

Chapter 4 Federal Requirements

Note: Refer to Chapter 7 for a description of the environmental and uniform relocation and real property assistance (URA) trigger guidance.

The Community Development Block Grant (CDBG) Program is subject to many federal requirements that cover a wide range of activities. Some of the requirements are briefly summarized below. More detailed information can be found in the Grant/Project Management Handbook and other resources available from Business Oregon. The CDBG Grant Management Handbook (2016 Edition) or most current edition, can be found on the [department's web site](#). Business Oregon encourages potential applicants to review the Grant Management Handbook prior to committing to submit an application in order to familiarize themselves with the wide array of program requirements.

Conflicts of Interest

Oregon Government Standards and Practices laws ORS Chapter 244 apply to procurement of supplies, equipment, construction and services to be paid for in whole or in part with CDBG funds. In addition, the provisions of the federal code of regulations (CFR), 24 CFR Subpart I, 570.489(h) also apply to the following activities assisted in whole or in part with CDBG funds: procurement of supplies, equipment, construction and services; acquisition and disposition of real property; and the provision of assistance to individuals, businesses, and other private entities.

- **Persons Covered by the Conflict of Interest Requirements**–The conflict of interest provisions in this section apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the unit of general local government or of any designated public agencies that are receiving CDBG funds.
- **Conflicts Prohibited**–Generally, except for eligible administrative and personnel costs, none of the persons covered by the Conflict of Interest Requirements who exercise or have exercised any functions or responsibilities with respect to CDBG assisted activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity. Also, such persons may not have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.
- **Exceptions to the Conflict of Interest Requirements**–Business Oregon may grant an exception to the provisions of this section upon written request of the unit of general local government provided the state can fully document its determination in compliance with all federal requirements in 24 CFR Subpart I, 570.489 (h)(4) and (5).

Continued Use Requirement/Change of Use Requirements

Any change in use of a facility or disposition of property acquired or improved in whole or in part with CDBG funds within five years after closeout (**note:** Business Oregon's definition of closeout is administrative closeout) of the grant project must be made in accordance with the standards provided in 24 CFR 570.489 (j). If the facility or real property cannot meet a national objective during the five-year continued-use period the grant must be repaid to the state. In the event of a possible

change of use of the funded facility, the grant recipient must contact Business Oregon prior to taking any action. More specifically, the requirements are:

- All projects that have improved or acquired real property within the grant recipients' direct control (including activities undertaken by sub-grantees) that was improved or acquired in whole or in part with CDBG funds in excess of \$100,000 must comply with the continued use requirements of 24 CFR subpart I, Section 570.489 (j).
- The grant recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that which the acquisition or improvement was made, unless they follow the requirements listed in Section 570.489 (j).
- **Direct Control**—Projects under the direct control of the grant recipient (publicly owned improvements) or eligible sub-grantee (nonprofit) must ensure the CDBG funded improvements remain in compliance with the federal national objective for which they originally qualified for funding.
- **Not Under the Direct Control**—Projects not under the direct control of the grant recipient or eligible sub recipient (private property owners for housing rehabilitation) do not have to comply with the continued use requirement. However, these projects must still meet the national objective requirements until the grant is closed out with the state.
- **Trust Deed**—In cases where the recipient is not and will not be the owner of the real property or facility being improved with CDBG funds, the recipient shall cause the owner of such real property or facility to duly execute and record a trust deed against the real property or facility in favor of the recipient. Said trust deed shall be in form and substance satisfactory to the state.

The state has prescribed language that must be included in any contract, which transfers the property from the recipient to another party. This language and more information regarding these requirements are contained in the Grant Management Handbook.

Environmental Review

Recipients are required to obtain appropriate environmental clearances for their project and to maintain an “environmental review record” for each project. More detail on how to comply with these requirements and the necessary forms are contained in the Grant Management Handbook.

The grant recipient shall not commit/obligate or expend funds on any project activity before completion of the appropriate level of environmental review and, when applicable, the approval by the state of a Request for Release of Funds (RROF). This restriction applies to all project funds, even non-CDBG funds in the project.

Excessive Force Policy

All city and county recipients must adopt and enforce a policy prohibiting excessive force by law enforcement agencies within their jurisdiction against any individuals engaged in non-violent civil rights demonstrations. Enforcement of all 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 also is required.

The excessive force policy is in the federal law for the Community Development Block Grant program. The effect of the law is that the state cannot legally award a grant to a city or county that does not adopt the policy.

In-Kind Value of Volunteer Labor

For the purpose of documenting local match, the department has established that volunteer labor is to be valued as follows:

- The time of a person who donates their professional skills shall be credited at their standard hourly fee. For example, an electrician that donates time to install wiring.
- The time of a person that provides labor for which they are not normally paid shall be credited at the state's current minimum wage. For example, a teacher that volunteers to perform carpentry work.

Minority, Women, and Emerging Small Businesses

The department encourages recipients to provide opportunities for minority, women, and emerging small businesses. The [Oregon Procurement Information Network](#) (ORPIN) or Business Oregon's [Certification Office for Business Inclusion and Diversity](#) (COBID) can be used for advertising procurement contracts.

Non-Discrimination Against Persons with Handicaps

Federal law prohibits discrimination against any otherwise qualified individual from participating in or benefiting from a federally funded program solely on the basis of handicap. Community Development Block Grant recipients must comply with U.S. Department of Housing and Urban Development regulations that implement this federal law (Section 504 of the Rehabilitation Act of 1973). Cities and counties who are working toward compliance with the federal Americans with Disabilities Act (ADA) will easily meet the requirements of Section 504.

Other Requirements

The recipient shall comply and cause its agents, contractors and sub grantees to comply with 30 F.R. 12319 (1965) as amended by Executive Order No. 11375, 32 F.R. 14303 (1967), reprinted in 42 U.S.C. 2000e (1994), and the regulations promulgated pursuant thereto, 41 C.F.R. 60-1.1 to 60-999.1 (1997).

Recipient shall conduct and administer the department financing in conformity with the Civil Rights Act of 1964, 42 U.S.C. 2000a-2000e (1994).

Many more federal requirements are contained within the recipient's contract with the state and the Grant Management Handbook.

Federal Prevailing Wages and Federal Labor Standards Provisions and Bureau of Labor and Industries (BOLI) Prevailing Wage Requirements

Construction projects assisted in whole or in part with CDBG funds must be carried out in compliance with the federal Davis Bacon and Related Acts and the Oregon Bureau of Labor and Industries (BOLI) requirements. This means that both Oregon Prevailing Wage Rates and the federal prevailing wage rates and Federal Labor Standards provisions will apply, effective for all projects advertised for bid on or after January 1, 2006. Extensive labor standards requirements must be followed. More detailed information can be found in the current Grant Management Handbook.

Program Income

Program Income includes, but is not limited to, the following:

- Payments of principal and interest on loans made from CDBG funds;
- Proceeds from the lease or disposition of real property and equipment acquired with CDBG funds;
- Interest earned on CDBG funds held in a revolving fund account; and
- Interest earned on any program income-pending disposition of such income.

Funds derived from CDBG funded activities are considered Program Income except when:

- The total amount of funds, which does not exceed \$35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its sub-grantees (all funds received from revolving loan funds are considered program income, regardless of amount);

Note: Oregon defines a single year as (July 1 to June 30).

All income received from any closed housing rehabilitation grant that is not utilizing the authority of 105(a)(15) of the HCDA and is still being tracked for program income by Business Oregon is considered program income. The miscellaneous income rule does not apply to these prior housing rehabilitation grants, effective May 23, 2012.

- The funds are generated by housing rehabilitation revolving loan fund activities eligible under Section 105(a)(15) of the Housing and Community Development Act and carried out by an entity under the authority of section 105(a)(15) of the Act. Such entities are limited to public nonprofit organizations that (1) meet the Internal Revenue Service requirements for nonprofit status; (2) are serving the development needs of non-entitlement areas; and (3) carry out community economic development, neighborhood revitalization and/or energy conservation projects. Such projects can include management of revolving funds for the purpose of housing rehabilitation and economic development.

The full definition of program income and federal rules governing its use are found in 24 CFR 570.489(e) and the preamble to the final rule and guidelines published by the U.S. Department of Housing and Urban Development in the Federal Register on May 23, 2012.

All requirements of 24 CFR 570 Subpart I apply to the use of program income retained by a unit of general local government. Failure to use program income as required may result in sanctions against the recipient.

Recipients shall not expend any income anticipated to be less than \$35,000 until after the end of the applicable annual period unless it is spent in compliance with CDBG rules.

Program income shall be paid to the state except where the income is to be used by the recipient to continue the activity from which such income is derived. For example, an older housing rehabilitation grant where the grant funds are loaned by the grantee to private property owners, the loans repaid to the grantee can be used to conduct more housing rehabilitation work.

Housing rehabilitation grants awarded under the authority of 105(a)(15) of the HCDA exemplify the exception to program income rules if all the following conditions exist: 1) the state's grant to the city or county must be subgranted to an eligible nonprofit, 2) the nonprofit must loan funds directly

to income-eligible homeowners, and 3) loan repayments made by those homeowners must be dedicated to CDBG-eligible activities such as housing rehabilitation for subsequent eligible homeowners, community economic development, neighborhood revitalization and/or energy conservation projects.

Property Acquisition, Relocation, and Tenant Assistance Requirements

All temporary construction easements and real property acquisition, including the acquisition of permanent easements for construction projects assisted in whole or in part with CDBG funds, must be carried out in compliance with the requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA or Uniform Act) and Section 104(d) of the Housing and Community Development Act of 1974. The federal rules apply even if CDBG funds will not be used to pay for the acquisition.

If tenant displacement has occurred, the recipient must have documentation that the notices were received by the tenant when the grant application is submitted to the state, by means of certified mail return receipt or the tenant signed for the notice. Tenants who did not receive their notices at the project application stage may be entitled to relocation benefits under federal law. There are many notices, depending upon the details of the situation, therefore, rather than include all types of notification in the Method of Distribution, the applicant is encouraged to use the numerous examples of notices (“guide form notices”) in *HUD Handbook 1378*. These are available for download from the [HUD web site](#). A wide range of samples for different situations are found in the appendices.

If an owner or tenant did not receive their notice, a complaint can be filed either by contacting the HUD Region X office or by [filing a complaint online](#).

Due to the specialty calculations and detailed requirements for relocation activities, any applicant with a proposed project that involves relocation will be required by Business Oregon to hire a specialist acceptable to Business Oregon to complete the required URA relocation process.

Note: Refer to the “Note” in Chapter 7 for a brief description of the environmental and uniform relocation and real property assistance (URA) trigger guidance. More detailed information can be found in the current Grant Management Handbook.

Proportional Funding

Proportional funding for any project is not allowed.

Record Keeping

Recipients must maintain records that are complete and cover program and financial use of the CDBG funds for monitoring by the department. Records retention requirements for the CDBG program is three years from the date the state’s grant is closed with the U.S. Department of Housing and Urban Development (HUD) as required by 24 CFR Subpart I, 570.490. The department will provide technical assistance and a Grant Management Handbook, which contains detailed record keeping information and information covering other aspects of the program’s requirements.

Residential Antidisplacement and Relocation Plan

Recipients must comply with the state of Oregon’s “Residential Antidisplacement and Relocation Plan.”

Title I

These grants and any sub-grants of these federal grants are subject to Title I of the Housing and Community Development Act of 1974, and any regulations promulgated pursuant thereto and as may be amended from time to time.

Volunteers or Prison Inmates

Applicants planning to use volunteer or prison inmates for a project must consult with the department and receive department approval prior to submitting an application. Donated labor can help reduce the cost of the project. However, the use of volunteers also may result in coordination problems with contractors, quality of work issues, and potential local government liability for personal injury and property damage. Applicants should consider both the benefits and the drawbacks of volunteer labor before finalizing any project budget.

Volunteers

In general, the following rules apply to volunteers:

- A person cannot be a volunteer if the person is otherwise employed at any time on the project activity in the construction or maintenance work for which the person volunteers.
- Volunteers cannot be paid to provide materials or supplies unless the recipient has obtained the materials/supplies through a competitive process under the appropriate procurement rules.
- Persons providing work subject to the Davis-Bacon Act (laborers and mechanics in the construction trades) must be paid the applicable federal prevailing wage unless they meet the requirements for volunteers contained in 24 CFR Part 70.3 entitled "Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates." This rule is available, upon request, from the department.

Prison Inmates

There is no prohibition against the use of prison inmate labor on CDBG funded construction work. Prisoners are generally not considered volunteers because they have no choice in the matter, so they must be paid Davis-Bacon wage rates. In rare situations, prisoners may be participating in a voluntary program and they are truly volunteering their services to the local government.