). The Stafford Act's prohibition on DOB aims to ensure that federal assistance serves only to “supplement insurance and other forms of disaster assistance.” (42 U.S.C. 5170)

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when any person, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. When reimbursement is permitted by the CDBG-DR grant requirements, unmet needs can include amounts needed for reimbursement. It is the responsibility of OHCS to determine that no DOB exists before paying CDBG-DR to a disaster recovery project to ensure that beneficiaries, persons, businesses, or other entities (includes local governments) are not receiving a DOB.

Specific DOB policies and procedures are included in policies and procedures for each CDBG-DR program identified in the CDBG-DR Public Action Plan. OHCS commits to having procedures to prevent any duplication of benefits as defined by section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). To this end:

1. OHCS's DOB policies and procedures include a uniform process that:
 - a. Verifies all sources of disaster assistance received (for subrecipient projects or applicants applying to applicant-based programs) and all reasonably identifiable financial assistance available (for projects or applicant-based programs), as applicable, before committing funds or awarding assistance;
 - b. Determines the amount of the need (for subrecipient projects or applicants applying to direct applicant-based programs) for CDBG-DR assistance before committing funds or awarding assistance;
 - c. Requires beneficiaries (includes subrecipients that are categorized as a beneficiary) to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG-DR award was provided. [Section III.A.1.a.(3)(a) – (c)];

- d. Identifies the personnel or unit of government, or other subrecipient, for carrying out the DOB review; and
 - e. Retains the documentation in accordance with record keeping requirements.
2. OHCS's DOB policies and procedures identify a method to monitor compliance with the agreement for a reasonable period (i.e., a time period commensurate with risk) and articulates this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: "Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729." [Section III.A.1.a.(3)(c)]
3. The policies and procedures provide that before the award of assistance, OHCS will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state, and federal sources of funding to prevent the duplication of benefits. [Section III.A.1.a.(3)(c)]

The following sections lay out additional information for how OHCS will comply with each of these requirements. In the event OHCS funds subrecipients to administer programs on behalf of the agency, then those **subrecipients will be required to comply with the respective DOB policies and procedures, in line with the policy described below. In addition, information may be provided in specific program guidelines, so make sure to follow program procedures when possible.**

10.1 Duplication of Benefits Policies and Procedures Framework

OHCS will follow — or will require its subrecipients to follow — the following process for avoiding a DOB for individuals, businesses, and any subrecipients receiving CDBG-DR assistance prior to committing funds or awarding assistance:

- Assess applicant need.
- Identify total assistance.
- Exclude non-duplicative amounts.
- Identify DOB amount and calculate CDBG-DR award.
- Monitor compliance and reassess unmet need when necessary.

10.1.1 Assess Applicant Need

The need will be calculated based on assessment of the need at the time of application. OHCS is not currently reimbursing expenses for pre-award costs, but costs incurred prior to application will be considered when calculating the total recovery need for purposes of subtracting DOB. If OHCS does allow for reimbursement through future Action Plan and program amendments, then eligible activities undertaken by applicants prior to applying for funding will be included in the total need that is eligible for CDBG-DR funding. A budget estimate is used to establish the project cost for both subrecipients and persons applying for CDBG-DR assistance. This assessment must be conducted prior to the receipt of CDBG-DR funds. All costs determined for assistance to beneficiaries whether they be subrecipients or individuals must adhere to the federal cost principles, which include the “necessary and reasonable” definitions in 2 CFR Part 200. (See the Financial Management chapter for more information on cost principles.)

10.1.2 Identify Total Assistance

To calculate DOB, OHCS or subrecipients will identify “total assistance.” Total assistance includes all reasonably identifiable financial assistance available to an applicant.

10.1.2.1 Total Assistance

Total assistance includes resources such as cash recovery awards, insurance proceeds, grants, and loans received by or available to each CDBG-DR applicant, including awards under local, state, or federal programs, and from private or nonprofit charity organizations. Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant’s account), retirement accounts, credit cards and lines of credit, in-kind donations (although these non-cash contributions known to the grantee reduce total need), and private loans.

10.1.2.2 Available Assistance

Total assistance includes available assistance. Assistance is available if an applicant:

- Would have received it by acting in a reasonable manner, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; or
- Has received (the) assistance and has legal control over it.

Available assistance includes reasonably anticipated assistance that has been awarded and accepted for the same (recovery) purpose but has not yet been received. Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled.

Potential DOB sources include:

- Other HUD funds
- FEMA Public Assistance or Individual Assistance funds
- United States Forest Service funds
- U.S. Army Corps of Engineers funds
- Federal Economic Development funds
- U.S. Department of Transportation funds
- SBA loans
- Private insurance funds
- Legal settlement proceeds (if applicable)
- Other federal program funds
- Private and nonprofit organization funds
- State and local funds

10.1.2.3 Private Loans

A **private loan** is a loan that is not provided by or guaranteed by a governmental entity (e.g., SBA), and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms (e.g., the loan is not forgivable). For DOB calculations, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

10.1.2.4 Subsidized Loans

By contrast, **subsidized loans** for the same purpose are to be included in the DOB calculation unless an exception applies. HUD defines subsidized loans as loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other sources. Subsidized loans are assistance that must be included in the DOB analysis unless an exception applies. Exceptions for when subsidized loans are not counted as a DOB occur when those loans are declined by the applicant or cancelled.

Declined SBA Loans — Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

OHCS will not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). OHCS is only required to document declined loans if information available to OHCS (e.g., the data OHCS receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and OHCS is unable to determine from that available information that the applicant declined the loan. If OHCS is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, OHCS will obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

Cancelled Loans — Cancelled loans are loans (or portions of loans) that were initially accepted, but, for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following list of documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available:

- A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
- A legally binding agreement between OHCS and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take action to reinstate the loan or draw any additional undisbursed loan amounts. The documentation described above will be maintained by OHCS. Without this documentation, any approved but undisbursed portion of a subsidized loan will be included in the award calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, OHCS will notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

10.2 Exclude Non-Duplicative Amounts

Once OHCS has determined the total need and the total assistance, OHCS will determine which sources it must exclude as non-duplicative for the DOB calculation. OHCS will exclude amounts that are:

- Provided for a different purpose.
- Provided for the same purpose (eligible activity), but for a different, allowable use (cost).
- Funds not available for CDBG-DR projects or activities. Funds are considered available when they are received by a subrecipient or individual beneficiary and the subrecipient/individual gains legal control of them, or when a subrecipient/individual has been approved for a duplicate funding source, even if they have not yet drawn on the funds.

10.2.1 Funds for a Different Purpose

OHCS will exclude any assistance from total assistance, provided for a different purpose than the CDBG-DR eligible activities, or a general, nonspecific purpose (e.g., **disaster relief/recovery**) and not used for the same purpose when calculating the amount of the DOB.

10.2.2 Funds for the Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose must be excluded when calculating the amount of the DOB if the applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use of the CDBG-DR assistance.

10.3 Identify DOB Amount and Calculate CDBG-DR Award

The total DOB will be calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, OHCS will follow these steps:

1. Identify total need.
2. Identify total assistance.
3. Subtract exclusions from total assistance to determine the amount of the DOB.

4. Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.
5. Adjust award, if needed to comply with program caps. The lesser of the maximum eligible amount or program cap determines the final amount.

10.4 Monitor Compliance and Reassess DOB when Necessary

OHCS will work with subrecipients to reassess unmet need, when necessary. Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in an applicant's circumstances can affect that applicant's remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include:

- A subsequent disaster that causes further damage to a partially rehabilitated home or business
- An increase in the cost of construction materials
- Vandalism
- Contractor fraud
- Forced mortgage payoffs
- Settlements from pursuing insurance claims
- Theft of materials

Additional assistance requests must be fully documented and include the method for identification and verification of the unmet need. Additional assistance requests must also be verified as not being duplicative benefit.

The period of monitoring for DOB after project completion is program specific and outlined in the specific program policies and procedures. The basis for the DOB monitoring is dependent on the eligible activities, overall level of risk, and post-completion requirements (such as an occupancy period). OHCS provides a method to monitor compliance for a reasonable period for each program in the program-specific policies and procedures. This method includes the basis for the period of time in which OHCS or its subrecipient will monitor for compliance. OHCS will monitor compliance by verifying amounts with other funding agencies included for the initial DOB calculation, and recalculating DOB if required.

If a duplication is discovered after CDBG-DR assistance has been provided, the duplicative funds will be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose. See specific program guidance for the method of recapture and the relevant timeframe.

10.4.1 Agreement to Repay — Subrogation Agreement

As required by the Stafford Act, OHCS will ensure that applicants agree to repay all duplicative assistance to HUD or the applicable agency providing federal assistance through OHCS or its subrecipients. To address any potential DOB, OHCS will require each applicant to enter into an agreement with OHCS to repay any assistance later received for the same purpose for which CDBG-DR funds were provided. This agreement will be in the form of a subrogation agreement or similar document and must be signed by every applicant before OHCS disburses any CDBG-DR assistance to the applicant.

OHCS will document compliance with DOB requirements pre- and post-award, including any post-award monitoring. Policies and procedures for post-award monitoring of DOB will be specific for each program funded by OHCS and will be commensurate with risk. For each set of program policies and procedures, OHCS will establish a method to monitor each applicant's compliance with the subrogation agreement for a reasonable period after project completion.

The Subrecipient Agreement and Subrogation Agreement, as required by HUD, provide the following language:

DOB Clause — Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 18 U.S.C. 1001, and 31 U.S.C. 3729.

Subrogation Clause — Requires any person or entity that receives further assistance to repay that assistance, if the total amount of assistance (for the same purpose) exceeds the funding required to satisfy the unmet need of the project.

10.4.2 Collecting a Duplication

If a potential DOB is discovered after CDBG-DR assistance has been provided, OHCS will reassess the applicant's need at that time. If additional need is not demonstrated, CDBG-DR funds will be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose.

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, OHCS must and will collect duplicative assistance it provides.

10.5 Order of Assistance

CDBG-DR appropriations acts generally include a statutory order of assistance for federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps. This means that OHCS and its subrecipients must verify whether FEMA or Army Corps funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or Army Corps (i.e., the grantee will receive FEMA or Army Corps assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity.

If FEMA or Army Corps are accepting applications for the activity, the applicant must seek assistance from those sources before receiving CDBG-DR assistance. If the applicant's costs for the activity are anticipated for reimbursement by FEMA or the Army Corps, OHCS cannot and will not provide the CDBG-DR assistance for those costs. In the event that FEMA or Army Corps assistance is awarded after the CDBG-DR to pay the same costs, it is OHCS's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the Army Corps.



11 Green Building & Energy Efficiency

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11 Green Building & Energy Efficiency

11.1 Introduction

CDBG-DR subrecipients are required to incorporate green building and energy efficiency measures into their new construction, reconstruction, and rehabilitation projects. HUD identifies a number of different industry-recognized standards that may be selected from and incorporated into each program's policy. These standards may differ from program to program.

11.2 Overview

The HUD Green and Resilient Building Standard is a set of guidelines for the design, construction, and operation of housing that is both energy efficient and resilient to natural disasters. The standard is based on the principles of green building, which incorporates a range of practices that reduce the environmental impact of buildings. These practices can include the use of energy-efficient appliances, water-saving fixtures, and recycled building materials. The standard also includes requirements for resilience to natural disasters, such as earthquakes, floods, and wildfires. These requirements can include the use of reinforced concrete foundations, impact-resistant windows, and noncombustible building materials.

The benefits of the HUD Green and Resilient Building Standard include:

- Lower energy bills for homeowners and renters
- Reduced environmental impact
- Improved indoor air quality
- Increased resilience to natural disasters
- Greater comfort and livability
- Higher property values

OHCS requires that grantees incorporate measures that will result in a project that meets green and resilient building standards. A distinction is made between rehabilitation and new construction, reconstruction, or substantial rehabilitation, with different requirements necessary for both.

11.3 New Construction, Reconstruction, and Substantial Rehabilitation

The subrecipient is required to select and adhere to the Green and Resilient Building Standard for new construction and reconstruction of housing as required by HUD. The subrecipient must meet this standard for all residential new construction, reconstruction, and rehabilitation of substantially damaged buildings. HUD defines substantial damage and substantial improvement, with limited exceptions, in 44 CFR 59.1 as:

- **Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.
- **Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed.

11.3.1 Selection Options

Each project must meet an industry-recognized standard that has achieved certification under one of the following:

- **Enterprise Green Communities.** Program and compliance information can be found here: <https://www.greencommunitiesonline.org/checklist>
- **Leadership in Energy and Environmental Design (LEED) (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development).** Program and compliance information can be found here: <https://www.usgbc.org/guide-LEED-certification>
- **ICC-700 National Green Building Standard Green+ Resilience.** Program and compliance information can be found here: <https://www.iccsafe.org/building-safety-journal/bsj-hits/2020-national-green-building-standard-now-available-for-free-download/>
- **Living Building Challenge.** Program and compliance information can be found here: <https://living-future.org/lbc/resources/>
- *Or any other equivalent comprehensive green building program. The subrecipient will need to specify the standard and present it for approval.*

In addition to the selection options above, the project must also meet one of the following minimum energy efficiency standards such as:

- **ENERGY STAR® (Certified Homes or Multifamily High-Rise).** Program and compliance information can be found here: https://www.energystar.gov/sites/default/files/asset/document/ES%20Certified%20Homes%20QA%20Checklist_Rev%202012.pdf
- **DOE Zero Energy Ready Home.** Program and compliance information can be found here: <https://www.energy.gov/eere/buildings/doe-zero-energy-ready-home-zerh-program-requirements>
- **EarthCraft House, EarthCraft Multifamily.** Program and compliance information can be found here: <https://earthcraft.org/resources/>
- **Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US, International Passive House Association.** Program and compliance information can be found here: <https://www.phius.org/resources/tools-and-support/certification-support>
- **Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label).** Program and compliance information can be found here: <https://www.greenpointrated.com/greenpoint-rated/rating-process-and-fees>
- **Earth Advantage New Homes.** <https://www.earthadvantage.org/initiatives/home-standards.html>
- *Or any other equivalent energy efficiency standard acceptable to HUD. The subrecipient will need to specify the standard and present it for approval.*

Many of the green building standards incorporate energy efficiency standards. The subrecipients should review the standards and select the option(s) they would like to implement for their project. The subrecipient must identify within each project file which of these standards will be used and must also include the appropriate scoring metrics that demonstrates the extent to which the project is in compliance with the selected standards.

11.4 Rehabilitation of Non-substantially Damaged Residential Buildings

For rehabilitation of residential projects other than those described as “substantial,” OHCS requires that the subrecipient adhere to the HUD CPD Green Building Retrofit Checklist, found here: <https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf>. Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example:

- When replacing or repairing bathrooms, kitchens, and laundry rooms, use materials that have durable, cleanable surfaces.
- Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program labeled.
- When replacing windows, install geographically appropriate ENERGY STAR rated windows.
- Utilizing low/no VOC adhesives and sealants.

The HUD Office of Community Planning and Development Green Building Retrofit Checklist promotes energy efficiency and green building practices for residential retrofit projects. Subrecipients must follow the checklist in its entirety and apply all measures within the checklist to the extent applicable to the particular building type being retrofitted. The phrase “when replacing” in the checklist refers to the mandatory replacement with specified green improvements, products, and fixtures only when replacing those systems during the normal course of the retrofit.

Note: OHCS does not expect the subrecipient to attempt to bring into compliance items that are outside of the rehabilitation scope.

11.5 Additional Requirements

Subrecipients should also be aware of, and incorporate into their projects as applicable, other state energy efficiency requirements. These requirements may be found in the following documents:

- 2021 Oregon Energy Efficiency Specialty Code
<https://www.oregon.gov/bcd/codes-stand/Documents/2021oeesc.pdf>
- 2023 Oregon Residential Specialty Code Adoption notes that the 2023 edition Chapter 1 is effective as of October 1, 2023, while the remainder is effective as of April 1, 2024.
<https://www.oregon.gov/bcd/codes-stand/pages/orsc-adoption.aspx>

Subrecipients should be aware that this is not an exhaustive list.

11.6 Monitoring and Compliance

11.6.1 Award

The Green Building and Energy Efficiency requirements are acknowledged by submitting selection certification with their evidentiary material. The subrecipient should be prepared to provide these documents to OHCS upon request. The subrecipient is encouraged to contact the OHCS representative if assistance in understanding the requirements and additional documentation is needed.

11.6.2 Housing Policy

As discussed in this chapter, depending on the housing program, different requirements will be met in terms of green and resilient building requirements. Interim monitoring and compliance requirements will be detailed in program design and policy or procedural documents.

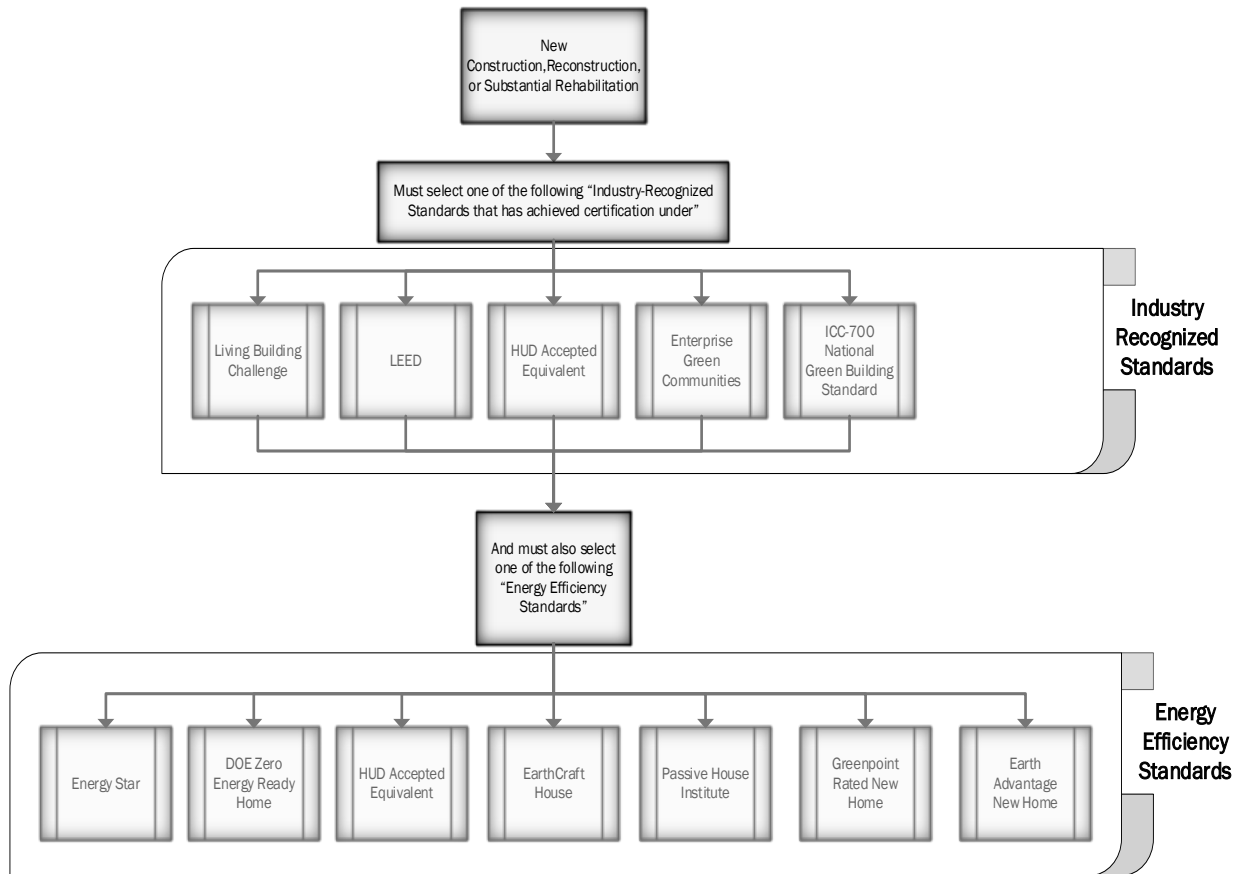
11.6.3 Project Close-out

At the completion of the project, as part of the required documentation for close-out and/or final verification that green building requirements have been achieved per the program policy, the subrecipient should include the completed checklist(s) and/or inspection document(s) for the selected standard within the project file.

Should an instance arise in which the project may be at risk of running afoul of the requirements, the subrecipient should contact the OHCS representative for further guidance.

Below is a flowchart that identifies the different allowable options within the Industry Recognized Standards, as well as the Energy Efficiency Standards.

It should be noted that while HUD identifies the combination of these two different standards as the Green and Resilient Building Standard, there is a fair amount of overlap between the two groups and they should not be viewed as one being “green” and the other being “resilient.”





12 Mitigation

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12 Mitigation

12.1 Introduction

CDBG-DR recipients are encouraged to be proactive in addressing the anticipated impacts of climate change and future natural disasters to ensure that federal grant funds are achieving the goal of building long-term community resilience. Mitigation involves analyzing current conditions, identifying risk, and having a plan to reduce the identified risk. Mitigation is one of the best ways to support the health and well-being of vulnerable community members before disaster strikes.

For CDBG-DR, HUD defines mitigation activities as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

12.2 Mitigation Set-Aside

In accordance with the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43) approved September 30, 2021 (the “Appropriations Act”), OHCS must incorporate mitigation measures into its recovery activities and spend an amount equal to at least 15% of their unmet needs allocation for mitigation activities that reduce risk in the identified MID areas. OHCS has conducted an assessment of community impacts and unmet needs to inform its Public Action Plan and also prepared a mitigation needs assessment to inform their mitigation activities. Subrecipients can refer to the mitigation needs assessment in the Public Action Plan for more information on what risks can be addressed with CDBG-DR funding.

The CDBG-DR mitigation set-aside is calculated as 15% of the total estimate for unmet recovery needs allocated for the 2021 disasters. Unlike recovery activities that must demonstrate “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, activities funded by the CDBG-DR mitigation set-aside activities do not require such a “tie-back” to the specific qualified disaster that has served as the basis for the allocation. The CDBG-DR mitigation set-aside will only fund activities that meet the following provisions:¹

1. Meet HUD’s definition of mitigation.
2. Address a current and future risk as identified in the mitigation needs assessment in the MID areas.

¹ [Community Development Block Grant Disaster Recovery \(CDBG-DR\) Mitigation Set-Aside Funds](#)

3. Be CDBG-eligible activities under Title I of the Housing and Community Development Act or otherwise eligible pursuant to a waiver or alternative requirement.
4. Meet a national objective.

The requirement for the CDBG-DR mitigation set-aside can also be satisfied by including eligible recovery activities that both address the impacts of the disaster (i.e., have “tie-back” to the specific qualified disaster) and incorporate mitigation measures into the recovery activities. To count those activities as part of the CDBG-DR mitigation set-aside, OHCS and its subrecipients will need to document how those activities and the incorporated mitigation measures will meet the definition of mitigation.

At the same time, funding of mitigation activities that do not tie back to the wildfire is limited to no more than 15% of the grant allocation. Therefore, OHCS and subrecipients must carefully consider if an activity can be considered responsive — either directly or indirectly — to disaster impacts and document tie-back in cases where there is connection with the disaster.

12.3 Mitigation Needs Assessment

The mitigation needs assessment (MNA) is a risk-based assessment that summarizes the natural and human-caused threats and hazards in the eight counties most affected by the 2020 Oregon wildfires (DR-4562). The MNA discusses the characteristics and impacts of current and future hazards identified through previously declared disasters. The assessment also addresses risks to indispensable services that enable continuous operation of critical business and government functions and are critical to human health and safety or economic security. Lastly, the assessment considers the costs and benefits of incorporating hazard mitigation measures to protect against the specific identified impacts of future extreme weather events and other natural hazards using historical and projected data on risk that incorporates best available and science tools.

OHCS has completed its mitigation needs assessment and identified in the assessment the type of activities that can be funded by the CDBG-DR mitigation set-aside. The Action Plan can be found on the OHCS website at <https://www.oregon.gov/ohcs/housing-assistance/disaster-recovery/Documents/CDBG-DR-Action-Plan.pdf>.

The mitigation needs assessment documented at least nine natural hazards that pose a risk to the eight MID counties. By characterizing these hazards in terms of their frequency and Oregon’s vulnerability, OHCS and its sub-recipients can draw on this needs assessment and the Oregon’s Office of Emergency Management FEMA-approved [Natural Hazards](#)

[Mitigation Plan](#) to identify current and future hazards in their communities and target CDBG-DR funds toward cost-effective solutions to mitigate them over the long term.

Oregon’s mitigation needs may change and OHCS will amend the mitigation needs assessment and Action Plan when additional mitigation needs are identified and additional resources become available.

12.4 Mitigation Framework

When funding CDBG-DR activities with the 15% mitigation set-aside, OHCS will work with subrecipients to identify how an activity qualifies as “mitigation.” OHCS may work with subrecipients to consider if mitigation dollars are distributed fairly to communities with respect to unmet needs or the 80/20 split for MID areas.

Maintenance: Per 24 CFR § 570.207(b)(2), CDBG-DR funds cannot cover costs for operations and maintenance. Subrecipients should be aware that the justification for a CDBG-DR activity should not be based solely on reducing the costs of future maintenance of a facility.

OHCS requires the incorporation of resilience and mitigation measures into all construction and planning projects. Refer to program guidelines for details on resilience standards to be applied or measures to track. The OHCS review and approval of projects that do not have a clearly documented disaster “tie-back” is dependent on their being sufficient budget available for those mitigation-only projects. Given that purely mitigation projects are only currently anticipated within the PIER or Statewide Planning programs, which together constitute less than the 15% maximum, OHCS does not anticipate this being a barrier.

12.5 Coordination on Mitigation

Any subrecipient-identified or subrecipient-led mitigation set-aside project must be conducted in accordance with any adopted local Natural Hazard Mitigation Plan (NHMP) and should be developed in consultation with local emergency management authorities responsible for implementation of that NHMP.

12.6 Mitigation Measures and Resilience Performance Metrics

To improve long-term community resilience, the Allocation Announcement Notice ([87 FR 31636](#)) requires OHCS and its subrecipients to incorporate mitigation measures into its recovery activities that will protect the public, including members of protected classes, vulnerable populations, and underserved communities, from the risks identified. Mitigation

measures also help ensure that communities are more resilient to the impacts of recurring natural disasters and climate change. Examples of **mitigation measures** include:

- Incorporating resilient construction standards
- Using resilient building materials and technology
- Elevating facilities above the Base Flood Elevation
- Buyout/acquisition of properties in high-risk areas
- Providing aid to relocate residents or businesses to lower-risk areas
- Restoration of trees in the urban landscapes
- Use of more renewable energy technologies
- Utilization of backup power for critical facilities

Before carrying out CDBG–DR funded activities to construct, reconstruct, or rehabilitate residential or non-residential structures that are intended to qualify as expenditures to meet HUD’s mitigation set-aside requirement, OHCS and its subrecipients must establish resilience performance metrics for the activity. The process for developing resilience performance metrics includes:

1. An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (e.g., high winds destroying newly built homes)
2. Identification of the mitigation measures that will address the projected risks (e.g., using building materials that are able to withstand high winds)
3. An assessment of the benefit of the mitigation measures through verifiable data (e.g., 10 newly built homes will withstand high winds up to 100 mph)

In DRGR, HUD has published specific measures² for mitigation activities such as the number of non-residential buildings constructed, number of fewer outages of critical facilities and utilities, number of linear feet of public improvement, number of public facilities, number of residents protected from future flooding, and number of plans or planning products developed. Examples of other **resilience performance metrics** include:

- Number of acres no longer vulnerable to flood events
- Number of floodplain design standards updated
- Number of energy plans completed

² DRGR Guidance on Grantee Program Projections — [Adding Grantee Program Projection of Outcomes](#)

- Number of resilience plans created
- Number of properties with access above 100-year or 500-year flood level
- Number of homes retrofitted with resiliency measures

12.7 Reporting on Activities

In order to count activities towards the CDBG-DR mitigation set-aside, OHCS must document how those activities and how the incorporated mitigation measures will meet HUD's definition of mitigation. These activities will be reported as a mitigation activity type ("MIT") in the HUD Disaster Recovery Reporting system called DRGR. By tracking these activity types in DRGR, OHCS will be able to demonstrate to HUD how the 15% mitigation set-aside was expended.

Activity types that are available for "mitigation" in the DRGR system include:

- MIT — Direct Housing Payments
- MIT — Economic Development
- MIT — Planning and Capacity Building
- MIT — Public Facilities and Improvements — Covered Projects Only
- MIT — Public Facilities and Improvements — Non-Covered Projects
- MIT — Public Services and Information
- MIT — Rehabilitation/Reconstruction of Residential Structures
- MIT — Residential New Construction

If a project includes mitigation measures or activities, to the extent feasible, subrecipients should delineate those costs as separate line items in the budget. This will allow OHCS to create separate mitigation activities in DRGR to track those costs under a program.

If it is not feasible to separate out the mitigation measures or activities from the larger project, OHCS may treat the entire cost of a project as counting towards the 15% mitigation set-aside. Subrecipients should inform OHCS of their intent in how they wish to identify qualified mitigation expenditures. OHCS will coordinate with HUD, where necessary, and approve or modify the subrecipients' approach.



13 Monitoring & Audit

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13 Monitoring & Audit

Subrecipients and subgrantees must monitor each program, function, or activity funded by its CDBG-DR awards to ensure compliance with applicable federal requirements and to determine if performance expectations are being achieved.

Monitoring and evaluation of program performance and compliance by recipients of CDBG-DR funds is a requirement of HUD. Monitoring program, statutory, and/or regulatory requirements is the responsibility of OHCS, subrecipients, and subgrantees. Subrecipients and subgrantees are responsible for carrying out their programs to meet these compliance requirements, including monitoring their project administrators, contractors, and subcontractors.

13.1 What This Means for Subrecipients and Subgrantees

Subrecipients and subgrantees must:

- Understand and ensure that contractors and developers understand grant requirements.¹ Subrecipients should refer to FAQs and the webinar on “Management Contractors, Developers, and Subgrantees.”
- Document eligibility of activities and costs charged to the grant.^{2,3} Refer to Chapter 4 Financial Management for additional details.
- Report on benchmarks, deliverables, and costs.² Refer to Chapter 15 Project Reports and Closeout for additional details. If applicable, review Single Audits for any subgrantee that expends more than \$750,000 in federal funds a year.³ Refer to the section at the end of this chapter for additional details.

Attention to your activities and your performance is imperative. Unresolved findings could lead to the need to repay funds to OHCS and HUD. Therefore, subrecipients must be aware and conscious of policies and controls. Subrecipient responsibilities and guidance related to common concerns are included in this section. However, please note that the responsibilities included here do not substitute for the responsibilities under your SRA and applicable regulations.

¹ 2 CFR § 200.329 and 2 CFR § 200.332

² Subrecipient Agreement — Requires the subrecipient to oversee CDBG-DR funded activities undertaken by contractors, developers, and/or subgrantees. Subrecipients must provide monthly reports to OHCS on the designated form and immediately report to OHCS Compliance and Monitoring Staff for any risks or concerns identified.

³ 2 CFR § 200.501(a) Audit requirements

Also, if the subrecipient is the subject of a HUD monitoring finding or concern, OHCS staff will work with them to prepare and implement corrective actions as directed by HUD. All HUD monitoring findings must be closed in a timely manner identified by HUD.

13.2 Monitoring Roles and Responsibilities

Monitoring is the responsibility of OHCS, subrecipients, and subgrantees. OHCS, subrecipients, and subgrantees must monitor to ensure compliance with executed agreements, applicable state and federal laws and regulations, and project/program performance criteria. See the table below for a description of the monitoring responsibilities.

Monitor	Monitored Entity	Monitoring Responsibilities
HUD	<ol style="list-style-type: none"> OHCS (grantee) Subrecipient Subgrantee 	<ul style="list-style-type: none"> HUD provides training and technical assistance. HUD conducts monitoring reviews of all monitoring entities.
OHCS (Grantee)	<ol style="list-style-type: none"> Grantee Programs/projects Subrecipient, including a sample of the subrecipients subgrantees ReOregon Program Staff 	<ul style="list-style-type: none"> OHCS conducts required training and provides ongoing technical assistance. ReOregon Program Staff conduct monthly monitoring reviews. OHCS Compliance Staff conduct desk, onsite, and remote monitoring reviews.
Subrecipient	<ol style="list-style-type: none"> Subrecipient programs/projects Program/project administrators, contractors, and subcontractors 	<ul style="list-style-type: none"> Subrecipient participates in and ensures that subgrantees attend and understand required training. Subrecipient conducts monthly review and reporting of subrecipient and subgrantee procurement, budget, allowability, benchmarks, performance, and compliance with crosscutting requirements.

Monitor	Monitored Entity	Monitoring Responsibilities
Subgrantee	<ol style="list-style-type: none"> 1. Subgrantee programs/projects 2. Program/project administrators, contractors, and subcontractors 	<ul style="list-style-type: none"> • Subgrantee participates in and understands required training. • Subgrantee manages monthly reporting procurement, budget, allowability, benchmarks, performance, and compliance with crosscutting requirements.

13.3 Capacity Building & Required Training

To assist with understanding the regulatory environment and CDBG-DR specific requirements OHCS requires subrecipients and subgrantees to certify they have taken and understand applicable trainings. A training plan with links to required trainings and curricula will be posted on the ReOregon website. All required training will be recorded for future reference. A listing of training required for subrecipients and subgrantees will be provided prior to beginning program implementation. Those subrecipients and subgrantees for which training is required will be asked to send a self-certification to OHCS Compliance Staff that training has been completed and by whom.

13.4 Policy and Procedures

All subrecipients and subgrantees will be required to follow federal, OHCS, and programmatic policies and procedures. These documents will be posted on the OHCS ReOregon website.

13.5 Activity and Cost Eligibility

The Financial Management chapter (Chapter 4) and individual program guidelines will provide specific information on national objectives, eligible activities, and eligible costs.

13.6 Monthly Monitoring

Subrecipients are expected to conduct ongoing implementation and performance monitoring and oversight throughout the project funded with CDBG-DR resources. Each subrecipient will be expected to submit a monthly report for each funded project or program. These reports document that each funded project is on time, within budget, and compliant with federal requirements and programmatic policies and procedures.

These reports are submitted to OHCS for review and used to report Quarterly Performance Reporting to HUD. Timely submission of these reports on the part of subrecipients demonstrates that appropriate project oversight is undertaken. Should issues be identified either directly by the subrecipient or through analysis of the data provided, the OHCS Compliance Staff will work with subrecipients and subgrantees on training, technical assistance, and monitoring, as necessary. The *OHCS Compliance and Monitoring Manual* details the OHCS process of monitoring CDBG-DR funds. OHCS Compliance Staff will work with subrecipients and subgrantees to prepare them for HUD monitoring.

In addition to gathering performance and financial data, subrecipients and subgrantees are expected to monitor contractors and developers for the following:

- Compliance with applicable federal and state requirements
- Construction contractors for equal opportunity, federal and state labor standards, and Section 3 requirements⁴
- Developers for federal requirements, adherence to underwriting guidelines, and affordability periods⁵

13.7 Audit Requirements

Subrecipients are required to comply with Federal Single Audit requirements if they expend more than \$750,000 in federal funds annually. Likewise, a subrecipient that contracts with a nonprofit or unit of local government must require that the entity receiving CDBG-DR funding also comply with Federal Single Audit requirements.

There are typically both state and federal requirements for audits. Federal Single Audit details audit requirements for governmental and nonprofit organizations. Oregon's audit requirements for municipalities have a lower federal audit threshold of \$500,000.

Failure to comply with audit requirements can jeopardize both the subrecipient's and subgrantee's ability to draw grant funds or receive future awards.

Subrecipients must request a copy of the annual audit for entities municipalities. For each year of their involvement with the program. Audits should also be collected for nonprofits meeting the federal threshold for audits. In the absence of an audit, financial statements may be substituted. Applicants required to conduct a Single Audit may have their contract/agreement held, pending receipt of the audit. Subrecipients may proceed if an

⁴ If applicable in the scope of work identified in the subrecipient agreement.

⁵ Ibid.

annual Single Audit is underway if it is received before the first disbursement of CDBG-DR funds occurs.

The costs of a Single Audit are an allowable CDBG-DR expense. If the entity receives more than one federal award, audit costs must be prorated across those awards if grant funding is to be used to cover audit costs.

13.8 Audit Submissions

It is the responsibility of the entity from which an audit is required to submit it to the subrecipient within 60 days of the end of each fiscal year during which the entity has an open federal award.

Audits should be carefully reviewed by the subrecipient, particularly as they relate to findings and corrective actions taken. Information in the audit may be used to inform additional conditions included in subgrant or contract award documents.

13.9 Reporting Subrecipient or Subgrantee Concerns

If the subrecipient or subgrantee encounters issues with a contractor or developer, they should inform the ReOregon Program Staff and OHCS Compliance Staff. Together, OHCS and the subrecipient will develop a plan to address concerns. This could include:

- Additional training
- Technical support
- Allowable adjustment of budget, metrics, or timelines
- Contract termination, reduction, limitation of payments

Failure to cooperate with the subrecipient and comply with the corrective actions may result in contract termination, reduction, limitation of payments, or other actions taken pursuant to 2 CFR Part 200 and allowable per written agreement.

13.10 Additional Resources

- HUD Exchange CDBG-DR page:
<https://www.hudexchange.info/programs/cdbg-dr/>
- 24 CFR 570:
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title24/24cfr570_main_02.tpl
- HUD Community Planning and Development Monitoring Handbook:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2
- HUD Office of Inspector General Integrity Bulletin Summer 2016:
<https://www.hudexchange.info/resources/documents/HUD-Integrity-Bulletin-Subrecipient-Oversight-Monitoring.pdf>
- A Guidebook for Grantees on Subrecipient Oversight:
https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17086.pdf
- 2 CFR Part 200 — Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>



14 Fraud, Waste, and Abuse

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14 Fraud, Waste, and Abuse

14.1 Introduction

Subrecipients and subgrantees are required to:

- Monitor all funded programs for instances of fraud, waste, and abuse.
- Take steps to prevent and address fraud, waste, and abuse.
- Report any instances of fraud, waste, or abuse to the appropriate authorities.

In this chapter, we will present subrecipient and subgrantee responsibilities for preventing fraud, waste, and abuse; helpful hints to understanding fraud motivations and actors; and specific types of fraudulent activities involving federal funds and programs; consequences; and how to report fraud, waste, and abuse.

14.2 Definitions

Fraud: Fraud is an intentional deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. Fraud can violate civil law or criminal law.

Waste: Waste is a useless consumption or expenditure that is done without an adequate return.

Abuse: Abuse is the improper usage or treatment of a thing, often to gain benefit unfairly or improperly.

14.3 Preventing Fraud, Waste, and Abuse

There are several actions subrecipients and subgrantees must take to prevent fraud, waste, or abuse. These include:

Policies

- Ethics and/or conflict of interest policy and statements
- Procurement
- Financial

Procedures

- Contractual performance measures
- Fiscal procedures evidencing segregation of duties
- Programmatic and fiscal reviews to ensure that subrecipient and subgrantee reports are accurate
- Verifying accuracy of programmatic and fiscal information provided by applicants and subgrantees
- Maintaining records in organized and easily retrievable formats.
- Including fraud reporting on website or direct to OHCS, Oregon, or HUD OIG hotlines

Staff Qualifications

- Attendance at fraud-related training provided by the HUD OIG
- Competency

14.4 Helpful Hints to Understanding and Identifying Fraud

Fraud can take many forms. It involves deception through the misrepresentation or omission of material facts for the purpose of illegitimate gain. Due to finite resources, it deprives citizens with legitimate needs from governmental benefits designed to support and assist them.

14.4.1 Sources of Fraud

Fraud can occur with anyone involved in the program:

- **Employees:** People hired to serve clients and conduct the business of the organization or entity with vendors (e.g., appraisers and code enforcement officials who inflate the value of repairs, solicit bribes, accept kickbacks from contractors)
- **Clients:** People the program will serve (e.g., false deeds, failure to report all benefits received, falsifying residency)
- **Vendors:** Firms with which the subrecipient contracts (e.g., failing to begin or complete work, substandard work, substandard materials/products)

14.4.2 Fraud Triangle

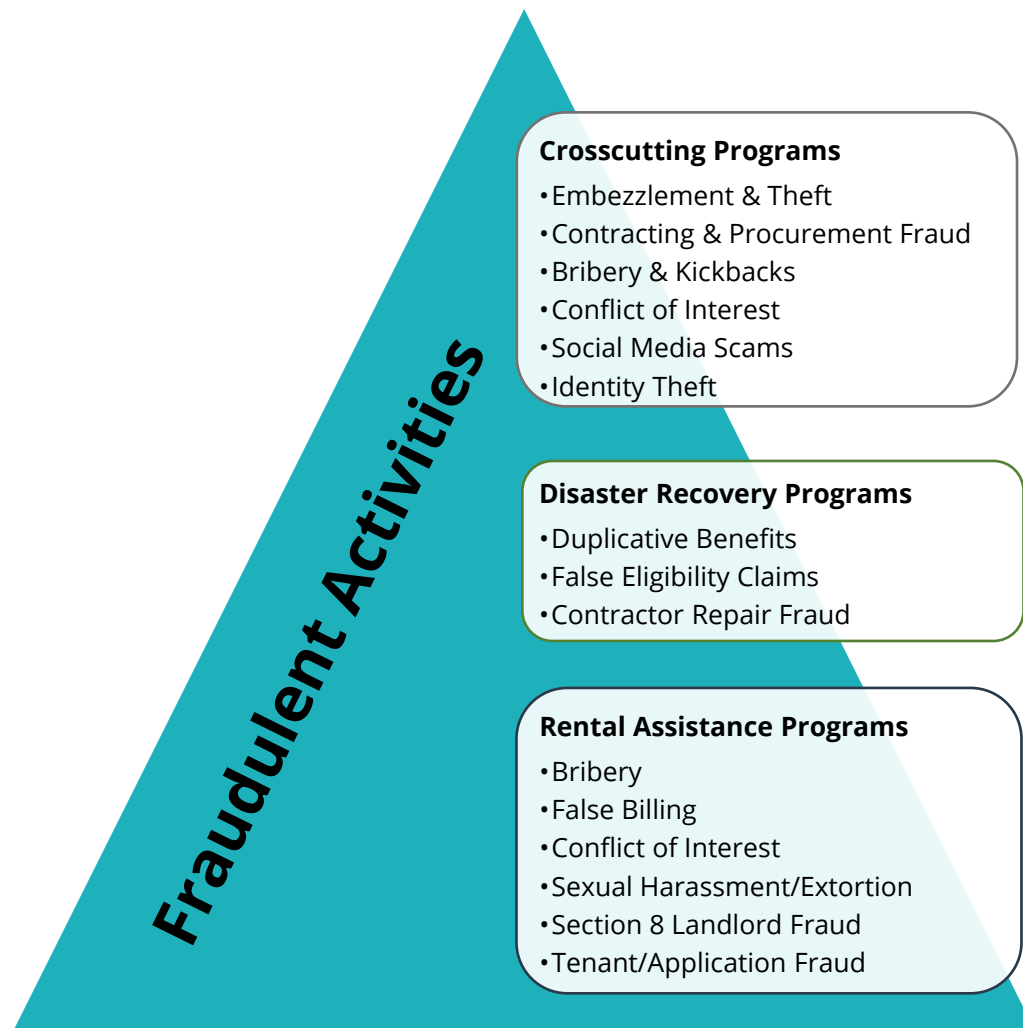
Any trusted and competent employee can commit fraud if there is pressure, opportunity, and rationalization. These three components make up the fraud triangle, which is commonly used to explain the reason behind fraud.



- **Pressure:** Pressure to engage in fraud can be high; for example, when organizations feel pressure to meet financial targets, catch up to deadlines, or make up for poor past performance. Economic conditions such as a financial crisis (personal, organizational, or national) can make pressure particularly acute, increasing the temptation for fraud.
- **Opportunity:** Opportunities for fraud are high when fraud goes undetected due to lack of internal controls or reviewing procedures. Economic conditions such as a financial crisis may also increase opportunities. For example, opportunity could be greater where there are not enough employees to maintain segregation of duties, an important factor for fraud prevention, leading the ability to override internal controls.
- **Rationalization:** When opportunities to commit fraud exist alongside pressure, the fraud triangle suggests that a third, necessary component for fraud is the ability to justify fraud. People may have an easy time rationalizing fraud, for example, when they perceive that executives condone fraud or believe that fraud is widespread across an industry. Examples of rationalization include: “No one was hurt,” “I am not being paid enough,” “Others have done it,” “I will only do it once and it will never happen again,” and “the Feds have enough money.”

14.4.3 Types of Fraudulent Activities by Program Type

Below are examples of the types of fraud encountered by program type:



14.4.4 Description of Fraudulent Activities with Federal Funds

Below is a listing and description of the types of fraud most often seen when federal funds are involved:

- **Embezzlement and Theft:** In several HUD programs, administrators and participants may be entrusted with cash or assets and take them for their personal use. There are many ways they may embezzle, from simply taking money from the cash drawer or writing checks to cash to more elaborate methods to conceal the theft, such as falsifying invoices and misusing credit cards of the HUD-funded organization. Other examples are when they may steal rental or laundry receipts; falsify deposits, checks, or other accounts; or write bonuses to themselves. They

may hire “ghost” employees and convert the payroll checks for their own use. They may use staff, materials, or equipment for personal use, which is also a fraud.

- **Bribery and Kickbacks:** Bidders may offer contract officials money or other items of value to award a grant (bribery) or contract officials may require funds or items of value from bidders to obtain a contract (kickbacks). Additionally, application and recertification staff, grievance officers, or others may require or accept bribes from a tenant or help an applicant get in, or stay in, a unit (or get priority on the waiting list). Inspectors may ask for or accept bribes to pass units for inspections.
- **Bid Rigging:** This usually occurs in the pre-solicitation, procurement, or evaluation phase of the bidding process and acts to limit competition or impede competitive bidding. Oftentimes with bid riggings, insider knowledge is utilized, which is using insider information in order to gain an unfair advantage in bidding and or obtaining a federal benefit.
- **Contract Repair Frauds:** Home repair firms that contract for work, but do shoddy work, or leave when paid while performing little to no work.
- **Contracting and Procurement Fraud:** There are many variations of these frauds that can involve procurement officials and bidders working alone or in collusion to commit frauds including:
 - Falsifying certification of regulatory and statutory compliance, or qualifications necessary to obtain a contract
 - Colluding with others to win a contract using bid rigging, phantom or altered bids, or split bids
 - Falsifying information on contract proposals
 - Using federal funds to purchase items that are not for government use
 - Billing more than one contract for the same work
 - Billing for expenses not incurred as part of the contract
 - Billing for work that was never performed
 - Falsifying data such as employee credentials, experience, and rates; false or defective bonds; and test or inspection results
 - Committing change order abuses, underbidding to win contract and colluding with procurement officer to make up profits through unnecessary change orders
 - Substituting approved materials with unauthorized products
 - Misrepresenting a project’s status to continue receiving government funds
 - Charging higher rates than those stated or negotiated for in the bid or contract

- **Conflict of Interest:** This occurs when an employee, manager, or executive has an undisclosed economic or personal interest in a transaction that adversely affects their employer; additionally, renting to a relative or having a conflict of interest in allowing themselves or a relative to be a Section 8 landlord. Commissioners (except resident commissioners), officers, and policy influencers of a Public Housing Agency are prohibited from living in a Section 8 unit. Criminal conflict occurs when an employee participates in a particular matter where the person has a financial interest if that matter will have a direct and predictable effect on that interest. It also includes profiting from insider knowledge. (Note: if there is a question of conflict, check with OHCS as it may be possible to mitigate the conflict.)
- **Documentation Fraud:** People commit forgery or alteration of documents, destruction or concealment of records, impropriety with respect to reporting financial transactions. Examples include identity theft (using another person's identification), forging signatures or documents, and misrepresentation of a medical condition to obtain an additional benefit.
- **Duplicate Benefits:** Disaster victims apply for and receive benefits from multiple agencies, which is often seen for duplicate rental assistance and repairs.
- **False Billing:** This occurs with the submission of false invoices or altered valid invoices for payment (shell company, personal purchases on company credit cards, misappropriation or theft of funds or assets). Most billing schemes involve services rather than goods as it is easier to conceal services not performed than goods not received.
- **False Eligibility Claim:** Homeowners falsely claim damage to a primary residence when it was actually an investment property. Rental properties are not eligible for repair funding. This also refers to cases where recipients falsely obtain Section 8 assistance when they in fact own an undamaged home. They sublet the Section 8 unit and keep the rents as profit.
- **Identity Theft:** Program administrators and others steal identities or create false identities to apply for and illegally receive various HUD-funded benefits such as rental assistance, mortgages, or block grant program funds.
- **Ownership Fronts:** Small/disabled/woman/minority/veteran owned business where the contractor has falsely certified themselves or obtained legitimate certification through invalid means.
- **Section 8 Landlord Fraud:** Section 8 landlords may require additional side payments from tenants above the rents reported to the housing authority.

- **Sexual Harassment/Extortion:** Instead of requesting money, program administrators as well as landlords and inspectors may demand sexual favors to allow an applicant/tenant to get into or stay in the assisted unit.
- **Social Media Scams:** Programs have seen various scams in which websites and other social media sites are used to induce the public to send money in order to receive various HUD benefits, grants, or contracts. They sometimes falsely advertise themselves as being government representatives or agents of HUD to promote their scheme further.
- **Tenant/Applicant Fraud:** Applicants falsify their true income and assets or family circumstances in order to be eligible for or increase rental subsidy.

14.5 Consequences of Committing Fraud

The HUD Office of Inspector General (OIG) has a variety of enforcement options available should evidence of fraud be confirmed:

- **Criminal Penalties:** Conviction may result in a prison sentence, probation, and/or restitution.
- **Civil Penalties:** Damages payable to the federal government for each false claim are three times the amount of the claim, plus a penalty in an amount ranging up to \$11,000. False claims liability includes payments received when the grantee relied on information in a work proposal, certification of cost or pricing data, request for payment, or in progress reports. “Knowledge” in these instances is defined as “deliberate ignorance” or “reckless regard for the truth.”
- **Administrative Penalties:** Administrative penalties include debarment or suspension. These sanctions are government-wide regardless of the federal agency involved. They can be indefinite and are imposed with a fraud conviction, criminal or civil judgment.

14.6 Addressing and Reporting Fraud, Waste, and Abuse

The occurrence of fraud, waste, and abuse are not signs of a poorly run or mismanaged agency. Reaction to perceived fraud, waste, and abuse is what defines the management of an organization.

The existence of a fraud policy, preventive steps taken, and proper handling of fraud, waste, and abuse are deterrents. By addressing fraud, waste, and abuse, management can identify and close procedural gaps to ensure that the same issues will not reoccur.

Remember to involve OHCS and HUD OIG early at the first indication of fraud; maintain all original documents and provide requested access to records. Indications of mismanagement; violations of laws, rules, or regulations; or theft of or fraudulent claims for funds must be reported.

14.6.1 Office of the Inspector General

OIG is an independent office within HUD. Its role is to promote economy, efficiency, and effectiveness of HUD's programs and operations. It prevents and responds to issues related to fraud, waste, and abuse, reporting to the HUD Secretary and Congress.

OIG focuses on reports of fraud or serious mismanagement with high dollar losses or significant community impact. What to report to the OIG Hotline:

- Violations of federal laws, rules, and regulations pertaining to HUD programs and funding
- Substantial and specific danger to health or public safety at HUD Public and Multifamily Housing Developments
- Contract and procurement irregularities
- Theft and abuse of government property
- Employee misconduct
- Abuse of authority or conflict of interests
- Housing subsidy fraud
- Serious mismanagement
- Ethics violations by HUD officials
- Bribery

14.6.2 OHCS Reporting

According to OHCS policy, any employee, consultant or subrecipient who has knowledge of fraud, waste, or abuse, or who has good reason to suspect that such conduct has occurred shall immediately report the activity to the OHCS Disaster Recovery and Resilience Management in one or more of the following ways:

- Filling out the CDBG-DR Fraud, Waste, and Abuse Reporting Form
- Contacting the OHCS Executive Director
- Contacting the OHCS Internal Auditor
- Report to the Oregon Secretary of State

14.7 Additional Resources

- HUD OIG's "What You Can Do" page
<https://hudoig.gov/fraud/what-you-can-do>
- Department of Homeland Security Privacy Training & Awareness
<https://www.dhs.gov/privacy-training>
- Oregon Secretary of State Report Misuse of State Government Resources
[State of Oregon: Audits — Report Misuse of State Government Resources](#)



15 Project Reports and Closeout

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15 Project Reports and Closeout

15.1 Introduction

Throughout the lifecycle of a project, various project reports are required to ensure that funds are being expended in accordance with the subrecipient agreement, program rules, and state and federal requirements. The purpose of this chapter is to describe the various project reports that are required throughout the project as well as project closeout process and requirements.

15.2 Project Reports

The following chart demonstrates all reports that may be needed, the applicability of whom they apply to, and the timing of the reports. This is then followed by subheadings with an additional detailed description of each report.

Report	Applicability	Timing
Single Audit Report	If a subrecipient expends \$750,000 or more of federal awards	Annually — fiscal year ending for subrecipient
Monthly Activity Report: Financial progress, program income, accomplishments, and performance measures	All subrecipients	Monthly, no later than the 15 of each month
Section 3 Report	See Chapter 7 of the Subrecipient Manual	Quarterly

15.2.1 Single Audit Report

Subrecipients share the responsibility with OHCS to ensure that federal resources are expended efficiently, economically, and effectively to achieve the purposes for which the funds are furnished. The financial and performance audits discussed in this chapter and noted in [2 CFR Part 200, Subpart F – Audit Requirements](#) are designed to ensure that OHCS and its subrecipients are accountable to the public and meet this mutual responsibility, in particular for:

1. A financial audit is an independent, objective review of the entity's financial reporting processes and financial statements, indicating they are accurate and complete.

2. A primary purpose is to give assurance that the entity complies with the specific financial requirements for accounting systems and procedures and that financial statements are prepared in accordance with accepted accounting standards. (See Chapter 4 Financial Management.)
3. A performance audit is an independent examination of a program, function, operation, or management systems and procedures of the entity.
4. The performance audit assesses whether the entity has efficiently and effectively carried out operations and achieved the intended results from the entity's programs, which include the CDBG-DR program.

A single audit is an audit that includes both an entity's financial statements and its federal awards (from all applicable federal programs). For any fiscal year(s) in which the subrecipient expends \$750,000 or more of (total) federal awards, the subrecipient is required to obtain an annual audit report (this audit must include the single audit requirements in 2 CFR 200 Subpart F). Subrecipients are responsible to submit an audit to the [Federal Audit Clearinghouse](#) in a timely manner and submit a copy of the fiscal audit to OHCS.

Subrecipients must have an audit conducted in accordance with 2 CFR Part 200, Subpart F—Audit Requirements except when they elect to have a program-specific audit conducted. A program audit is an audit of one federal program (such as CDBG-DR). A program-specific audit is allowed when the grantee or subrecipient expends federal awards under only one federal program.

If a subrecipient expends less than \$750,000 a year in federal awards, he/she is exempt from the audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity, and the Government Accountability Office.

15.2.1.1 Preparing for a Single Audit

Whether your agency has a single audit or a program audit, you will be responsible for providing the auditor with:

- Access to personnel, accounts, books, records, supporting documentation, and other information as needed (2 CFR [200.508](#))
- Financial statements that reflect your financial position, results of operations or change in your net assets, and cash flows for the fiscal year ([2 CFR 200.510](#))
- A summary schedule of any prior audit findings noting whether corrective action was taken, and the status of correction actions not yet completed

The Single Audit Act requires, among other things, that the independent auditor determine and report on whether your organization or governmental entity has internal control systems to provide reasonable assurance that you are managing your federal assistance programs in compliance with applicable laws and regulations (Scope of Audit – [2 CFR 200.514](#)). Please refer to Chapter 4 Financial Management for more information on internal control systems.

15.2.2 Quarterly Performance Reports

The Consolidated Notice for the CDBG-DR funds requires OHCS to report performance measures to HUD on a quarterly basis during the lifecycle of the grant. OHCS will require subrecipients to submit performance reports on a monthly or more frequent progress reports on a case-by-case basis if it decides that regular written reports from a subrecipient are necessary. The performance report must be submitted during the period of performance of the subrecipient grant agreement with a final performance report submitted at closeout. Refer to Chapter 4 Financial Management for more information. The performance report provides status of financial progress as well as accomplishments and performance measures on a monthly basis. The subrecipient will also provide any relative financial information related to program income if the project activities generate program income. See the attachment at the end of this chapter for guidance on performance reports.

15.2.3 Noncompliance with Grant Management and Audit Requirements

In accordance with CFR 570.492 state's reviews and audits: (a) the state shall make reviews and audits including on-site reviews of subrecipients as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act and (b) In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for subrecipient noncompliance. (See Chapter 13 Monitoring.)

15.3 Subrecipient Agreement/Project Closeout

As CDBG-DR funds are fully spent and the project is completed, the subrecipient must begin the process of closing out project activities under the subrecipient agreement. While additional closeout information may be required for certain programs, this section describes the closeout conditions that must be met to fully complete the closeout process, timeline, and reporting requirements for closing out a project.

15.3.1 Closeout Conditions

It is important to note that the following conditions must be met to fully complete the closeout process:

- ✓ The subrecipient has fulfilled all of its responsibilities under the subrecipient agreement and completed the CDBG-DR funded activities in accordance with program guidelines.
- ✓ A CDBG national objective must have been met.
- ✓ All project costs to be paid with CDBG-DR funds have been paid, with the exception of closeout costs, such as project delivery costs.
- ✓ There must be no outstanding compliance review findings on the project.
- ✓ Any real property acquired has been disposed of according to the CDBG requirements and 2 CFR Chapter I and II, Parts 200, 215, 220, 225 and 230
- ✓ All required audits have been approved. (Refer to Chapter 4: Financial Management.)

15.3.2 Public Hearing

A second public hearing is required in accordance with the CDBG-DR citizen participation requirements. This hearing may take place anytime after the project status is 80% complete.

The purpose of the closeout public hearing is to address the performance of the funded grant. Hearings shall be scheduled at a time and location felt to be most likely possible for the majority of interested citizens to attend without undue inconvenience. Notification of all hearings shall be given a minimum of 5 full days (actually, 7 days, as the day of the notice and the day of the hearing cannot be counted as one of the 5 full days) in advance to allow citizens the opportunity to schedule their attendance.

In addition, steps must be taken to:

- Provide accommodations for persons with disabilities — location offers accessibility.
- Accommodate to meet the needs of non-English speaking people where a significant number of non-English speaking residents can reasonably be expected to participate.

City and county subrecipients must conduct the meeting for their communities. Other subrecipients will coordinate with OHCS for the public hearing. The subrecipient should indicate that all comments from citizens were considered or, if applicable, cite reasons for rejection of comments. All comments and responses must be documented in the citizen participation and closeout files.

As part of the closeout process, the subrecipient must provide proof of the public hearing to OHCS to include the following items:

- Copy of the notice
- Proof that the meeting location provided reasonable accommodations/accessibility
- Proof that language interpretation services were available if the need was anticipated
- Affidavit of publication
- Final approved hearing minutes

15.3.3 Closeout Timeline

Subrecipients must submit a grant completion report with applicable documentation before the end of the period of performance of the subrecipient agreement. The requirement for timely closeout is a subrecipient responsibility. The subrecipient must ensure project timeliness in accordance with the agreed upon timeline in the award contract. If at any point reasonable additional time is needed, the awardee shall request amendment to the award contract with justifiable request to extend the project timeline along with updated project work plan. Failure to manage project timeliness will affect the awardee's capacity assessment for future CDBG-DR funding.

15.3.3.1 Notice of Completion and Closeout Letter

As part of closeout, subrecipients may perform a final inspection, submit a grant completion report, and return any final program income, if applicable. A final closeout file review will be conducted by OHCS in coordination with the subrecipient to ensure that all required documentation is complete and compliant.

After OHCS has reviewed and approved the grant completion report, OHCS will send the subrecipient a letter stating that this report has been approved. If all other requirements have been met and the project is ready to be closed, OHCS will also issue a notice of completion or closeout letter to the subrecipient. It is important to note that if there are any outstanding or unresolved audit findings pertaining to the use of CDBG-DR funds, then a closeout letter cannot be issued.

15.3.3.2 Record Retention

The subrecipient is required to maintain all records pertaining to the project for a minimum of 3 years from the official closeout letter date per 2 CFR 200. Refer to Chapter 4 Financial Management in this manual and the applicable federal and state regulations for additional information regarding the specific records that should be maintained and the required format.

15.4 Appendix/Attachment

15.4.1 Guidance for Performance Report

Ensure that enough information is provided for HUD to determine if sufficient progress is being made on this activity.

1. Highlight the status of the activity (i.e., planned [has not been started], underway [in progress], cancelled, and completed) when providing details on activity progress. Make sure to include details pertaining to the project schedule as applicable. Highlight the month's accomplishments. Feel free to provide context to your reported current, quarter performance measures.
2. You may provide details on favorable developments that enabled meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned. Provide details on key components completed, including partnership development and coordination.
3. If the activity did not have progress, obligations, or expenditures during the quarter, use the space to communicate why the activity has not progressed. Provide details, delays, or adverse conditions that will materially impair the ability to meet the objectives of the activity. Include what actions are being taken, or contemplated, and any assistance needed to resolve the situation.
4. Please include any qualitative actions for Section 3 performance measures. Keep in mind that employment and training opportunities should be in connection with the HUD financial assistance being expended. Below are some examples of qualitative efforts; however, other efforts may be reported as appropriate and applicable to the activity. These efforts may be performed by the program or contractors, including construction firms.
 - Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers
 - Provided training or apprenticeship opportunities
 - Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
 - Provided or connected Section 3 workers with assistance in seeking employment including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services
 - Held one or more job fairs

- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare)
- Helped apply for/or attend community college, a 4-year educational institution, or vocational/technical training
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses