

## Chapter 5 Program Policies and Definitions

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

### Policies

#### Eligible/Ineligible Costs

##### Activity Delivery Costs

Activity delivery costs are expenses directly related to carrying out eligible activities such as property acquisition. These costs are not considered CDBG grant/project administration expenses. Professional appraiser's fees and attorney charges necessary to complete the acquisition of property are eligible as part of the acquisition activity cost.

##### Audit Cost

Community Development Block Grant (CDBG) funds can pay for A-133 audit costs in proportion to the federal CDBG funds received by the city or county. The eligible share of the A-133 audit cost cannot exceed the ratio of these federal grant funds received to the recipient's total annual expenditures and incurred obligations—times—the cost of the audit. For example:

CDBG receipts	\$100,000
Total Expenditures and Incurred Obligations	\$1,000,000

##### Ratio:

$$\frac{\text{(CDBG Receipts)}}{\text{(Total Expenditures and Incurred Obligations)}} = 0.1$$

Total Cost of A-133 Audit	\$5,000
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##### Eligible CDBG reimbursable portion of the audit cost

$$\text{(Total Audit Cost)} \times \text{(Ratio)} = \$500$$

##### Equipment

Grant funds may be used to buy equipment for grant/project administration purposes. Examples include computers, file cabinets and other office equipment. These expenses are included in the maximum amount allowed for grant/project administration.

**Entertainment/Refreshments**—The cost of food, beverages, snacks, and any related expenses for utensils etc., are not eligible for reimbursement under the program.

##### Grant (Project) Administration/Environmental Review/Labor Standard Compliance/Program Management Services

For all categories that allow grant administration as an eligible activity, up to 10 percent of the grant award, but not more than \$35,000 (\$25,000 for housing rehabilitation projects) may be used to pay for grant/project administration costs, including overall project management, coordination, monitoring, and evaluation. Recipients may use some of the grant/project

administration allowance to conduct activities to further Fair Housing in their communities. Grant administration is not an eligible activity under the Microenterprise Assistance category.

In addition to the grant administration allowance the following limitations apply:

- **Federal Labor Standards Compliance**—Up to a maximum of \$20,000 per project is allowed if needed. Any amount of funds in excess of the \$20,000 must be paid for with local or non-CDBG funds. The cost associated with Bureau of Labor and Industry (BOLI) labor standards compliance must be paid for with local or non-CDBG funds.
- **Environmental Review**—Up to a maximum of \$20,000 per project is allowed to prepare and complete a full environmental review record including any associated wetlands delineations, 8-step floodplain/wetlands processes, biological assessments, pedestrian survey's, SHPO/THPO communication etc., to meet all the requirements of the most current Grant Management Handbook and approved by Business Oregon, if needed. The complete record must be ready for public comment. Any amount of funds in excess of the \$20,000 must be paid for with local or non-CDBG funds.
- **Legal Fees**—There is no maximum limit on costs associated with attorney fees.
- **Audit**—See Page 5-1 for details.
- **Property Appraisal Fees**—There is no maximum limit on costs associated with property appraisal fees related to property acquisition as long as the fee is reasonable and consistent with fees charged for projects with a similar scope of work in the local market.
- **Limited English Proficiency (LEP) Translation Services**—Up to a maximum of \$3,000 per project is allowed to translate documents into other language(s), to meet the LEP requirements. The documents that are translated must be directly needed for the successful completion of the CDBG funded project, such as procurement notices, CDBG public meeting notices, etc.
- **Cultural Resource Monitoring**—Cultural resource monitoring required by Tribes in the completion of the environmental review record and during construction is an allowable expense. There is no maximum limit on the cost associated with cultural resource monitoring to satisfy Tribal compliance as long as the fee is reasonable and consistent with fees charged for projects with a similar scope of work.
- **Funding Application Preparation**—Up to a maximum of \$7,500 per project is allowed under the Public Works, Public Water and Sewer System category to prepare funding applications to the department or other state and federal agency(s) for the next phase of the project.
- **Program Management Services** (Only applies to housing rehabilitation projects.)—Up to 20 percent of the grant award may be used for the combined costs associated with grant administration and program management. Of this amount, no more than \$25,000 may be used for grant administration costs. Program management costs are expenses directly related to carrying out eligible program activities such as working with low- and moderate-income eligible clients. These costs are not considered to be grant/project administration costs because they provide a direct service to clients eligible under the low- and moderate-income national objective.

Recipients that are subject to the 20 percent cap on grant administration and program management, will be allowed an additional \$20,000 on top of the 20 percent cap for grant administration and program management, allowing a maximum of \$25,000 for grant administration expenses.

Refer to Table F for identification of the eligible grant administration, environmental review, labor standards compliance review, attorney fees, appraisal costs, program management costs, and other costs.

<b>Activity</b>	<b>Allowance</b>
Grant Administration for Public Works and Community Facility projects only	10% up to a maximum of \$35,000
Grant Administration for Housing Rehabilitation projects only	10% up to a maximum of \$25,000
Federal Labor Standards Compliance	Up to a maximum of \$20,000 per project
Environmental Review	Up to a maximum of \$20,000 per project
Legal Fees	There is no maximum limit
Audit Costs	Refer to Page 5-1 for details
Limited English Proficiency Translation Services	Up to a maximum of \$3,000 per project
Cultural Resource Monitoring	There is no maximum limit
Funding Application Preparation (Public Works Water and Sewer only)	Up to a maximum of \$7,500 per project
Property Appraisal Fees	There is no maximum limit
Construction Contingency	Capped at 10% of the estimated construction cost
Architectural	12 percent of project construction and construction contingency costs combined
Engineering	20 percent of project construction and construction contingency costs combined
Program Management (Only applies to housing rehabilitation projects)	Up to 20% of the requested grant, plus \$20,000. This includes the \$25,000 allowance for grant administration.
Under rare circumstances, for projects involving biological assessments, archeological surveys or other required environmental studies, the department may allow the recipient to use a portion of the grant administration allowance to complete these activities. The costs must be required and reasonable, approved by Business Oregon and are limited by the amount of funds available in the recipient's grant award.	

Refer to Table F on page 5-11 for more details.

**Indirect Costs**

Indirect costs are not allowed under the state program.

**Ineligible Activities**

CDBG funds cannot be used for any debt financing or takeout, fines, fees, or penalties. System development charges (including construction excise taxes), hook-up fees, and connection charges are also not eligible for reimbursement under the federal regulations for the CDBG program. Bureau of Labor and Industry (BOLI) fees are ineligible under the program. The use of a Construction Manager/General Contractor (CMGC), also known as the design/build construction technique, is prohibited under the program.

### **Limitations on Architectural and Engineering Costs**

The department will not approve, without explanation, grant awards that include budgets that contain more than the following percentages for architectural and engineering work regardless of whether the item is paid for with grant funds or other funding resources:

- Architectural**–12 percent of project construction and construction contingency costs; and
- Engineering**–20 percent of project construction and construction contingency costs.

Proposed amounts in excess of the above percentages are generally not allowed and must be fully explained in the application. Approval to exceed the percentages can be granted on a case-by-case basis by Business Oregon. The work included in these percentages generally includes: project design, surveying, preparation of bid and contract documents, review of bids, project/construction oversight, preparation of as-built drawings and operation and maintenance plans. Professional services contracted out by the engineering/architectural firm for project geotechnical evaluation, surveying, core samples, or other extra services are not generally included in the above stated limit for engineering and architectural costs. For further assistance contact the department’s staff.

Preliminary engineering/planning documents, final design engineering documents and construction oversight in projects funded in full or in part with CDBG funds must be prepared and stamped or conducted by a registered professional engineer or architect licensed to do work within the state of Oregon.

### **Limits on Construction Contingencies**

Construction contingencies are limited to a maximum of 10 percent of the projected construction line item cost.

### **Pre-Award Costs**

Costs incurred prior to award of the grant are not eligible for reimbursement in any project assisted in whole or in part with CDBG funds.

### **Pre-Agreement Costs**

In any project assisted in whole or in part with CDBG funds, costs incurred after a grant award has been made but prior to execution of a grant contract are not eligible for reimbursement unless there are provisions in the grant contract allowing for payment of specific pre-agreement costs. The activities must also be eligible and undertaken in accordance with the requirements of the Community Development Block Grant program/future contract requirements and the federal environmental review rules at 24 CFR Part 58. Consult with department staff during project development for pre-agreement cost activities.

If pre-agreement costs are to be requested, the applicant must provide a written letter with the application, requesting pre-agreement costs that clearly explains and identifies:

- The amount of funds needed, by budget line item.
- An explanation as to why pre-agreement costs are necessary for the completion of the project.
- The timeline in which the funds will be expended.
- Documentation the federal environmental review rules at 24 CFR Part 58 have been met.

The application must describe the pre-agreement costs within the project description and show the costs in the project budget.

### **Grant Contract Execution**

Grant contracts must be signed by the highest elected official of the recipient and returned to the department.

### **Grant Contract Amendments**

The department must approve and process a formal written grant contract amendment if any of the following changes occur on a project: change in cost, scope of work, location, objectives, time frame, budget, or budget line items of the approved activities, program beneficiaries or project completion dates. The recipient's failure to obtain an approved grant contract amendment from the department when necessary may result in sanctions. Failure to gain prior approval, when needed, could result in the recipient having to pay for the costs associated with the amendment. The grant recipient must request, in writing, an amendment from the department and the documentation must contain the reasons why the amendment is needed and identify the proposed revisions to the budget, timeframes, scope of work etc.

- **Project Completion Date**–Project completion date extension requests must be submitted, in writing, to the department by the recipient. The written request must contain:
  - 1) The reason(s) for the extension including identification and justification of the reasons beyond the recipients control that caused the delay;
  - 2) The actions taken by the recipient to overcome the reasons for the delay; and,
  - 3) Propose a date when all grant activities will be completed. (i.e., the extension request cannot be more than six months and must include a timeline/work plan showing that the grant can be administratively closed within the six months).
- **Budget**–A formal written grant contract amendment is required to draw funds differently than authorized in the approved CDBG grant contract budget. However, if at the time of the **last/final** disbursement request, the recipient needs to vary from the approved budget the following procedure can be used, only for the final disbursement request:
  1. The amounts being changed and a brief explanation justifying the need to change or move line item amounts must be documented, with notations on the final disbursement request. The documentation can either be filed under the grant contract amendment tab or with the disbursement request in the Business Oregon project file;
  2. The final changes must be in conformance with the grant administration, engineering, environmental, program management etc. allowances identified on page's 5-2 to 5-4 of this MOD;
  3. The costs are eligible under the CDBG program; and,
  4. There is written communication from the Regional Project Manager to the grant recipient in the project file, attached to the final disbursement request that "Business Oregon agrees to waive the requirements in [insert precise sections in both the contract to follow the approved budget] in this instance." The documentation can either be filed under the grant contract amendment tab or with the disbursement request.

The department Director or Assistant Director has the authority to designate/assign grant contract amendment approval authority.

### **Mixed Use Facilities**

A community/public facility that contains activities both eligible under the Method of Distribution and activities ineligible under the Method of Distribution is a mixed-use facility. These types of facilities are not eligible for funding under the program.

### **“Pass Through” Grants**

The city or county grant recipient is fully responsible for the grant-funded project and compliance with all applicable federal and state requirements. Recipients may not “pass through” any of the grant funds to another entity to undertake the project activities, **except** for regional housing rehabilitation revolving loan fund activities where the department has reviewed and/or approved a sub-grant agreement. **However, the original grant recipient remains responsible for compliance with the federal and state program requirements.**

### **Procurement**

When procuring property or services to be paid for in whole or in part with CDBG funds, city and county recipients shall comply with the requirements of Oregon Revised Statutes (ORS) Chapter 279 and Oregon Administrative Rules (OAR) Chapter 137, as applicable. If the grant recipient has professional engineers, architects or other consultants already under contract, the recipient must provide documentation from their legal counsel showing that the procurement met state law and the procurement requirements for each grant. If necessary, all such contracts must be amended to include the required federal clauses.

### **Project Period (Project Completion Date)**

All grants must be administratively closed within the timeframe specified in Table 8-1 found in Chapter 8, unless formally amended. The project completion period begins the date the grant contract is fully executed. Projects that are not completed within the specified project period may be terminated and any unexpended grant funds may be recaptured by the state.

### **Publicly Owned Improvements/Facilities**

#### **All categories:**

When a project requires public ownership, the improvements/facility to be constructed must be owned by the applicant or the applicant has a minimum 50-year long-term lease on the improvements/facility. **Note:** The eligible applicant must have no intention of turning over/selling the improvements or facility to another entity within 50 years.

Public infrastructure improvements must be constructed on land owned by or where proper long-term easements have been obtained by the applicant.

Public/Community facilities can be owned or operated by a non-profit if there is a trust deed or recorded agreement covering the five-year restriction on change of use/continued use requirements.

**Note:** All temporary construction easements and real property acquisition, (including long-term leases of 50 years or more) 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.

### **Readiness to Proceed**

All projects must meet the following readiness to proceed criteria:

#### **Financial Readiness to Proceed:**

- All other funds needed to complete the project are available and committed to the proposed project at the time of application for CDBG funds. Applications must contain clear and convincing documentation that funds are secured and readily available for the project (i.e., Commitment letter or, for Business Oregon internal funding programs, a signed staff recommendation).
- If any necessary other funds are not committed, but the applicant has received a conditional commitment from a funder, the applicant must request a waiver to Business Oregon prior to submitting an application. The following process should be followed when submitting a request for a waiver:
  - Applicant must submit a written request and submit it to the CDBG RPM. The request should include source of funds, status of funding request and circumstances surrounding the inability to obtain a commitment from the funder.
  - Upon receipt of the request, the CDBG Regional Project Manager (RPM) will work with the Regional Development Officer (RDO), CDBG Program and Policy Coordinator (PPC) and Finance Officer to review the request. Within 10-days of receipt of the request, Business Oregon will determine if a waiver will be granted.
  - If granted, written waiver documentation will be provided to the applicant.
  - The applicant must include the written waiver documentation with the application.

**(Note:** The expected date of funding determination is not considered a “commitment” as there is no guarantee that a project will be funded.) If all project funds are not committed, and the funds are anticipated to come from a private funding source, the applicant must provide a back-up financing plan.

#### **Project Readiness to Proceed:**

- Business Oregon expects all awarded projects will start drawing funds four (4) months following the date of grant contract execution. Applications must clearly and concisely document how this will be achieved. (Final design and construction public water/sewer or public/community facility grants must be administratively closed within 36 months of grant execution. Design only projects and Housing Rehabilitation projects must be administratively closed within 24 months of grant execution. Microenterprise assistance projects must be administratively closed within 12 months of grant execution.)
- If the project overlaps municipal boundaries, attach an executed copy of an intergovernmental cooperation agreement that lays out the duties and obligations of each entity.
- If the applicant will own the facility and another nonprofit or other entity will operate the facility, attach a draft of the operating agreement between the parties.
- If applicable, all land use approvals needed for the project have been secured; documentation must be included with the application.

**Note:** If the project is not able to proceed within four months following the date of grant contract execution, the state may terminate the grant and re-obligate the funds.

### **Sanctions**

The state may bar a recipient from applying for CDBG funds, withhold unallocated funds, require return of unexpended funds or require return of program income, if during the grant period, the state finds that:

- The recipient has not signed the grant contract and returned it to the department within 120 days of receipt of contract from Business Oregon.
- None of the grant activities have commenced within 4 months after execution of the grant contract and no funds have been drawn down on the project.
- Federal or state regulations have not been met.
- There is significant deviation from the grant contract-funded activities.
- There has been a monitoring finding that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not, or will not be implemented within 30 days.

No sanction will be issued by the state until the recipient has been notified in writing and has been given 30 days to appeal the decision and to correct the deficiencies. Only the local government (grant recipient) has standing to submit an appeal. During this 30-day period, the grant recipient can submit documentation to Business Oregon disputing the appropriateness of the proposed sanction determination by the state. After the 30-day period is concluded and assuming Business Oregon is not persuaded to rescind the potential sanction, Business Oregon will issue a letter to the grant recipient formally issuing the sanction. Once the formal sanction letter is issued, it will not be rescinded by Business Oregon.

### **Unexpended Grant Funds**

Grant funds not used for activities as shown in the approved contract budget will be recaptured by the state and made available to other communities in accordance with the rules contained within this Method of Distribution.

### **Use of CDBG Funds for Facilities Owned and/or Maintained by a State or Federal Agency**

Grants will not be awarded for facilities owned and maintained by another state or federal agency. CDBG funds cannot be used to offset locally budgeted funds or to replace state or federal funds. All CDBG projects must comply with OMB Circular A-87 "Cost Principals for State and Local Governments." In addition, 24 CFR 570.489(d) requires that CDBG funds are not used for general expenses required to carry out other responsibilities of state and local governments. Maintenance and upgrades to roadways or property of the Oregon Department of Transportation (ODOT) and federally owned property (or maintenance agreements) is not eligible under the CDBG program.

### **Waivers**

The director of Business Oregon, or his or her designee, may waive non-statutory program requirements. A request for a waiver will be approved only when it is determined necessary to further the objectives of the Community Development Block Grant (CDBG) program and the mission of the department.

The director of Business Oregon cannot waive an Oregon CDBG program requirement if the requested waiver conflicts with the Housing and Community Development Act statutes, the HUD regulations, or the state's community development objectives.

Waivers requested by the grant recipient or applicant must be requested in writing. The written request must contain: 1) the reason(s) for the waiver including justification of the reasons beyond the recipients control to warrant a waiver; 2) the actions taken by the recipient to overcome the problem(s); 3) the specific CDBG requirements that are proposed to be waived; and, 4) identification of the plan to complete the project. The written request must be submitted to the department's Regional Project Manager. Waivers must be prepared by the CDBG Program and Policy Coordinator and approved by Business Oregon management prior to the action needing the waiver is completed.

Waivers initiated by Business Oregon must contain written supporting documentation identifying: the reason(s) that warrant a waiver; 2) the actions taken to overcome the problem(s); 3) the specific CDBG requirements that are proposed to be waived; and, 4) identification of the plan to complete the project/activity. Waivers must be prepared by the CDBG Program and Policy Coordinator and approved by Business Oregon management prior to the action needing the waiver is completed.

**Work Performed by Staff of the City or County Recipient (Force Account)**

Applicants should be aware that federal law governing the program states, "It is the intent of Congress that the Federal assistance made available under this title may not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance" (Public Law 93-383.101(c)).

This means that if the applicant intends to use existing budgeted staff to administer the grant or to work on other grant activities (such as construction), Community Development Block Grant funds cannot be used to pay for that staff. Grant funds should only be used to increase local community development activities.

**Note:** Cities and counties planning to pay their own staff with grant funds for administration and/or force account work including, but not limited to, engineering, design and inspection services, construction labor, and operation of locally owned equipment must consult with department staff and receive department approval **prior** to submitting an application.

**Definitions**

**Combination Facility**

A combination facility is a building in which all activities offered are eligible under the CDBG Method of Distribution. Please refer to Chapter 11, page 11-1 for more information on combination facilities.

**Family**

All persons living in the same household who are related by blood, marriage or adoption, this includes any related dependent persons over 65 or working dependent children over 18.

**Financial Review**

When required by the specific funding category applicable to each project type, applications will undergo a financial review to determine that the grant, if awarded, is the minimum amount necessary, when combined with other resources, to ensure the completion of the project. Refer to the specific project type chapters for more details of the financial review required for each type of project.

**Household**

All persons occupying the same housing unit regardless of their relationship to each other.

**Income**

**Annual Family Income**–The total income earned before taxes by all family members, including job earnings (wages, salary, tips, bonuses, commissions), interest, dividends, child support, alimony, welfare, social security, disability, unemployment, retirement payments, net income from business activities, farms, rents, royalties, trusts, estates and any other income received regularly by all family members.

**Annual Household Income**–The total income earned before taxes for everyone that lives within the residence whether they are related or not including job earnings (wages, salary, tips, bonuses, commissions), interest, dividends, child support, alimony, welfare, social security, disability, unemployment, retirement payments, net income from business activities, farms, rents, royalties, trusts, estates and any other income received regularly by all household members.

**Low and Moderate Income**

“Low income” means income equal to or less than 50 percent of the area median (adjusted by family size). “Moderate income” means income equal to or less than 80 percent of the area median (adjusted by family size). Applicable income limits are determined by HUD on an annual basis for all Oregon counties and metropolitan statistical areas.

**Permanent Resident**

A person that resides within a residential dwelling unit for six months or more out of the year.

**TABLE F**  
**Guide for Grant Administration/Activity Delivery Costs/Program Management Costs**

<b>Activity</b>	<b>Grant Administration Cost (yes/no)</b>	<b>Activity Delivery Cost (yes/no)</b>	<b>Program Management Cost (yes/no)</b>	<b>Maximum amount allowed</b>
Preparing budgets, schedules, contract amendments	Yes	No	No	10% of the grant award but not more than \$35,000. For Housing Rehabilitation Projects Only: 10% of the grant award but not more than \$25,000.
Drafting Requests for Proposals and agreements with consultants for grant administration or other consulting work (Architect and Engineer)	Yes	No	No	
Setting up systems to assure compliance with state and federal program requirements. For example, labor standards files and a grant accounting system.	Yes	No	No	
Monitoring project progress against the grant contract scope of work and budget and reporting to elected officials.	Yes	No	No	
Preparing disbursements/cash requests, reports, and other documents for submission to the department.	Yes	No	No	
Participating in department monitoring visits and responding to monitoring findings and concerns.	Yes	No	No	
Preparing a project completion report, assisting an auditor with required grant information.	Yes	No	No	
Costs of publishing the Fair Housing Resolution.	Yes	No	No	
Purchase of capital equipment, such as computers and file cabinets for grant administration.	Yes	No	No	
Training on CDBG grant administration requirements.	Yes	No	No	
Limited English Proficiency translation services to translate documents directly needed for the CDBG project.	No	Yes	No	Maximum \$3,000 per project.
Cultural Resource Monitoring	No	Yes	No	No maximum–reasonable and necessary to complete the activity.
Preparation of the environmental assessment or other environmental documents and publishing required notices.	No	Yes	No	Maximum \$20,000 per project.
Federal Labor Standards Compliance work related to conducting on-site employee interviews, verifying payroll data, reviewing payrolls, attending pre-construction conferences, and obtaining compliance with these requirements.	No	Yes	No	Maximum \$20,000 per project.

Attorney fees for preparing or reviewing contract documents or property acquisition activities.	No	Yes	No	No maximum–reasonable and necessary to complete the activity.
Audit Costs.	No	Yes	No	Refer to page 5-1 for details
Funding application preparation to ensure the planned Public Water or Wastewater project is designed and constructed.	No	Yes	No	Maximum \$7,500 per project
Professional appraiser fees related to property acquisition.	No	Yes	No	No maximum–reasonable and necessary to complete the activity.
Construction Contingency	No	Yes	No	10% of the estimated construction cost
Architectural	No	Yes	No	12% of project construction and construction contingency costs combined
Engineering	No	Yes	No	20% of project construction and construction contingency costs combined
Marketing Grant Activities to clients.	No	No	Yes	Up to 20% of the grant award, plus \$20,000 for the combined costs associated with grant administration and program management. Grant administration is limited to \$25,000.  <b>Refer to Chapter 5 for more information.</b>
Collecting client applications, verifying application to determine eligibility.	No	No	Yes	
Making referrals for products or services.	No	No	Yes	
Providing education or counseling to clients.	No	No	Yes	
Site-specific environmental review, on-site inspections, bid preparation, contracting, client/contractor troubleshooting, compiling cost data on individual rehabilitation homes.	No	No	Yes	