

Subrecipient Manual

Version 1.1



Got Questions?

Email: housingsupport@reoregon.org

Call: 877-510-6800 or 541-250-0938



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 revisions 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 (e.g., 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
1.1	January 2025	Complete manual revised with updated wording and minor 2 CFR 200 revisions posted in October 2024

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
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
DRGR	Disaster Recovery Grants Reporting (system)

Acronym	Description
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
HMP	Hazard Mitigation Plan

Acronym	Description
HUD	U.S. Department of Housing and Urban Development
IFB	Invitation for Bid
LAP	Language Access Plan
LEP	Limited English Proficiency
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
RFP	Request for Proposal

Acronym	Description
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 Area
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

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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 lower- and moderate-income families across the housing continuum by helping to prevent homelessness, provide housing stability supports, finance the building and preservation of affordable housing, and encourage 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 and 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 and straight-line winds.

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 project funded by CDBG-DR. This handbook does not address how to determine eligibility for CDBG-DR activities or how to apply for a CDBG-DR grant. Specific CDBG-DR program guidelines, posted on the [OHCS CDBG-DR website](#), address eligibility and application. OHCS staff will assist 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. OHCS staff is there to help subrecipients complete their projects successfully, so it is important to ask questions and keep OHCS staff informed about progress.

Each chapter of this handbook describes 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.

Subrecipients are encouraged to keep the handbook bookmarked so that it can be accessed quickly for 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	Action Plan Designated Programs					
	HARP ¹	AHD ²	HSS ³	PIER ⁴	Public Services	Planning
Introduction and Project Administration	✓	✓	✓	✓	✓	✓
Environmental Review	✓	✓	✓	✓	✓	✓
Financial Management	✓	✓	✓	✓	✓	✓
Procurement	✓	✓	✓	✓	✓	✓
Labor Standards (DBRA)	✓	✓		✓		
Section 3	✓	✓		✓		
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 and Closeout	✓	✓	✓	✓	✓	✓
Asset Management	✓	✓	✓	✓	✓	✓

¹ HARP is an acronym for “Homeowner Assistance and Reconstruction Program” identified in the Action Plan.

² AHD is an acronym for the “Affordable Housing Development” program identified in the Action Plan. This program was added during substantial Action Plan Amendment #1.

³ HSS is an acronym for the “Housing Support Services” program identified in the Action Plan. This program was added during substantial Action Plan Amendment #1.

⁴ PIER is an acronym for the “Planning, Infrastructure, Economic Revitalization” program identified in the Action Plan.



Project Administration

2 Project Administration

2.1 Applicability of CDBG-DR Requirements

The U.S. Department of Housing and Urban Development (HUD) allocates Community Development Block Grant Disaster Recovery (CDBG-DR) funds granted by public law through a Federal Register Notice (FRN) based on specific disaster events and also 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. HUD may publish waivers, alternative requirements, or clarifications through the use of memorandums. HUD's website offers a chronological list of all public laws, FRNs, and memorandums issued, located here: [hud.gov/program_offices/comm_planning/cdbg-dr/regulations](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations)

2.1.1 Federal Register Volume 87 Page 31636

The list below highlights key changes in the FRN titled *Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice*, issued on May 24, 2022 (referenced as 87 FR 31636).

Each additional section of this manual or specific policies developed for activities funded by CDBG-DR 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 MID areas: 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 area that received a presidential disaster declaration but did not meet HUD's criteria for a HUD MID area. Oregon has identified Klamath County as having significant unmet needs and being 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** of 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** of this manual for more details on DOB 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 that are typically not required under basic CDBG.
- **104(d) Relocation and One-for-One Replacement:** Activities funded by CDBG-DR that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). HUD has waived requirements at sections 104(d)(2)(A)(i) and (ii) and section 104(d)(3). 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 called a “buyout” for the purpose of creating open space and mitigating high-risk properties from future impacts. 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.
- **Non-Residential Elevation:** Non-residential structures, including infrastructure, assisted with CDBG-DR funds must be elevated to the standards described in the FRN or floodproofed in accordance with the 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:** Activities funded by CDBG-DR must follow Section 3 as codified at 2 CFR Part 75. The updated Section 3 regulations change the way that Section 3 workers and Section 3 targeted workers are defined and reported, and goals that must be achieved for each class.

See **Chapter 7** of 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 Parts 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, the environmental review that was completed in relation to federal funding 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** of this manual for more details on environmental requirements and procedures.

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

2.1.2 Memorandum 22-01

The list below highlights key changes in Memorandum 22-01 applicable on Dec. 12, 2022.

- **Private Utilities:** HUD has imposed alternative requirements governing assistance to utilities in place of prohibiting the use of CDBG-DR funds to assist a privately owned utility. Oregon may choose to assist utilities as a part of a disaster-related eligible activity under section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305 (a)) as long as the assistance complies with the following requirements:
 - The activity must comply with applicable CDBG-DR requirements, including the requirements to meet a national objective and address an unmet recovery need or a risk identified in Oregon's mitigation needs assessment.
 - If assistance is provided to a for-profit entity for an economic development project under section 105 (a)(17), OHCS must first comply with the underwriting requirements in section II.D.6 of 87 FRN 31636.
 - OHCS must continue to carry out the grant consistent with the approved grantee's certification to give the maximum feasible priority to activities that will benefit LMI families.
 - This includes prioritizing assistance granted to a for-profit entity that will benefit areas where at least 51% of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

- Costs to assist the utility must be determined necessary and reasonable and must not duplicate other financial assistance. This includes documenting that the level of assistance provided to the utility addresses only the actual identified needs. Establishment of policies and procedures to ensure the CDBG-DR funds reflect the actual identified financing needs of the assisted businesses by using a mix of financing terms based on the business's financial capacity to ensure assistance is based on actual identified need.
 - Mixed financing terms may include repayable loans, forgivable loans, or grants.

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 subrecipient can be found at 24 CFR § 570.500(c). It is further defined at 2 CFR § 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 CFR §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 Act.⁵ According to [24 CFR § 5.109](#), OHCS or subrecipients must not discriminate on the use of a religious faith-based organization.

2.2.1 Selection Process

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.

⁵ Refer to [24 CFR § 570.480\(e\)](#) and [§ 570.200\(j\)](#) for more information.

HUD permits its grantee, 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 nonprofit organization serving a specific geography
- Selecting a unit of general local government
- Selecting a governmental agency or organization
- Making 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.

2.2.1.1 Formal Application

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

- There is 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.

2.2.1.2 Direct Selection

OHCS has the discretion to directly identify and select a prospective subrecipient to carry out the desired CDBG-DR programs or 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 a project or complete control/ownership over a project site.
- There is reasonable basis to conclude that direct selection 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.

2.3 Subrecipient Agreement

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 CFR § 570.503. The agreement denotes responsibilities for each party and outlines in exact measure the scope of services to be provided, 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.

A sample of the SRA template is available at oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-Guidance.aspx

It is important to note that this manual is supplemental to the SRA and applicable federal and state regulations, standards, policies, and procedures. As a recipient of federal grant funds, the subrecipient must follow and understand basic program regulations applicable to the management and financial systems for CDBG-DR found in 24 CFR and 2 CFR.

The executed SRA between the subrecipient's organization and OHCS contains the rules applicable to implement the program, scope of work, timelines, performance goals, objectives, budgets, reports, staffing, and special conditions, if any, applicable to the specific services or project to be provided by the subrecipient's entity.

This manual will assist the organization in complying with the SRA. However, the manual is not meant to be used as the single document that rules the administration of the SRA. This document should be used as a supplement to the SRA and does not supersede the SRA provisions.

2.3.1 Project Signage

The SRA may include additional requirements such as funding source and OHCS recognition. For contracts including recognition requirements, the project signage should:

- Be placed in a prominent visible public area that is visually unobscured
- Be constructed of durable materials
- Be a minimum of 12" in height by 18" in length with lettering no smaller than ½"
- Include required text:
 - This project is funded by Oregon Housing and Community Services with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Disaster Recovery program.

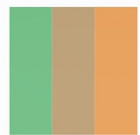
The OHCS contract administrator should be contacted with any requests to reduce the minimum size requirements or required text, or remove or add any language or recognition.

2.4 What Happens Once the SRA Is Signed?

Once the SRA with OHCS has been signed, OHCS staff will contact the organization's representative to schedule an onboarding to the CDBG-DR program where performance goals, expected outcomes, and work plans will be reviewed and discussed. The 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 of necessary programmatic and/or budget changes, the subrecipient will need to contact their assigned OHCS staff for review and approval. The 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.



Environmental Review

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3 Environmental Review

3.1 Introduction

The purpose of the environmental review process is to analyze the effect that a project funded by a Community Development Block Grant Disaster Recovery (CDBG-DR) grant may have on human health and the environment.

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

The U.S. Department of Housing and Urban Development (HUD) is the federal agency allocating CDBG-DR funding to Oregon Housing and Community Services (OHCS) for ReOregon program activities. Environmental reviews are required when there is a federal nexus, such as when a project or activity receives federal funding, requires a federal permit, or includes a federal land decision.

HUD uses the term **Responsible Entity** (RE) to describe the local entity that is responsible for conducting and certifying the environmental review. OHCS is the RE for the CDBG-DR ReOregon programs but may identify another local entity (such as a county government) to assume the role of RE.

The RE is responsible for conducting the environmental reviews for each project and completing and maintaining the appropriate environmental review record (ERR) for each selected project in accordance with 24 Code of Federal Regulations (CFR) part 58. The RE will also certify the results of the review and submit the ERR to HUD (or OHCS) for review. The RE will need to receive the Authority to Use Grant Funds (AUGF) form prior to obligating any project funds and informing subrecipients and grantees that the project can begin.

All activities funded by CDBG-DR are subject to an environmental review. Subrecipients will provide the project work descriptions and other information as requested 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. Subrecipients must inform OHCS of their plan for which entity will assume the role of RE. In those cases, OHCS will assist the subrecipients to make sure they understand requirements and conduct the environmental review process correctly. The Subrecipient Agreement will include requirements for the environmental review process.

Once a subrecipient or a project partner applies to the selection committee for CDBG-DR funds, the project is considered federalized and the subrecipient or project partner must refrain from starting or continuing work and must stop work on the project until receipt of the notice of environmental clearance from OHCS. Subrecipients should be aware that 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 Appendix A for a visual aid of the different steps and requirements.

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 Environmental Clearance Prior to Commencing Work

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

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

According to 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. To achieve this objective, 24 CFR 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and an AUGF 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. Avoiding choice-limiting actions ensures that 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 limit the choice of alternatives cannot be undertaken, even with the RE's or other project participants' own funds, prior to obtaining environmental clearance.

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

- Execution of a 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)

3.4 The Environmental Review Record

The RE is required to establish and maintain an ERR for each project, according to 24 CFR 58.38. The purpose of the ERR is to document the environmental review decision-making process and all actions taken during the course of the environmental review. 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 or notices, as applicable
- Public comments and responses to them, as applicable
- Written determinations and findings
- Verifiable source documentation and relevant data

- Request for release of funds and certification¹
- Release of funds issued by the RE

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

Documents produced supporting the environmental review must be available to the public upon request. 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.

3.5 Applicability of Environmental Review Procedures

HUD environmental review procedures and requirements apply to all activities related to a project with a federal nexus, including those activities that are paid for with local or other funds.

3.6 Levels of Environmental Review

Different project activities require different levels of environmental review and compliance. The level of environmental review that must be completed depends on the overall nature of the project. A first step in the environmental review process will be the RE's determination of the level of review needed. The five levels of review are:

- Exempt
- Categorical exclusion not subject to 24 CFR 58.5 (CENST)
- Categorical exclusion subject to 24 CFR 58.5 (CEST)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

Exempt and CENST project reviews must comply with 24 CFR 58.6; CEST, EA, and EIS project reviews must comply with 24 CFR 58.5 and 58.6.

3.6.1 Related Federal Laws and Authorities (24 CFR 58.5)

A main component of the environmental review process is to determine project compliance with the related federal laws and authorities. The RE must consider the criteria,

¹ As applicable, projects requiring a CEST, EA, or EIS should have a request for release of funds in the project files in addition to the release of funds issued by the RE.

standards, policies, and regulations of these laws and authorities. The related federal laws and authorities are listed in [24 CFR 58.5](#) of the regulation:

Historic properties

- The National Historic Preservation Act of 1966 (16 United States Code [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 Federal Register [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)

Farmland 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 [24 CFR part 51](#), 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 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 use of the property
- 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

3.6.2 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 of the level of review. The RE must comply with the following requirements of [24 CFR 58.6](#).

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 the Federal Emergency Management Agency (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 one 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.²

² Oregon does not have Coastal Barrier Resources System units.

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.

3.6.3 Environmental Assessment Process (24 CFR 58.40)

If the project does not meet the requirements to be classified as exempt, CENST, or CEST, then an EA must be completed. 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 24 CFR 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 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 24 CFR 58.5 and 58.6.

3.7 Levels of Environmental Review: Definition and Process

3.7.1 Exempt Activities

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are exempt from the environmental

requirements of NEPA and related laws and authorities. Exempt activities as listed in 24 CFR 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.
- 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 its review and upload the ERR in the system of record.
- OHCS will notify the subrecipient that the project is exempt and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.7.2 Categorically Excluded Activities Not Subject to 24 CFR 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. 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.

Activities determined to be categorically excluded not subject to section 58.5 require compliance with regulations in 58.6 only. Activities considered categorically excluded not

subject to the related laws and authorities in 58.5 are listed in 58.35(b). 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 of this subrecipient manual 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 that 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.
- 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 its review and upload the ERR in the system of record.
- OHCS will notify the subrecipient that the project is categorically excluded not subject to 58.5 and document the results of the 24 CFR 58.6 other requirements evaluation.
- Project can begin.

3.7.3 Categorically Excluded Activities Subject to 58.5

Activities determined to be categorically excluded subject to section 58.5 require compliance with regulations in 58.5 in addition to 58.6. These activities are categorically excluded from NEPA review because they would not individually or collectively have a significant impact on the environment. Activities considered categorically excluded subject to the related laws and authorities in 58.5 are listed in 58.35(a). 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 for the 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.
- OHCS will notify the subrecipient that the project is categorically excluded 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 58.5 and other requirements in 24 CFR 58.6.
- OHCS will complete its review, enter the ERR into the system of record,³ and publish the Notice of Intent to request release of funds from HUD. The public will have seven days to comment to OHCS.
- After public comment has been completed, OHCS will submit to HUD the request for release of funds. HUD will then hold a 15-day public objection period.
- After the 15-day objection period has ended and if there is no follow-up action needed, HUD will send the AUGF to OHCS.
- OHCS will notify subrecipient that the project can begin.

3.7.4 Environmental Assessment

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 as to whether or not the proposed project is “a federal action [that] has the potential to cause significant environmental effects.”⁴ 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 and the other requirements as listed in 24 CFR 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 Finding of No Significant Impact or a Finding of Significant Impact. If the EA results in a Finding of Significant Impact, the RE must proceed with an EIS.

³ If the RE is not OHCS, the system of record would be the HUD Environmental Review Online System (HEROS). Information on how to use HEROS and gain access is available here: hudexchange.info/programs/environmental-review/heros/

⁴ Review the EA explanation provided by the EPA here: epa.gov/nepa/national-environmental-policy-act-review-process#ea

Process:

- Subrecipient Agreement is signed.
- OHCS will make the level of review determination based on the project description.
- OHCS will notify the subrecipient that the project needs an EA.
- 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 and the other requirements as listed in 58.6, and preparing the EA as listed in 58.40. For construction projects, 30% design plans may be requested to show the general construction plans, scope, and elevation.
- OHCS will complete its review, enter the ERR into the system of record, 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 then hold a 15-day public objection period.
- After the 15-day public objection period has ended and if there is no follow-up action needed, HUD will send the AUGF to OHCS.
- OHCS will notify subrecipient that the project can begin.

3.7.5 Environmental Impact Statement

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.

3.8 Sample Project Information Requested

Once the RE 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 the RE:

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, and 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), 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: Additional construction details may be requested if the project is located in an air basin or district that is in a nonattainment area⁵ for criteria pollutants.

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. *NOTE: A Phase 1 Environmental Site Assessment is different from a NEPA environmental assessment.*

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

Noise: For residential projects where an existing community noise level exceeds the day-night average sound level of 65 decibels (dB), noise attenuation measures may be required in building and site design. Additional information may be requested to assure a maximum interior level of 45 dB.

⁵ A nonattainment area is a location where the concentration of one or more criteria pollutants is above the National Ambient Air Quality Standards (NAAQS), established by the Environmental Protection Agency. Examples of criteria pollutants include ozone, particulate matter, sulfur dioxide, lead, carbon monoxide, and nitrogen dioxide. Additional information on the NAAQS and criteria pollutants may be found here: [epa.gov/green-book](https://www.epa.gov/green-book)

3.9 Starting the Project

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

In cases in which RE 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, the RE is required to impose appropriate remedies and sanctions in accordance with the law and regulations for the CDBG-DR program, under which the violation was found, in accordance with 58.72(c).

3.10 Compliance Monitoring

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

The RE is responsible for monitoring and ensuring compliance with any mitigation measures identified during the environmental review. Documentation demonstrating that the mitigation measures have been implemented must be included in the ERR and may be requested from the subrecipient.

3.11 Oregon Environmental Laws

Subrecipients must also follow Oregon environmental laws and requirements as issued by the Oregon Department of Environmental Quality (DEQ). A list of Oregon's Revised Statutes is maintained on DEQ's website here: [oregon.gov/deq/Regulations/Pages/statutes.aspx](https://www.oregon.gov/deq/Regulations/Pages/statutes.aspx)

Subrecipients executing agreements that exceed \$150,000 for work performed under CDBG-DR are required to include contract clauses for the Clean Air Act and Federal Water Pollution Control Act as amended.⁶

Wetlands:

- Oregon Administrative Rules (OAR), 141086-0180 through 0240, and 141-086-0300 through 0350

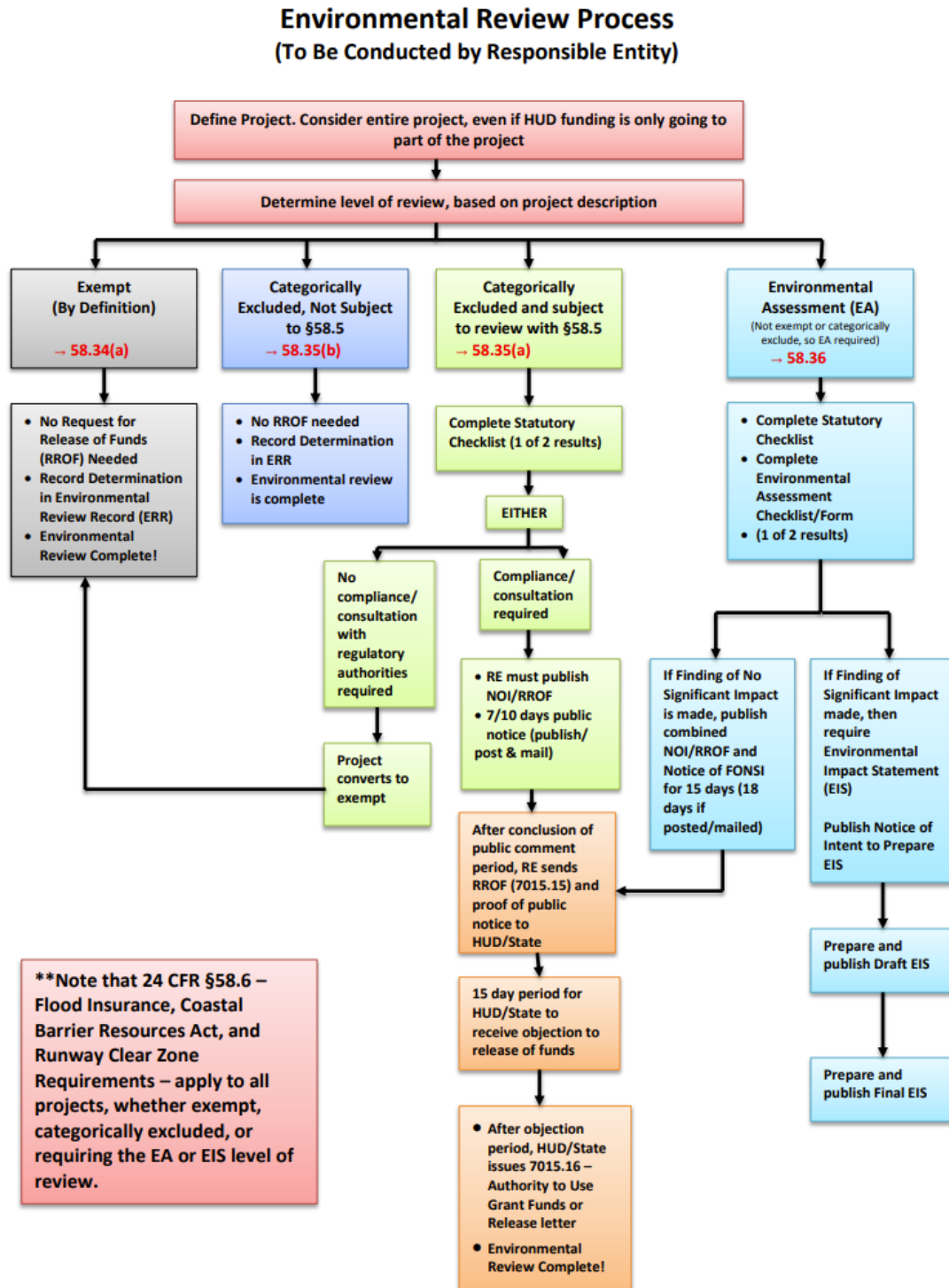
Oregon State Scenic Waterways:

- Scenic Waterways Act, Oregon Revised Statutes 390.805 to 390.940
- Scenic Waterways Rules, Oregon Administrative Rules, Chapter 736, Division 40

⁶ For a complete list of contract clauses please refer to the Subrecipient Manual Chapter 5 – Procurement. Only the required clauses related to environmental regulations are included here.

When a site is within the geographic boundary of an Oregon Scenic Waterway, review by the Oregon Parks and Recreation Department is required. Their initial screening will determine whether a formal Notice of Intent is needed; if so, the applicant must submit a Notice of Intent plan for approval once official site plans are sufficiently developed.

3.12 Appendix A: Environmental Review Process Diagram





Financial Management

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4 Financial Management

4.1 Introduction

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, 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 an 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. Oregon Housing and Community Services (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 the U.S. Department of Housing and Urban Development (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 the requirements of a Community Development Block Grant Disaster Recovery (CDBG-DR) financial system can be found later in this chapter in the [Required Elements of Financial Systems section](#).

4.2.2 Execute Required Forms

The subrecipient is responsible for executing the following forms required by OHCS:

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 are approved. Once they are approved, subrecipients may make changes to any budget category amounts up to 10% of the total award amount per line item with the approval of OHCS so long as budget categories are not added or deleted, the total dollar amount of the agreement is not affected, and the outcomes of the agreement will not be affected as determined by OHCS. Such changes must be approved in writing and signed by OHCS and the subrecipients. Amendments to the contract are required for any other budget changes that include 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 2 CFR 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, Feb. 3, 2022
- CDBG-DR program, [24 CFR Part 570 \(Subpart I, 570.480-497\)](#), 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 Part 570.503 (b)(4) contains the applicability of the uniform administrative requirements (24 CFR Part 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 closeouts 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 Part 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 ensure 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 Part 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 Chapter 13: Monitoring and Audit 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 of 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:

- Creating a current organizational chart that clearly indicates the individuals involved in approving or recording financial transactions and their responsibility
- Constructing a 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 that 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 suggestions 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 Control — 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
Formal written policies and procedures to establish control components	• 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.
Segregation of duties to mitigate against fraud, waste, and abuse	• Determine the proper level of authorization for purchases. • Limit access to inventory, equipment, and banking accounts to personnel authorized to use the assets.
Adequate internal monitoring to ensure that the entity is following the internal control components in place	• 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 federal cost principles regulations.
Reconciliation of grant expenditures to the budget	• Schedule account reconciliations to ensure that financial information is current and updated in a timely manner.
Appropriate controls to secure and safeguard assets and ensure that controls are only used for authorized purpose by the award	• Protect property from loss, damage, or theft. ◦ 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.

Internal Control	Actions
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 the 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 balances for proper authorization.
Adequate source documentation produced and retained	- Review documentation policies to ensure that there is enough detail: - What was the purchase and 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. - Make sure that 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 or 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, subrecipients should have effective control over and accountability for all CDBG-DR funds, property, and other assets in their possession (acquired/assisted by CDBG-DR funds). In order to meet these requirements, their financial management system must provide for the following:

Chart of Accounts. This is a list of names, classifications, and the numbering system for the subrecipient's 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, and 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 Part 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 by providing:
 - 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 not only include 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 or activities.

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 are 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 charge pre-award costs that are outside the period of performance to the CDBG-DR program with written OHCS approval if the contract allows such costs to be charged and if the approved budget includes those pre-award costs. Otherwise, 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 are also in compliance with all applicable state and local requirements (following the stricter of these requirements).

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 five 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.

- **Reasonable** — [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 the 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 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	• Does the cost directly relate to an activity or line item in the project budget? • Does the cost meet any stipulations in the subrecipient agreement relevant to the activity?
Necessary (200.403(a))	• Is the cost necessary to carry out the program/project activity?
Reasonable (200.404)	• Have purchasing or procurement procedures been followed? • Is the cost in line with fair market prices (at the time of procurement) for comparable goods or services?

Requirement	Consideration
	• Would a “prudent person” agree that the item is reasonable?
Allowable — Conforming to limitations or exclusions (200.403(b))	• Is the cost permissible and NOT disallowed under the 55 specific items of cost found in the Uniform Guidance in 200.420-475? ○ Specific costs always unallowable for federal funding are lobbying, fundraising, 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?
Consistent with policies and procedures	• 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?
Allocable (200.405(a))	• 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?
Determined in accordance with GAAP (200.403(e))	• Is the cost determined in accordance with GAAP or as otherwise provided for in the Uniform Guidance (applicable to the CDBG-DR award)?
Be net of applicable credits (200.406)	• Have any credits such as purchase discounts or price adjustments been deducted from the total costs charged?

Requirement	Consideration
Adequately documented (200.403(g) and 200.302(b)(3))	- Is there documentation demonstrating the need, the purchase, and use of the item? - Are there 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 the subrecipient submits 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)
- Development of activity-specific policies and procedures
- Marketing and outreach to applicants and contractors for a specific activity
- Applicant intake
- Processing of applications for assistance

Note that specific projects may include one or more Disaster Recovery Grant Reporting (DRGR) activities, and the subrecipient 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, allowable, and documented 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 Part 200.332](#). The first is through a negotiated indirect cost rate agreement, the second is the de minimis rate option, and the third is through the use of a cost allocation plan.

	Type	Basis/Requirements	Required Documentation
1	Negotiated Indirect Cost Rate Agreement (NICRA)	An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government	Federal approval letter, dated and signed, or a certificate of indirect costs
2	De minimis	10% of modified total direct costs (MTDC)	For subrecipients that undergo a single audit, OHCS will verify that the report states that the subrecipient uses or chooses not to use the de minimis rate across all grants.
3	Cost allocation plan (document that specifies the method for how direct and indirect costs are treated)	A negotiated and validated cost allocation method between OHCS and a subrecipient. 1. May be based on a prior negotiated rate between a different pass-through entity (any non-federal entity² that provides a subaward) and the same subrecipient. 2. If NO prior negotiated rate exists, OHCS can approve based on the subrecipient's submission of reasonable documentation outlining the basis for calculation and application.	Subrecipient negotiated agreements, policies, and/or financial reports that demonstrate the method for how direct and indirect costs are calculated and applied.
4	No indirect costs requested	Subrecipient opts out of claiming indirect costs in budget.	None

² A state, local government, Indian tribe, institution of higher education, or nonprofit organization

OHCS CDBG-DR Financial Policies — Indirect Cost Pathways

During program budget reviews, OHCS will work with subrecipients to discuss and understand the scope of work, the budget of scope items, and the allowability of costs and confirm if subrecipients want to be reimbursed for indirect costs. If subrecipients request to be reimbursed for indirect costs, OHCS will allow subrecipients to choose three options in the following order.

1. **Federally Negotiated Rate:** A subrecipient can use the federally approved rate in a NICRA (see [200.332\(b\)\(4\)\(i\)](#) and [200.414\(d\)](#)).³ OHCS may request a copy of the NICRA and test the authorized indirect cost rate (ICR) during monitoring.
2. **De Minimis:** Per [2 CFR Part 200.414\(f\)](#) and [2 CFR Part 200.332\(b\)\(4\)\(i\)](#), if the subrecipient does not have a NICRA or a negotiated indirect cost rate with another pass-through entity, OHCS can allow subrecipients to choose the de minimis rate. If the de minimis rate is applicable to the eligible entity and used, the rate needs to be treated consistently across all federal awards. For subrecipients that undergo a single audit, OHCS will verify that the report states that the subrecipient decided to use the de minimis rate across all grants.
3. **Cost Allocation Method:** The last option only applies if a subrecipient does not have a NICRA or does not elect to use the de minimis rate. If the subrecipient is incurring costs that benefit two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefited projects. OHCS will work with the subrecipient to negotiate and validate a reasonable basis for documenting the allocation of indirect costs ([2 CFR Part 200.405\(b\)](#), [2 CFR Part 200.405\(d\)](#), and [2 CFR Part 200.332\(b\)\(4\)\(i\)](#)). A "reasonable basis" is not intended to meet the higher standard that is required to receive a federally negotiated rate. For due diligence, OHCS can request that the subrecipient provide proof that the method has been negotiated with another pass-through entity or collect documentation for review when monitoring the subrecipient. Examples of documentation to review at monitoring for the cost allocation method may include:

³ OHCS will refer eligible applicants to their appropriate federal cognizant for ICR proposal processing to ensure that NICRAs are up to date. For entities with pending ICR proposals, OHCS will accept evidence of submission followed by the agreement with a provisional rate within 30 days of authorization but no later than within six months of contract date. For each ICR proposal, OHCS and/or its subrecipient will need to maintain on file a certificate of indirect costs, as described in Appendix IV to Part 200, Title 2, that has been signed by the subrecipient's chief financial officer. This is something HUD will look for when using Exhibit 34-2A to monitor CDBG-DR grantees for compliance with cost allowability provisions of Part 200.

- Review policies, spreadsheets, and/or systems showing how the cost allocation method is being performed
- Subrecipient's expense reimbursement: Verify there are no charges for unallowable costs captured in indirect cost pool (e.g., interest expense, fees)
- Samples of transactions (e.g., review checks paid, receipts)
- General ledger detail report: Review a report of expenses, revenues, chart of accounts, and/or journal entry memo to check that expenses are in an approved budget

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 Part 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 allowable or unallowable, 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 Security Accounts Manager (SAM) database to determine if a proposed contractor is debarred. (See Chapter 5: 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 Part 200, [2 CFR Part 200.302\(b\)\(3\)](#), [2 CFR Part 200.400\(d\)](#), and [2 CFR Part 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 (approved pre-award costs are an exception)
- 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

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.

One piece of source documentation should include invoices from vendors for costs. All invoices should include any additional supporting documentation and clearly and sufficiently detail the following **required** information at a minimum:

- Vendor payee information
- Subrecipient payee information
- Invoice/reference number (assigned by the vendor)
- Invoice date and service period (applicable to the reimbursement request)
- Itemization of the reimbursement request detailing the following:
 - The amount currently requested by budget line item
 - A description of the cost and what is being paid for

Invoices are **recommended** to also include the following information (as applicable):

- Contract number of the grant agreement with OHCS
- Contract period with OHCS
- Itemization of the reimbursement request detailing the following:
 - The total amount of the contract or purchase requisition
 - The amount billed to date
 - The remaining balance of the contract

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 (e.g. 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. Time sheets 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."⁴ 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, workers' 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.

4.3.6.2.2 Requirements for Reimbursement

Subrecipients may include reimbursement for their employees' compensation,⁵ 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 CFR Part 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 CFR Part 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.

⁴ 2 CFR Part 200.431 Compensations — Fringe Benefits: [ecfr.io/Title-02/se2.1.200_1431](https://e CFR Title 02 Section 200.1431)

⁵ Notice CPD-23-06 — 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/

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

- Time sheets of employees with specific work performed on a daily basis, allocated time per day, employee name, position, and a total number 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 Part 200.430\(i\)](#). OHCS guidance on timekeeping can be found in the [appendix](#) for this chapter.

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 life cycle 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 : 5 Procurement.

4.3.8 Cash Management

Subrecipients must monitor cash management to ensure that systems comply with post federal award requirements. See the 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 explains how to comply with this requirement.

Three general methods are available to OHCS to transfer CDBG-DR grant funds to its subrecipients as follows:

The **reimbursement method** (see [2 CFR Part 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 or Smartsheet (whichever is applicable to your program) 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 Part 200.305\(b\)\(4\)](#)). The working capital advance 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 advance 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.

Funds received from a working capital advance must be kept in an interest-bearing account unless they are exempt from the requirements. See [2 CFR Part 200.305\(b\)\(11\)](#) for additional information.

The **cash advance method** (see [2 CFR Part 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.

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.⁶ 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 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 business days of the CDBG-DR funds deposit. If payment takes longer than three business days, written justification should be maintained in the project file.

⁶ Per HUD’s Aug. 30, 2023, email stating, “Once funds are distributed, then there is no need for an interest-bearing account; threshold is \$5MM. No timeline although expenditures should be made within 72 hours of drawdown.”

- If the subrecipient places CDBG-DR grant advances in an interest-bearing account, the subrecipient must return the interest income earned in excess of \$500 per year to the U.S. Treasury per 24 CFR Part 570.502(b)(3)(i), as applicable, 24 CFR Part 570.500(a)(2)), and 2 CFR Part 200.305(b)(11). 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 no less frequently than annually (24 CFR Part 570.500(b)).

4.3.8.3 Requirements for Interest-Bearing Accounts

When OHCS draws CDBG-DR funds from the U.S. Treasury, both OHCS as the grantee and all subrecipients of CDBG-DR funds will deposit these funds in interest-bearing accounts. According to U.S. Treasury guidelines, funds drawn from the U.S. Treasury continue to be treated as federal assets until (i) expended for the eligible activity or (ii) expended as a reimbursement to the entity that performed the eligible activity. As a result, any interest income that could be earned from cash sitting in an interest-bearing account belongs to the U.S. Treasury.

4.3.8.3.1 Qualifying Interest Income

1. **Reimbursements.** If the subrecipient is receiving a reimbursement for grant activities that were performed and expensed, this revenue belongs to the subrecipient and is no longer a federal asset. *Any interest income earned from a reimbursement belongs to the subrecipient.*
2. **Cash Advance.** The subrecipient has three days to expend funds that are provided as a cash advance. For circumstances where the cash advance revenue is held by the subrecipient in excess of three days, any interest income belongs to the U.S. Treasury.
3. **Working Capital.** Unless working capital, revenue is received and expended within three days, working capital will almost always earn interest income that belongs to the U.S. Treasury — similar to cash advances.
4. Exceptions to this requirement include:
 - a. The non-federal entity receives less than \$250,000 in federal awards per year.
 - b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances.

- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.
- d. A foreign government or banking system prohibits or precludes interest-bearing accounts.

Please reach out to OHCS for any questions regarding interest-bearing accounts and if an interest-bearing account is needed to implement a CDBG-DR activity.

4.3.8.4 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); Housing Support Services; Planning, Infrastructure, and 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 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 Part 570.489\(e\)](#), [24 CFR Part 570.500](#), and [24 CFR Part 570.504](#) and 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:

- Proceeds from the sale or long-term lease of real property purchased or improved with CDBG-DR funds
- Proceeds from the disposition of equipment purchased with CDBG-DR funds
- 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
- 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
- Payments of principal and interest on loans made using CDBG-DR funds
- Proceeds from the sale of loans made with CDBG-DR funds
- Proceeds from the sale of obligations secured by loans made with CDBG-DR funds
- Interest earned on program income, pending the disposition of such program income, including interest earned on funds held in a revolving fund account
- Funds collected through special assessments made against properties owned and occupied by households not of LMI, where such assessments are used to recover part or the entire CDBG portion of a public improvement

- 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:

- 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.
- 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.

4.3.9.2 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:

- Compliance and Policy Documents:
 - Appointment of a civil rights officer
 - Section 3 policy
 - Non-discrimination/EEO (including policy and notice of non-discrimination)

- Section 504 self-evaluation, coordinator, and grievance procedures
- Fair housing requirements
- Language access plan
- Environmental clearance
- Civil rights resolution (local governments only)
- Public notices (local governments only)
- Excessive force policy (local governments only)
- Citizen participation plan (local governments only)
- Financial Documents:
 - Single Audit (if subrecipient expends \$750,000 of federal funds during the fiscal year)
 - W-9
 - ACH form
 - Authorization form
 - Financial policy
 - Procurement policy
 - Neighborly registration
 - Approved subrecipient budget

All reimbursement requests to include:

- OHCS invoice cover sheet
- Supporting documentation

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 information pertinent to this draw), and submit. If the draw is returned, subrecipients will address issues and make corrections. Contact the OHCS contract administrator with any questions. 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](#) or some other method, depending on the program. 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) and how the funds are used:
 - Identifies why the specific task/activity/item is 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
- Ensures that 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:

- Documentation that does not meet the minimum requirements established in this chapter will be declined.

- Costs must be 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, including 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
- 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 Act 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 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 \$10,000.00
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 \$10,000.00 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, or lease existing property to carry out eligible CDBG-DR activities

Note: OHCS may determine, based on the assessed risk of the subrecipient, the need to adjust the documentation requirements. This adjustment may involve either reducing or increasing the amount of required documentation. This will be formalized through use of a memo.

4.6.2 Personnel Costs | Supporting Document Checklist

4.6.2.1 Personnel Costs

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

☒	Required Contents	Purpose
☐	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
☐	Reflect all hours worked during the pay period, regardless of funding source.	To account for all hours the employee worked during the pay period
☐	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
☐	Be signed and dated by the employee and supervisor or otherwise authorized electronically.	To demonstrate the employee and immediate supervisor certified that the time sheets 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 the CDBG-DR project or activity.

☒	Required Contents	Purpose
☐	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 to include invoices and/or receipts that must clearly show the costs incurred for the CDBG-DR project.

☒ Required Contents	Purpose
☐ 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
☐ 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)
☐ Reflect the total cost less 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, to submit copies of each internally processed invoice package for each cost.

☒ Required Contents	Purpose
☐ Invoice package processed at subrecipient level with required approvals (e.g., signatures) compliant with local payment processing requirements for both units of local government or nonprofit organizations.	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 must be provided, 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 must be provided, 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 equal the amount requested for reimbursement on the required invoice cover sheet.
☐ 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 time sheets in order to support the eligibility and allocability of costs.

General Requirements

Subrecipient payroll records used in support of federal projects should:

- Accurately reflect an **after-the-fact accounting** of all hours, activity, and work performed, inclusive of paid leave.

- 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.
 - For example, a documented process for weekly time sheet approvals by a supervisor
- Comply with internal accounting policies and practices.
- Be incorporated into official payroll records and reconciled accordingly.

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

- Be based on a pre-determined estimate or allocation between cost objectives.⁷
- 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 time sheets on either a weekly, biweekly, or monthly basis. Detailed time sheets 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 rata share and determine how much of a gross salary is charged to that grant. See below for an illustrative example of this calculation using one week's payroll.

	Total	CDBG-DR	Program 1	Program 2	Program 3	Program 4
Employee Wkly Time Sheet	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

⁷ 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.

In this example, an employee worked 50% (20 hours of the total 40 hours worked) of their time on a CDBG-DR program. The result is that \$1,000, or 50% of their \$2,000 weekly salary, is charged to the CDBG-DR program.⁸

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 time sheet for accuracy and sign the time sheet to certify that the hours are correct.⁹ In addition, to the extent possible, it is a best practice that time sheets 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 objective. 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.

4.6.5.5 Best Practices

The following best practices may help the organization maintain compliance and meet the 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.

⁸ If a subrecipient works on multiple CDBG-DR programs (e.g., HARP, Housing Support Services, 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.

⁹ Digital signatures are also allowable.

- **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. OHCS may review files such as the organizational chart, staffing and hiring plan, job descriptions, time sheets, 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 be assigned by OHCS in HUD's 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 cover sheet that allocates invoiced costs by DRGR "activity." The instructions below provide guidance on how to complete and appropriately categorize costs when finishing the invoice cover sheet.

4.6.6.2 Procedure: Completing the Cover Sheet

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

- 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 insert the date.

The second tab of the invoice cover sheet also 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 cover sheet, subrecipients must provide any other documentation to support the invoiced costs. Subrecipients can refer to the applicable Supporting Document Checklist above for guidance on requirements.

Additionally, it is recommended, but not required, that a subrecipient also submit an invoice to track costs back to their system. This should include a breakdown of all costs submitted as part of the invoice package.

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 or activities on their invoice. For example, for HARP outreach, each subrecipient will be benefiting two national objectives: 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 cover sheet for OHCS to be able to assess the process each subrecipient used for allocating costs and its appropriateness and accuracy.

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

Procurement Guide for Subrecipients and Subgrantees

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5 Procurement Guide for Subrecipients and Subgrantees

5.1 Background

Subrecipients procuring goods and services with grant funds must follow all program, statutory, and regulatory requirements. This chapter establishes standards and guidelines for procurement, which are governed by 2 CFR Part 200 (d), 24 CFR Part 570.489, Federal Register Notices, and state and local laws.

The following standards will help subrecipients and subgrantees receiving Community Development Block Grant Disaster Recovery (CDBG-DR) funds to procure goods and services efficiently while complying with the applicable federal requirements.

The guidance in this chapter does not relieve subrecipients or subgrantees 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 in support of the grant.

5.2 Application of Federal Regulations

Oregon Housing and Community Services (OHCS) implementing 24 CFR Part 570.489 (g) requires subrecipients and subgrantees to procure goods and services following 2 CFR Part 200.318–327. Any activity financed in whole or in part with federal funding must comply with the federal procurement standards and any other applicable federal, state, or local requirements for the CDBG-DR program.

5.3 Procurement Policies Requirements

Subrecipients should determine whether their written procurement policies and procedures comply with all federal requirements in 2 CFR Parts 200.318–327. Subrecipient procurement policies must include the federal requirements and the requirements found in Oregon procurement laws¹ if intending to use CDBG-DR funds to pay for such services.

¹ If Oregon procurement regulations and requirements are stricter than federal standards or have additional conditions not required by federal procurement standards at 2 CFR Part 200.318–327, then the strictest regulation should be applied.

Administration and Oversight: Subrecipients must administer and oversee contractors to ensure that they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Avoidance of Unnecessary or Duplicative Items: Subrecipients must avoid acquiring unnecessary or duplicative items by considering ways to consolidate purchases or leases to obtain more economical purchases.

Awarding to Responsible Contractors: Subrecipients must award contracts only to responsible contractors who have the ability to perform successfully under the terms and conditions of a proposed procurement. Subrecipients should consider vendor integrity, compliance with public policy, record of past performance, and financial and technical resources to deem a contractor responsible. See Appendix A for sample award form.

Conflict of Interest: 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 that individual has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent has any immediate family member, partner, or an organization that employs or is about to employ any of the parties indicated to have a financial or other interest in a tangible personal benefit from a firm considered for a contract.

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

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. However, subrecipients may set standards for situations where the financial interest is not substantial or the unsolicited gift is of nominal value. The standards of conduct must apply disciplinary action for violations of such standards by officers, employees, or agents of the subrecipient.

Government Agreements: To foster greater economy and efficiency, subrecipients are encouraged to enter into state and local intergovernmental agreements to procure or use common goals and services. This can include promoting the use of federal excess and surplus property and equipment to reduce project costs.

Recordkeeping: Subrecipients must retain records detailing the history of procurement. These records include:

- Rationale for the method of procurement
- Selection of contract type

- Independent cost estimate
- Advertisements and solicitations
- Responses to procurement
- Bid evaluations
- Contractor selection or rejection
- Basis for the contract price
- Suspension and debarment verification

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

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.

5.4 Procurement Procedures and Standards

Subrecipients must have written procedures for procurement transactions that ensure that all solicitations align with federal requirements. Subrecipients must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that restrict competition. The description may include a statement of the qualities 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 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 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 that the offerors must fulfill:

- The procurement must identify the source(s) of funds being used for the project (e.g., CDBG-DR).
- The subrecipient must identify all factors that offerors must fulfill to be used in evaluating bids or proposals.

- Awards shall be given only to responsible contractors who have the ability to perform successfully under the terms and conditions of a proposed procurement.

To make sure there is objective contractor performance and eliminate unfair competitive advantage, contractors who develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Examples of prohibited restriction of competition include:

- Placing unreasonable requirements on firms for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Using noncompetitive pricing practices between firms or between affiliated companies
- Offering noncompetitive contracts to consultants that are on retainer contracts
- Allowing 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
- Conducting any arbitrary action in the procurement process

When using pre-qualified 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 prevent 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 and practical procurement. Consideration should be given to consolidating or breaking out to obtain a more economical CDBG-DR project.

5.5 Public Website

OHCS must maintain a public website that permits individuals and entities to see how the funds are being used and administered. This provides transparency to the public and allows for maximum accountability for the work performed, contractor selected, and status of the work.

Procurement information that must be available on the website includes:

- All contracts paid with CDBG-DR, including subrecipient's contracts²
- A summary containing details such as:
 - Status or phase of ongoing procurement processes
 - Description of the goods or services being procured
 - Entity procuring the related goods or services

5.6 Phases of Procurement

The phases of procurement include pre-award through post-award, reporting, and administration. Before buying goods and services with CDBG-DR to assist in recovery efforts, subrecipients should keep the following procurement-related actions in mind:

1. Pre-procurement
2. Procurement
3. Pre-contract award
4. Contract award
5. Post-contract award

5.6.1 Pre-Procurement Actions

5.6.1.1 Executed OHCS Subrecipient Agreement

Subrecipients must have a fully executed agreement with required federal and state provisions before starting procurement action or executing any project.

5.6.1.2 Contractor/Subrecipient Determination Form

Subrecipients must document before procurement that a determination has been made that the relationship into which they will enter is contractual. See Appendix B of this document for a sample form titled Contractor/Subrecipient Determination Form.

² Contracts that do not exceed the micro-purchase threshold are not required to be posted.

5.6.1.3 Environmental Review Clearance

All CDBG-DR grants require an environmental review before starting projects receiving funds. This is to meet the National Environmental Policy Act standards. Any funds committed, awards made, contracts executed, or projects started prior to the environmental review approval and receipt of Authorization to Use Grant Funds (AUGF) are a “choice-limiting action.”³

5.6.1.4 Authority To Use Grant Funds

The subrecipient must have received authority to use grants funds from OHCS. Once the Part 58 environmental requirements have been met, the responsible entity will issue an “Authorization to Use Grant Funds” (AUGF). This means that a subrecipient can begin a procurement action.

In no event should a “**choice-limiting action**” be entered into before receiving the AUGF. Entering a contract, announcing the selection of a contractor, or 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 disqualifying the entire project for CDBG-DR funding. For more information on the process for completion of the environmental review, subrecipients should refer to the Environmental Review Chapter of the subrecipient manual.

5.6.1.5 Conflicts of Interest

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.

No employee, officer, or agent of subrecipients may participate in the selection, award, or administration of a vendor contract supported by a federal award with a real or apparent conflict of interest. Conflicts of interest arise when the employee, officer, agent,

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 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 for 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 used to pay only 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 Part 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.

any member of one's immediate family, one's 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.

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 Part 200.319). One example is an administrative consulting firm that participates in developing or distributing the request for proposal (RFP) for environmental services may not then submit a proposal in response to that RFP.

Additional examples of conflicts of interest include:

- The same individual or firm is interested in identifying both a benefiting business in the subrecipient agreement performance statement and any consultant or construction contracts required to complete the project.
- Elected officials vote on awarding funds to organizations where a family member is on the staff or where the elected official is on the subrecipient's board.
- Local officials award vendor contracts to companies where they, their family members, or close associates hold positions or have ownership interests.
- Subrecipient officials or staff have relatives who may benefit from a subrecipient's programmatic activities.

5.6.1.6 Pre-Qualified Contractors or Vendors

The non-federal entity must ensure that all pre-qualified 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.

- The non-federal entity must not preclude potential bidders from qualifying during the solicitation period.
- Subrecipients should consider how recently the solicitation occurred for a pre-qualified list and determine whether the list is outdated.
- If the subrecipient does not have a routine schedule to solicit qualified vendors, a new period to pre-qualify vendors may be necessary to meet the federal procurement guidelines of free and open competition.

5.6.1.7 Affirmative Steps

The subrecipient must take all necessary affirmative steps to assure that minority business enterprises (MBE), women's business enterprises (WBE), and labor surplus area firms are used when possible.⁴ The affirmative steps must include:

- Placing qualified small businesses and MBEs and WBEs on solicitation lists
- Ensuring that small businesses and MBEs and WBEs are solicited whenever they are potential sources
- Dividing total requirements into smaller tasks or quantities to permit maximum participation by small businesses and MBEs and WBEs, where economically feasible
- Establishing delivery schedules that encourage the participation by small and MBEs and WBEs, where the requirement permits
- Using the services and assistance of organizations like the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce as well as the U.S. Department of Housing and Urban Development's (HUD) Section 3 business registry
- Requiring the prime contractor to take the affirmative steps above if subcontracts are to be let

5.6.1.8 Independent Cost Estimate

Before procurement, HUD and 2 CFR Part 200.324 require that the procuring entity conduct an independent cost estimate. This is an estimate of the goods or services to be acquired under a contract or a modification. It allows a subrecipient to determine the reasonableness of the responses to the solicitation, for budgetary purposes, and to help determine the most advantageous procurement method.

It is prepared **before** solicitation or modification that exceeds the simplified acquisition threshold (SAT) and may not be necessary for actions considered to be micro-purchases. If a significant time elapses or market conditions change between the time the original independent cost estimate was prepared and offers received, the independent cost estimate may need to be updated.

Examples of data that can be used to determine a cost or price estimate include:

- Price last paid for similar procurement
- Catalog price or other advertised offers

⁴ The Department of Labor updates the labor surplus area firms list on its fiscal year basis every Oct. 1. The labor surplus area list is available on DOL's website located here: [Labor Surplus Area | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whistleblower/).

- Past professional experience
- Professional journals discussing relevant market trends
- Other historical information

These estimates may be developed in-house or using outside parties. Depending on the type of project to be undertaken, this independent cost estimate can be done by any individual or entity with reasonable experience or certifications relevant to the procurement. Appendix C of this document has a sample form that can be used for cost estimates for an RFP.

5.6.2 Procurement Actions

Appendix D contains a table that breaks down thresholds by type of procurement. Refer to [2 CFR Part 200.320](#) and the [Federal Acquisition Regulation \(FAR\)](#) for details on the specific application of the micro-purchase and SAT.

5.6.2.1 Informal Procurement Methods

When the value of the procurement for property or services under a federal award does not exceed the SAT as defined in 2 CFR Part 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:

5.6.2.1.1 Micro-Purchases

- **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. When determining if the micro-purchase method should be used, subrecipients should use the complexity of the goods or services and estimated total cost to determine the most appropriate procurement method.
 - Do not fragment purchases with the intent to reduce the procurement effort and use a micro-purchase method. This may be considered an arbitrary procurement action that limits free and open competition.
 - To the maximum extent practicable, the subrecipient's 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.** This applies to purchases below \$10,000 that do not require construction. If construction includes the purchase, then it must be below \$2,000 to follow micro-purchase rules.
- **Increasing Micro-Purchase Threshold up to \$50,000.⁵** A subrecipient may establish a threshold higher than what is identified in 2 CFR Part 200.1 and clarified in the Federal Acquisition Regulation by self-certification. The self-certification up to \$50,000 must be done annually, and documentation must be retained for the federal awarding agency and auditors in accordance with 2 CFR Part 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following. For public institutions, a higher threshold must be consistent with state law.
 - A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR Part 200.520 for the most recent audit
 - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks

Increasing Micro-Purchase Threshold Over \$50,000.⁶ Must be approved by a subrecipient's cognizant agency for indirect costs. The non-federal entity must submit a request with the following requirements:

- Self-certify the threshold on an annual basis.
- Maintain documentation to be made available to the federal awarding agency and auditors in accordance with 2 CFR Part 200.334.
- Provide justification with a clear identification of the threshold
- Provide supporting documentation of any of the following:
 - A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR Part 200.520 for the most recent audit

⁵ Subrecipients following Oregon Revised Statutes (ORS) 279B.065 or ORS 279B.070 may be limited to increasing the micro-purchase threshold to \$25,000, which is stricter than the federal requirement.

⁶ Subrecipients following ORS 279B.065 or ORS 279B.070 may be limited to increasing the micro-purchase threshold to \$25,000 which is stricter than the federal requirement.

- An annual internal institutional risk assessment to identify, mitigate, and manage financial risks
- Maintain a higher threshold for public institutions that must be consistent with state law

5.6.2.1.2 Small Purchases

- **Small Purchase Procedures.** Small purchases are the acquisition of property or services, where the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. The subrecipient must gather price or rate quotations from an adequate number of qualified sources.
- **SAT.** 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. At the time this manual was drafted, the SAT was \$250,000. Periodically, the thresholds are adjusted, so always check the most current Federal Register notices for any updates. Subrecipients whose procurement rules may have a lower dollar value threshold to procure using the small purchase method must use the lesser of the two values to adhere to the stricter standards. Each entity should determine whether an informal or formal procurement method should be used.

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

5.6.2.2.1 Sealed Bids

- The sealed bid procurement method is a publicly solicited bid with a firm, fixed-price contract awarded to a responsible bidder. The bid must be the lowest in price and conform with all material terms and conditions listed in the invitation for bids. 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 based on price.
- If sealed bids are used, the following requirements apply:
 - An independent cost estimate must be performed before receiving bids.
 - Bids must be solicited from an adequate number of qualified sources and provide sufficient response time prior to the date for opening bids. For local and tribal governments, the invitation for bids must be publicly advertised. The invitation for bids includes any pertinent specifications and attachments and 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 publicly advertised.
 - 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 the lowest bid. Payment discounts will be used only to determine the low bid when prior experience indicates that the bidder takes advantage of the discounts.
 - Any or all bids may be rejected if there is a sound documented reason.

5.6.2.2.2 Requests for Proposals

An RFP is a procurement method in which either a fixed-price or cost-reimbursement type contract is awarded. They are used when conditions are not appropriate for 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 RFPs must be considered to the maximum extent practical.
- An independent cost estimate must be conducted before receiving proposals. Any external party involved in developing the independent cost estimate or creating the RFP may not participate as a vendor in the awarded contract.
- 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, called a request for qualifications (RFQ), for architectural/engineering (A/E) professional services. The entity evaluates the

offerors' qualifications and selects the most qualified offeror, subject to negotiating fair and reasonable compensation. The method, where price is not used as a selection factor, can be used only in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

5.6.2.2.3 Noncompetitive Procurement

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

- The aggregate dollar amount of which does not exceed the micro-purchase threshold for the acquisition of property or services.
- The item is available only from a single source.
- A public emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.⁷
- The federal awarding agency or pass-through entity expressly authorizes a noncompetitive 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 required and must be well documented with the rationale for using the noncompetitive procurement.

5.6.3 Pre-Contract Award

5.6.3.1 Contract Cost and Price

As specified in 2 CFR Part 200.324, a cost analysis or price analysis must be performed for every procurement action that exceeds the simplified acquisition threshold, including contract modifications or change orders. The degree of detail required varies with the procurement method and contracting circumstances but must start with independent estimates before receiving bids or proposals.

Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-federal entity under 2 Part CFR 200 (e). The

⁷ CDBG-DR funds for recovery do not constitute an emergency purchase. A public emergency must be documented as a part of history of the procurement and the rationale.

non-federal entity may reference its own cost principles that comply with the federal cost principles.

5.6.3.2 Conducting a Price and Cost Analysis

Subrecipients should include the following in their analysis:

- A comparison of the proposed prices to the subrecipient's independent cost estimate
- A review of the accuracy of the prices submitted
- An evaluation of the necessity of the proposed cost items
- An evaluation of the separate elements of cost
- A review of the proposal for potential cost overruns, considering the vendor's past performance
- A comparison of the proposed prices to previous cost estimates or actual costs incurred for similar work

Subrecipients must not use either the cost plus a percentage of cost or percentage of construction cost method of contracting.

5.6.3.3 Negotiating Profit

The non-federal entity must negotiate profit as a separate element of price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to:

- The complexity of the work
- The risk borne by the contractor
- The contractor's investment
- The amount of subcontracting
- The quality of its record of past performance
- The industry profit rates in the surrounding geographical area for similar work

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

5.6.3.4 Bonding Requirements and Insurance

For construction or facility improvement contracts or subcontracts exceeding the SAT, the awarding agency may accept the bonding policy and requirements of OHCS and Oregon. This is providing the awarding agency has determined that the federal interest

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

- 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 their bid, execute contractual documents required within the time specified.
- 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 the contract.
- 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. Oregon bond requirements can be found at oregon.gov/ccb/pages/ccb%20license.aspx. Subrecipients should comply with bond requirements as directed by OHCS.

5.6.3.5 Suspension and Debarment

Subrecipients are subject to the debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.220. 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.

Before Award: Subrecipients must make sure that all contractors whose awarded contract is expected to be equal to or exceed \$25,000 have met all the eligibility requirements outlined in state and federal law. All contractors 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 at sam.gov. A copy of the SAM search result, with the date to demonstrate the search occurred before award, must be kept in the subrecipient's file on that contractor.⁸

Subrecipients must also check the Oregon debarred contractors list at 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.

⁸ The SAM search function has a demonstration video on how to use the website located here: youtu.be/Zlv7hFpBZcc?si=jT-MYuijXPcK-JhF

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.

If any of the above-listed parties are deemed ineligible to receive CDBG-DR funds after award of the contract, the matter must be reported to OHCS immediately for further guidance and may result in the contract being terminated.

5.6.4 Contract Award

5.6.4.1 Allowable Contract Types

Types of contracts that a subrecipient can utilize include:

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

5.6.4.1.1 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
- Order date
- Term of contract (delivery period after receipt of order or beginning and end dates)
- Contractor's name, payee/vendor identification number, address, and 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

5.6.4.1.2 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 based on 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 a minimum administrative burden upon the contracting parties

5.6.4.1.3 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 to obligate funds and establish a ceiling that contractors may not exceed (except at their own risk).

5.6.4.1.4 Time and Materials Contracts

Subrecipients may use a time and materials type contract only after determining that no other contract structure is suitable. It must include a ceiling price that the contractor exceeds at their own risk. In this type of contract, the subrecipient's cost is the sum of:

- The actual cost of materials
- Direct labor hours charged at fixed hourly rates that reflect wages
- General or 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 their own risk.

Any subrecipient awarding this type of contract must assert a high degree of oversight to obtain reasonable assurance that the contractor uses efficient methods and cost controls.

5.6.4.1.5 Changes/Amendments to an Executed Contract

When changes to an executed contract are necessary and 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 contract are necessary:

- The subrecipient must submit how they followed 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 have been met.
- Change orders for construction contracts will require additional documented analysis to determine that added costs are necessary, reasonable, and eligible.
- Changes or additions to the scope of work for subrecipient agreements must be documented.

5.6.4.2 Required Contract Provisions

Appendix E of this document includes a comprehensive listing of the specific contract provisions that may be used as an example to be included in contractor agreements. All contracts using federal funds must contain the following provisions:

- Administrative, contractual, or legal remedies for breach of contract terms and sanctions (if contract is greater than the SAT)
- Termination for cause or convenience (if over \$10,000)
- HUD clauses
 - Equal Employment 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
 - Section 6002 of the Solid Waste Disposal Act

- Prohibited telecommunications and video surveillance services or equipment
- Domestic preferences for procurements under the Buy America Act

5.6.5 Post-Contract Award Actions

5.6.5.1 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 available for review and monitoring upon request.

Each procurement record should contain the following information:

- An independent cost estimate for the project or services being procured
- A complete copy of the procurement documents, which must include as relevant:
 - 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
 - Labor standards requirements
 - Section 3 requirements
 - Sample contract (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.

5.7 Appendices

5.7.1 Appendix A: 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

5.7.2 Appendix B: Contractor/Subrecipient Determination Form

Oregon Housing and Community Services 2020 Labor Day Disasters (DR-4562) CDBG-DR



CONTRACTOR/SUBRECIPIENT DETERMINATION FORM:

Instructions:

Review the following description and characteristics per CFR 200.331 for Subrecipient and Contractor determinations. The applying entity is prohibited from receiving both a contract and a subgrant for the same grant. Make a determination of “Subrecipient” or Contractor” after reviewing the applicable information and regulations for the entity subject to review.

Background:

Subrecipients are OHCS’s partners that directly implement an eligible CDBG-DR activity. Subrecipients may be non-profit organizations or Government agencies receiving CDBG-DR funds to carry out eligible activities. The primary distinction between a subrecipient and a contractor lies in the undertaking of the eligible activity. A subrecipient is carrying out the activity on behalf of OHCS, but a contractor is providing goods or services so OHCS may carry out the activity. All or only some of the following listed characteristics may be applicable to the categorization of the entity. When making this determination the substance of the relationship is more important than the form of the agreement.

Subrecipient: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in [§ 200.1 of this part](#). Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether objectives of a Federal program were met;
- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Contractor: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in [§ 200.1 of this part](#). Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the Federal program; and
- Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

_____ is classified by _____ as a

Entity's Name

☐ **Subrecipient** or ☐ **Contractor** for

Grant Agreement Number: _____

A digital sample of this form is available here:

app.box.com/s/puu8rqji9h77gbsuzby3g920696dx5vh/file/1638549723616

5.7.3 Appendix C: Form for Independent Cost Estimates

Note: This example form lends itself better to independent cost estimate for architectural, engineering, and other professional services. For construction projects, a licensed engineer or architect can provide an independent cost estimate based on the technical specifications provided. For residential construction, a qualified inspector can provide an independent cost estimate based on nationally recognized construction cost software like Xactimate or RS Means.

Independent Cost Estimate 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 amount of time identified on the scope of services should correspond to the estimate in this			
Job Title (e.g., Architect, Draftsman, etc.)	Est. # 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. # of Days	Daily Rate	Est. Cost
Reproduction	Est. # of Pages	Page Rate	Est. Cost
Other (specify)			\$
1.			\$
2.			\$
3.			\$
4.			\$
5. Total Other Direct Costs			\$

D. <u>Subcontracts</u>			
Type of Subcontractor(s)	Est. # of Days	Daily Rate	Est. Cost
1.			
2.			
3. Total Subcontractor Costs			
Total Estimated Costs (Lines A5+B+C5+D3)			\$
Profit			\$
TOTAL ESTIMATED PRICE			\$

5.7.4 Appendix D: Procurement Method Table

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
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 ⁹
Small Purchase	Price or rate quotations — an adequate number (at least two) Submitted bids	Price analysis	1. Fixed order 2. Fixed price	Supplies, produced items, single task service	\$250,000 ¹⁰ or less for produced items, \$250,000 or less for non-construction services

⁹ In October 2024, the threshold will increase to \$50,000 and can be confirmed by checking the micro-purchase threshold at 48 CFR Part 2.10 at [ecfr.gov/current/title-48/part-2/subpart-2.1#p-2.101\(Micro-purchase%20threshold\)](https://www.ecfr.gov/current/title-48/part-2/subpart-2.1#p-2.101(Micro-purchase%20threshold)). Subrecipient's local procurement rules may have a lower dollar value threshold to procure using the small purchase method. Each entity should determine what the applicable threshold is and if an informal or formal procurement method should be used.

¹⁰ Subrecipient's local procurement rules may have a lower dollar value threshold to procure using the small purchase method. Each entity should determine what the applicable threshold is and if an informal or formal procurement method should be used. For example, ORS 279B.070 allows for a specific set of procedures that align with small purchases for contracts ranging from \$25,000 to \$250,000.

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
Sealed Bid Formal Advertising	Submitted bids	Price analysis, Cost analysis	Fixed price	Construction items, produced or designed items	All construction contracts including less than \$250,000, produced or designed items over \$250,000
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 \$250,000, designed items over \$250,000 when sealed bids are not appropriate

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
Non-Competitive Proposals ¹¹	Submitted proposals	Cost analysis	1. Cost reimbursement 2. Fixed price 3. Time and materials	Professional services, single task service, multi-task services, designed items	Aggregate value does not exceed \$2,000 for construction, aggregate value does not exceed \$10,000 for all other purchases

¹¹ Additional circumstances may allow for the use of a noncompetitive procurement described in detail at Section 5.6.2.1.5.

5.7.5 Appendix E: 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 appropriate sanctions and penalties. 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 affected 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, 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 contains 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.
- **Procurement of recovered materials.** 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 the 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 that maximizes energy and resource recovery, and establishing an affirmative procurement program for recovered materials identified in the EPA guidelines.
- **Prohibited telecommunications and video surveillance services or equipment.** Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract), procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary

or affiliate of such entities). For public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) is required. Telecommunications or video surveillance services are provided by such entities or using such equipment. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by or otherwise connected to the government of a covered foreign country. In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services to procure replacement equipment and services, and sustain communications service to users and customers. See [Public Law 115-232](#), section 889 for additional information. See also 2 CFR [§ 200.471](#).

- **Buy America Preference.** As appropriate and to the extent consistent with the law, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including but not limited to iron, aluminum, steel, cement, and other manufactured products. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this award. For purposes of this section, “Produced in the United States” means for iron and steel products that all manufacturing processes, from the initial melting stage through the application of coatings, occur in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics, and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber. Federal agencies providing federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](#).

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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.

Projects involving construction contracts for public facilities, public works, infrastructure, or multifamily housing of eight units or contracts for more than \$2,000 must comply with the following laws and regulations:¹

1. Federal Fair Labor Standards Act (FLSA), 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 and 40 USC §3145
4. Contract Work Hours and Safety Standards Act (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 the U.S. Department of Housing and Urban Development (HUD) website at the following link: [hud.gov/program_offices/administration/hudclips/handbooks/sech/13441](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 procurement process. Activities financed by Community Development Block Grant Disaster Recovery (CDBG-DR) funds 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, testing²)
- Other non-construction items (furniture, business licenses, real estate taxes)

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

¹ Links to the laws and regulations are available in [section 6.8.1 Useful Resources – Regulations and Guidance](#).

² 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 case lead assigned to the agreement to discuss any questions regarding the applicability of labor standards or the associated recordkeeping 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 is described in detail in the following pages:

Preconstruction 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 Preconstruction 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, or name, an appropriate person to act as the labor compliance officer (LCO) 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 prevailing federal wage obligations applicable to HUD-funded CDBG-DR programs. For individuals seeking additional training on the requirements and how to perform their respective duties, training is available through the HUD Exchange. A listing of available training is in Appendix A of this chapter.

6.2.2 Obtain the Effective Wage Determination

A wage determination, or “wage decision,” is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics, which the DOL has determined to be prevailing in each area for a particular type of construction. Wage determinations can be found at sam.gov/content/wage-determinations by selecting the project type or by the wage determination number. A guide for how to conduct the SAM.gov search for wage determinations is included in Appendix A of this chapter.

Subrecipients should also consult the Oregon Bureau of Labor & Industries (BOLI) website for state prevailing wage rates. **The higher rate will apply to each project.** A link to the BOLI prevailing wage rate determinations and handbook is available in this chapter under Useful Resources – Prevailing Wage Rates. Oregon’s wage rates are updated quarterly throughout the year on Jan. 5, April 5, July 5, and Oct. 5.

Subrecipients preparing the wage determination do not need to consider the constantly changing rates. 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. To request an additional classification contractors can complete the HUD Form 4230A available under Useful Resources.³ Completed forms can be emailed to whd-cbaconformance_incoming@dol.gov or sent by mail to the following address:

Branch of Construction Wage Determinations
US Department of Labor
200 Constitution Avenue, NW, Room S-3014
Washington, DC 20210

³ HUD provides separate instructions for how to accurately complete Form 4230A online using the following website: hud.gov/sites/dfiles/OCHCO/documents/4230AInstructions.pdf

If an additional classification is needed that is not included in BOLI's covered occupations, send a written request including the name of the proposed trade, minimum education required, a description of the skills required, and the tools used to the following address:

Prevailing Wage Rate Unit
Wage and Hour Division
1800 SW 1st Avenue, Suite 500
Portland, OR 97201

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. After receiving a DOL rate, an LCO should review the payrolls for the trade that required the additional wage rate classification to verify that the tradespersons were paid at minimum the approved rate.

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

Force account labor refers to the use of laborers or mechanics who are employed by the subrecipient in place of a contractor for the CDBG-DR construction project and are generally exempt from the prevailing wage requirements. In such cases, the subrecipient does not have to pay the Davis-Bacon wage rates but can pay the rates paid to staff employees. The amounts paid to workers on force account labor projects are allowable costs of the CDBG-DR program. Please contact OHCS for assistance if you anticipate force account work and to receive pre-approval from OHCS and HUD if necessary.

6.2.2.3 Construction Categories

Federal wage determinations are issued based on construction categories, locations, and special characteristics. When determining a rate category, it is important to know the differences to avoid paying wages from the wrong category. It is possible that more than one wage determination may apply. Choosing 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, town houses, or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
- **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:** 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

The 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 a new series of wage decisions, called “supersedeas decisions,” with a new wage decision number based on a new series year.

6.2.2.5 Ten-Day Confirmation of the Wage Rate

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 a part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are given the opportunity to change their bids before the bid opening, based on the updated wage decision.

The subrecipient may search the DOL website at 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 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 “lock-in” at construction contract award or start of construction, whichever occurs first.
- For infrastructure: Wage decision “lock-in” at bid opening provided construction contract is awarded within 90 days. The LCO must re-confirm the wage decision if the construction contract is awarded 90 days beyond the bid opening.

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 is still responsible for ensuring the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

If 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.

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.

If there has been a wage decision update, the selected 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 on the SAM.gov website. The subrecipient must retain records of these verifications from the CCB and SAM website in local files. Appendix B has the instructions on how to complete the search and save the results for use in the local file.

6.2.3.1 Oregon Construction Contractors Board (CCB)

All persons working on construction projects funded by CDBG-DR must be registered with the CCB or be an 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 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 that 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 at [SAM.gov](https://sam.gov).

At the state level, BOLI maintains a list of contractors ineligible to receive public works contracts at oregon.gov/boli/employers/Pages/pwr-ineligible-contractors.aspx.

6.2.3.3 Independent Contractors

Independent contractors registered as "exempt" 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 complete one of the following:

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

For more information on the Labor Standards Compliance Requirements read the [Federal Labor Standards Requirements in Housing and Urban Development Programs](#).

6.2.4 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 that 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 a change order to compensate for an increase in wages due to 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.

6.2.5 Notification of Subcontractor Awards

The subrecipient's LCO should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This informs the LCO of when to expect the submission of subcontractor payrolls.

6.2.6 Award the Construction Contract

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

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages.
- Obligate the construction contractor to comply with the labor requirements.
- Provide 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.
- Incorporate HUD Federal Labor Standards Provisions Form HUD-4010 in the construction contract and provide it with preconstruction 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.

6.2.6.1 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 ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/.

6.2.6.2 Public Works Bond

All contractors working on public works projects in Oregon with a total project cost of more than \$100,000 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 copy of the form is available in Appendix D of this chapter.⁴

The construction contract and every subcontract must contain the provision requiring the Public Works Bond. The general contractor must 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 oregon.gov/biz/programs/COBID. If a business chooses to use the OMWESB exemption for the Public Works Bond, the firm must submit the application form to the CCB. The request may be downloaded from ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB_Application_Exemption.pdf.

6.2.6.3 Retainage

The recipient must comply with the most current Oregon Retainage and Prevailing Wage Law, and the recipient must withhold at least 25% of any amount owed to a contractor if the contractor has not submitted the required certified payroll reports (CPRs). The recipient

⁴ The Public Works Bond form is also available through the Oregon Bureau of Labor and Industries website located here: oregon.gov/boli/employers/pages/prevailing-wage.aspx.

will pay the contractor within 14 days after the proper CPR is submitted. Likewise, the prime contractor may withhold funds from a first-tier subcontractor until the subcontractor has submitted the required CPR.

6.2.7 Hold Preconstruction Conference

The subrecipient should hold a preconstruction conference with the prime contractor and all available subcontractors to learn of their responsibilities and obligations concerning labor standards. Identify job site signage requirements. Use of electronic payroll submissions is highly recommended.

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

6.2.8 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. Failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors and may result in the imposition of serious sanctions and penalties.

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

- Verifying that required notices are appropriately posted and consider documenting the review with date-stamped photos showing the poster requirements onsite.
- Reviewing all contractors' and subcontractors' CPRs to verify that the correct wages are paid and are signed by the authorized person.
- Conducting hourly wage and rate determinations, including overtime payments.
- Verifying wages through worker interviews.
- Reviewing the use of apprentices, trainees, and helpers.
- Being alert for 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.

6.2.8.1 Required Notices

The subrecipient should be checking that the project wage determination and the Davis-Bacon posters 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 dol.gov/sites/dolgov/files/WHDLegacyFiles/fedprojc.pdf under Resources, Labor Relations Forms.

6.2.8.2 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.

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 must include the employee(s) name and an individual 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.

6.2.8.2.1 No Work Performed Report

Document each week in which no work is performed. This can be done by writing "no work" on the corresponding weekly payroll report. During the project, labor standards compliance will be monitored, and written records can clearly establish that there are no missing payroll reports.

6.2.8.2.2 Certified Payroll Reviews

The subrecipient must review all weekly CPRs. They must ensure wages are paid weekly in an amount no less than identified in the federal prevailing wage determination, applicable to the project. They must also comply with the following:

- Submit on time within 7–10 business days after the reported working week and signed with original signature in ink.

- Complete with names, individual identifying numbers, and job classifications for each employee.
- Report on prime contractors' CPRs, including all "self-employed owner/operator" subcontractors, with no employees.
- List independent contractors, also known as "1099-workers."
- The payroll reports for their general contractor or the payroll reports for another subcontractor that is not exempt.
 - The "owner operator" can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.
- If a construction company owner works with employees for less than 20% of the time on-site on projects under the Davis-Bacon wage decision, they do not need to be listed on the CPR. The name of the supervisor/owner is enough. Each week, log the total hours on-site and the number spent on Davis-Bacon projects. This helps prove the work in the covered classification was under the limit. When the construction company owner works with employees on-site for over 20% of the time, the Davis-Bacon wage decision applies. In that case, the owner must list their name, individual identifying number, work classification, daily hours worked on-site, total hours worked on-site per week, pay rate, and fringe benefits. The CPRs include the proper wages, fringe, and zone pay for each employee.
- The proper trade classifications are listed on the CPR for each employee.
- The CPRs include 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 that 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 or otherwise disclosed.
 - 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 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 program, 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 union agreement applicable to each section of the wage decision.

6.2.8.2.3 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 the accuracy of mathematical calculations pertaining to wages and deductions.

6.2.8.2.4 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. A link to the form is available in section 6.8.4 Useful Resources – Forms.

6.2.8.2.5 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 per a fund, plan, or program can be credited toward meeting this requirement without prior state approval.
- **Unfunded Plans:** Fringe benefit plans are programs that a contractor funds. They are called unfunded plans. The contractor may reasonably anticipate their costs in providing benefits.
- **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. This is expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Apprentices 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.

6.2.8.2.6 Federal Overtime Requirements

The Contract Work Hours and Safety Standards Act (CWHSSA) requires that persons performing the work of laborers or mechanics under contracts that exceed \$100,000 must be paid no less than 1.5 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.

6.2.8.2.7 State Overtime Requirements

State of Oregon law for overtime pay is different from federal law. The state's statutes ORS 279C.520 and 279C.540 do not exempt federally funded projects from the state overtime law. State overtime law requires payment of overtime to workers who are employed more than 8 hours per day when working on a 5-day, 8-hour schedule or in excess of 10 hours per day when working a 4-day, 10-hour schedule, or for hours worked over 40 hours in any

single work week. Overtime must be paid for work on Saturday, Sunday, and six legal holidays. This must 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.

6.2.8.2.8 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

oregon.gov/BOLI/pages/index.aspx

6.2.8.2.9 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 must report the restitution paid on the corrected/amended CPR, with a signed Statement of Compliance. For each employee paid restitution, the amended CPR must include 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 paid restitution must sign and date the corrected/amended payroll as receipt of payment.

- Calculate the dollar amount of liquidated damages due (e.g., \$10 per violation, per employee, per day), and inform the prime contractor in writing of the amount of the computations.
- File a written request within 60 days 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 despite the exercise of due care, and that in the absence of a timely waiver or reduction request, the determination is final. HUD handbook 1344.1, Rev 1, Change 1, Section 3-4(f).
- Submit copies of corrected/amended CPRs with the employee's signature and date for each worker.
- Use the "Start the Process" button on this webpage for violations ranging from \$10 to \$999.99: complaints.boli.oregon.gov/home/landing
- Submit a labor standards enforcement report (described later in this chapter) if the violation is \$1,000 or more. Any waiver of fines must be reported to OHCS.

If the amount of the violation is under \$10, the violation does not need to be reported to OHCS.

6.2.9 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:

hud.gov/sites/dfiles/OCHCO/documents/11.pdf (English)

hud.gov/sites/dfiles/OCHCO/documents/11SP.pdf (Spanish)

6.2.9.1 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 the 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 job site 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 added trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors on the job site 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.

6.2.9.2 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 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 the same as the estimated number that would have been obtained during an on-site session.

6.2.9.3 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 the information, the interviewer should not insist.

6.2.9.4 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 found at 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).

Additionally, workers may report complaints for state wage rate violations to Oregon BOLI online by going to the following website and clicking the "Start the Process" button at the bottom of the page: complaints.boli.oregon.gov/home/landing.⁵

Workers may also notify OHCS by contacting the Contract Administrator or submitting a complaint online at the following website: oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-FWAA.aspx

⁵ If you are filing for owed wages, please include any evidence, documents, or witness statements, and an explanation of your work schedule or calendar detailing the hours worked for each day of your claim. BOLI also accepts evidence by mail at Bureau of Labor & Industries Wage and Hour Division, 1800 SW 1st Ave, Suite 500, Portland, Oregon 97201.

6.2.9.5 Using the Interview Information

After the interviews, compare the wage decision and payroll information to determine if the workers' classification and compensation are correct. If necessary, initiate corrective action.

6.2.9.6 Corrections

The payroll format includes 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 include the necessary information as on WH-347. If a contractor's alternate form is not sufficient, the contractor must provide the necessary information on an acceptable form or a supplementary statement.

Payrolls that are incomplete, such as missing 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.

6.2.9.7 Handwritten Corrections

The subrecipient, in reviewing a payroll, cannot 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 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.

6.2.10 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)
- Debarment verification printouts from CCB (for each prime contractor and/or subcontractor)
- Debarment verification printouts from SAM (for each prime contractor and/or subcontractor)
- Preconstruction conference report minutes and sign-in sheet(s)

- 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, including the amount and payment 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. This includes those 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 include clauses imposing the federal labor standards provisions. If the required provisions are not included in the subcontract, the prime contractor is still 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 available in section 6.8.4 Useful Resources - Forms. 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 named "Statement of Compliance." The Statement of Compliance must be a part 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.

6.3.1.1 Document week(s) in which no work is performed

This can be done by writing “no work” on the weekly payroll report.

During the project, labor standards compliance will be monitored, and written records will clearly establish that there are no missing payroll reports. Submit payrolls of subcontractors via the prime contractor. The prime contractor reviews the subcontractor’s payrolls and may require corrections. The prime contractor 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 the 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 recordkeeping 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. Reporting compliance with Section 3 requires the worker’s address information.

6.3.3 Signature on the Statement of Compliance

The Statement of Compliance, which is now the certification part of payroll form WH-347, 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 the initial stages of construction to ensure that the prime contractors understand and are fulfilling their payroll responsibilities. 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. There is not a direct relationship between the subrecipient and subcontractor. 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 works at other job sites other than the CDBG-DR project, do not report those hours 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

Check payrolls 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 ensure compliance with prevailing wage requirements for rates and proper worker classifications. Check the proper calculation of straight time and "time and a half" rates for overtime hours and the mathematical accuracy of wage and deduction calculations.

6.3.8 Employees Performing Work in More Than One Classification

Pay a person employed as a laborer or mechanic performing work in more than one job classification at least the required rate for the actual hours spent in each classification. When using "split" payrolls, apportion the hours worked at more than one classification in a workday according to the hours worked in each classification.

To avoid the extra work of split payroll reporting, pay the worker the highest rate of the multiple classifications for the work 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. 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 foreman who spends 20% of time on labor or mechanic work must follow Davis-Bacon rules. Their work type should align with wage decisions. If a foreman is salaried and labeled as "salary" on the payroll, they must earn the prevailing wage for their role. This salary needs to appear on payroll. For projects with a lot of overtime, extra checks are needed to ensure pay meets Davis-Bacon and CWHSSA standards.

Only the exact classifications appearing on the federal wage decision or additional classifications requested should 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 works on expanding existing commerce facilities 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 or financially assisted 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." If state labor and wage requirements are greater, contractors must pay the higher of the two prevailing wage rates.

6.4.2 Section 110 of the Housing and Community Development Act 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 Davis-Bacon 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 with fewer 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 on 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. The Secretary of Labor, in accordance with the Davis-Bacon Act, will determine these rates. However, Oregon's prevailing wage rates, as determined by BOLI, may apply. Use the higher of the two rates.

HUD published the following guidance on the applicability of Labor Standards to activities funded by CDBG-DR: [hud.gov/sites/documents/CDBGCHAPTER16.PDF](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, can be downloaded from SAM.gov, in the invitation to bid. For instructions, please see Appendix A of this chapter.
- Recipients must include the Federal Labor Standards Provisions Form HUD-4010 in the invitation to bid. A link to the form is available in [section 6.8.4 Useful Resources – Forms](#).
- Recipients may only award construction contracts to eligible contractors and subcontractors. These contractors must agree to comply with the labor standards provisions.

- Contractors must pay laborers the wage rate determination or the Oregon BOLI rate, whichever is greater. The determination must be made at the time of procurement.
- Contractors must pay wages at least once a week.

Exceptions to the requirements:

1. For construction contracts at or below \$2,000, separating a project into individual contracts below \$2,000 to circumvent the Davis-Bacon and Copeland Act requirements is not allowed.
2. Rehabilitation or construction of residential structures with fewer 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. For 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 about the applicability of Davis-Bacon, 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 of more than \$2,000 awarded by subrecipients under Oregon's CDBG-DR program shall include a compliance provision for 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 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 used on projects subject to Davis-Bacon wage rates and be compensated at less than the Davis-Bacon prevailing wages.

These classes are:

1. **Apprentices:** must be individually registered in a bona fide apprenticeship program in which the contractor participates and that the DOL approves. Apprentices must also satisfy other conditions specified in the Labor Standards Contract Provisions.
2. **Trainees:** must be in a DOL-approved training program and satisfy other conditions specified in the Labor Standards Contract Provisions.
3. **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, the contractor must provide documentation necessary to allow the subrecipient to comply with the Davis-Bacon wage rate determination.

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

Additionally, the subrecipient must see that the "Notice to All Employees Working on Federal or Federally Financed Construction Projects," and "Know Your Rights" posters are displayed at the job site. Posters are available to be downloaded at dol.gov/general/topics/posters.

6.4.3.1 Davis-Bacon Final Rule (Effective Oct. 23, 2023)

On Aug. 23, 2023, DOL published the final rule, "[Updating the Davis-Bacon and Related Acts Regulations](#)." Below is a 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. These 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: dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts

NOTE: The following updates included in the regulations apply to contracts entered after Oct. 23, 2023.

6.4.3.2 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 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 must comply with them.

6.4.3.3 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 Davis-Bacon and non- Davis-Bacon work, criteria for categorizing non-funded benefit plans, and requirements for crediting the cost of apprenticeship programs against fringe benefit obligations.

6.4.3.4 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 Davis-Bacon policy to not supersede HUD or DOL regulations, and where the two contradict, the regulations will prevail.

6.4.3.5 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 Davis-Bacon-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.

6.4.3.6 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 Davis-Bacon, including the CWHSSA. They also enforce remedies for workers and job applicants who have been discriminated against in any manner for engaging in, or being perceived to have engaged in, protected activities.

6.4.3.7 Trainees

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

6.4.3.8 Demolition

Section III.B.3.ii(C) of the final rule clarified the circumstances under which demolition work is exempt from Davis-Bacon wage requirements. Under the final rule, demolition is only exempt from Davis-Bacon 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 Davis-Bacon when performed under the same contract as construction or when future construction is anticipated on the same site.

6.4.3.9 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."

6.4.4 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 of 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. The contractor must retain payroll records and submit weekly certified payrolls documenting compliance.

6.4.5 Contract Work Hours and Safety Standards Act

The CWHSSA (40 U.S.C. §327 et seq.) and FLSA state that no contract work may permit any laborer or mechanic to work over 40 hours in a workweek unless they are paid at least 1.5 times their basic rate for all hours worked. If a violation occurs, the contractor or subcontract shall be liable for unpaid wages and liable to the United States for liquidated damages.

All construction contracts in excess of \$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 beyond this standard is allowed if paid at least 1.5 times the basic rate for the extra hours.
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 issued 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) applies to all construction projects of \$50,000 or more, including those that are federally funded. The Oregon PWR applies to public works projects subject to ORS 279C.800 and Davis-Bacon Act (40 U.S.C. 276a). For each specific job classification, the following applies:

1. If the Oregon PWR is higher than the federal prevailing wage rate, the prime 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 contractor and every subcontractor on the project shall pay at least the federal PWR as required by Davis-Bacon.

Both Davis-Bacon rates⁶ and the Oregon PWR must be included in the construction contracts funded, in whole or in part, with CDBG-DR funds.

6.4.7 Updating Wage Rates After Award

Section III.B.1.vi(B) of the final rule clarified circumstances in which a project is 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. **New out-of-scope construction:** 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 not originally obligated:** refers to a contract 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.

⁶ Making Davis-Bacon Work (2006): [hud.gov/sites/documents/21811_4812-LR.PDF](https://www.hud.gov/sites/documents/21811_4812-LR.PDF)

3. **Long-term, as-needed contracts:** includes blanket purchase agreements (BPAs) and indefinite delivery indefinite quantities (IDIQs). Davis-Bacon 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 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.

6.4.9 Updated Contract Provisions

Due to the changes made by the final rule, HUD has updated form [HUD-4010](#) to be reflected in contracts effective Oct. 23, 2023. A link to the form is also available in section 6.8.4 Useful Resources – Forms.

6.5 Helpers, Apprentices, Trainees, and Prisoners

6.5.1 Helpers

“Helpers” — workers who use tools in assisting mechanics and are paid below the minimum rates for mechanics — is not an acceptable job classification. 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 considered appropriate by DOL.

6.5.2 Apprentices

Apprentices are permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprenticeship program registered with the DOL Office of Apprenticeship. If a worker is an apprentice, the contractor must submit a copy of their apprenticeship papers with the first payroll that includes that worker.

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 are permitted to work at less than the predetermined rate for the work performed only if they are employed by and registered in a program that has received prior approval. This must be certified by the federal Office of Apprenticeship or Oregon BOLI Apprenticeship and Training Division.

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 required) publication that 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.

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: Stand-alone 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. For further information, refer to Labor Relations Letter LR 2009-01 dated Aug. 12, 2009, available in [section 6.8.1 Useful Resources – Regulations and Guidance](#).

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 (e.g., the purchase of an elevator and then installation.)

Family Members: Related to contractor payrolls. There are no exceptions to labor requirements on the basis of family relationships. Relatives 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 subrecipient's employees is generally exempt from the prevailing federal wage requirements. Please contact the Department's CDBG-DR 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 in prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should simplify the contents of the wage decision. A copy of this form, along with instructions, is available in section 6.8.5.

Laborers and Mechanics: Workers whose duties are manual or physical as distinguished from managerial. Mechanics perform the work of a recognized trade, such as an electrician, while 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 usually found in subcontractor or 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 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: The total minimum compensation, including the base rate and fringe benefits, as required under Davis-Bacon for a given classification of worker as determined by DOL in a document called a wage decision. See subsection 6.4.2 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 equipment financed by CDBG-DR, this is an incidental cost. The installation is not subject to Davis-Bacon wage rates (HUD Office of Labor Relations notice dated Nov. 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 considered 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 Checklist for Labor Standards Compliance

1. OHCS has reviewed and approved bid documents; this must be done 10 days before the bid advertisement.
2. Include Federal 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 BOLI and 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 SAM.gov and the CCB and not on the Excluded Parties List).
 - ii. Verify with Oregon BOLI's Ineligible List.
5. Assure that general contractor has filed a \$30,000 public works bond with the CCB.
6. Submit a Responsible Bidder Determination form to the CCB.
7. Contact OHCS representative at least 10 days before the 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.

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 a resource to this Chapter that states submit to HUD MUST be interpreted as submitting the form to OHCS, not HUD.

10. Obtain signature of general contractor on preconstruction conference notes; contractor and OHCS receive copies, and 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 to OHCS prior to requesting grant funds for construction.
12. Post at the job site:
 - i. Federally required DOL Wage and Hour Division Posters⁷ including those for federally financed construction projects
 - ii. Davis-Bacon wage determination along with the DOL-approved additional classification(s)
 - iii. Applicable Oregon Workers' Rights posters⁸
 - iv. Applicable Oregon BOLI's wage rate
 - v. Project sign (if required)
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.

⁷ A link to the federally required posters is available in section 6.8.5 Useful Resources – Posters.

⁸ A link to Oregon's required workers' rights posters is available in section 6.8.5 Useful Resources – Posters. Additionally, poster requirements for Oregon are updated annually July 1.

6.8 Useful Resources

6.8.1 Regulations and Guidance

- Davis-Bacon and Related Acts:
dol.gov/agencies/whd/laws-and-regulations/laws/dbra
- Copeland Anti-Kickback Act: [18 USC §874](https://www.uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section874&num=0&edition=prelim), [40 USC §3145](https://www.uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title40-section3145&num=0&edition=prelim)
[uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section874&num=0&edition=prelim](https://www.uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section874&num=0&edition=prelim)
[uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title40-section3145&num=0&edition=prelim](https://www.uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title40-section3145&num=0&edition=prelim)
- CWHSSA: [Field Operations Handbook, Chapter 15](https://dol.gov/agencies/whd/field-operations-handbook/Chapter-15)
dol.gov/agencies/whd/field-operations-handbook/Chapter-15
- Comparison Chart for Recent Changes in Labor Standards:
dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts
- Federal Fair Labor Standards Act: [29 USC Chapter 8](https://www.uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim)
[uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim](https://www.uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim)
- Federal Labor Standards Requirements in Housing and Urban Development Programs (1344.1):
hud.gov/program_offices/administration/hudclips/handbooks/sech/13441
- Final Rule DBRA Effective Oct. 23, 2023:
[Updating the Davis-Bacon and Related Acts Regulations](https://www.federalregister.gov/documents/2023/09/27/2023-09-27-updating-the-davis-bacon-and-related-acts-regulations)
- Labor Relations Notice LR-09-01 Davis-Bacon Applicability to Demolition Work:
hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.pdf
- Oregon Revised Statute Condition Concerning Hours of Labor (ORS 279C.520):
[oregon.public.law/statutes/ors_279c.520](https://www.oregonpubliclaw.com/statutes/ors_279c.520)
- Oregon Revised Statute Condition Concerning Employment of Apprentices to Perform Percentage of Work Hours that Workers in Apprenticeable Occupations Perform on Public Improvements (ORS 279C.533):
[oregon.public.law/statutes/ors_279c.533](https://www.oregonpubliclaw.com/statutes/ors_279c.533)
- Oregon Revised Statute Maximum Hours of Labor on Public Contracts:
[oregon.public.law/statutes/ors_279c.540](https://www.oregonpubliclaw.com/statutes/ors_279c.540)
- HUD Guidance regarding Davis Bacon for CDBG projects:
hud.gov/sites/documents/CDBGCHAPTER16.PDF

- HUD Guidance for Davis-Bacon and Labor Standards: Agency/Contractor Guide: hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Agency-and-Contractor-Guide.pdf
- HUD Guidance for Davis-Bacon and Labor Standards: Contractor Guide Addendum: hudexchange.info/resources/documents/Davis-Bacon-and-Labor-Standards-Contractor-Guide-Addendum.pdf
- HUD Guidance regarding “Covered Demolition” projects: hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.pdf
- Oregon Construction Contractors Board: oregon.gov/ccb/Pages/index.aspx
- Oregon Bureau of Labor and Industries (BOLI): oregon.gov/BOLI/pages/index.aspx

6.8.2 Prevailing Wage Rates

- Federal Prevailing Wage Determination Search: sam.gov/content/wage-determinations
- Oregon Prevailing Wage determination: oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx
- Oregon Definitions of Covered Occupations for Public Works Contracts in Oregon: oregon.gov/boli/employers/Documents/OccupationalDefinitions_070118.pdf

6.8.3 Debarment Verification

- Oregon Debarred Contractors Listing: oregon.gov/boli/employers/pages/pwr-ineligible-contractors.aspx
- SAM.GOV Federal Debarment Search: sam.gov/search/

6.8.4 Forms

- Certified Payroll Form (WH-347): dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdfh
- Employee Interview Form HUD-11: hud.gov/sites/dfiles/OCHCO/documents/11.pdf
- Federal Labor Standards Provisions Form HUD-4010: hud.gov/sites/dfiles/OCHCO/documents/4010.pdf
- Project Wage Rate Sheet: hud.gov/sites/dfiles/OCHCO/documents/4720.doc

- Oregon Reporting Overtime Payment Violations: oregon.gov/boli/workers/pages/wage-and-hour-complaint-form.aspx#:~:text=If%20your%20rights%20are%20being,call%20971%2D245%2D3844
- Oregon Responsible Bidders Form: ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/
- Oregon Public Works Bond Form: oregon.gov/boli/employers/Documents/public-works-bond.doc
- Oregon Public Works Bond Exemption for Minority, Woman, Service Disabled Veteran, or Emerging Small Business Form: oregon.gov/ccb/Documents/PWB_Application_Exemption.pdf
- Report of Additional Classification and Rate Form HUD-4230A: hud.gov/sites/dfiles/OCHCO/documents/4230A.pdf
- Worker Complaint Form: hud.gov/sites/dfiles/OCHCO/documents/4731.pdf

6.8.5 Posters

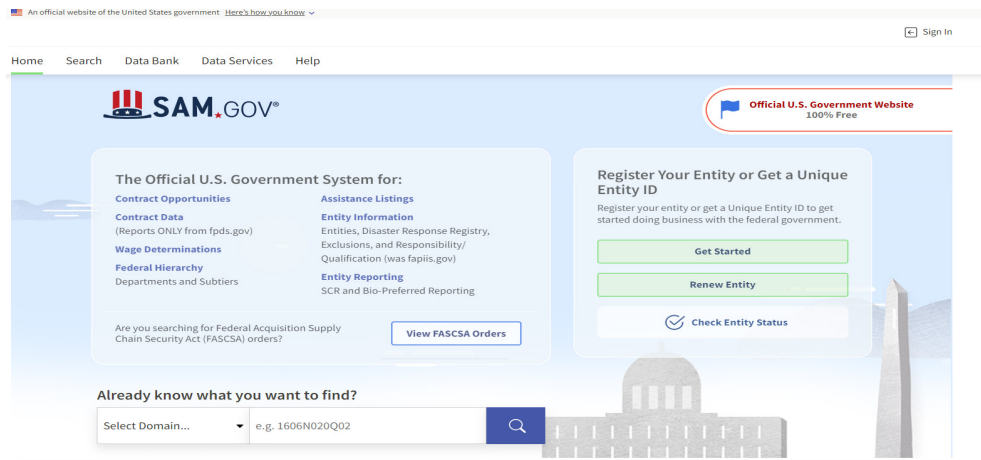
- Federal Required Job Site Posters: dol.gov/general/topics/posters
- Oregon Required Job Site Posters: oregon.gov/boli/employers/Pages/required-worksite-postings.aspx

6.8.6 External Training

- Contractor Training Materials: portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/olr/trainingcontractors
- Davis-Bacon Labor Standards 101 for Labor Contract Administrators: An Introduction to Federal Labor Standards hudexchange.info/trainings/courses/davis-bacon-labor-standards-101-for-lcas-an-introduction-to-federal-labor-standards1/
- Davis-Bacon Labor Standards: Payroll Analysis hudexchange.info/trainings/courses/davis-bacon-labor-standards-payroll-analysis/

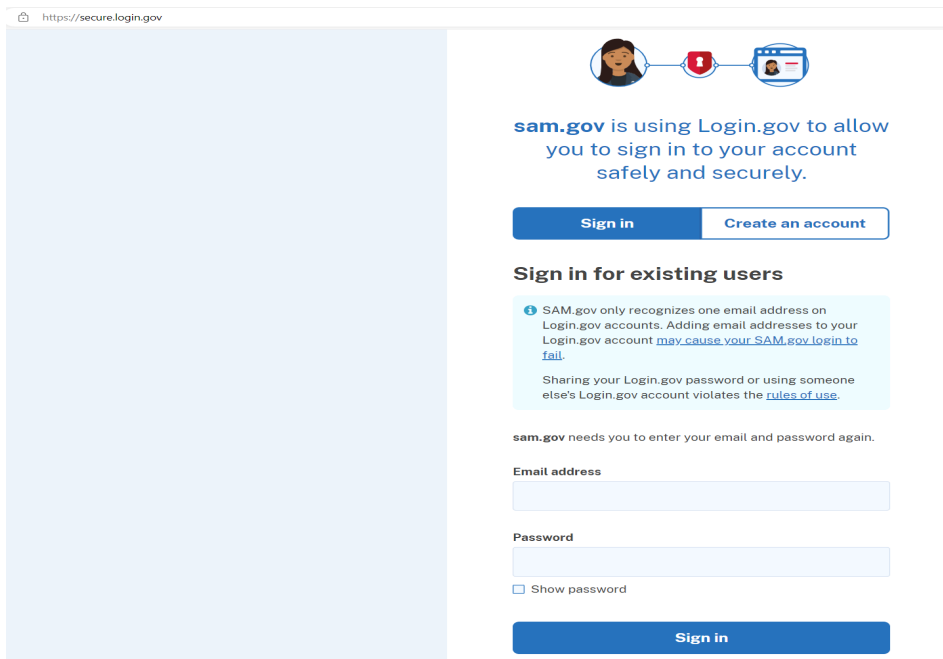
6.9 Appendix A: SAM.gov Active Registration

Create a SAM.gov account if you do not have one already and sign in.



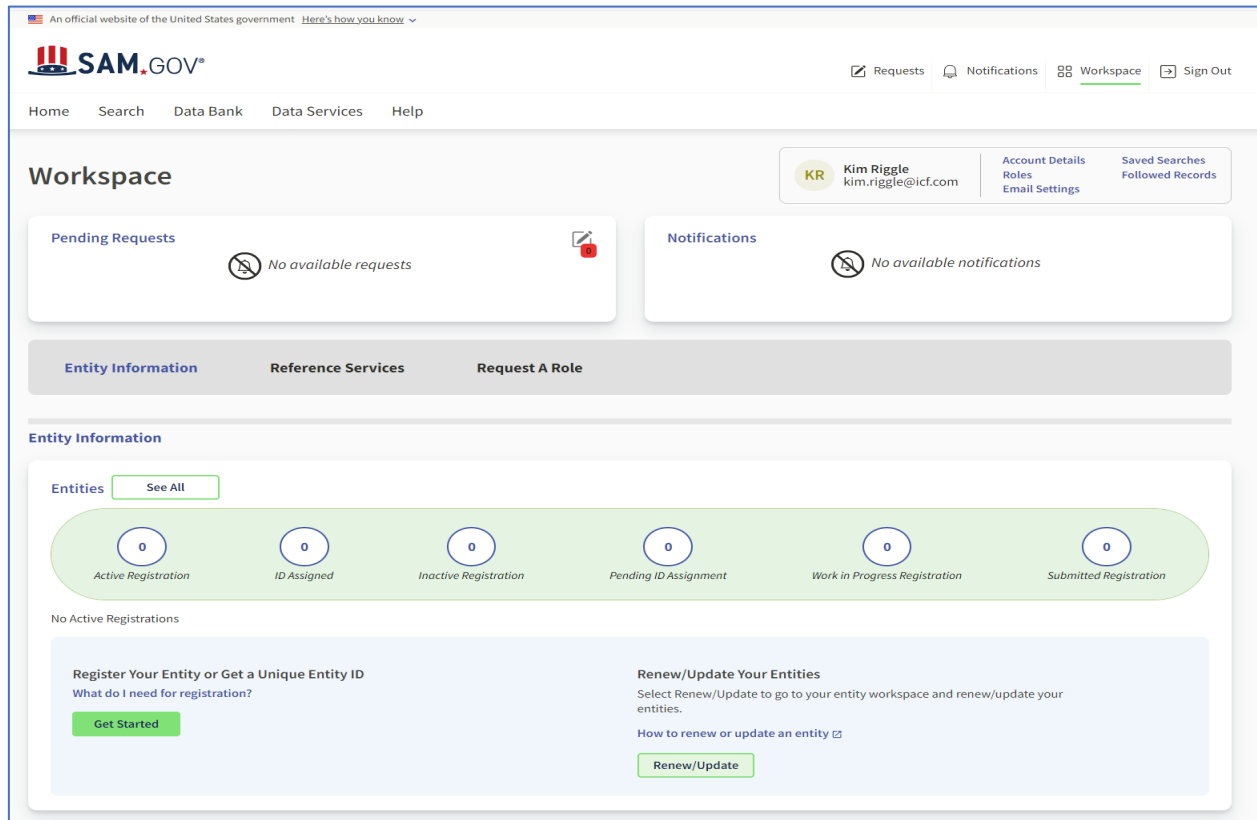
The screenshot shows the SAM.gov homepage. At the top, there is a navigation bar with links for Home, Search, Data Bank, Data Services, and Help. Below this, the SAM.gov logo is prominently displayed. To the right of the logo, there is a badge that says "Official U.S. Government Website 100% Free". The main content area is divided into two columns. The left column lists various services: Contract Opportunities, Contract Data (Reports ONLY from fpdfs.gov), Wage Determinations, Federal Hierarchy (Departments and Subtiers), Assistance Listings, Entity Information (Entities, Disaster Response Registry, Exclusions, and Responsibility/Qualification (was faplis.gov)), and Entity Reporting (SCR and Bio-Preferred Reporting). There is also a link to "View FASCSA Orders". The right column is titled "Register Your Entity or Get a Unique Entity ID" and includes a brief description: "Register your entity or get a Unique Entity ID to get started doing business with the federal government." Below this text are three buttons: "Get Started", "Renew Entity", and "Check Entity Status". At the bottom of the page, there is a search bar with the text "Already know what you want to find?" and a dropdown menu for "Select Domain...". The search bar contains the text "e.g. 1606N020Q02".

Enter your login credentials.

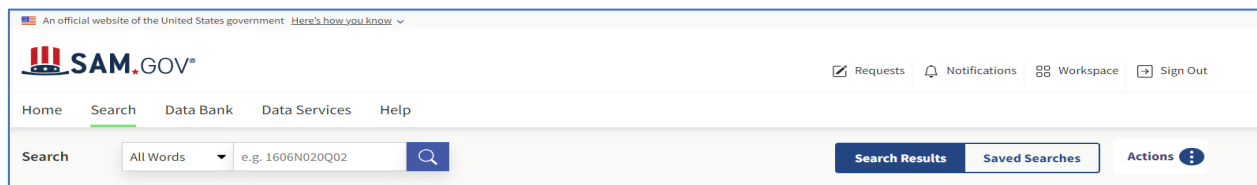


The screenshot shows the SAM.gov login page. At the top, there is a navigation bar with links for Home, Search, Data Bank, Data Services, and Help. Below this, the SAM.gov logo is prominently displayed. To the right of the logo, there is a badge that says "Official U.S. Government Website 100% Free". The main content area is divided into two columns. The left column lists various services: Contract Opportunities, Contract Data (Reports ONLY from fpdfs.gov), Wage Determinations, Federal Hierarchy (Departments and Subtiers), Assistance Listings, Entity Information (Entities, Disaster Response Registry, Exclusions, and Responsibility/Qualification (was faplis.gov)), and Entity Reporting (SCR and Bio-Preferred Reporting). There is also a link to "View FASCSA Orders". The right column is titled "Register Your Entity or Get a Unique Entity ID" and includes a brief description: "Register your entity or get a Unique Entity ID to get started doing business with the federal government." Below this text are three buttons: "Get Started", "Renew Entity", and "Check Entity Status". At the bottom of the page, there is a search bar with the text "Already know what you want to find?" and a dropdown menu for "Select Domain...". The search bar contains the text "e.g. 1606N020Q02".

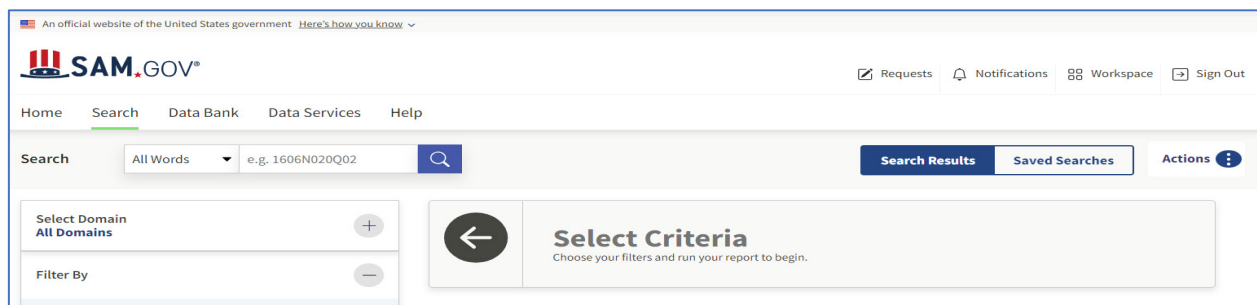
Navigate to the Search option at the top left of the landing page.



Select the search option "All Words" from the drop-down menu.



Select Domain defaults to "All Domains," but you should change this option to choose "Entity Information" by clicking on the "+" sign.



In the Keyword Search window, select the “Simple Search” tab, then choose the “All Words” option.

The screenshot shows the 'Keyword Search' window. On the left, there's a sidebar with 'Select Domain Entity Information' and 'Filter By' sections. The 'Simple Search' tab is active, and the 'All Words' radio button is selected. The search box contains the text 'e.g. 123456789, Smith Corp'. On the right, there's a 'Select Criteria' section with a back arrow and the text 'Choose your filters and run your report to begin.'

Enter the name of the vendor, or name of the individual, or the Unique Entity ID # (UEI) (if you know it), into the search box and press Enter. Note: The search criteria are very sensitive so you must be certain that you use exact spelling to include punctuation marks, etc.

The screenshot shows the search results for the query 'Housing Associates of Brownsville'. The results are displayed in a table with columns for Unique Entity ID, CAGE Code, Physical Address, Expiration Date, and Purpose of Registration. Two results are shown, both for 'Housing Associates of Brownsville, Ltd.' with 'Active Registration' status. The first result has a Unique Entity ID of UTXSPNRK3C3F6 and an expiration date of Mar 21, 2024. The second result has a Unique Entity ID of NNASVCKJDD06 and an expiration date of Oct 10, 2024. The sidebar on the left shows the 'Simple Search' tab and 'All Words' option selected. The search box contains the text 'e.g. 123456789, Smith Corp' and the search results are displayed below it.

Unique Entity ID	CAGE Code	Physical Address	Expiration Date	Purpose of Registration
UTXSPNRK3C3F6	(blank)	1013 VAN BUREN ST, HOUSTON, TX 77019 USA	Mar 21, 2024	Federal Assistance Awards
NNASVCKJDD06	93SP5	1013 VAN BUREN ST, HOUSTON, TX 77019 USA	Oct 10, 2024	Federal Assistance Awards

Select which vendor you would like to view from the list of searches by clicking on the hyperlinked entity name in blue.

Select Domain
Entity Information

All Entity Information

Entities

Disaster Response Registry

Responsibility / Qualification

Exclusions

Filter By

Keyword Search
For more information on how to use our keyword search, visit our [help guide](#)

Simple Search **Search Editor**

☐ Any Words *i*

☒ All Words *i*

☐ Exact Phrase *i*

e.g. 123456789, Smith Corp

"Housing Associates of Brownsville" x

Entity v

Location v

Status ^

☒ Active

☐ Inactive

Reset

Showing 1 - 2 of 2 results

Sort by: Relevance

HOUSING ASSOCIATES OF BROWNSVILLE II LTD ● Active Registration

Unique Entity ID: U7X9PNK3C3F6 CAGE Code: (blank) Physical Address: 1013 VAN BUREN ST, HOUSTON, TX 77019 USA

Expiration Date: Mar 21, 2024

Purpose of Registration: Federal Assistance Awards

Housing Associates of Brownsville, Ltd. ● Active Registration

Unique Entity ID: NNASVCXJDDG6 CAGE Code: 93SP5 Physical Address: 1013 VAN BUREN ST, HOUSTON, TX 77019 USA

Expiration Date: Oct 10, 2024

Purpose of Registration: Federal Assistance Awards

Results per page: 25

The report will look like this. Be sure to make sure that it displays “Active Registration” next to the name of the vendor and that it has not expired.

An official website of the United States government [Here's how you know](#)

SAM.GOV

Requests Notifications Workspace Sign Out

Home Search Data Bank Data Services Help

Core Data Actions

Entity Registration

- Core Data
- Business Information
- Entity Types
- Financial Information
- Points of Contact
- Assertions
- Reps and Certs
- Exclusions
- Responsibility / Qualification

HOUSING ASSOCIATES OF BROWNSVILLE II LTD ● Active Registration

Unique Entity ID: U7X9PNK3C3F6 CAGE/NCAGE: (blank) Expiration Date: Mar 21, 2024

Physical Address: 1013 Van Buren ST, Houston, Texas 77019-4126, United States

Mailing Address: 1013 Van Buren ST, Houston, Texas 77019-4126, United States

Purpose of Registration: Federal Assistance Awards Only

Version: Current Record

BUSINESS INFORMATION

Doing Business As: (blank) URL: (blank)

Division Name: (blank) Division Number: (blank)

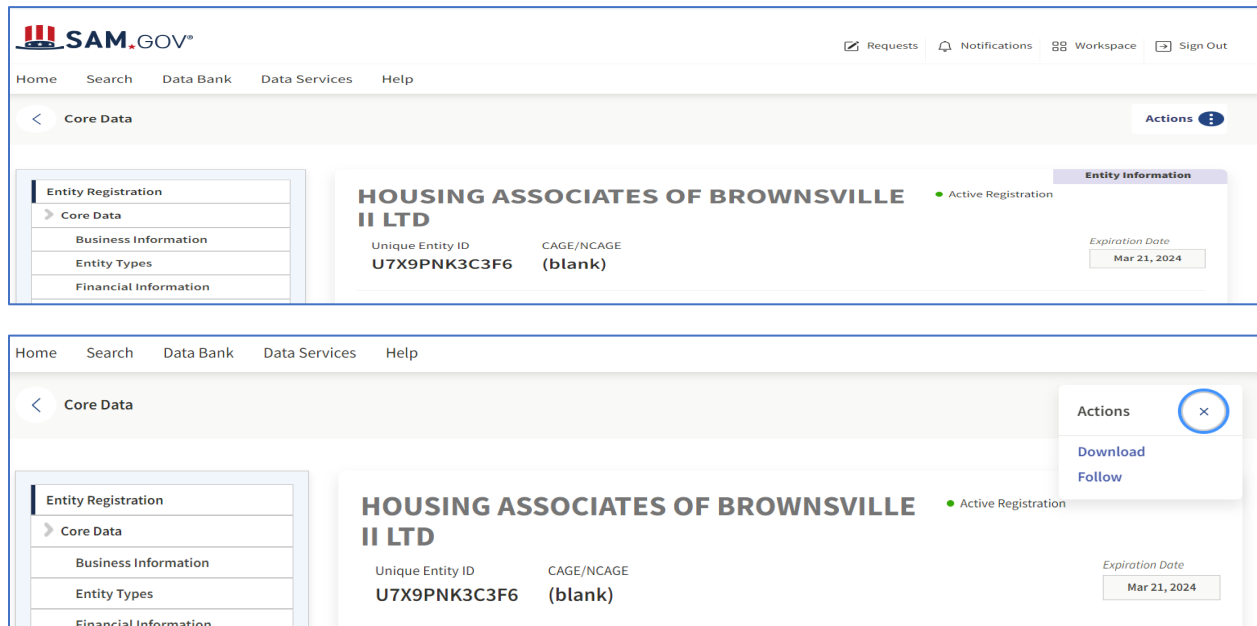
Congressional District: Texas 07 State/Country of Incorporation: Texas, United States

Registration Dates

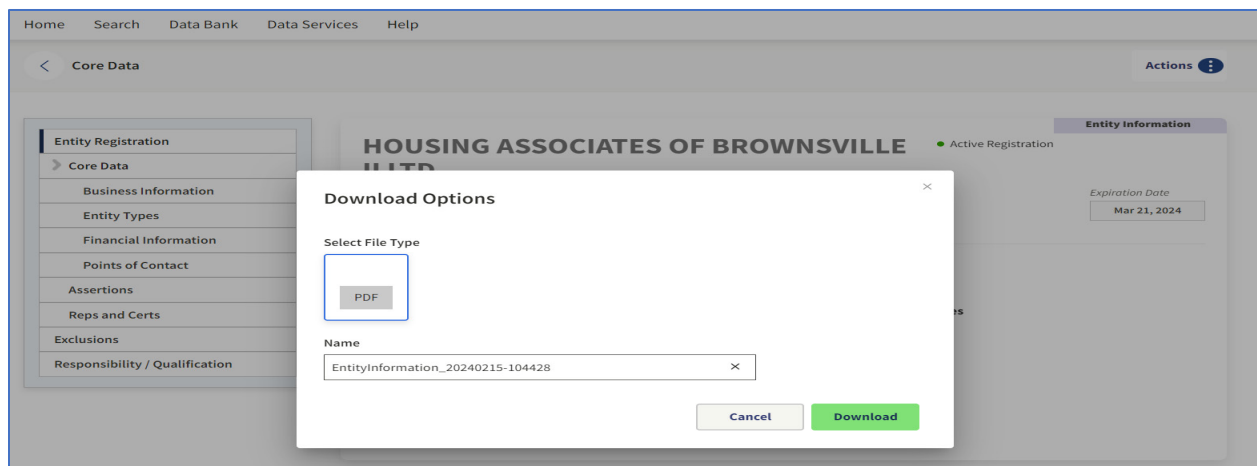
Activation Date: Mar 23, 2023 Initial Registration Date: Mar 21, 2023

Submission Date: Mar 23, 2023

Select the 3 dots to the right attached to “Actions” to download this report.



Once the Download Options box pops up, select file type “PDF,” and then click on the green “Download” button.

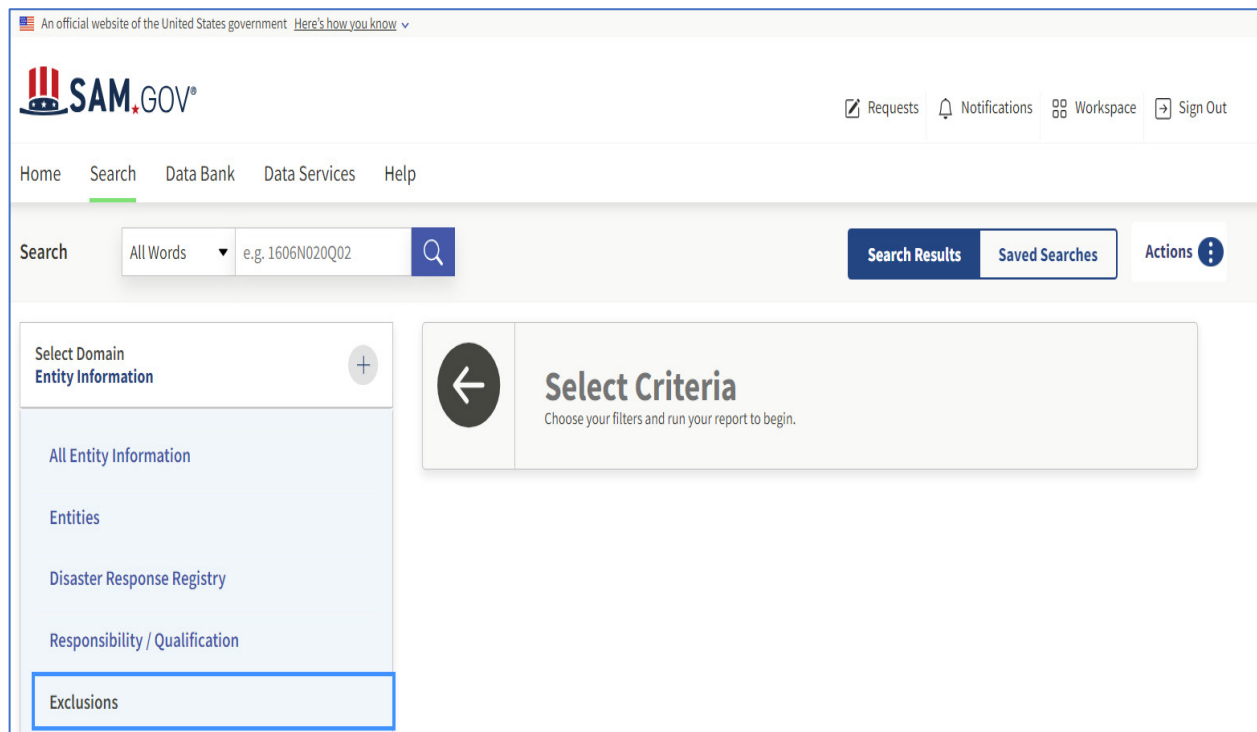


6.10 Appendix B: SAM.gov Active Exclusions

Steps to search for SAM active exclusions — Verify that the applying entity is not debarred:

Follow steps in Appendix A to log in to SAM.gov and search for an entity.

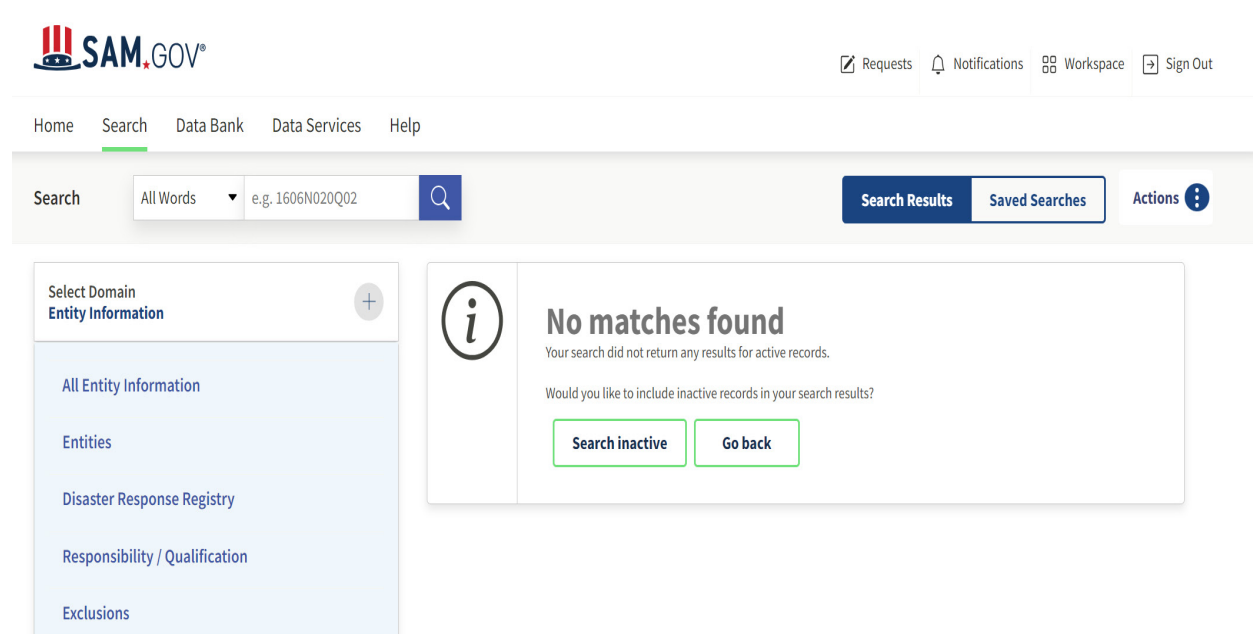
Choose “Entity Information” by clicking on the “+” sign and select “Exclusions” from the list of options shown below:



NOTE: If searching for an individual, you can search using first and last name. You can also search for the following:

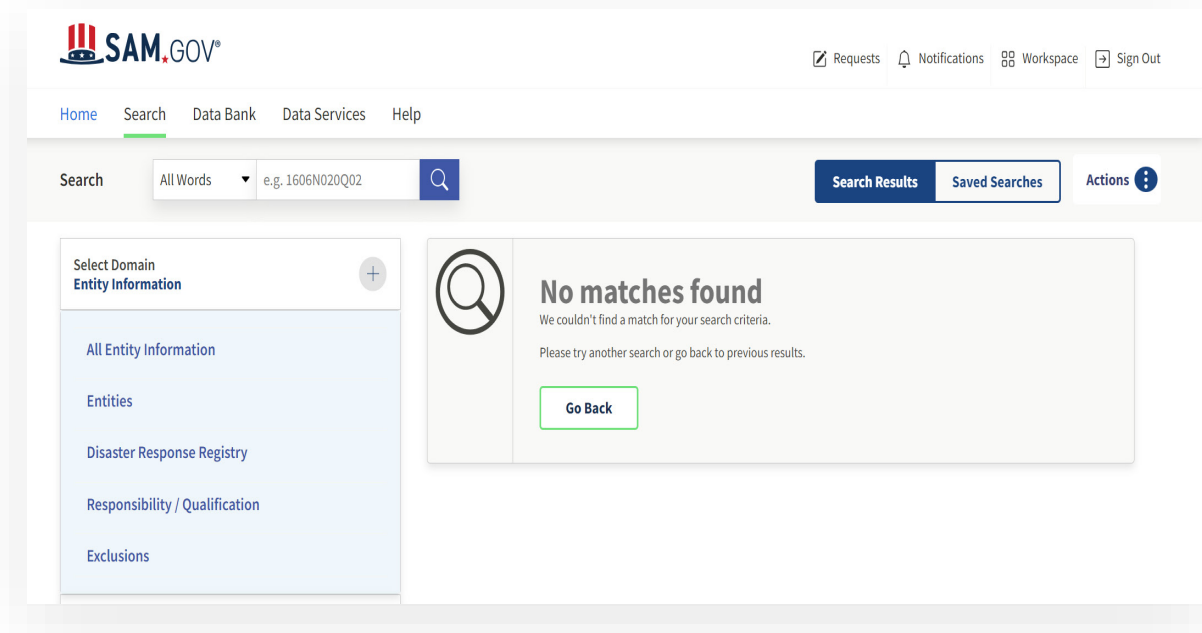
- Classification
- Excluded Individual
- If you search by Social Security number, you must also enter the first and last name of the individual
- Dates
- Excluded Entity
- Federal Organizations
- Exclusion Type
- Exclusion Program
- Location

This screenshot is what you will see if the entity or individual has not been debarred in SAM.gov. Note: If you see “Search Inactive,” select the button and run a search.



The screenshot shows the SAM.GOV search interface. At the top, the SAM.GOV logo is on the left, and links for Requests, Notifications, Workspace, and Sign Out are on the right. Below the logo is a navigation bar with Home, Search (highlighted), Data Bank, Data Services, and Help. The search bar contains the text "All Words" and "e.g. 1606N020Q02". To the right of the search bar are buttons for "Search Results", "Saved Searches", and "Actions" (with a three-dot menu icon). On the left side, there is a "Select Domain" dropdown menu with "Entity Information" selected. Below this, a list of categories is shown: "All Entity Information", "Entities", "Disaster Response Registry", "Responsibility / Qualification", and "Exclusions". The main content area displays a message: "No matches found" with an information icon. Below this, it says "Your search did not return any results for active records." and "Would you like to include inactive records in your search results?". There are two buttons: "Search inactive" and "Go back".

Select the 3 dots to the right of “Actions” to download this report.



This screenshot shows the same SAM.GOV search interface as the first one. The search bar still contains "All Words" and "e.g. 1606N020Q02". The "Actions" button now has a three-dot menu icon. The main content area displays a message: "No matches found" with a magnifying glass icon. Below this, it says "We couldn't find a match for your search criteria." and "Please try another search or go back to previous results." There is a single button: "Go Back".

Select PDF option.

1. Name the file using the contractor or subcontractor identifier.
2. Always select “Add to my saved search.”
3. Then select “Download.”

Download

Select file type

csv

pdf

- Limited to 3000 records.

File name

Up to 45 characters

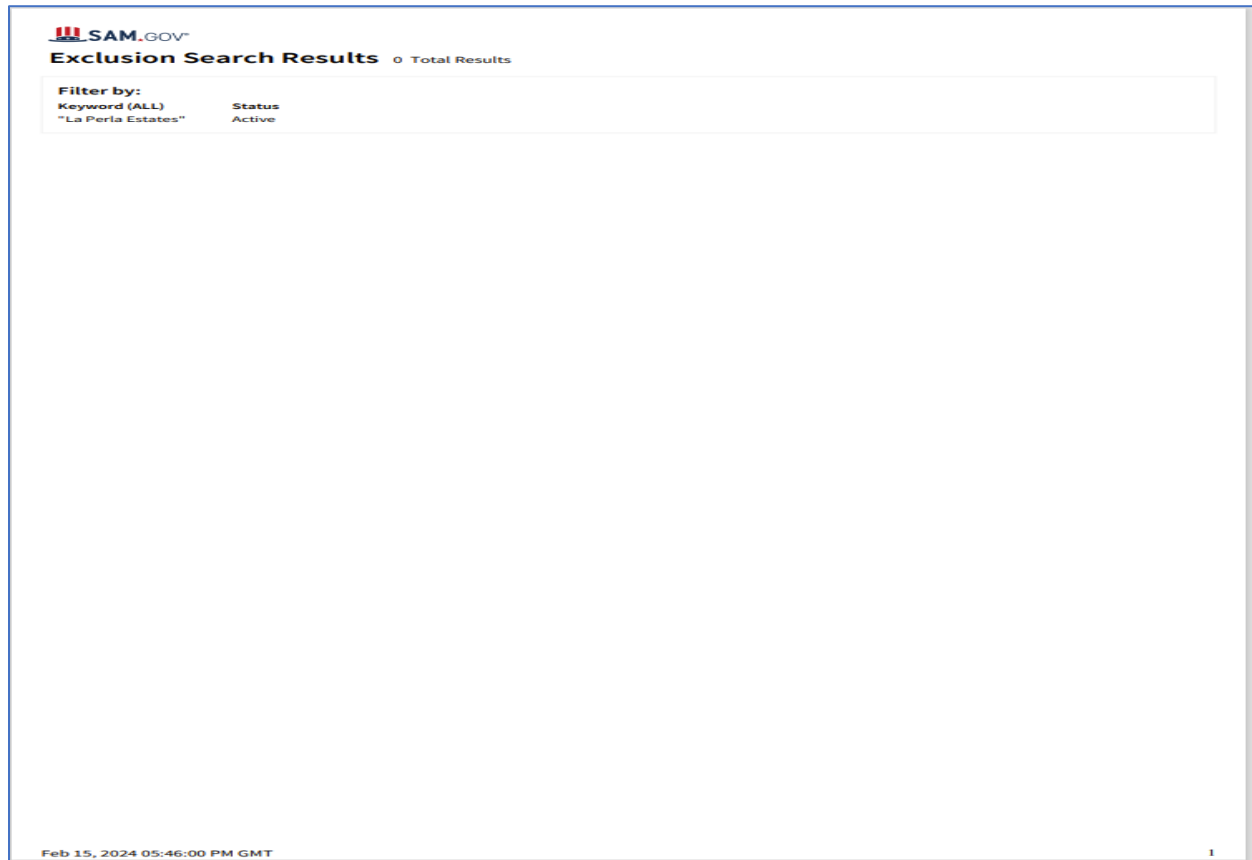
SubcontractorsName

☒ Add to my saved search

Cancel

Download

Select and open the file from your downloaded documents on your computer. It will open as a PDF file and look like this.



Make sure the following appear on the document:

- The document says "Exclusion Search Results"
- The name of the Entity searched
- The date the search was performed in SAM.gov
- The total number of pages for the search results

The icon for Section 3 consists of three vertical bars in green, brown, and orange.

Section 3

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.

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. Applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in 24 CFR Part 75.3. Section 3 requirements do **not** apply to materials supply contracts (24 CFR Part 75.3(b)) or Indian and Tribal preferences (24 CFR Part 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, employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers. Additionally, they must ensure that 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, subrecipients should 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:

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:

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 focus on 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 the total number of **labor hours worked** by Section 3 workers, Targeted Section 3 workers, and all workers overall.

A **Section 3 worker** is an individual who currently (or at time of hire in the past 5 years) fits at least *one* of the following criteria: low- or very low-income as established by HUD's income limits, employed by a Section 3 business concern, or a YouthBuild participant.

A **Targeted Section 3 worker** is a Section 3 worker who meets any of the three criteria above, and additionally meets one of the two following criteria:

- Is employed by a Section 3 business concern
- Currently (or at the time of hire in the past 5 years) fits at least one of the following categories:

- Living within the service area or the neighborhood of the project
- 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:

- Section 3 workers comprise 25% or more of the total number of labor hours worked by all workers on a Section 3 project:

$$\frac{\text{Section 3 labor hours}}{\text{Total labor hours}} = 25\% \text{ AND } \frac{\text{Targeted Section 3 labor hours}}{\text{Total labor hours}} = 5\%$$

- Targeted Section 3 workers comprise 5% or more of the total number of labor hours worked by all workers on a Section 3 project, as defined at 24 CFR Part 75.21(a):

Without evidence to the contrary, subrecipients and contractors of covered funding will be considered compliant with Section 3 safe harbor (24 CFR Part 75.23) if the reported ratios meet the established benchmarks. Subrecipients that fail to meet the minimum numerical goals outlined above must report on the specific qualitative efforts to achieve them.

7.3 Section 3 Reporting

7.3.1 Section 3 Measurement Ratios and Benchmarks

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

- The total number of labor hours worked
- The total number of labor hours worked by Section 3 workers
- 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, per 24 CFR Part 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), per 24 CFR Part 75.25(a)(3).

Basis of Hours Reported: 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, per 24 CFR Part 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, per 24 CFR Part 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 workers¹ from professional services without

¹ Both Section 3 workers and Targeted Section 3 workers are used in the numerators of the benchmarking ratios shown in Section 7.2.4 of this chapter.

including professional services in the total labor hours² worked. 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, per 24 CFR Part 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 the following:

- **Applicant Outreach:** Engaging in outreach efforts to generate job applicants who are Targeted Section 3 workers
- **Training and Apprenticeship:** Providing training or apprenticeship opportunities
- **Employment Assistance:** Providing technical assistance to help Section 3 workers compete for jobs or connecting Section 3 workers with assistance in seeking employment. This includes drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- **Job Fairs:** Holding one or more job fair or sponsoring a job informational meeting in the service area/neighborhood of the project
- **Work Readiness and 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 childcare
- **Educational Assistance:** Providing assistance to apply for or attend community college, a 4-year educational institution, or vocational/technical training
- **Financial Literacy:** Assisting Section 3 workers to obtain financial literacy training and/or coaching
- **Business Concern Outreach:** Engaging in outreach efforts to identify and secure bids from Section 3 business concerns
- **Competition Assistance:** Providing technical assistance to help Section 3 business concerns understand and bid on contracts

² Professional services are excluded from the total labor hours worked in the denominator of the benchmarking ratios listed in Section 7.2.4 of this chapter.

- **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, per 2 CFR Part 200.321(b)(3)
- **Bidder Viability Support:** Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
- **Business Registries:** Promoting the use of business registries designed to create opportunities for disadvantaged and small businesses
- **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, such as barriers, roadblocks, or impediments encountered, and other relevant information that will enable OHCS to make the most accurate, informed compliance determination.

7.4 Section 3 Records

7.4.1 Recordkeeping Supporting Section 3 Worker Categorizations and Certifications

7.4.1.1 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:

- **Section 3 Worker:** For a worker to qualify as a Section 3 worker, **one** of the following must be maintained:
 - **Self-Certification of Income:** A worker's self-certification that their income is below the income limit from the prior calendar year
 - **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

- **Program Management Certification of Program Participation:**
Certification from a public housing agency, 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
- **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
- **Employer Certification of Section 3 Business Concern Employment:**
An employer's certification that the worker is employed by a Section 3 business concern
- **Targeted Section 3 Worker:** For a worker to qualify as a Targeted Section 3 worker, **one** of the following must be maintained:
 - **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
 - **Employer Certification of Section 3 Business Concern Employment:**
An employer's certification that the worker is employed by a Section 3 business concern
 - **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 Nov. 30, 2020. Therefore, Section 3 workers hired prior to Nov. 30, 2020, may be certified for a 5-year period beginning Nov. 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 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.

7.4.1.2 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:

- It is at least 51% owned and controlled by low- or very low-income persons.
- Over 75% of the labor hours performed for the business over the prior 3-month period are performed by Section 3 workers.
- 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, 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 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: hud.gov/program_offices/sdb.

The documentation outlined in this subsection must be maintained for the time required for records retention in accordance with applicable program regulations and 24 CFR Part 200. For further guidance regarding Section 3 recordkeeping — including additional considerations specific to public housing agencies — see 24 CFR Part 75.31.

7.5 Section 3 Contracting Requirements

7.5.1 Contract Provisions

Per 24 CFR Part 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.

7.5.2 Contract and Subcontracting Strategies

The following examples are provided to help subrecipients ensure that the contracting objectives of Section 3 are met and the established Section 3 benchmarks are 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.

- **Small Purchase Procurement:** The use of small purchase procedures such as soliciting quotations from a minimum of three qualified sources (contract may not exceed the simplified acquisition threshold). At the time of solicitation, inform the parties of the Section 3 covered contract to be awarded. Include enough detail, the deadline for quotes, and the information required. A valid attempt to obtain at least three quotes from qualified sources must be made and documented.
- **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.
- **Contractors Associations and Community Organizations:** Utilize minority contractor associations and community organizations to assist in identifying Section 3 businesses as potential bidders.
- **Housing Development Publicity:** Advertise contracting opportunities by posting notices concerning the work to be contracted in shared areas of housing developments.
- **Formalized Notices:** Provide written notice to all known Section 3 business concerns of the contracting opportunities.
- **Maintain Contact:** Follow up with Section 3 business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
- **Pre-Bid Meetings:** Coordinate pre-bid meetings to inform Section 3 business concerns of the upcoming contracting opportunities.
- **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.
- **Assisting With Barriers to Entry:** Advise Section 3 business concerns where to find assistance with limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

- **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.
- **Contract Sizing:** Break out contract work items into economically feasible units to facilitate the participation of Section 3 business concerns.
- **YouthBuild Programs:** Contact agencies administering HUD YouthBuild programs and notify them of the contracting opportunities.
- **Advertisement/Publication:** Advertise contracting opportunities through trade association papers and local media such as television, newspapers, radio, and websites.
- **Business Concern Listing:** Develop and maintain a list of eligible Section 3 business concerns.
- **Advance Goal Setting:** Establish concrete numerical goals (dollar amounts and number of awards) for contracts to Section 3 business concerns.



Fair Housing and Civil Rights

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8 Fair Housing and 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 Community Development Block Grant Disaster Recovery (CDBG-DR) funds.

Subrecipients are required to ensure that all programs and activities funded in whole or in part with CDBG-DR funds will be conducted without bias or discrimination on the basis of:

1. Race
2. National origin
3. Religion
4. Color
5. Sex (including gender identity and sexual orientation)
6. Age
7. Familial status
8. Disability

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	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of: 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	To the greatest extent feasible, provide to low- and very low-income individuals opportunities such as: 1. Training 2. Employment 3. Contracting 4. Other economic opportunities

Statute/Executive Order	Description
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing on the basis of: 1. Race 2. Color 3. Religion 4. Sex 5. National origin 6. Familial status 7. Disability Also requires the U.S. Department of Housing and Urban Development (HUD) to administer its programs in a manner that affirmatively promotes fair housing.
Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended	Requires subrecipients to certify that they will, among other things, affirmatively further fair housing.
Section 504 of the Rehabilitation Act of 1973, as amended	No otherwise qualified individuals shall, solely, by reason of disability, be: 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 508 of the Rehabilitation Act, as amended	Requires all electronic and information technology (also referred to as information and communication technology) that is developed, procured, maintained, or used by a subrecipient to be accessible to people with disabilities, including employees and members of the public seeking information or services from the subrecipient.
Section 109 of the Housing and Urban Development Act of 1974, as amended	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: 1. Race 2. Color 3. National origin 4. Sex 5. Age 6. Religion 7. Disability

Statute/Executive Order	Description
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 1103, Equal Opportunity in Housing	Prohibits discrimination in the sale, leasing, rental, or disposition of properties owned or operated with federal funds.
Executive Order 11246, as amended, Equal Employment Opportunity	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 excess of \$10,000.
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency	Requires HUD to take action to provide access to services for eligible persons with limited English proficiency.
Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation	Requires HUD to develop a plan to prohibit sexual discrimination, including that based on gender identity or sexual orientation.
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) of 1990	Prohibits discrimination based on disability in programs, services, and activities by public and private entities that operate public accommodations.
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

The purpose of a Citizen Participation Plan is to provide information about disaster recovery efforts to impacted citizens, particularly those with low and moderate income within the community where the activities funded by CDBG-DR will take place. Encouraging participation allows for greater transparency and can result in better serving community needs in long-term recovery.

8.1.1 Local Government Subrecipients

Local government subrecipients must prepare and adopt a Citizen Participation Plan.¹

The plan must include:

1. Methods for encouraging citizen participation, particularly low- to moderate-income persons in the impacted areas.
2. Methods for ensuring that citizens, including persons with disabilities and individuals with limited English proficiency (LEP), are provided reasonable and timely access to information about the program or activity being implemented. At a minimum, this must include:
 - a. Conducting all aspects of their programs or activities in an open manner with reasonable access to records on the proposed and actual use of funds for interested persons.
 - b. Keeping all records of applications and grants at the subrecipient's offices and making them available during normal business hours.
 - i. Any CDBG-DR project, except for confidential matters relating to housing and economic development programs, shall be open to examination by all citizens.
3. Provision of technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals at the level of expertise available at governing offices. All application materials and instructions shall be provided at no cost to any such group requesting them. Citizens shall be provided adequate and timely information to enable them to be meaningfully involved in important decisions at the various stages of the program, including at least the determination of needs, the review of the proposed activities, and the review of past program performance.

¹ Citizen Participation Plan requirements must meet Section 104(a) (2) of the Housing Community Development Act and 24 CFR 570.486 except where waivers or alternative requirements are provided in the applicable Federal Register Notices.

4. A written citizen complaint procedure that provides citizens the email, address, phone number, and times for submitting complaints. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days where practicable. Concerned citizens can file a complaint or dispute a decision to OHCS by emailing housingsupport@reoregon.org or by calling 877-510-6800.
 - a. The subrecipient will provide a timely written response to every formal or written 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.
 - b. Informal complaints are verbal complaints, and subrecipients should attempt to resolve those items; however, these comments are not subject to a written response by OHCS or the subrecipient.
 - c. OHCS will track complaints that may include:
 - i. Date complaint received
 - ii. Name of complainant and contact information
 - iii. Date subrecipient responded to the complaint
 - iv. The outcome of the complaint and final resolution
 - v. Date complaint closed
 - d. Subrecipients may want to track their own complaints similarly to support any documentation retained to show evidence of meeting the 15-working-day response requirement.
5. Public hearing and notification requirements. Unless otherwise clarified in a Program Manual (e.g., for the Planning, Infrastructure, and Economic Revitalization program), the public hearing requirements for local government subrecipients are as follows and should be described in the Plan:
 - a. At least one public hearing shall be held prior to the submission of an application for housing and/or non-housing needs being submitted to OHCS for funding through the CDBG-DR program. 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. The development of needs and the review of the proposed activities and their possible environmental impact must be addressed at this hearing as reflected by minutes of the hearing. The hearing cannot be more than six months prior to application submittal.

- b. The second required hearing is held to address the performance on the funded grant at a minimum of 80% completion. The review of performance (during the grant) must be addressed in a public hearing prior to grant closeout. Proof of said hearing will be part of closeout documentation.
- c. Description of how notification of all hearings shall be given a reasonable amount of days' notice in advance to allow citizens the opportunity to schedule their attendance. Reasonable amount of notice should be, at minimum, 14 days. Notification can include displaying advertisements in the local newspaper with the greatest distribution and posting letters, flyers, and any other forms that are clearly documented with wide circulation.
- d. Description of how subrecipients will ensure all hearings are accessible to persons with disabilities. Provisions for interpretation shall be made at all public hearings for non-English-speaking residents if such residents are expected to be in attendance. The chief elected official's office shall receive and relate to appropriate persons or groups any views or proposals submitted to aforesaid office within the decision-making time. Any criticism submitted in writing at any time should be answered in writing within 15 working days by the chief elected official's office. If the complaint is not resolved, it shall be referred to the governing body for final disposition.
- e. Description of maintenance of records regarding public notices and public hearings. Some examples of acceptable records include:
 - Posting to the local government subrecipient's website and keeping a screenshot of posting in program files
 - Advertising in the newspaper, documented with tear sheet/full-page advertisement/photocopy with publisher's identification and date/publisher's affidavit
 - Posting publicly 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
 - Posting publicly 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 screenshots of the posting

8.1.2 Nonprofit Subrecipients

Nonprofit subrecipients are required to document participation and engagement efforts undertaken that are applicable to the audience impacted by the program they are administering or supporting (e.g., small business, micro-enterprise, or impacted resident).

Depending on the program, OHCS may also require nonprofit subrecipients to maintain an engagement plan.

Nonprofit subrecipients engaged in housing intake, outreach, and other related activities are required to resolve complaints in coordination with OHCS and must log the receipt and resolution of complaints through an OHCS-provided tracker and/or OHCS' system of record. Additional details on managing complaints for these subrecipients will be provided through the applicable Program Standard Operating Procedures or other job aids.

8.2 Excessive Force Policy

Local government 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 local government 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

8.3 Fair Housing

The Fair Housing Act requires all subrecipients, public housing authorities, 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 Act.

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

OHCS will provide subrecipients with a form to capture information for contractually required Monthly Status Reports that include data on the racial, ethnic, and gender characteristics ([87 FR 31636](#)) for all beneficiaries residing in units fully or partially funded by CDBG-DR. This form should be submitted as part of the subrecipient's reporting requirements.

8.3.1 Affirmatively Furthering Fair Housing (AFFH)

All subrecipients must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5) and 24 CFR 570.601).

Please note: HUD has published a Notice of Proposed Rulemaking for a new AFFH rule intended "to remedy the effects of the long history of discrimination in housing" and "fully enforce the Fair Housing Act." Updates to this manual and subrecipient process and documentation requirements may be required if there are any amendments to affirmatively further fair housing resulting from this process.

8.3.2 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 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 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.

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: Subrecipients must meet the minimum requirements below:

1. All subrecipients must adopt a fair housing resolution that certifies it will affirmatively further fair housing and submit the resolution to OHCS within a period of six months before the first draw for non-construction activities/funds.
2. All local government subrecipients must distribute and post the fair housing posters and brochures at City Hall and/or the county courthouse and other locations within the community and submit documentation that this was completed within a period

of six months before the first draw for non-construction activities/funds.² Brochures and posters can be found at fhco.org or hud.gov/program_offices/fair_housing_equal_opp/marketing

3. All 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 planned and clearly document within the project file the completed action. 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. If subrecipients have an alternative activity, they may present to OHCS for pre-approval to meet this additional requirement (e.g., providing fair housing training to staff). If a subrecipient has received more than one grant per program year, subrecipient need only conduct one additional fair housing activity for both grants.

8.3.3 Fair Housing Organizations and Resources

Information about fair housing can be obtained by contacting the Fair Housing Council of Oregon (FHCO) at 800-424-3247 (hotline) or at fhco.org.³ FHCO can also be contacted by mail at:

Fair Housing Council of Oregon
1221 SW Yamhill St., #305
Portland, OR 97205

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 Oregon fair housing laws.

² If the jurisdiction that the subrecipient is serving or where the activity is located comprises 5% or more non-English-speaking persons, the fair housing resolution, brochures, and posters must be disseminated in the applicable non-English language. Subrecipients can reference OHCS' Language Access Plan to understand the percentage of non-English or LEP people in their county: oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-Public-Involvement.aspx

³ The FHCO is a statewide nonprofit 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.

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

- Community development corporations and other nonprofits
- Boards of realtors
- Lender associations and financial institutions
- Legal aid programs
- Public housing authorities
- Community action agencies

Oregon has developed a 2021–2025 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: [Attachment B - 2022 Proposed FHAP Report.pdf](#).⁴ Subrecipients can obtain copies of fair housing posters, brochures, and videos for use from FHCO and OHCS.

8.3.4 Housing and Infrastructure in Support of Housing Additional Requirements

To ensure compliance with 24 CFR 5.151, subrecipients, including local governments, public housing authorities, and developers, will ensure or will work with landlords in order to take meaningful and specific actions to affirmatively further fair housing. 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 to conduct targeted outreach to minority groups in the community who are least likely to apply for housing. The AFHMP is required for projects that contain five or more units.

HUD's Implementing Affirmative Fair Housing Marketing Requirements Handbook 8025.1 provides extensive guidance on AFHMPs and can be found at [hud.gov/program_offices/administration/hudclips/handbooks/fheo/80251](https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80251)

8.3.4.1 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.

⁴ The full web address for this document is [oregon.gov/ohcs/development/Documents/Attachment%20B%20-%202022%20Proposed%20FHAP%20Report.pdf](https://www.oregon.gov/ohcs/development/Documents/Attachment%20B%20-%202022%20Proposed%20FHAP%20Report.pdf)

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 that 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.

8.3.4.2 Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs

On Sept. 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 Oct. 21, 2016, ensures that all individuals have equal access to many of HUD's core shelter programs in accordance with their gender identity.

HUD's new rule requires grantees, subrecipients, or providers to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures so that

equal access is provided to individuals based on their gender identity. HUD has provided a document (included here in Appendix C) that subrecipients can post publicly 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.⁵

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 nonconformity 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 or expression housing discrimination. If a person has experienced, or is about to experience, housing discrimination, they should contact the Oregon Bureau of Labor & Industries (BOLI).

To file a complaint with BOLI, the individual may submit a complaint for free online at the following link: complaints.boli.oregon.gov/home/file-complain

If a person is unsure about whether to file a complaint or needs assistance filing a complaint, they can contact BOLI by phone at 971-245-3844 or email at boli_help@boli.oregon.gov.

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 (FHEO) for help at 800-877-0246.

To file a complaint with FHEO, the individual may submit a complaint for free online at the following link: hud.gov/fairhousing/fileacomplaint

⁵ The Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs is one of three regulations that are the Equal Access Rule (EAR). HUD has created a toolkit to provide training on the EAR and how to follow it successfully through HUD's programs. This information is available through the HUD Exchange located here: hudexchange.info/programs/fair-housing/lgbtqia-fair-housing-toolkit/lgbtqia-protections/huds-equal-access-rule/

8.4 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 disabilities.

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 and housing programs.

8.4.1 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.
2. **Self-Evaluation** — Each subrecipient shall complete 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 must be completed within six months of the execution date of the Subrecipient Agreement.

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.

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 disabilities, 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 disabilities. 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 recorded 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.

8.4.2 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 organizations representing persons with disabilities. (24 CFR 8.21 (c) (4)).

The construction activities identified in the transition plan must be completed within three years of completion of the transition plan. 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 a schedule for completion of the modifications. If the schedule exceeds one 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 transition 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 three-year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

Any 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 disabilities (24 CFR 8.32).

8.4.2.1 Subrecipients That Employ 15 or More Persons

In addition to the above requirements, subrecipients that employ 15 or more persons (not full-time equivalents) are required to comply with the following requirements.

1. **Designated 504 Coordinator** — A responsible employee must be designated to coordinate the community's efforts to comply with Section 504.
2. **Grievance Procedures and Complaints** — 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. The subrecipient must publicize how and to whom a complaint can be submitted.

8.4.3 Communicating With Persons With Hearing, Visual, and Manual Impairments

Section 504 regulations also require that the subrecipient provide appropriate auxiliary aids where necessary to afford an individual with disabilities 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)).

The subrecipient 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 online at the following link: oregon.gov/odhs/aging-disability-services/pages/deaf-hard-of-hearing-services.aspx

In every public meeting notice, the subrecipient 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 further arrangements. During monitoring of the grant, the subrecipient must be able to provide documented evidence that the required notice was made and, if a request was made for assistance, how the subrecipient responded.

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

"The [meeting facility] is accessible for persons with disabilities. Please let us know if you will need any specific accommodations to attend the meeting."

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 State 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 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 Equal Employment Opportunities (EEO)

8.5.1 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.

8.5.2 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 statements of non-discrimination in any CDBG-DR program communications or 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 EEO posters prominently at all job sites.
 - a. Posters are available at [dol.gov/sites/dolgov/files/OFCPP/regs/compliance/posters/pdf/22-088_EEOC_KnowYourRights.pdf](https://www.dol.gov/sites/dolgov/files/OFCPP/regs/compliance/posters/pdf/22-088_EEOC_KnowYourRights.pdf)
8. Take affirmative action to overcome the effect of past discrimination.

8.5.3 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 OHCS 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 five years.

8.5.4 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 contracting opportunities.⁶ Contractors may not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

1. Place the qualified applicable businesses on solicitation lists to receive notice of contracting opportunities.
2. If the applicable businesses are a potential respondent, directly request a response to the solicitation.
3. When feasible, divide the total requirements into smaller tasks or quantities to allow for participation by the applicable businesses.
4. When feasible, establish delivery schedules that can encourage participation by the applicable businesses.
5. When appropriate, use services and assistance from the Small Business Administration and Minority Business Development Agency of the Department of Commerce.
6. Require contractors to take the affirmative steps for any subcontracts.

⁶ The exact wording of the affirmative steps is available at 2 CFR 200.321 located here: [ecfr.gov/current/title-2/section-200.321](https://www.ecfr.gov/current/title-2/section-200.321)

8.6 Language Access Plan (LAP)/Limited English Proficiency (LEP)

8.6.1 Language Access Plan Requirements

OHCS and subrecipients are required to ensure meaningful access to agency services, programs, and activities for persons who have LEP. 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.

Subrecipients may either create their own LAP or adopt OHCS' LAP, which can be found in English and Spanish at: oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-Public-Involvement.aspx

Subrecipients must notify OHCS whether they will adopt OHCS' LAP or will develop their own. The development or adoption of an LAP must be done before the first draw.

8.6.1.1 LAP Requirements

If a subrecipient decides to develop or provide their own LAP, it must comply with 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 and adopted, and will be implemented for all projects funded by CDBG-DR. The subrecipient's LAP will include an identification of all LEP populations exceeding 1,000 persons 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 subrecipients receiving federal funds through OHCS will report annually on services provided to LEP persons. Subrecipients 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 or concerns.
2. Analysis of language assistance usage, including the number of language service requests, the languages most frequently encountered, the primary modes of communication, and the costs associated with services rendered.
3. Assessment of response to requests by LEP individuals and subrecipients regarding the delivery of language assistance services.

8.6.1.2 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 United States Census Bureau Data at the following link: data.census.gov

Appendix B contains specific instructions for how to find LEP persons through the Census Bureau Data website.

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 fewer in number	Translated written notice of right to receive free oral interpretation of documents
5% or less of the eligible population or beneficiaries and fewer 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

8.7 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.

8.7.1 Documentation Required at Project Start-Up

Prior to releasing any funds, OHCS must receive the following documentation at project start-up from all subrecipients:

1. Appointment of civil rights officer
2. Non-discrimination/EEO policy
3. Policy and notice of non-discrimination on basis of disability. Subrecipient may combine this policy with their non-discrimination/EEO policy
4. Section 3 Policy for subrecipients carrying out construction and construction-related activities only
5. Appointment of a Section 504 Coordinator for subrecipients with 15 or more employees
6. Section 504 Grievance Procedures for subrecipients with 15 or more employees
7. Adopted resolution of OHCS' LAP or completion of subrecipient LAP

Local government subrecipients only:

8. Citizen Participation Plan, including complaint and grievance procedures
9. Excessive Force Policy
10. Adopted resolution(s) regarding applicable Citizen Participation Plan, Section 3 Policy, Excessive Force Policy, Section 504 Policy and Grievance Procedures, and Fair Housing Policy

8.7.2 Ongoing Compliance Documentation

During the grant period, subrecipients must ensure that all activities funded by CDBG-DR 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. Section 504 Self-Evaluation Review: Complete within six months of Subrecipient Agreement execution.
2. Fair housing: Document efforts to affirmatively further fair housing.
3. Section 3 Business Participation: Document efforts to solicit Section 3 businesses and maintain data concerning the number and dollar amount of contracts awarded to locally owned businesses.
4. 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.

5. Maintain records of any monitoring actions and any findings as well as copies of contractors' certifications and monthly utilization reports documenting contractor compliance.
6. Maintain records of program applicants as well as direct and indirect beneficiaries, including race, color, sex, national origin, age, and disability status.
7. Record race, head of household, age, and income data of persons affected by displacement and/or relocation, if applicable.
8. Maintain human resources documents regarding employment, including training handbooks, policy and procedure manuals, resolutions, and ordinances regarding civil rights requirements.
9. Maintain documentation related to any complaints received and action taken to notify OHCS or HUD, if applicable.
10. Conduct annual report on LAP and LEP services and evaluate effectiveness.

8.8 Appendix A: Applicable Requirements by Entity

Requirement	Citation	Local Government	Nonprofit
Citizen Participation Plan	24 CFR 570.486 and 24 CFR 91.115(e)	Regulations requiring Citizen Participation and comments apply to state and local units of government.	Nonprofit subrecipients under agreement with the state to implement some or all of a state's CDBG-DR program will not be required to have a separate plan but must comply with the provisions of the state Citizen Participation Plan.
Excessive Force Policy	24 CFR 91.325(b)(6)	A state must certify that it will require its units of general local government receiving CDBG-DR funds to certify that they are adopting policy prohibiting excessive force by law enforcement agencies and that state and local laws regarding excessive force will be followed.	Nonprofit subrecipients must certify they will follow and enforce any applicable state or local laws regarding prohibition of excessive force for non-violent civil rights demonstrations.
Section 504 Designation of Responsible Employee and Adoption of Grievance Procedures	24 CFR 8.53	Designation of responsible employee. A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part. Adoption of grievance procedures. A recipient that employs 15 or more persons shall 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.	
Section 504 Notice	24 CFR 8.54	A recipient that employs 15 or more persons shall take appropriate initial and continuing steps 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 recipient that it does not discriminate on the basis of handicap in violation of this part.	

Requirement	Citation	Local Government	Nonprofit
		The notification shall also include an identification of the responsible employee designated pursuant to § 8.53.	
Section 504 Complaints	24 CFR 8.56	Investigations. The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. Who may file. Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. When to file. Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. Notification. The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within 10 calendar days. Within 20 calendar days of acknowledgment of the complaint, the responsible civil rights official will review.	
Section 504 Self-Evaluation	24 CFR 8.51	Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps: (1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part; (2) Modify any policies and practices that do not meet the requirements of this part; and (3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.	
Section 3	2 CFR Part 75	Section 3 requirements apply to housing rehabilitation, housing construction, or other public construction projects.	
Affirmatively Further Fair Housing	24 CFR 151	Each subrecipient must complete at least one additional fair housing activity for each grant prior to the final draw of grant funds. Options are listed in section 8.3.2 of subrecipient manual.	

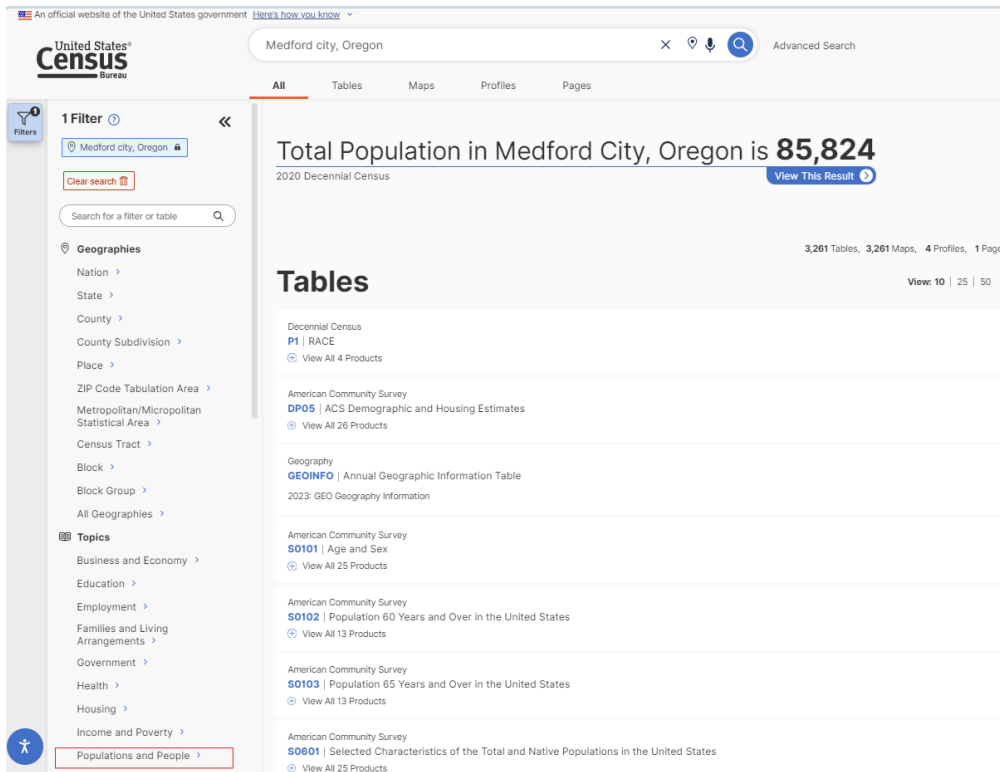
8.9 Appendix B: Using the Census Bureau Data Website

Step 1: Go to data.census.gov.

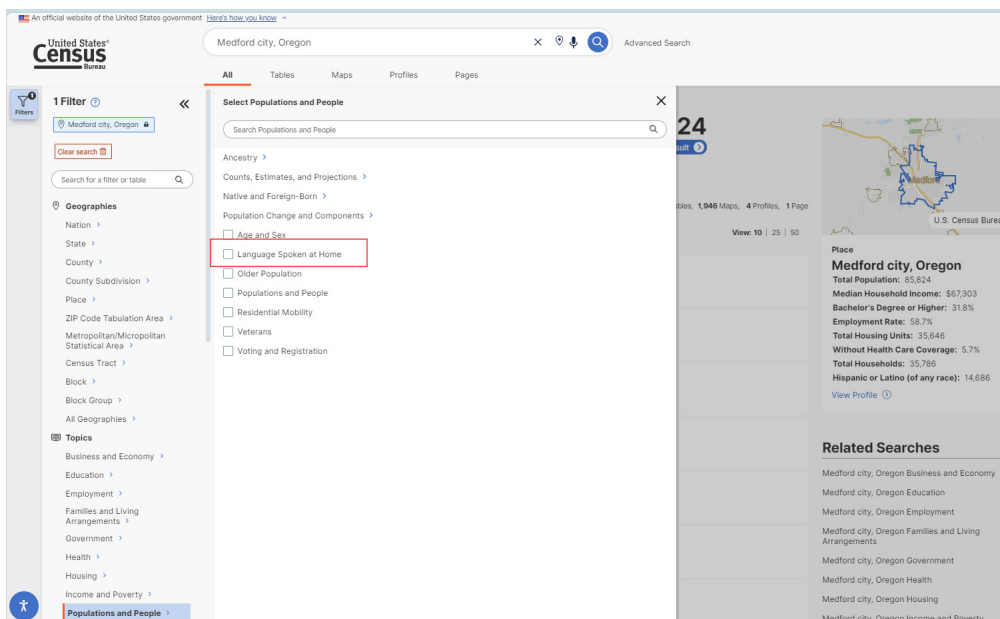
Step 2: Type in the geographic location for the area covered by the LAP in the search bar, and click the blue magnifying glass button to search, as shown below:



Step 3: On the left side of the webpage, there are different filters for the census data. Under “Topics,” select “Populations and People,” shown below with a red box around the button:



Step 4: A window will appear in the center of the page with the option to further filter the data. Select “Language Spoken at Home,” as shown below with a red box around the button:



Step 5: To see the table, once you have selected “Language Spoken at Home,” close the filter by clicking the “X” in the upper right corner. This is shown with a red box around the button:

The screenshot shows the United States Census Bureau website interface. The search bar at the top contains "Medford city, Oregon". The left sidebar shows the "2 Filters" section with "Medford city, Oregon" and "Language Spoken at Home" selected. A red box highlights the "X" button in the upper right corner of the filter panel. The main content area displays the "Select Populations and People" section with a search bar and a list of categories including "Ancestry", "Counts, Estimates, and Projections", "Native and Foreign-Born", "Age and Sex", "Language Spoken at Home" (checked), "Populations and People", "Residential Mobility", and "Veterans". The right sidebar shows the "Medford" results page with a map and a table of statistics.

Place	Total Population	Median Household Income	Bachelor's Degree or Higher	Employment Rate	Total Housing Units	Without Health Care Coverage	Total Households	Hispanic or Latino (of any race)
Medford city, Oregon	65,824	\$56,100	26.1%	54.3%	35,648	6	34,867	1

Step 6: The selected tables should now be visible. Ensure that “All” is selected, and then click “View All Tables” at the bottom of the page. Both items are shown below with red boxes identifying the selections:

The screenshot displays the United States Census Bureau website for the topic "Language Other Than English Spoken At Home in Medford City, Oregon is N ± N". The page shows a list of tables under the "Tables" section, with a "View All Tables (72)" button at the bottom. The "All" filter is selected in the top navigation bar. The "View All Tables (72)" button is highlighted with a red box.

United States Census Bureau

Medford city, Oregon

All Tables Maps Charts Profiles Pages

2 Filters

- Medford city, Oregon
- Language Spoken at Home

Clear search & filters

Search for a filter or table

Geographies

- Nation
- State
- County
- County Subdivision
- Place
- ZIP Code Tabulation Area
- Metropolitan/Micropolitan Statistical Area
- Census Tract
- Block
- Block Group
- All Geographies

Topics

- Education
- Employment
- Families and Living Arrangements
- Health
- Housing
- Income and Poverty
- Populations and People
- Race and Ethnicity

Surveys

- American Community Survey
- Decennial Census

Years

- ☐ 2023
- ☐ 2022
- ☐ 2021
- ☐ 2020
- ☐ 2019
- ☐ 2018
- ☐ 2017
- ☐ 2016
- ☐ 2015
- ☐ 2014
- ☐ 2013

Language Other Than English Spoken At Home in Medford City, Oregon is N ± N

2023 American Community Survey 1-Year Estimates

Tables

American Community Survey
S1001 | Language Spoken at Home
View All 27 Products

American Community Survey
S1003 | Characteristics of People by Language Spoken at Home
View All 27 Products

American Community Survey
S1002 | Limited English Speaking Households
View All 27 Products

American Community Survey
B06007 | Place of Birth by Language Spoken at Home and Ability to Speak English in the United States
View All 29 Products

American Community Survey
B08113 | Means of Transportation to Work by Language Spoken at Home and Ability to Speak English
View All 14 Products

American Community Survey
B08513 | Means of Transportation to Work by Language Spoken at Home and Ability to Speak English for Workplace Geography
View All 14 Products

American Community Survey
B10054 | Language and Ability to Speak English of Grandparents Living With Own Grandchildren Under 18 Years by Responsibility for Own Grandchildren and Age of Grandparent
View All 14 Products

American Community Survey
B16002 | Detailed Household Language by Household Limited English Speaking Status
View All 15 Products

American Community Survey
B16003 | Age by Language Spoken at Home for the Population 5 Years and Over in Limited English Speaking Households
View All 15 Products

American Community Survey
B16004 | Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over
View All 17 Products

VIEW ALL TABLES (72)

Place
Medford city, Oregon
Total Population: 85,824
Median Household Income: \$66,186
Bachelor's Degree or Higher: 26.1%
Employment Rate: 54.3%
Total Housing Units: 35,646
Without Health Care Coverage: 6.0%
Total Households: 34,867
Hispanic or Latino (of any race): 14,686
View Profile

Related Searches

- Medford city, Oregon Business and Economy
- Medford city, Oregon Education
- Medford city, Oregon Employment
- Medford city, Oregon Families and Living Arrangements
- Medford city, Oregon Government
- Medford city, Oregon Health
- Medford city, Oregon Housing
- Medford city, Oregon Income and Poverty
- Medford city, Oregon Populations and People
- Medford city, Oregon Race and Ethnicity

Step 7: Select “Table DP02 | Selected Social Characteristics in the United States,” as shown below with a red box around the link:

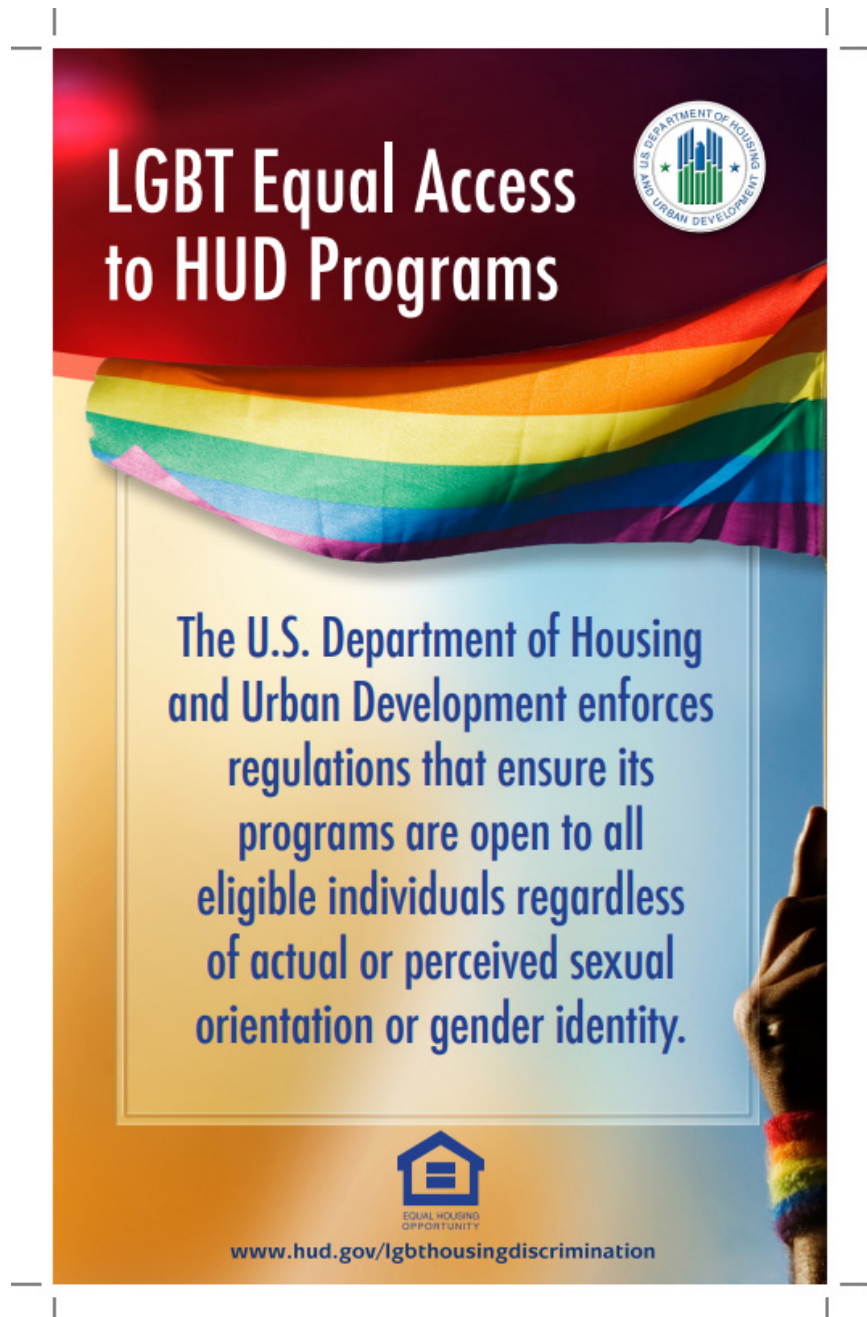
The screenshot shows the United States Census Bureau website. At the top, there is a search bar with "Medford city, Oregon" entered. Below the search bar, there are tabs for "All", "Tables", "Maps", "Profiles", and "Pages". The "Tables" tab is selected. On the left side, there is a sidebar with "Geographies" and "Topics" sections. The "Topics" section is expanded, showing various categories like Education, Employment, Families and Living Arrangements, Health, Housing, Income and Poverty, and "Populations and People", which is highlighted. Below "Populations and People" is the "Surveys" section, which includes "American Community Survey" and "Decennial Census". The "Years" section is also visible, with checkboxes for years from 2022 down to 2013. The main content area displays a list of tables. The table "DP02 | Selected Social Characteristics in the United States" is highlighted with a red box. The table is part of the "American Community Survey" and is labeled "DP02". It has a link to "View All 27 Products".

This link will provide a table with many data elements that can be used and that include data on Language Spoken at Home.

8.10 Appendix C: HUD Equal Access Poster

The most current version of the HUD Equal Access Poster can be found here:

[hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq)



HUD's regulations requiring equal access to LGBT persons include the following:

- A general equal access provision which requires housing that is funded by HUD or subject to a mortgage insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status;
- Clarification that the terms "family" and "household," as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status;
- Prohibition on owners and operators of HUD-funded housing or housing insured by FHA from asking about an applicant's or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available; and
- Prohibition on FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

If you believe a housing provider or FHA-insured lender violated this rule or otherwise denied housing to someone because of actual or perceived sexual orientation, gender identity, or marital status, contact your local HUD office or HUD's Office of Fair Housing and Equal Opportunity for help at (800) 669-9777 or (800) 927-9275 (TTY).



www.hud.gov/lgbthousingdiscrimination



Acquisition and Relocation

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9 Acquisition and Relocation

9.1 Overview

This policy for acquisition and relocation will apply to housing and infrastructure programs that involve the participation of property owners who apply for assistance or acquisition of real property using federal funds. If a property owner who applies to the program has tenants that must move due to Community Development Block Grant Disaster Recovery (CDBG-DR) program activity, the tenants are considered displaced. The displacement may be temporary or permanent depending on the type of recovery activity.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, both displaced residential and nonresidential tenants are afforded rights and protections to minimize permanent and involuntary displacement as the direct result of a federally assisted activity.

To help affected households and businesses and comply with the URA, 49 CFR Part 24, as amended, and the U.S. Department of Housing and Urban Development's (HUD) Handbook 1378, "Tenant Assistance, Relocation and Real Property Acquisition,"¹ (HUD Handbook 1378), Oregon Housing and Community Services (OHCS) has adopted a Residential Anti-Displacement and Relocation Assistance Plan (RARAP) that aligns with the URA.

This chapter includes the policies on relocation assistance required by federal regulations and HUD policies.

This policy will ensure, at a minimum, the following:

- The uniform, fair, and equitable treatment of persons whose real property is involuntarily acquired or who are involuntarily displaced in connection with federally funded projects
- The provision of relocation assistance to displaced persons to lessen the emotional and financial burden of displacement
- The availability of decent, safe, and sanitary (DSS) housing within the displaced person's financial means

¹ A direct link to this resource is available in the Useful Resources section within this chapter: [CPD Handbook 1378.0 | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#).

- The improvement of housing conditions of displaced persons living in substandard housing
- Expedited acquisition by agreement and without pressure

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, farms, nonprofit organizations, and persons living in the project area
- Qualification of personal property owned by someone other than the homeowner as displaced (even if no person is living on the site)
- Demolition or conversion of occupied and/or vacant livable 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 in-depth information on these subjects. For more information, reach out to your contract administrator.

9.2 Definitions

The terms used in this section have the following meanings, unless indicated otherwise. Other applicable definitions may be found in 49 CFR Part 24 and HUD Handbook 1378 Chapter 5. Effective June 3, 2024, all definitions related to the URA can be found at 49 CFR Part 24.2(a). The terms listed here shall be considered consistent with and applicable when used by subrecipients:

30-Day Notice To Vacate: A letter issued to a tenant with a specific date of at least 30 days in advance to vacate the property. The urgent need provisions described in 49 CFR Part 24.203(c)(4) allows an agency or subrecipient to require an occupant to vacate with less than 90 days' notice. However, an agency may not make up an urgent need. It cannot issue a notice to proceed to a demolition contractor, then use the imminent demolition to substantiate a danger to the tenant's health and safety to reduce the required notice period.

90-Day Notice To Vacate: A letter issued to a tenant with a specific date of at least 90 days in advance to relocate from the property. This letter is required by 49 CFR Part 24.203(c).

Alien Not Lawfully Present in the United States: A foreign national who is not lawfully present in the United States as defined in 8 CFR Part 103.12:

- An alien present in the United States who has not been admitted or paroled into the United States per 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 period of stay authorized by the U.S. Attorney General ends 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, to review and revise a determination made by any OHCS program.

Applicant: Any individual who submits an application for assistance to CDBG-DR programs.

Appraisal: An independent and impartial written statement by a qualified appraiser. It states a defined value for a well-described property as of a specific date. It is supported by the relevant market data and analysis.

Base Monthly Rent: Average monthly cost for rent and utilities at the displacement dwelling before displacement, as determined by the agency. If a tenant pays little or no rent, the fair market rent becomes the base, unless this causes a hardship.

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 must be moved
- By a nonprofit organization that has proven its nonprofit status under applicable state law

Citizen: 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. This may include homeowner and rental repairs and elevations, acquisition or buyout of damaged or at-risk properties, and infrastructure repairs.

Comparable Replacement Dwelling: 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 that meets the strictest local housing and occupancy code, federal agency regulations, or the agency's regulations or written policy. The dwelling shall:

- Be structurally sound, weather tight, and in good repair.
- Have a safe electrical wiring system adequate for lighting and other divides.
- Have a heating system capable of sustaining a healthful temperature of approximately 70 degrees for a displaced person.
- Have adequate living space for the displaced person and their needs. Occupancy of sleeping rooms must not exceed local, state, or federal housing code regulations.
- Have a separate, well-lit, and ventilated bathroom that provides privacy to the user. It must include a sink, bathtub, or shower stall and a toilet in good working order and properly connected to the suitable water sources and a sewage drainage system.
- Have safe, clear open space exits at ground level.
- Be free of any barriers that would prevent reasonable entrance or exit or use of the dwelling by displaced person with a disability.

Displaced Person: Any person, family, individual, business, or nonprofit organization who moves from real property or moves personal property from real property. This action is a direct result of an acquisition, rehabilitation, or demolition by a federally assisted program.

- As a direct result of a written notice of intent to acquire the initiation of negotiations for, or the acquisition of such real property in whole or in part for a project.
- As a direct result of rehabilitation or demolition for a project.
- 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 49 CFR Part 24.205(c) and moving expenses under 49 CFR Parts 24.301–303.

This includes a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements of the URA as described at [49 CFR Parts 24.401\(a\)](#) and [24.402\(a\)](#):

Persons Required To Move Temporarily: A person, or their property, must move from the real property due to the project but is not required to relocate permanently. Such determination will be made by the agency in accordance with any requirement, policy, or guidance established by the federal agency funding the project (see Appendix A to [49 CFR Part 24.2\(a\)](#)). All the benefits for persons who must move on a temporary basis are described in [49 CFR Part 24.202\(a\)](#).

Voluntary acquisitions. A tenant who moves as a direct result of a voluntary acquisition as described in [49 CFR Parts 24.101\(b\)\(1\)–\(3\)](#) is eligible for relocation assistance. This applies when there is a binding written agreement between the agency and the owner that obligates the agency, without further election. Federal funding agencies should develop binding policies for agreements used in their programs or projects. They should trigger eligibility for tenants as displaced persons.

This does not include options to purchase and conditional purchase and sale agreements within [paragraph \(iii\)](#) until all conditions to the agency's obligation to purchase the real property have been satisfied.

The agency may find that a tenant who moves before a binding agreement is eligible for relocation assistance once a binding agreement exists. This allows for the establishment of eligibility (see Appendix A to [49 CFR Part 24.2\(a\)](#)).

Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

- A person who moves before the start of negotiations (see [49 CFR Part 24.403\(d\)](#)), unless the agency decides that the person was displaced as a direct result of the program or project.
- A person who initially occupies the property after the date of its acquisition for the project.
- A person who has occupied the property to obtain assistance under the URA.
- An owner-occupant who moves because of an acquisition of real property as described in [49 CFR Part 24.101\(a\)\(2\)](#) or [\(b\)\(1\)](#) or [\(2\)](#), or because of the rehabilitation or demolition of the real property. However, the tenant displacement due to any acquisition, rehabilitation, or demolition for a federal or federally assisted project is subject to this part.
- A person whom the agency determines is not displaced because of a partial acquisition.

- A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. This notification is only issued if the person has not moved. Otherwise, the agency must reimburse the person for expenses incurred while under a binding relocation contract entered into after the effective date of the notice of relocation eligibility.
- An owner-occupant who conveys their property, as described in [49 CFR Part 24.101\(a\)\(2\), \(b\)\(1\), or \(2\)](#), after receiving written notice that an agreement cannot be reached on the property's sale, the agency will not acquire the property. However, any tenant displacement is subject to the regulations in this part.
- A person who has the right to use and occupy real property for life following its acquisition by the agency.
- An owner who has the right to use and occupy real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93-477, Appropriations for National Park System, or Public Law 93-303, Land and Water Conservation Fund. The exception is if the owner is still a displaced person for purposes of 49 CFR Part 24 Subpart D.
- A person who is determined to be in unlawful occupancy prior to or after the start of negotiations, or a person who has been evicted for cause, as provided for in [49 CFR Part 24.206](#). However, they may receive advisory assistance to help the project.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with [49 CFR Part 24.208](#).
- Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. Agencies can name a shelter occupant as displaced based on a long stay or other special conditions. Agencies should provide advisory assistance to all occupants at the start of negotiations.

Disability: A physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. For the CDBG-DR program, "disability" has the same meaning as 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 Parts 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 house, multifamily 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 of one property owner to use of the land of another owner 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 (FMR): Determines standard payment amounts for HUD rental assistance programs. They include the shelter rent plus all utilities and are used to determine similar units for replacement housing payments in the URA.

General Information Notice (GIN): This required notice, under 49 CFR Part 24.203(a), informs potentially displaced individuals that they may be displaced and that they should not move. It covers general URA requirements and rights.

Head of Household: The adult head of the household whose income determines eligibility, rent, or participation in CDBG-DR programs as outlined in 24 CFR Part 5.504.

Household: All persons occupying the same housing unit, regardless of their age or relationship to each other. Once a tenant is eligible for temporary or permanent relocation assistance, all persons who live in the household must be identified so that proper relocation resources and assistance can be provided.

HUD Housing Quality Standards (HQS): HUD's housing quality standard as defined by 24 CFR Part 982.401.

Initiation of Negotiations (ION) Date: The trigger to issue 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): Persons who do not speak English as their primary language or 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 composed of one or more components substantially assembled in a manufacturing plant and transported to a building site on its own chassis for placement on a supporting structure. An MHU is built

in accordance with the standards established in HUD's building code for manufactured housing. An MHU is not built 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 built 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.

Notice of Intent To Acquire, Rehabilitate, and/or Demolish (NOI): An agency's written communication to a person to be displaced, either permanently or temporarily, which clearly states the agency's intent to acquire, rehabilitate, and/or demolish the property. The notice establishes eligibility for relocation assistance prior to the invitation of negotiations and/or prior to the commitment of federal financial assistance to the activity.

Notice of Relocation Eligibility (NORE): A notice that must be issued promptly after a written notice of intent. It must describe the available relocation assistance, the estimated amount of assistance based on the displaced person's circumstances and needs, and how to get assistance. This notice must be specific to the person and their situation so that they will have a clear understanding of the type, amount, and number of payments and/or any other assistance they may claim.

Notice of Non-Displacement (NND): A notice provided to persons who will not be permanently displaced for a HUD-assisted project. Such persons may have to move to another unit within the project or move temporarily while the property is rehabilitated. The terms of the move must be reasonable, and costs for the move must be covered by the project. This notice is not required by the URA. HUD policy requires that this notice is used to inform persons within the project who will not be permanently displaced but who may be impacted because of the project. A person who will not be displaced by the project may choose to leave the project site. However, if an accurate and timely Notice of Non-Displacement was provided before they moved, they are presumed ineligible for relocation payments.

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 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: The term "project" means any activity or series of activities undertaken with federal financial assistance received or expected 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 one activity would be done 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 rebuilding 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 need reasonable accommodation to benefit from temporary or permanent relocation activities in conjunction with housing assistance programs. Displaced households who need 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 unit the person moves into and may or may not be one of the units provided as comparable to a permanent unit.

Review Appraisal: A qualified professional meets the requirements of a review appraiser as determined by OHCS and required in 49 CFR Part 24.103(d)(1). They review and ensure that all appraisals of property for the buyout programs meet professional standards.

Section 104(d): A section 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, that requires a residential anti-displacement and relocation assistance plan. It must provide:

- One-for-one replacement of occupied and vacant livable LMI income dwelling units demolished or converted to another use in connection with a development project. The project must be assisted under 24 CFR Parts 570 and 92.
- 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 section 104(d) section of this document.

Tenant: A person who has the temporary use and occupancy of property owned by another (24 CFR Part 24.2(a)).

Tenancy: A situation where one individual leases real property to another.

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.

U.S. Department of Housing and Urban Development (HUD): The federal department for fair housing and housing assistance programs such as CDBG-DR program funds. HUD administers, monitors, and distributes funds to grantees.

9.3 Applicable Regulations

There are three major types of requirements that cover acquisition and relocation activities in CDBG-DR programs:

1. The URA regulations, effective June 03, 2024, implementing the URA, as amended at 49 CFR Part 24: [ecfr.gov/current/title-49/subtitle-A/part-24](https://www.ecfr.gov/current/title-49/subtitle-A/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): [ecfr.gov/current/title-24/section-570.496](https://www.ecfr.gov/current/title-24/section-570.496)
3. 24 CFR Part 570.606 of the CDBG regulations, which requires compliance with the regulations listed above: [ecfr.gov/current/title-24/section-570.606](https://www.ecfr.gov/current/title-24/section-570.606)

Additional regulations specific to the CDBG-DR funding and Public Law 117-43 provide further requirements and waivers on the HUD website located at [hud.gov/program_offices/comm_planning/cdbg-dr/regulations#2020](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations#2020).

9.3.1 HUD Acquisition and Relocation Guidance

HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, change 15, issued July 31, 2019, and the U.S. Department of Transportation regulation located at 49 CFR Part 24 updated June 3, 2024, provide the information necessary to address any type of acquisition and contain detailed guidance on HUD's URA requirements. The handbook and all sample guide forms are located at hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

9.4 Waivers, Modifications, and Alternative Requirements per the Consolidated Notice

9.4.1 Section 414 of the Stafford Act

This section allows persons eligible for replacement housing payment under the URA to continue to be eligible for funds if they cannot meet occupancy requirements because of a presidentially declared disaster. This requirement has been waived by the Consolidated Notice to apply to the CDBG-DR activities funded within one year after the disaster declaration date. To determine if [Section 414](#) is waived, the earliest of the following dates is the point in which a project is considered funded by the:

- Date of an approved Request for Release of Funds and Certification;
- Date of Completion of the site-specific environmental review when a program uses tier reviews; or
- Date of sign off by an approving official when a project is converted to exempt under 24 CFR Part 58.31(a)(12)

All CDBG-DR activities for the 2020 Labor Day Disasters should be funded more than a year after the latest applicable disaster, and Section 414 requirement is waived.

9.4.2 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 livable lower-income dwelling units demolished or converted in connection with an activity assisted by CDBG-DR. 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 Part 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 and procedures governing these activities. More information can be found later in the chapter on rental units.

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 eligible activities for CDBG-DR and redevelop them. A buyout acquisition is the purchase of real property to reduce future risk of property damage by demolishing all structures on the property and leaving it as open space or to be used for flood mitigation purposes. Please review the Action Plan for any potential inclusion of funds to be used for buyout acquisition projects.

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 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 Versus Involuntary Acquisition

The URA regulations at 49 CFR Part 24 Subpart B state 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 or condemnation.

9.6.1 Voluntary

Voluntary acquisitions are transactions with no threat or use of eminent domain meeting the criteria stated in 49 CFR Part 24.101(b)(1) through 33.

An acquisition will be considered “voluntary” when all the following conditions in paragraphs (b)(1)(i) through (iv) are met:

- 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, 49 CFR Part 24.101(b)(1)(iii)).
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all the property within the area is to be acquired within specific time limits.
- The agency will not acquire the property if negotiations do not result in an amicable agreement, and the owner is so informed in writing.
- 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 occur when the acquisition is subject to threat or use of eminent domain. Under the URA, voluntary acquisitions that satisfy the requirements of 49 CFR 24.101(b)(1)–(33) 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 involuntary acquisition of real property must be satisfied 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 both the acquisition and housing replacement requirements for displaced homeowners.

9.6.2.1 Fair Market Value

The current fair market value (FMV) should be paid for the property to be acquired. The FMV for properties that are involuntarily acquired and are subject to 49 CFR Part 24 Subpart B cannot exceed the value as determined by a professional appraiser unless there is clear evidence the acquisition will:

- Go to eminent domain proceedings
- Raise the cost above FMV/negotiated price with the cost of completing eminent domain proceeding

This MUST be clearly documented and should be a rarity.

9.6.2.2 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.

9.6.2.2.1 Eminent Domain Purchases From the Federal Government

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 wanting 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.

9.6.3 Basic Project Development Concepts

When developing your project, here are some basic concepts to keep in mind:

- “Buy vacant” for projects funded by CDBG-DR because relocation requirements are complicated and expensive.
- If there is going to be a relocation during the project, the subrecipient must have a “relocation plan” in place.

- One-for-one replacement does not necessarily have a time limit; replacement depends on whether the property meets the alternative section 104(d) requirements and is vacant/occupiable (i.e., suitable for rehabilitation).

9.7 Acquisition Requirements

URA applies to acquisition of a 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 the acquisition of easements.

Handbook 1378 includes an [Acquisition Checklist \(hud.gov\)](#) 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 URA.

9.7.1 Initiation of Negotiations

To assist subrecipients to comply with URA acquisition requirements, some sample initial notices and agreements with property owners regarding proposed acquisition are attached. These include:

- [Voluntary Acquisition-Informational Notice-Agency With Eminent Domain Authority \(hud.gov\)](#)
- [Involuntary Acquisition With Threat/Use of Eminent Domain \(hud.gov\)](#)
- [When A Public Agency Acquires Your Property Brochure.DOC \(live.com\)](#)

The recipient’s file must state the way 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, known as the “Low Value Waiver,” may be allowed for small, uncomplicated acquisitions with a FMV less than \$15,000. This waiver may be available for properties up to \$50,000 with prior written approval by OHCS.

An appraisal is not needed for voluntary transactions. However, the subrecipient must have on file evidence of how the FMV of the property was determined by a qualified person knowledgeable in land/property valuation.

An appraisal is needed for involuntary purchases. It is also required that the homeowner, or the owner’s designated representative, has an opportunity to be present during the appraisal process. If the property owner elects to have the subrecipient appraise the property, the subrecipient must obtain an appraisal and may not use the waiver valuation approach. When an appraisal is waived by a property owner for an involuntary transaction that is subject to Subpart B of the URA, the subrecipient must have on file a waiver valuation.

All appraisals must meet the minimum appraisal requirements of the URA. The URA requires an appraisal to be current; this means no more than 1 year or 12 months old at the time the offer of just compensation is made. Exhibit 7C of the URA includes a Guide to Preparing an Appraisal Scope of Work that can be used in meeting these requirements. Exhibit 7D includes a draft Agreement for Appraisal Services that can be used as a guide for entering into agreements with companies providing appraisal services. Exhibit 7E includes a Certificate of Appraiser that can be used for “subject to” acquisitions or other acquisitions where an appraisal is obtained.

Property owners that are subject to involuntary acquisition subject to Subpart B, and a waiver valuation is not used, have the right to accompany the appraiser when the appraisal is conducted on their property. Exhibit 7F includes an example invitation to the property owner, or their designated representative to accompany the appraiser.

Once the appraisal is done, a review of the appraisal is necessary to ensure that it meets applicable appraisal standards and 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 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 (see 49 CFR Part 24.102(c)(2)(i)).

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 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.

To assist subrecipients to comply with tenant access notification requirements, use of tenant access clauses in purchase options is recommended. This 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 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 Part 200.310.

Recipients should familiarize themselves with all applicable regulations and work with their OHCS 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 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 to promote the availability of DSS 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.

In accordance with 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 Part 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) that pertain to tenant assistance are waived in accordance with the Consolidated Notice. Under the notice, LMI persons and households who reside in a unit that is subject to replacement will only receive 42 months of benefits as persons and households under the URA, and not the 60 months for projects not tied to disaster recovery. 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,” then the unit **does not** need to be replaced per the Consolidated Notice waiver.

If the residential dwelling does not meet the three criteria above, 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 a vacant-livable lower-income dwelling?
Note: Vacant Occupiable: The unit is standard, vacant, and suitable for rehab or dilapidated but has been occupied within the last three 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 Part 42.375(b)(2) requires one-for-one replacement. This means a duplex with two 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

In accordance with the provisions of the URA a displaced person is an individual, family, partnership, association, corporation, nonprofit or organization that moves either temporarily or permanently from their home, business, or farm, or moves their personal property, as a direct result of the acquisition, demolition, or rehabilitation of real property for a CDBG-DR project. Displaced persons are eligible for relocation assistance under the URA.

HUD has developed several brochures for people who are eligible for relocation assistance. All are available online at the HUD. They are:

- Relocation Assistance to Tenants Displaced From Their Homes (HUD 1042-CPD)
- Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD)
- Relocation Assistance to Displaced Homeowner Occupants (HUD 1044-CPD)

The URA relocation requirements are triggered when persons are displaced by a federally funded action. For example, anytime eminent domain is used to acquire a property that is owner-occupied, it is always considered a permanent displacement and the owner is entitled to relocation benefits. Similarly, anytime a tenant is displaced by an activity, even if the activity is to repair the tenant's unit, the tenant is considered displaced, even though it is for a temporary period, which cannot exceed one year.

The requirements for relocation assistance and advisory services under the URA do not apply 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 requirements because the property owner voluntarily applied for a program, unlike a tenant who does not own the property. 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 if they are not receiving CDBG-DR or other federal assistance. However, if they are going to need CDBG-DR assistance, OHCS needs to ensure that the acquisition activities of the subrecipient conform with the URA requirements.

If CDBG-DR assistance is used for any part or phase 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 Oregon RARAP. If needed, reach out to OHCS for a copy of the plan.

9.10.2 Permanent Versus 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 considered permanently displaced if the property that the tenant or homeowner occupies becomes unavailable through an action funded in whole or in part with federal funds. If the tenant or homeowner must leave the property for a temporary amount of time (e.g., less than a year) and the tenant can return to the property after the federal activity ends, the tenant would be considered temporarily displaced. URA advisory services and moving expenses are the same whether persons are permanently or temporarily displaced.

Permanent Relocation	Temporary Relocation
- Relocation advisory services - Rental assistance differential for 42 months or down payment assistance to purchase home if residential tenant - Re-establishment cost if nonresidential - Moving expenses	- 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 relocation assistance and advisory services as defined by the URA. In this circumstance, the tenant or homeowner will be contacted by the OHCS relocation specialist, and a revised NORE 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 assistance (ORA) services in accordance with 24 CFR Part 570.606(d) for persons displaced by CDBG-DR activities that do not qualify for assistance under the URA. Specifically, homeowners who have voluntarily agreed to participate in a program that will displace them either on a temporary or permanent basis who are not eligible to receive relocation assistance under the URA but may be provided moving or relocation assistance under an ORA plan.

Per the CDBG-DR allocation notice, the regulations at 24 CFR Part 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 equal relocation assistance within each class of displaced persons according to 24 CFR Part 570.606(d).

The Optional Relocation Plan must be reviewed and approved by OHCS prior to implementation.

9.10.4 Tenant Notices

All occupants of property that will be acquired, rehabilitated, or demolished due to 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 “Relocation Assistance to Tenants Displaced From Their Homes” (HUD booklet 1042-CPD). 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 on Unfound Displaced Tenants: If the tenants who were issued a GIN vacated for personal reasons before the initiation of negotiations (ION) (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 possible. Anyone who vacates a property after the subrecipient applies for funds but before receiving a GIN could be considered displaced by the project and be eligible for benefits and assistance under the URA.

If there are unfound displaced tenants that qualify for benefits under the URA, subrecipients must take whatever steps are necessary to remedy oversights.² Subrecipients must take all corrective actions necessary to comply with the URA. OHCS recommends one of the two following potential paths:

1. Agency properly provided the GIN that advised the tenant not to move and used all reasonable procedures to locate the 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.
3. Agency did not properly provide GIN: The tenant(s) now have extenuating circumstances and can file a request to indefinitely extend the 18-month window to file a claim for URA benefits.

If the tenant(s) files a valid claim for benefits, they must be paid.

² Common oversights that require remedy include inadequate replacement housing, failure to provide notices, advisory services, and underpayments.

Notice of Eligibility (NOE): Informs occupants that they will be displaced and are eligible for URA benefits. This 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. It informs the tenant of the date by which they must 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 gives the owner-occupant or tenant a chance to learn about the process, ask questions, and submit the necessary income verification information. Owner-occupants or tenants should receive a written notification of their eligibility for benefits after displacement is confirmed and after other eligibility items have been confirmed (e.g., living in property before the notice of intent, 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 as LMI benefit or urgent need.

9.11.2 Intake Negotiations

Once eligibility and national objective are determined, the owner-occupant or tenant file stays “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 much like the home from which they are displaced as is possible. This includes matching the size and function, having the same principal features, and having a similar location (e.g., reasonable access to a person’s employment, schools, medical facilities, general neighborhood characteristics). The comparable dwellings must also offer proper environmental conditions and meet DSS and HUD Housing Quality Standards (HQS). The comparable unit must be available for use/occupancy.

Comparable dwellings are compared using HUD Form 40061 (see HUD Handbook 1378, Appendix 12), and a “most comparable dwelling” is chosen based on objective criteria. Benefits are calculated based on the selection of the “most comparable dwelling” and the rent and utilities of the displacement dwelling. Subrecipients must develop a methodology for determining estimated monthly utility costs at the replacement unit when comparing the actual utility costs at the displacement 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 displaced person is not a public housing recipient, they cannot be provided with a public housing replacement unit as a comparable.

9.11.4 Send Notice of Eligibility and 90-Day Notice

NOEs and 90-day notices inform the occupants of the day they must vacate the property. Displaced persons may not be given fewer than 90 days to vacate their residence. However, 90-day notices may not be issued until residential tenants are provided an NOE and referred to available, comparable replacement housing. The subrecipient can combine the NOE and the 90-Day Move Notice into a single notice if the date to vacate is known. If not, the 90-Day Move Notice can be issued separately later.

If, during the project development stage, the subrecipient identifies a potential tenant displacement, they must have documentation that they sent the GIN to the tenant when the grant application is submitted to the state. Use certified mail, return receipt required, or have the tenant sign the notice 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 hud.gov/fairhousing/fileacomplaint.

9.11.5 Determine Eligibility and Amount of Assistance

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 15, issued July 31, 2019, and Part V of the U.S. Department of Transportation regulation located at 49 CFR Part 24, updated June 3, 2024, and discuss the requirements with the OHCS contract administrator for their project at the beginning of the project.

If the displaced person is found to be eligible for benefits, HUD Forms 40054 and 40058 must be 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 must sign HUD Forms 40054 and 40058 (see HUD Handbook 1378, Appendix 11 and Appendix 14).

The income of the displaced person is not a factor in determining basic eligibility, but it is a factor in calculating the amount of assistance they are required to receive. There is no income cutoff 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 Part 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), schedule an interview, obtain tenant documents, and ensure 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
- Explaining available relocation assistance, such as moving costs and replacement housing, eligibility requirements, and the process for obtaining assistance

- Explaining a tenant's right to appeal if they are not satisfied with program decisions, including written appeal procedures
- Offering transportation to inspect the referred housing
- Providing information about other assistance, such as legal services, financial services, and housing counseling
- Providing 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 do not have to move unless at least one comparable replacement dwelling is made available
- Inspecting the dwelling to determine if it meets DSS requirements
- Providing counseling and other assistance to minimize hardship in adjusting to relocation
- Providing 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, a fixed payment from the Federal Highway Administration, or any combination of the above.

At the date of this publication, the most current residential moving cost schedule can be found at [fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm).

Recipients should check the website above to obtain the most current moving cost schedule.

9.14 Relocation Assistance and Payments

The URA provides 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, rental assistance, or down payment assistance.

Information regarding eligibility for this assistance is available at [fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations](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 OHCS contract administrator.

Cash rental assistance payments must be made in installments and not a lump sum. Relocation assistance payments for residential tenants must be disbursed in installments. Lump sum payments may be made only to cover eligible moving expenses and a down-payment on the purchase of replacement housing, which may include incidental expenses. Once the NOE has been issued and the full amount of relocation assistance has been established, the regular installments paid shall remain the same, regardless of whether there is any later change in the person's income or rent or in the condition or location of the person's housing.

The subrecipient can determine the frequency of the disbursements. However, if not paid monthly, there should be at least three installment payments, unless the rental assistance is \$500 or less. Where the rental assistance is \$500 or less, the payment can be in two installments with at least four months 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 on family income. The URA establishes a cap on payments at \$99,570. This cap can be exceeded if there is insufficient comparable housing in the local market. In these "last resort" housing situations if relocation assistance is insufficient, the subrecipient may provide the funds necessary. Information relating to "Replacement Housing of Last Resort" situations can be found in 24 CFR Part 24.404 and Chapter 3 of HUD Handbook 1378. Rental assistance must be provided with payments made to the displaced person.

9.15.1 Housing of Last Resort

In accordance with the requirements found at 49 CFR Part 24.404(a)(2), this determination to exceed the amount under 49 CFR Part 24.401 or 24.402 and provide, as appropriate, additional assistance, is based on one of the following:

- A case-by-case determination based off good cause with consideration given to the availability of comparable replacement housing in the program or project area, resources available to provide comparable replacement housing, and the specific individual circumstances of the displaced person.
- A determination that there is little to no comparable replacement housing available to the displaced persons within an entire program or project area resulting in last resort housing assistance that is necessary for the area as a whole.
 - A program or project cannot be advanced to completion in a timely manner without last resort housing assistance.
 - The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

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. This would be in place of rent assistance. The entire purchase assistance payment for a DSS replacement dwelling must be applied at closing.

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 lived in their house for 90 days before an offer to purchase their home, activating an involuntary purchase, are eligible for a replacement housing payment as “displaced persons” (90-day homeowner). The maximum payment is \$41,200. If homeowners were living in their house for less than 90 days before the ION, they are protected by the URA as “displaced persons.” The calculation is the same method used for tenants.

Note: If an owner occupies a property purchased using voluntary acquisition requirements (non-mandatory purchase requirement), 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 unit identified by the program or the cost of the actual replacement unit that the homeowner chooses if a comparable option is not presented
- 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 (see HUD Handbook 1378, Appendix 13). 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 as their principal residence to qualify for a RHP as a displaced owner-occupant.

9.17 Lawful Presence

Any person who is an alien (foreign national) not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless 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 according to the Immigration and Nationality Act (8 U.S.C. 1101), whose stay in the United States has not been authorized by the Secretary of Homeland Security; who is present in the United States after the expiration of the period of stay authorized by the Secretary of Homeland Security; 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:

- In the case of an individual, certify 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.
- In the case of a family, certify 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.

- In the case of an unincorporated business, farm, or nonprofit organization, certify 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.
- In the case of an incorporated business, farm, or nonprofit organization, certify 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 does not have this certification or who has been determined to be unlawfully 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 will directly result in:

- A significant and demonstrable adverse impact on the health or safety of a spouse, parent, or child
- A significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member
- 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 fewer than 90 days to relocate to a new dwelling. The displaced person 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 \(see HUD Handbook 1378, Appendix 13\)](#). However, the unit they choose to occupy must be inspected to verify that it is DSS and meets HQS 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, the RHP cannot be provided for this unit. The displaced person may choose to move to one of the suggested comparable dwelling units or find another unit that can pass the DSS/HQS standards. If the displaced person wants to move into the unqualified unit, they will not receive the housing assistance but can still receive reimbursement for moving expenses.

9.18.1 Inspect New Unit

In cases of residential relocation, when the displaced person 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 within 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. Once a new unit is chosen, the rental assistance payment should be issued in installments over a four-month period.

9.19 Appeals

All tenants will have an opportunity to file an appeal in accordance with the URA regulations at 49 CFR Part 24.10. Written complaints and appeals must be submitted in writing. An appeal should be filed 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 thoroughly inspected the replacement housing
- Not complied with the provisions concerning the notice of right to continue in occupancy

Appeals are limited to actions or decisions the individual making the appeal believes are 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 if a person believes that the subrecipient 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



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) and applicable Community Development Block Grant Disaster Recovery (CDBG-DR) appropriation acts require the U.S. Department of Housing and Urban Development (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 Oregon Housing and Community Services (OHCS) to determine that no DOB exists before paying CDBG-DR funds to ensure that beneficiaries, persons, businesses, or other entities, including local government(s), do not receive a duplication.

DOB policies and procedures are included for each CDBG-DR program identified in OHCS' Public Action Plan. OHCS commits to having procedures to prevent any DOB as defined by section 312 (42 U.S.C. 5155) of the Stafford Act (42 U.S.C. 5121 et seq.). To this end:

1. OHCS' 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, including 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 recordkeeping requirements.
2. OHCS' 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. 287, 18 U.S.C. 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 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 that 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

Prior to committing funds or awarding assistance, OHCS will follow and require its subrecipients to follow the process to avoid a DOB for individuals, businesses, and any subrecipients receiving CDBG-DR 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,¹ retirement accounts, credit cards and lines of credit, in-kind donations,² 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.

¹ This does not include insurance proceeds or disaster assistance deposited into the applicant’s checking or savings accounts.

² In-kind non-cash contributions to the applicant known to OHCS may be used to reduce total need.

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
- Federal Emergency Management Agency (FEMA) Public Assistance or Individual Assistance funds
- U.S. 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 canceled.

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.

Canceled Loans — Canceled 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 canceled 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 canceled and no longer available:

- A written communication from the lender confirming that the loan has been canceled 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 canceled SBA loans, OHCS will notify SBA that the applicant has agreed to not take any actions to reinstate the canceled 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).
- 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 that was provided for a different purpose than the activities eligible for CDBG-DR 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 funds 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 a 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 time frame.

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 or causes another to do so 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 the 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. For example, OHCS and its subrecipients must check if FEMA or Army Corps funding is available for an activity or reimbursable from those sources before awarding CDBG-DR funds for the same activity.

If FEMA or the 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' responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the Army Corps.

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Green Building and Energy Efficiency

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11 Green Building and Energy Efficiency

11.1 Introduction

Community Development Block Grant Disaster Recovery (CDBG-DR) subrecipients must incorporate green building and energy efficiency measures into their new construction, reconstruction, and rehabilitation projects. The U.S. Department of Housing and Urban Development (HUD) identifies different industry-recognized standards that may be selected and incorporated into each program's policy. These standards may differ from program to program.

The following requirements are not applicable to manufactured housing and/or housing that is not subject to site-specific adopted residential building codes such as the International Residential Code. For energy efficiency and performance, Manufactured Housing is required to adhere to either the NEEM or NEEM+ standards common to current production methods, and as approved by Oregon Housing and Community Services (OHCS) for implementation in the ReOregon program(s). Additional information can be found at neemhomes.com.

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 incorporate 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

Oregon Housing and Community Services requires that grantees incorporate measures that will result in a project that meets the HUD Green and Resilient Building Standard. A distinction is made between new construction, reconstruction, or substantial rehabilitation and rehabilitation, with different requirements necessary for both.

11.3 New Construction, Reconstruction, and Substantial Rehabilitation

The subrecipient must select and adhere to the HUD Green and Resilient Building Standard for new construction and reconstruction of housing as required by HUD. The subrecipient must meet this standard for all new residential construction, reconstruction, and rehabilitation of substantially damaged buildings. HUD defines substantial damage and substantial improvement, with limited exceptions, in 44 CFR Part 59.1 as follows:

- **Substantial damage** means damage of any origin sustained by a structure where the cost of restoring the structure to its original condition would equal or exceed 50% of the market value before it was damaged.
- **Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure where the cost 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. Program and compliance information can be found here:

- [Enterprise Green Communities](#)
- [Leadership in Energy and Environmental Design \(LEED\) \(New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development\)](#)
- [ICC-700 National Green Building Standard Green+ Resilience](#)
 - Including the Certified Compliance Path found in Section 12
- [Living Building Challenge](#)
- 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. Program and compliance information can be found here:

- [ENERGY STAR® \(Certified Homes or Multifamily High-Rise\)](#)
- [U.S. Department of Energy \(DOE\) Zero Energy Ready Home](#)
- [EarthCraft House, EarthCraft Multifamily](#)
- [Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US, International Passive House Association](#)
- [GreenPoint Rated New Home, GreenPoint Rated Existing Home \(Whole House or Whole Building label\)](#)
- [Earth Advantage New Homes](#)
- 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, often overlapping in requirements, making it possible for one standard to encompass the requirements of the energy efficiency standards. The subrecipients should review the standards and select the option(s) they want to implement for their project. The subrecipient must identify, in each project file, which standards are used and include the appropriate scoring metrics. This demonstrates the extent to which the project is in compliance with the selected standards.

11.4 Rehabilitation of Non-Substantially Damaged Residential Buildings

For the rehabilitation of residential projects other than those described as “substantial,” OHCS requires that the subrecipient adhere to the HUD Office of Community Planning and Development (CPD) [Green Building Retrofit Checklist](#). Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken, such as the following:

- 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.
- Use low/no Volatile Organic Compound adhesives and sealants

The HUD CPD Green Building Retrofit Checklist promotes energy efficiency and green building practices for residential retrofit projects. Subrecipients must follow the entire checklist and apply all measures 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 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](#). Effective until June 30, 2025.
- [2025 Oregon Energy Efficiency Specialty Code](#). Effective Jan. 1, 2025 with a *6-month phase-in period / Mandatory July 1, 2025
- [2023 Oregon Residential Specialty Code Adoption](#)
 - Chapter 1 ~ Effective and mandatory Oct. 1, 2023
 - Chapters 2 - 44 and appendices ~ Effective Oct. 1, 2023 and mandatory April 1, 2024
 - Based on 2021 International Residential Code (IRC)
 - [Issued Errata](#)
 - Interim amendments:
 - [Emergency Escape and Rescue Opening](#) - Effective Oct. 1, 2025
 - [Attached stacked two-family dwelling](#) - Effective Jan. 31, 2025

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 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.

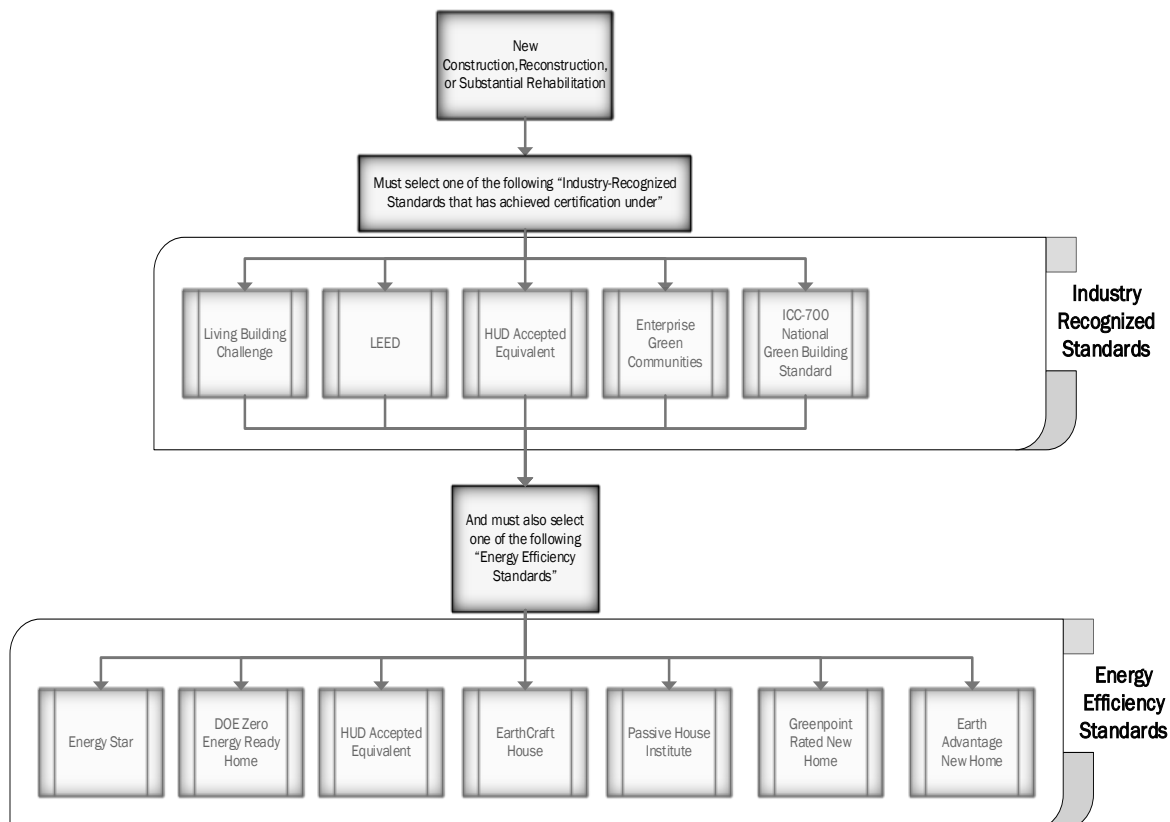
11.6.3 Project Closeout

At the completion of the project, as part of the required documentation for closeout 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 a project be at risk of violating 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 and 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 overlap between the two groups. They should not be viewed as one being “green” and the other being “resilient.”





Mitigation

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12 Mitigation

12.1 Introduction

Community Development Block Grant Disaster Recovery (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, the U.S. Department of Housing and Urban Development (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 (Public Law 117-43) approved Sept. 30, 2021 (the “Appropriations Act”), Oregon Housing and Community Services (OHCS) must incorporate mitigation measures into its recovery activities. It must spend an amount equal to 15% of its unmet needs allocation for mitigation activities that reduce risk in the identified most impacted and distressed (MID) areas. OHCS has assessed the community impacts and unmet needs to inform its Public Action Plan. It has prepared a mitigation needs assessment (MNA) to inform mitigation activities. For more information on what risks can be addressed with CDBG-DR funding, subrecipients can refer to the MNA in the Public Action Plan on the OHCS website at oregon.gov/ohcs/disaster-recovery/Pages/ReOregon-Action-Plan.aspx.

The CDBG-DR mitigation set-aside is calculated as 15% of the total estimate for unmet recovery needs allocated for the 2020 Labor Day Disasters. Unlike recovery activities that must demonstrate “tie-back” to the specific disaster activities funded by the CDBG-DR mitigation, set-aside activities do not require a tie-back to a specific disaster. The CDBG-DR mitigation set-aside will fund only activities that meet the following provisions:¹

- Comply with HUD’s definition of mitigation
- Address a current and future risk as identified in the MNA in the MID areas

¹ [Community Development Block Grant Disaster Recovery \(CDBG-DR\) Mitigation Set-Aside Funds](#)

- Be activities eligible for CDBG under Title I of the Housing and Community Development Act or otherwise eligible pursuant to a waiver or alternative requirement
- Satisfy a national objective

The requirement for the CDBG-DR mitigation set-aside can be satisfied by including eligible recovery activities that both address the impacts of the disaster (i.e., have a tie-back) 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 must 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 wildfires is limited to no more than 15% of the grant allocation. Therefore, OHCS and its subrecipients must carefully consider if an activity is responsive, either directly or indirectly, to disaster impacts and document tie-back in cases where there is a connection with the disaster.

12.3 Mitigation Needs Assessment

The 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 Labor Day wildfires and straight-line winds (FEMA DR-4562). The MNA discusses the characteristics and impacts of current and future hazards identified through previously declared disasters. The assessment addresses risks to indispensable services that enable the 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. It uses historical and projected data on risk that incorporates the best available scientific tools.

OHCS has completed its MNA and identified 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 oregon.gov/ohcs/housing-assistance/disaster-recovery/Documents/CDBG-DR-Action-Plan.pdf.

The MNA 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 subrecipients can draw on this needs assessment and Oregon's Office of Emergency Management Federal Emergency Management Agency (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 MNA and Action Plan when additional 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 to the MID and non-MID areas.

Maintenance: Per 24 CFR Part 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 there being sufficient budget available for those mitigation-only projects. Given that purely mitigation projects are currently anticipated within the Planning, Infrastructure, and Economic Revitalization (PIER) or statewide planning programs only, which together constitute less than the 15% maximum, OHCS does not anticipate this being a barrier.

12.5 Mitigation Coordination

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
- Buying out/acquiring properties in high-risk areas
- Providing aid to relocate residents or businesses to lower-risk areas
- Restoring trees in urban landscapes
- Using more renewable energy technologies
- Using backup power for critical facilities

Before carrying out activities funded by CDBG–DR to construct, reconstruct, or rehabilitate residential or nonresidential 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:

- Estimating 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)
- Identifying the mitigation measures that will address the projected risks (e.g., using building materials that can withstand high winds)
- Assessing the benefit of the mitigation measures through verifiable data (e.g., 10 newly built homes will withstand high winds up to 100 mph)

In Disaster Recovery Grants Reporting (DRGR), HUD has published specific measures² for mitigation activities such as the numbers of nonresidential buildings constructed, fewer outages of critical facilities and utilities, linear feet of public improvement, public facilities, residents protected from future flooding, and plans or planning products developed. Examples of other **resilience performance metrics** include the numbers of:

- Acres no longer vulnerable to flood events
- Floodplain design standards updated
- Energy plans completed
- Resilience plans created

² DRGR Guidance on Grantee Program Projections — [Adding Grantee Program Projection of Outcomes](#)

- Properties with access above 100-year or 500-year flood level
- Homes retrofitted with resiliency measures

12.7 Reporting on Activities

In order to count activities toward the CDBG-DR mitigation set-aside, OHCS must document how those activities and the incorporated mitigation measures meet HUD's definition of mitigation. These activities are reported as a mitigation activity type (MIT) in the HUD Disaster Recovery Reporting system called DRGR. By tracking these activity types in DRGR, OHCS can demonstrate to HUD how the 15% mitigation set-aside was expended.

Activity types that are available 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, subrecipients should list 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 difficult to separate the mitigation measures or activities from the larger project, OHCS may count the entire project cost towards the 15% mitigation set-aside. Subrecipients should inform OHCS about how they want to identify qualified mitigation expenditures. As needed, OHCS will coordinate with HUD and approve or modify the subrecipients' approach.



Monitoring and Audit

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13 Monitoring and Audit

Subrecipients and subgrantees must monitor each program, function, activity, or project funded by their Community Development Block Grant Disaster Recovery (CDBG-DR) awards to ensure compliance with applicable federal requirements and to determine if performance expectations are being achieved.

The U.S. Department of Housing and Urban Development (HUD) requires monitoring and evaluation of program performance and compliance by recipients of CDBG-DR funds. Oregon Housing and Community Services (OHCS), subrecipients, and subgrantees are responsible for monitoring program, statutory, and/or regulatory requirements. Subrecipients and subgrantees are responsible for carrying out their programs to meet these compliance requirements, including monitoring any hired project administrators, contractors, and subcontractors.

13.1 Monitoring

13.1.1 What This Means for Subrecipients and Subgrantees

Subrecipients, acting as a pass-through entity, and subgrantees must monitor grant performance to ensure compliance with federal requirements, including:

- Understanding grant requirements and ensuring that contractors and developers also understand these requirements.^{1,2} Subrecipients should refer to OHCS's webinars: [CDBG-DR Compliance Oversight and Monitoring Part 1](#) and [CDBG-DR Compliance Oversight and Monitoring Part 2](#).
- Documenting the eligibility of activities and costs charged to the grant.³ Refer to [Chapter 4 Financial Management](#) for additional details.

¹ 2 CFR Part 200.329 and 2 CFR Part 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 Part 200.501(a) audit requirements

- Reporting on benchmarks, deliverables, and costs. Refer to [Chapter 15 Project Reports and Closeout](#) for additional details.
- As applicable, reviewing federal single audits for any subgrantee that expends more than \$1,000,000 in federal funds a year.⁴ Refer to [13.2 Audit Requirements](#) for additional details.

13.1.2 Monitoring Roles and Responsibilities

Monitoring is the responsibility of all entities involved in the CDBG-DR funding process. Monitoring may be conducted by federal oversight agencies including HUD, as well as 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	1. OHCS (grantee) 2. Subrecipient 3. Subgrantee	• HUD provides training and technical assistance. • HUD conducts monitoring reviews of all monitoring entities.
OHCS (Grantee)	1. Grantee programs/projects 2. Subrecipient, including a sample of the subrecipients and subgrantees 3. ReOregon program staff	• OHCS conducts required training and provides ongoing technical assistance. • ReOregon program staff conduct monthly monitoring reviews. • OHCS compliance staff conduct on-site or remote monitoring reviews.
Subrecipient	1. Subrecipient programs/projects 2. Program/project administrators, contractors, and subcontractors	• 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.

⁴ 2 CFR Part 200.501(a) audit requirements

Monitor	Monitored Entity	Monitoring Responsibilities
Subgrantee	1. Subgrantee programs/projects 2. Program/project administrators, contractors, and subcontractors	• Subgrantee participates in and understands required training. • Subgrantee manages monthly reporting procurement, budget, allowability, benchmarks, performance, and compliance with crosscutting requirements.

Attention to grant activities and performance is imperative. Unresolved findings from monitoring events conducted by any authorized oversight entity could result in various remedies stated in the subrecipient agreement or those afforded to pass-through entities such as:

- Temporarily withholding payments until a corrective action is taken
- Disallowing costs in whole or in part associated with the noncompliance
- Suspending or terminating part of the subrecipient agreement under the federal award in whole or in part
- Withholding further federal funds for a new project or program
- Other legally available remedies⁵

13.1.3 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.

The reports are submitted to OHCS for review and used to create the Quarterly Performance Report 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

⁵ All potential remedies for noncompliance afforded to pass-through entities are located in 2 CFR Part 200.339. Remedies for noncompliance are available at [ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR86b76dde0e1e9dc/section-200.339](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR86b76dde0e1e9dc/section-200.339).

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 the following:

- Contractors and developers for compliance with applicable federal and state requirements
- Construction contractors for equal opportunity, federal and state labor standards, and Section 3 requirements⁶
- Developers for federal requirements, adherence to underwriting guidelines, and affordability periods⁷

13.1.4 Reporting Subrecipient or Subgrantee Concerns

If the subrecipient or subgrantee encounters issues with a contractor or developer, they should inform 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, or 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.

13.2 Audit Requirements

Subrecipients are required to comply with federal single audit requirements if they expend more than \$1,000,000 in federal funds annually. Any subrecipient that passes grant funds through to a nonprofit or unit of local government must require that the entity also comply with federal audit requirements.

Pass-through entities are responsible for issuing a management decision for audit findings that affect subawards issued to subrecipients receiving CDBG-DR funds. A management

⁶ If applicable in the scope of work identified in the subrecipient agreement

⁷ Ibid.

decision must be issued within six months of the Federal Audit Clearinghouse's (FAC) acceptance of the audit report. The person being audited must initiate and proceed with corrective action as rapidly as possible, and corrective action should begin no later than upon receipt of the audit report. Management decisions must include the reference numbers the auditor assigned to each audit finding.

Single audits are required to be submitted to the FAC digitally and can be viewed at fac.gov.

The subrecipient must submit the audit, data collection form, and reporting package within 30 calendar days after receiving the auditor's reports or nine months after the end of the audit period, whichever is earlier.⁸ If the due date falls on a Saturday, Sunday, or federal holiday, the reporting package is due the next business day.

Failure to comply with audit requirements can jeopardize both the subrecipient's and the subgrantee's ability to draw grant funds or receive future awards.

13.2.1 State Audit Requirements

Oregon has a Municipal Audit Law, which requires an annual financial audit⁹ for each year a municipality is involved with the program. Audits should also be collected for nonprofits that meet 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 annual single audit is underway if it is received before the first disbursement of CDBG-DR funds occurs.

13.2.1.1 Audit Submissions

It is the responsibility of the person being audited to submit the audit report to the Oregon Secretary of State website within six months after the close of the fiscal year audited. Subrecipients must receive a copy of the annual audit by searching the Secretary of State website at secure.sos.state.or.us/muni/public.do or by requesting it from the audited entity.

⁸ The cognizant agency for audit or the oversight agency for audit, in the absence of a cognizant agency, may authorize an extension when the nine-month time frame would place an undue burden on the person being audited.

⁹ There are limited exemptions to the requirement for municipalities that are detailed in ORS 297.435, located at oregonlegislature.gov/bills_laws/ORS/ORS297.html.

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.

13.3 Useful Resources

13.3.1 Monitoring Guidance

- HUD Community Planning and Development Monitoring Handbook Chapter 6: Disaster Recovery Community Development Block Grant, hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2
- HUD Office of Inspector General Integrity Bulletin Summer 2016, hudexchange.info/resource/5065/hud-integrity-bulletins

13.3.2 Audit Regulations

- 2 CFR Part 200 — Part 200 Uniform Administrative Requirements Subpart F – Audit Requirements, ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F
- Oregon Secretary of State Municipal Audit and Local Government Resources, sos.oregon.gov/audits/Pages/muni-faq.aspx



Fraud, Waste, and Abuse

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14 Fraud, Waste, and Abuse

14.1 Introduction

In this chapter, we present subrecipient and subgrantee responsibilities for preventing fraud, waste, and abuse (FWA); helpful hints to understanding fraud motivations and actors; specific types of fraudulent activities involving federal funds and programs; consequences; and how to report FWA.

14.2 Definitions

Abuse: The intentional misuse of authority to affect otherwise fair and open processes to gain benefit unfairly or improperly, which may result in unnecessary costs to the program. Abuse can occur for financial or non-financial benefits.

Fraud: A single act or pattern of intentional misrepresentations with the intent to deceive or mislead a person or agency that could result in an unauthorized benefit or could deprive others from a legal right or benefit. Fraud is a legal term that requires an investigation and can lead to civil or criminal penalties.

Mismanagement: Creating a substantial risk to an agency's or program's ability to accomplish its mission by not establishing or following existing policies or guidelines.

Waste: Misuse of funds for excessive or nonessential expenditures allocated to a program. Waste can be thoughtlessness, carelessness, or inefficient use of funding or resources without recognizing the difference between the costs and anticipated program benefits.

14.3 Acronyms

FWA: Fraud, waste, and abuse

HUD OIG: U.S. Department of Housing and Urban Development Office of Inspector General

14.4 Identifying FWA

Given the finite resources of the Community Development Block Grant Disaster Recovery (CDBG-DR) program to help individuals, households, and communities recover from the 2020 Labor Day wildfires and straight-line winds, identifying FWA is crucial for program

integrity. FWA actions can deprive citizens of recovery benefits designed to support and assist them. By understanding FWA indicators, detection mechanisms, and how to foster a culture of accountability, subrecipients and subgrantees play a part in upholding program integrity.

FWA can manifest in various forms, from financial mismanagement and unethical behavior to the misuse of assets and resources. It can also include fraudulent claims by program participants.

14.4.1 Participants

FWA could be perpetrated by anyone, and the threat comes from inside or outside the organization.

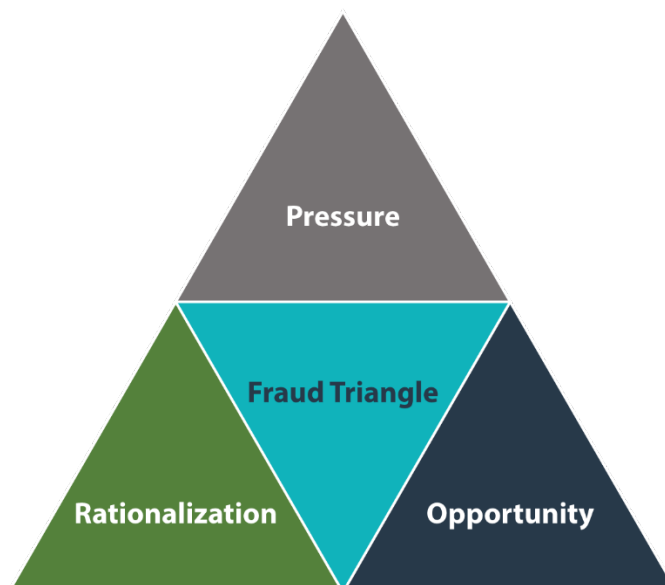
Employees: These are people hired to serve program participants and conduct the business of the organization or entity. Employees can be involved in the administrative, programmatic, or financial functions of the program and can be aided by facilitators who are knowingly benefiting from the FWA activity, have been coerced to participate, or are unknowingly part of the scheme.

Vendors or contractors: Entities contracted by subrecipients and subgrantees to provide goods or services for the implementation of a program run the greatest risk for FWA activities during the procurement and implementation stages of their engagement with the contracting subrecipient or agency.

Program participants: This particular group can both commit FWA and be a victim by misrepresenting residency, not reporting all benefits received, and claiming additional household members to obtain unauthorized or additional benefits. Participants may also be negatively affected by FWA by not receiving eligible benefits because of insufficient program funds.

14.4.2 The Fraud Triangle: Why Do People Commit FWA?

Pressure, opportunity, and rationalization make up the fraud triangle, which helps to identify traits and the likelihood of 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 when there are not enough employees to maintain segregation of duties, an important factor for fraud prevention, leading to 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

The following items describe 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 that they then cash to more elaborate methods to conceal the theft, such as by falsifying invoices and misusing the 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 gives the person or group an unfair advantage in bidding and/or obtaining a federal benefit.

Contract Repair Frauds

This type of fraud involves 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; bonds; and test or inspection results
- Committing change order abuses, underbidding to win contract, or colluding with the 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. If there is a question of conflict, notify Oregon Housing and Community Services (OHCS), as it may be possible to mitigate the conflict.

Documentation Fraud

People commit forgery or alteration of documents, destruction or concealment of records, or impropriety with respect to reporting financial transactions. Examples include identity theft (using another person's identification), forgery of 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.

Extortion

Someone demands payment of something of value by force, threat, fear, or intimidation.

False Billing

This occurs with the submission of false invoices or altered valid invoices for payment. This could include billings from a 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 an investment property or second home. Rental properties are not eligible for repair funding.

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.

Landlord Fraud

Landlords may require additional side payments from tenants above the allowable rent rates.

Sexual Harassment

Instead of requesting money, someone may imply or demand sexual favors to allow a tenant or applicant to get into or stay in the assisted unit.

Tenant or 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 OIG has a variety of enforcement options available, should evidence of fraud be confirmed, and penalties¹ including:

- **Criminal Penalties:** Conviction may result in a prison sentence, probation, and/or restitution.
- **Civil Penalties:** These are monetary penalty amounts required by the Federal Civil Penalties Inflation Act of 2015, which further amended the Federal Civil Penalties Adjustment Act of 1990.

¹ Penalties can change based on updates to the Code of Federal Regulations (CFR) and are routinely adjusted. For the most current penalties and potential monetary penalties, please review Title 24 Housing and Urban Development of the CFR, available at [ecfr.gov/current/title-24](https://www.ecfr.gov/current/title-24).

- **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, or criminal or civil judgment.

14.6 Preventing FWA

Subrecipients and subgrantees are required to:

- **Monitor** all funded programs for instances of FWA.
- **Take steps** to prevent and address FWA.
- **Report** any instances of FWA to the appropriate authorities.

The following sections describe several actions subrecipients and grantees can take to prevent FWA.

14.7 Reporting FWA

The occurrence of FWA is not a sign of a poorly run or mismanaged agency. Reaction to perceived FWA is what defines the management of an organization.

The existence of a fraud policy, preventive steps taken, and proper handling of FWA are deterrents. By addressing FWA, 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 or fraudulent claims for funds must be reported.

14.7.1 Mandatory Disclosures

Any applicant, recipient, or subrecipient of a federal award must promptly disclose any credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with 2 CFR 200 Appendix XII, available at [ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20XII%20to%20Part%20200](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20XII%20to%20Part%20200).

Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339 Remedies for Noncompliance. Remedies include but are not limited to:

- Temporarily withholding payments until corrective actions are taken
- Disallowing costs for all or part of the activity associated with the noncompliance
- Suspension or termination of the federal award in part or in its entirety
- Initiating suspension or debarment proceedings
- Withholding further federal funds from new awards or continuation funding
- Pursuing other legally available remedies

14.7.2 OHCS Reporting

According to OHCS policy, any employee, consultant, or subrecipient who has knowledge of FWA, 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. Individuals can complete an online reporting form located at app.smartsheet.com/b/form/ba45d4feece44aa4b4ac65d719750688.

14.7.3 Oregon Bureau of Labor and Industries (BOLI)

If subrecipients or individuals identify wage violations associated with BOLI, complaints should be directed to:

Oregon Bureau of Labor and Industries Wage and Hour Division
800 NE Oregon Street, Suite 1045
Portland, OR 97232
mailb@boli.state.or.us
971-673-0761
oregon.gov/BOLI/pages/index.aspx

For further information to determine if a complaint should be made to BOLI, please refer to Chapter 6 Labor Standards in the OHCS Subrecipient Manual. Chapter 6 provides detailed guidance on compliance requirements for labor standards.

14.7.4 HUD OIG

OIG is an independent office within HUD. Its role is to promote the economy, efficiency, and effectiveness of HUD's programs and operations. It prevents and responds to issues related to FWA, reporting to the HUD Secretary and Congress.

OIG focuses on reports of fraud or serious mismanagement with high dollar losses or significant community impact. Examples of what to report to the OIG Hotline include:

- 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 conflicts of interest
- Housing subsidy fraud
- Serious mismanagement
- Ethics violations by HUD officials
- Bribery

14.8 Additional Resources

- OHCS Anti-Fraud, Waste, and Abuse Policy, oregon.gov/ohcs/disaster-recovery/reoregon/Documents/CDBG-DR_Fraud-Waste-and-Abuse-Policy_ReOregon_012623.pdf
- OHCS Fraud, Waste, and Abuse Complaints webpage, oregon.gov/ohcs/disaster-recovery/reoregon/about-reoregon/Pages/report-complaints.aspx
- Oregon Secretary of State Report Misuse of State Government Resources, sos.oregon.gov/audits/Pages/accountability.aspx
- HUD OIG's "What You Can Do" Guidance Page, hudoig.gov/fraud/what-you-can-do



Project Reports and Closeout

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15 Project Reports and Closeout

15.1 Introduction

Throughout a project, project reports must ensure that funds comply 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 and project closeout process and requirements.

15.2 Project Reports

The following chart demonstrates all required reports, their applicability, and the timing of the reports. This is followed by detailed descriptions of each report.

Report	Applicability	Timing
Single Audit Report	If a subrecipient expends \$1,000,000 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 15th of each month
Section 3 Report	See Chapter 7 of the Subrecipient Manual	Quarterly

15.2.1 Single Audit Report

Subrecipients and Oregon Housing and Community Services (OHCS) must ensure that federal resources are used efficiently and effectively. They should achieve the purpose for which the funds were provided. The financial and performance audits discussed in this chapter and noted in [2 CFR Part 200, Subpart F — Audit Requirements](#) ensure that OHCS and its subrecipients are accountable to the public for:

- A financial audit: An independent, objective review of the entity's financial reporting processes and financial statements, indicating they are accurate and complete
 - The 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.

- A performance audit: An independent examination of a program, function, operation, or management systems and procedures of the entity
 - 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 Community Development Block Grant Disaster Recovery (CDBG-DR).

A single audit includes both an entity's financial statements and its federal awards. Single audits are required for any fiscal year(s) in which the subrecipient uses \$1,000,000 or more of (total) federal awards after Oct. 1, 2024.¹ The subrecipient is required to obtain an annual audit report that includes the single audit requirements in 2 CFR Part 200 Subpart F. Subrecipients are responsible for submitting single audits to the [Federal Audit Clearinghouse](#) in a timely manner and 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 choose 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 uses federal awards under only one federal program.

If a subrecipient uses less than \$1,000,000 a year in federal awards, the entity is exempt from the single 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 Part 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 Part 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

¹ For entities with fiscal years ending before Oct. 1, 2024, the lower threshold of \$750,000 in annual federal expenditures should be used to determine single audit requirements.

The Single Audit Act requires an independent auditor to report on your organization's internal control systems. The auditor must provide reasonable assurance that you manage federal programs in compliance with applicable laws and regulations ([2 CFR Part 200.514 — Standards and Scope of Audit](#)). Please refer to Chapter 4: Financial Management for more information on internal control systems.

15.2.2 Quarterly Performance Reports

The Consolidated Notice for CDBG-DR funding requires OHCS to report performance measures to the U.S. Department of Housing and Urban Development (HUD) on a quarterly basis during the life cycle of the grant. OHCS requires subrecipients to submit performance reports 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 the status of financial progress as well as accomplishments and performance measures on a monthly basis. The subrecipient will provide any 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 24 CFR Part 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 and Audit.

15.3 Subrecipient Agreement/Project Closeout

Once 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 complete the 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 complete the closeout process:

- The subrecipient has fulfilled all the responsibilities under the subrecipient agreement and completed the activities funded by CDBG-DR in accordance with program guidelines.
- A CDBG-DR national objective has been met.
- All project costs with CDBG-DR funds are paid, with the exception of closeout costs, such as project delivery costs.
- There are no outstanding compliance review findings on the project.
- Any real property acquired has been disposed of according to the CDBG-DR 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 Closeout Timeline

Subrecipients must submit a grant completion report with applicable documentation before the end of the performance period of the subrecipient agreement. The requirement for timely closeout is a subrecipient responsibility. The subrecipient must ensure project timeliness in accordance with the agreed timeline in the award contract. If reasonable additional time is needed, the awardee shall request an amendment to the award contract with a justifiable request to extend the project timeline along with an updated project work plan. Failure to manage project timeliness will affect the awardee's capacity assessment for future CDBG-DR funding.

15.3.2.1 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.

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 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, a closeout letter cannot be issued.

15.3.2.2 Record Retention

The subrecipient must maintain all records pertaining to the project for a minimum of three years from the official closeout letter date per 2 CFR Part 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, underway, canceled, 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 the reported current quarter performance measures.
2. 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 there is no progress, obligations, or expenditures during the quarter, use the space to communicate why the activity has not progressed. Report any details, delays, or issues that could hinder meeting the objectives of the activity. Include what actions are being taken or contemplated and any assistance needed to resolve the situation.
4. 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 used. Below are some examples of qualitative effort:
 - Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers.
 - Provide training or apprenticeship opportunities.
 - Provide technical assistance to help Section 3 workers compete for jobs through efforts like resume assistance and coaching.
 - Provide or connect Section 3 workers with assistance in seeking employment, including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
 - Hold one or more job fairs.
 - Provide or refer Section 3 workers to services supporting work readiness and retention through efforts like interview clothing, test fees, transportation, and child care.
 - Engage in outreach efforts to identify and secure bids from Section 3 business concerns.
 - Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
 - Promote use of business registries to create opportunities for disadvantaged and small businesses.
 - Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns.
 - Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

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. For additional information, please refer to Subrecipient Manual Chapter 7 covering Section 3 requirements.



Asset and Property Management

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16 Asset and Property Management

Asset and property management occurs after following the requirements in Chapter 5 Procurement or Chapter 9 Acquisition and Relocation in the Subrecipient Manual. Once assets or property have been purchased, subrecipients must follow additional rules on the management of the property and specific disposition requirements.

The Federal Regulations classify property into the following categories:¹

- **Real Property:** Land, including any improvements to and structures located on the land but excluding any moveable machinery or portable equipment. Examples of land improvements can include drainage systems, sewer systems, permanent or stationary power generators, or building emergency shelters.
- **Personal Property:** Any property *other than real property*. Personal property includes physical items (such as equipment), supplies, or intangible items (such as computer software licenses, copyrights, trademarks, and patents).
 - **Equipment:** Must have a useful life of more than one year and a per-unit acquisition cost that is greater than or equal to \$10,000 or the subrecipient's capitalization level, whichever is lower or stricter.²
 - **Supplies:** Any physical property that does not meet the definition of equipment with a per-unit acquisition cost less than \$10,000 or the subrecipient's capitalization threshold, whichever is lower or stricter. Additionally, supplies do not have to have a maximum or minimum useful life to be established.

This chapter details the requirements for use, management, and disposition of any real or personal property purchased with Community Development Block Grant Disaster Recovery (CDBG-DR) funds.

16.1 Overview

The U.S. Department of Housing and Urban Development (HUD) expects any grantee, subrecipient, or developer using federal funds to protect real and personal property purchased as federal assets.

¹ Federal definitions for the terms listed are available at 2 CFR Part 200.1 and should be checked periodically for updates.

² Before Oct. 1, 2024, the 2 CFR Part 200 threshold for supplies and equipment was set at an acquisition cost of \$5,000.

Any subrecipient that uses CDBG-DR funds for the purchase, construction, or rehabilitation of real property is required to develop an asset management plan for that property. The type and duration of the plan will differ with the type of real property involved.

The following requirements for use, management, and disposition of property apply to all real property purchased or improved with CDBG-DR funds:

- Property can only be acquired with CDBG-DR funds for a *specific purpose* that must be approved by Oregon Housing and Community Services (OHCS) and should be made a part of the Subrecipient Agreement.
- Pursuant to 24 CFR Part 570.503(b)(7), OHCS and its subrecipients are required to restrict the use of federally funded public facilities and housing for a minimum of five years and must conduct annual monitoring of the public facilities or housing use and operations during that period.
- Pursuant to 2 CFR Part 200.311, OHCS is required to restrict the use of property acquired or improved under a federal award to be used for the originally authorized purpose as long as needed. The subrecipient must not dispose of or encumber the property's title or other interests during this time. When the property is no longer needed for the originally authorized purposes, the subrecipient should notify and coordinate any dispositions with OHCS.
- Pursuant to program policy and guidelines for the specific project and any property acquired, the subrecipient must have a plan to monitor the property for the affordability period or monitor any other programmatic requirements that apply.
- Any required affordability periods must be recorded against the real property associated with the project and monitored on at least an annual basis for the duration of the affordability period.
- For any property purchased with CDBG-DR funds, the subrecipient is required to *keep accurate records* for it (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, and other inventory types of data).
- The subrecipient is responsible for controlling the use of the property (in accordance with its intended purpose) and taking good care of it (that is, take adequate steps to prevent its damage, theft, or loss). Subrecipients are required to provide insurance coverage for real property and equipment, as found necessary to protect the investment acquired or improved with CDBG-DR funds, provided that the property is under ownership of the subrecipient (non-federal entity). Refer to the Subrecipient Agreement for terms and conditions relating to the use of any real property under the entity's control that the subrecipient acquired, leased, or improved in whole or in part with CDBG-DR funds.

16.2 Real Property

16.2.1 Use

Real property must be used for the original approved purpose for as long as it is needed for that purpose and the subrecipient must not dispose of or encumber its title or other interests.

16.2.2 Acquisition

Projects funded by CDBG-DR are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq. (URA) and the federal regulations found in 49 CFR Part 24 (see also section 104(d) of the Housing and Community Development Act of 1974 and implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD-funded programs).

The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition of real property for any phase of a federal or federally funded project. The URA also establishes equitable land acquisition policies.

Chapter 9 Acquisition and Relocation details the specific rules to comply with acquisition under the URA and Federal Register alternative requirements and waivers.

16.2.3 Management

16.2.3.1 Change of Use for Real Property

Real property acquired or improved with CDBG-DR funds that exceed the applicable simplified acquisition threshold defined in Chapter 5 Procurement of the Subrecipient Manual must continue to be used for an approved purpose for at least five years following the grant agreement.

A subrecipient may not change the use or planned use of the property without providing affected citizens with reasonable notice and opportunity to comment on the proposed changes and either:

- The new use qualifies as meeting one of the national objectives and is not a building for the general conduct of government,

- The subrecipient, after consultation with affected citizens that it is appropriate to change the use of the property to a use that does not meet a national objective or is not a building for the general conduct of government, or
- The subrecipient may retain or dispose of the property for the changed use if the CDBG-DR program is reimbursed or the state's CDBG program is reimbursed, at the discretion of the state.
- The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG-DR funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within five years of such closeout, the subrecipient shall make the reimbursement to the state's CDBG program account.

16.2.3.2 Safeguarding All Assets

Federal requirements include effective control and accountability for all funds, property, and other assets. Real property, equipment, and supplies are recognized by the generally accepted accounting principles as types of assets. Subrecipients are required to adequately safeguard all assets and ensure that they are used only for authorized purposes.

Insurance Requirements: Subrecipients must provide the equivalent insurance coverage for real property acquired or improved with federal funds as it would for property owned by a non-federal entity. For specific insurance requirements, refer to the Subrecipient Agreement for terms and conditions.

16.2.4 Disposition

Disposition can occur through the sale or long-term lease of real property purchased or improved with CDBG-DR funds. Proceeds from disposition will be considered program income, including gross income from the rental or lease of real property.

16.3 Personal Property

The federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, a subrecipient's property management system must provide for:

- Accurate records
- Regular inventories
- Adequate maintenance and control
- Proper sales procedures

16.3.1 Equipment

Subrecipients must use equipment for the approved purposes of the project during the period of performance or until the property is no longer required for the project and follow disposition requirements. Additionally, subrecipients must not encumber the equipment without approval by OHCS and must dispose of the property following the rules within this chapter.

16.3.1.1 Use

During the time that equipment is used on the project or program for which it was acquired, subrecipients must also make equipment available for use on other projects or programs currently or previously supported by the federal government, provided that such use will not interfere with work on the projects or program for which it was originally acquired.

- First preference for other use must be given to other programs or projects supported by HUD, and second preference must be given to programs or projects under federal awards from other federal awarding agencies.
- Use for non-federally funded programs or projects is also permissible. User fees should be considered if appropriate.

16.3.1.2 Procedures for Tracking Large Property Purchases

Below are procedures for subrecipients to purchase property using CDBG-DR funding:

- To demonstrate the purchase of a property exceeding \$5,000, OHCS will require subrecipients to have three bids/quotes and responses. If it is not possible to get the bid/quotes, the subrecipient will need to provide justification for sole source (e.g., if a vehicle and a lease, provide a cost/benefit analysis).
- Purchase information will be provided by the subrecipient to OHCS.
- After the award is made, provide a copy of the invoice/delivery receipt and a copy of the approval used to initiate the purchase.
- Should the subrecipient choose to change the use of the property, they must contact OHCS to ensure that proper procedures are followed. Failure to do so can result in payback of the grant award.
- Before property can be disposed of, the subrecipient should request approval from OHCS.

16.3.1.3 Management Requirements

Procedures for managing equipment, including replacement equipment, whether acquired in whole or in part under a federal award, until disposition takes place will, at a minimum, meet the following requirements:

- Property records must be maintained that include:
 - A description of the property
 - A serial number or other identification number
 - The source of funding for the property (including the Federal Award Identification Number (FAIN))
 - The name of the title holder
 - The acquisition date
 - The cost of the property
 - The percentage of federal participation in the project costs for the federal award under which the property was acquired
 - The location
 - The use and condition of the property
 - Any ultimate disposition data, including the date of disposal and sale price of the property
- A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
- Adequate maintenance procedures must be developed to keep the property in good condition.

If the non-federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

16.3.1.4 Documentation

For any property purchased with CDBG-DR funds, the subrecipient is required to keep accurate records. Examples of records include the purchase date, price, location, physical description, title, maintenance history and condition, original and current use, depreciation or amortization, and other inventory types of data.

16.3.1.5 Insurance Requirements

The subrecipient is responsible for controlling the use of the property for its intended purpose, performing routine maintenance, and taking steps to prevent its damage, theft, or loss. Subrecipients are required to provide insurance coverage for real property and equipment, as found necessary to protect the investment acquired or improved with CDBG-DR funds, provided that the property is under ownership of the subrecipient.

Refer to the Subrecipient Agreement for terms and conditions relating to the use of any real property under the entity's control that the subrecipient acquired, leased, or improved in whole or in part with CDBG-DR funds of over \$25,000.

16.3.1.6 Disposition

If equipment acquired under a federal award is no longer needed for the original project, program, or other activities currently or previously supported by a federal awarding agency (except as otherwise provided in federal statutes, regulations, or federal awarding agency disposition instructions, the non-federal entity must request disposition instructions from the federal awarding agency). The request is required if specified by the terms and conditions of the federal award. Disposition of the equipment will be made as follows, in accordance with federal awarding agency disposition instructions:

1. Items of equipment with a current per-unit fair market value of \$10,000 or less may be retained, sold, or otherwise disposed of with no further responsibility to the federal awarding agency.
2. Except as provided in [2 CFR Part 200.312\(b\)](#), or if the federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$10,000 may be retained by the non-federal entity or sold. The federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the federal awarding agency may permit the non-federal entity to deduct and retain from the federal share \$500 or 10% of the proceeds, whichever is less, for its selling and handling expenses.
3. The non-federal entity may transfer the title to the property to the federal government or to an eligible third party provided that, in such cases, the non-federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
4. In cases where a non-federal entity fails to take appropriate disposition actions, the federal awarding agency may direct the non-federal entity to take disposition actions.

16.3.2 Supplies

16.3.2.1 Use

For supplies to be allowable costs for the CDBG-DR program, the costs incurred must be necessary to carry out an eligible activity under the federal award. Purchased materials must be charged at the actual price less any applicable credits or discounts. Additionally, supply expenses can be considered direct or indirect costs but must receive consistent treatment by the subrecipient across federal and non-federal projects and be in accordance with the generally accepted accounting principles. Subrecipients who receive donated supplies to complete the eligible activity must be used without charge to the federal award.

16.3.2.2 Management

Subrecipients must maintain effective control and accountability for all assets, including supplies, to ensure that they are used solely for authorized purchases. Subrecipients and recipients must not use the supplies acquired with the CDBG-DR funding to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as there is a federal interest in the supplies or as authorized by federal statute.

An example would be the purchase of supplies for an entity receiving an economic development loan. If the supplies are used to provide services, the entity would need to bill for services following market and industry standards in the private sector.

16.3.2.3 Disposition

When there is a residual inventory of unused supplies exceeding \$10,000 in aggregate value at the end of the Subrecipient Agreement and the supplies are not needed for any other federal award, the subrecipient may retain or sell the unused supplies.³

Subrecipients are required to follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return on disposition of property per 2 CFR Part 200.311(d)(2).

HUD or OHCS is entitled to compensation for unused supplies by multiplying the percentage of the federal contribution toward the cost of the original purchase by the current market value or proceeds from the sale of the supplies. If the supplies are sold,

³ Unused supplies are new and have not been opened or used before.

OHCS may allow subrecipients to retain up to \$1,000 of the sale proceeds to cover expenses associated with the disposition of the supplies.

16.4 Examples of Asset Management Plans

16.4.1 Single Family Housing Rehabilitation/Reconstruction

Housing is not determined to have achieved a national objective until the unit is occupied or reoccupied by the owner. Verification of occupancy should be placed in the project file for each property.

The subrecipient will continue to monitor the ownership of all the properties with affordability periods until that period has expired. A copy of the executed grant agreement specifying the expiration date of the affordability period should be filed with the clerk or register of deeds for the county in which the project is located. The recordation will assist in ensuring that the subrecipient is notified if an attempt is made to sell the property before the expiration of the affordability period.

On an annual basis, public land records and/or assessor's data can be used to verify ownership and current property tax status. If a sale is found that lacked notification to the subrecipient, the owner will be contacted and the situation of the sale reviewed for potential recapture of the remaining CDBG-DR obligation. If a property is determined to be delinquent on property taxes, the subrecipient will assist the homeowner to enter a payment plan.

A sample sheet is included with this document. It lists the Disaster Recovery Grant Reporting (DRGR) number, property address, and expiration date of affordability period. A copy of this plan must be submitted to OHCS Compliance.

16.4.2 Small Rental Rehabilitation Program

Based on the program guidelines, landlords are required to make their units assisted by CDBG-DR available to low- and moderate-income tenants for the duration specified in their grant agreement. Verification of a valid lease and occupancy of a unit by an income-qualified tenant are the basis on which a national objective is verified.

On an annual basis, each landlord must submit a current rent roll and copy of the current lease. The subrecipient should conduct a HUD housing quality standards (HQS) inspection annually as well. Upon initial lease-up, and whenever there is unit turnover, the landlord is required to provide documentation of household composition and income verification.

Appendix A is a sample report that lists the DRGR activity number, property address, and expiration date of the affordability period. A copy of this plan must be submitted to OHCS Compliance.

16.4.3 Multifamily Housing

A multifamily project is not determined to have achieved a national objective until at least 51% of the units are leased and occupied by income-qualified tenants. The subrecipient should collect a copy of the lease and tenant income and demographics for each unit leased.

Once lease-up has been achieved, the asset management plan that the subrecipients will implement for the multifamily projects involves the following:

Initial Review

- Confirm that all the elements of the initial financing on which the subrecipient's funding decision was based remain the same, including permanent loan financing and the developer's contributions.
- Confirm that demographic information is being regularly collected for tenants, including any new tenants, and that tenant turnover is being reported to the subrecipient for reporting into DRGR.

Semiannual Review

- Review actual operating costs versus the original operating pro forma. Look for variations that will negatively impact cash flow and debt service responsibilities.
- Review economic vacancy and collection numbers for increases in turnover or delays in putting vacant units back into service.
- Collect required demographic information on any new tenants.

Annual Review

- Compare actual performance to budget.
- Compare current performance to same period in prior year.
- Compare current operations to historic performance.
- Compare actual performance to projected performance.

- Compare deal performance to similar projects.
- Conduct an annual review of all on-site HQS inspections of units performed by the responsible party.
- Based on a sampling of HQS inspection reports, conduct on-site HQS inspections of a sampling of units.
- Collect annual rent roll information and demographics on all tenants.
- Look for:
 - Cash on hand
 - Accounts payable information
 - Tenant receivables
 - Repairs and maintenance expenditures
 - Operating expenses per unit
 - Debt service coverage ratio (should be greater than or equal to 1.15)

If, based on an analysis of the data described above, the projects funded by CDBG-DR have become “troubled,” the subrecipient will take the following actions:

- Notify OHCS Compliance.
- Convene all stakeholders (ownership partners, lenders, management company).
- Identify the problem(s).
- Establish benchmarks for addressing and remediating the problems.
- Develop a timeline.
- Create an action plan that will identify the responsibilities of partners and hold them accountable.

16.4.4 Infrastructure Projects

The most effective and efficient method of ensuring appropriate oversight of an infrastructure investment is to require, as a condition of funding, that a responsible entity enter a Maintenance and Operating Agreement with the subrecipient.

16.5 Regulations

The following table shows the type of property standards and provides links to the applicable regulation within 2 CFR Part 200 with an example of what type of property is included in each section as applicable.

Property Standards	Example	Refer to Citation
Insurance Coverage		2 CFR Part 200.310
Real Property	Land/Buildings	2 CFR Part 200.311
Tangible and Nonexpendable Equipment	Equipment	2 CFR Part 200.313
Tangible and Expendable Equipment	Supplies	2 CFR Part 200.314
Intangible Property	Copyrights	2 CFR Part 200.315

16.6 Appendices

16.6.1 Appendix A: Multifamily Property Tracking Sample Form

The activities listed below have their affordability period enforced as defined in Oregon's CDBG-DR Action Plan and the Grant Agreement.					
DRGR Activity Number	Address	Affordability Period	Unit Number	Start of Affordability Period	End of Affordability Period

16.6.2 Appendix B: Asset Management for Single Family Properties Sample Form

The activities listed below have their affordability period enforced by RECAPTURE provisions as defined by the CDBG-DR Homeowner Program Policies and Procedures.							
Single Family Homes							
Applicant ID	Street Address	City	ZIP Code	DRGR Activity Number	Affordability Period (number of years based on Action Plan)	Start of Affordability Period	End of Affordability Period

16.6.3 Appendix C: Asset Management Report Sample Form

Asset ID Number	Asset Name	Asset Description	Purchase Date	Cost	Useful Life

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