

Chapter 2 - First and Last Draw Requirements and Special Grant Contract Conditions

CAUTION:

Do not sign any contracts or make any purchases for project activities until all required preliminary conditions have been met.

Failure to address these conditions could result in severe consequences, including but not limited to the State being federally prohibited from providing grant funds for part or all of the project

Pre-Agreement Costs

Costs incurred prior to an award are not eligible for reimbursement under any circumstances.

Costs incurred after an award is made but prior to execution of the grant contract are also not eligible for reimbursement, unless there is a provision in the grant contract allowing payment of specific pre-agreement costs **and** if the federal environmental rules have been met for the specified activities. Any pre-agreement costs must be approved by the department **prior** to expenditure – refer to the Method of Distribution for pre-agreement costs procedures.

Acknowledgment of Grant Assistance

All materials produced with the use of grant funds must include a credit that identifies the assistance of the Community Development Block Grant program. **Exhibit 2D** has sample

language and other details about this requirement.

Prior to Obligating any Grant Funds

Environmental Clearance – Grant funds cannot be used for costs incurred before the appropriate environmental review process has been completed in compliance with 24 Code of Federal Regulation (CFR) Part 58. Do not obligate funds or sign any contracts or agreements until the appropriate clearance has been obtained. Chapter 3 of this handbook describes how the environmental requirements are met and clearance documented.

Firm Commitment of Other Funds - All other identified and necessary project financing must be firmly committed before grant funds can be obligated

Plan for Replacement of Lower Income Housing – For any project that will directly result in the demolition of lower-income dwelling units or their conversion to another use, the recipient must follow the *State of Oregon Residential Anti-displacement and Relocation Assistance Plan (Exhibit 2A)* or adopt a comparable local plan. This must be made public and submitted to OBDD prior to commitment of any funds.

Refer to Chapter 8 of this handbook for more specific information.

Other Special Grant Contract Conditions

Carefully review the *Special Conditions of Award* shown in Exhibit A of the Grant Contract. If a condition is not understood or if more information is needed to comply with the condition, call your regional coordinator at the Oregon Business Development Department for assistance.

Prior to First Draw for Non-Construction Activities

Numerous special conditions must be met before the first cash request may be submitted to the state for approval. These include:

- ***Environmental Clearance for all non-construction activities.***
Designate a “Certifying Officer” as defined in Chapter 3. Complete a *Finding of Exemption from Part 58 Environmental Review Requirements* for grant administration, engineering and architectural services and other activities that are exempt from environmental review (**Exhibit 3C**). Refer to Chapter 3 for more information.
- ***Fair Housing Resolution***
All grant recipients, must adopt and publish a Fair Housing Resolution (Exhibit 2B) and submit the affidavit of publication to OBDD within 6 months prior to the First Draw for Non-Construction Activities/funds
- ***Fair Housing Posters and Brochures***
All grant recipients must distribute and post the Fair Housing Poster and Brochures at City

Hall and/or the County Court House and other locations within the community and submit documentation that this was completed within 6 months prior to the First Draw for Non-Construction Activities/funds.

Brochures, booklet and posters can be found at: <http://www.fhco.org/> or <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>

Note - *If the grant recipient's jurisdiction is comprised of 5% of more non-English speaking persons, the fair housing resolution, brochures and posters must be disseminated in the applicable non-English language.*

- ***Self-Evaluation Checklist***

To comply with Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act, the recipient must document that it has completed a *Self-Evaluation for Compliance with Section 504 Accessibility Requirement for Persons with Disabilities*, usually referred to as the “Self-Evaluation Checklist” (**Exhibit 2C**). Individual(s) with disabilities or organizations representing individuals with disabilities must assist in completion of the Self-Evaluation. If the recipient has a Checklist that was completed within the last **five years** for a previous CDBG project, it will be accepted as long as no local conditions have changed. Refer to Chapter 7 for more Section 504 requirements.

- ***Notice of Nondiscrimination Policy and Grievance Procedures***

To comply with Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act, recipients with 15 or more employees must publish an Initial Notice about their Nondiscrimination Policy (**Exhibit 7F**), if they have not done so for a prior grant

project. A notice published for an earlier grant does not have to be republished if no required information has been changed (e.g., designation of responsible employee). Recipients must also adopt Grievance Procedures for all employees and project beneficiaries (**Example: Exhibit 7E**). (Please note: There must be a policy number and an adoption date for the policy and procedures.)

Note: *Formal Grievance Procedures are not necessary for recipients with fewer than 15 employees. Recipients will be monitored by OBDD for evidence (in the form of complaints) that they have or have not made reasonable accommodation for disabled persons.*

Additional information on all nondiscrimination requirements is found in Chapter 7.

- **Section 3 Plan – Economic Opportunities for Low –and Very Low – Income Persons -** Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires grant recipients of \$200,000 or more of CDBG funds must enforce the section 3 requirements in all construction contracts of \$100,000 or more, to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.

OBDD-IFA's receipt of the annual non-entitlement CDBG allocation, which is in excess of \$200,000 triggers the Section 3 requirements for all city/county CDBG grant recipients, entering into contracts of \$100,000 or more for any construction activity, or any non-construction activity that leads to construction, such as engineering, architectural, program management work etc. As such the Section 3 requirements apply to the following under OBDD-IFA's CDBG program:

- a. All public works planning, design and/or construction grants;
- b. All public/community facility design and construction grants;
- c. All economic development revolving loan fund grants, if the loan funds are anticipated to be used for construction activities that will exceed \$100,000 per loan or if any construction contractor which has an aggregate of \$100,000 of construction contracts funded with CDBG loan funds; and,
- d. All housing rehabilitation revolving loan fund grants. Under the housing rehabilitation category, this will also apply to any construction contractor which has an aggregate of \$100,000 of individual housing rehabilitation construction contracts under the CDBG grant.

To comply with the Section 3 requirements, with the exception of the microenterprise assistance, *all CDBG grant recipients are required to submit*

- 1) An annual HUD 60002 form (Exhibit 5C) by no later than January 31 of each year to OBDD-IFA. The reporting period is January 1 – December 31 of each year to OBDD-IFA;
- 2) A final HUD 60002 form at the completion of the project covering any information that was not previously reported on the most recent annual submission; and

- 3) A Section 3 Plan prior to the first draw of non-construction funds.

The Section 3 Plan

When the Section 3 requirements apply to a project, city and county grant recipients must make a special effort to recruit, target and to direct economic opportunities to Section 3 residents and business concerns by advertising and soliciting procurement contracts and employment opportunities to Section 3 residents and business concerns. This advertising and soliciting effort must be beyond the normal advertisement conducted the city or county. The regulation requires the state to meet the following numeric goals/requirements, which must be passed down from the state to the CDBG city/county grant recipients:

- a. 30% of the aggregate number of NEW hires shall be section 3 residents;
- b. 10% of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3% of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Exhibit 2G contains an example Section 3 plan, and Chapter 5 contains more detailed guidance on how to comply with the Section 3 requirements.

Limited English Proficiency Language Access Plan (LAP)

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are Limited English Proficient (LEP) can effectively

participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination. Executive Order (EO) 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons.

HUD's guidance was finalized on January 22, 2007 in Federal Register FR-4878-N-02. In accordance with this guidance, the LEP requirements apply to all entities receiving funds directly or indirectly from HUD. State grant recipients and their sub-grantee's/sub-recipients are likewise covered when federal funds are passed to them through the grantee (State of Oregon). Coverage extends to a recipient's entire program or activity, i.e. to all parts of the recipients operations. This is true even if only one part of the recipient receives federal assistance.

In accordance with these regulations, **starting in 2012 each** CDBG grantee and their sub-grantees/sub-recipients (including housing rehabilitation non-profit providers and microenterprise assistance non-profit providers) must complete an OBDD reviewed LAP plan prior to the first draw of non-construction funds. Chapter 7 contains detailed guidance on the requirements for a LAP Plan.

Prior to Advertisement for Bid of Construction Activities

Environmental Clearance for all construction activities

Environmental review requirements are discussed at length in Chapter 3. The grant

recipient must prepare and adopt an environmental review record, must adhere exactly to required public notice timelines, and must obtain an environmental clearance (also called a Release of Funds) from the department.

Draft Bid Documents, including the advertisement (call) for bids

These must be submitted to the department for review at least ten days before the anticipated advertisement date. It is advantageous to submit these draft documents as early as possible for review in case modifications are necessary. Refer to Chapter 5 for more information.

Prior to First Draw for Construction Activities

The recipient must send the following documents to the department before grant funds will be released for construction activities:

- ***Pre-Construction Conference Meeting Minutes*** - a complete copy of the pre-construction minutes signed by the recipient and general contractor(s). Minutes should contain the information described in **Exhibit 6E**. See Chapter 6 for more information.
- ***Notice of Construction Contract Award*** - Complete the form contained in **Exhibit 6F** and submit it to the department.
- ***Copies of Certified Payroll Reports*** - When the first draw for construction costs is submitted, copies of all completed certified payroll reports from the general and sub-contractors, whose work is covered by the first drawdown, must be submitted for review. See Chapter 6 for detailed information about Certified Payroll Reports.

Prior to Final Draw for all Projects

- Submit a completed **Minority, Women Emerging Small Activity Report** attached as **Exhibit 5B**.
- **Additional Fair Housing Activity** - All grant recipients must undertake and complete at least one an additional fair housing activity for each grant prior to the final draw for grant funds. See Chapter 7 for more information.
- **Section 3** – For grant awards of \$100,000 or more, a final Section 3 Summary Form contained in **Exhibit 5C** for all non-construction activities.

Prior to Final Draw for Construction Projects

- **Section 3** - Prior to final draw for construction projects over \$100,000 submit a final Section 3 Summary Form contained in **Exhibit 5C**.

Prior to Administrative Closure

- **Second Public Hearing** – The first public hearing was held prior to submitting the application for funding. A second hearing must be held as part of the grant close out process. The purpose of the Second Public Hearing is for the recipient to review the results of the project with citizens and to take comments about the local government's performance as part of the grant closeout process. A sample notice is contained in **Exhibit 2E**. Public notice should be made in accordance with local practice. **Exhibit 2F** contains a draft Spanish version of the second public hearing notice which must also be used when 5% or more of the population is non-English (Spanish) speaking.

Recipients must provide a copy of the notice, evidence of publication or certificate of posting and final approved hearing minutes to OBDD prior to administrative closure. The final approved hearing minutes can be submitted using a written format or a MP3 format.

Public Works, water and wastewater projects must submit a rate resolution that demonstrates the user rates were increased as required, by construction completion.

Quick Checklist for your 1st and Last Draw Requirements

Prior to <u>Obligation of any Grant Funds</u> or <u>Signing</u> of any Contracts or Agreements:	
	1. Obtain Environmental Clearance (Refer to Chapter 3)
	2. Obtain firm commitment of other funds
	3. Adopt a Residential Anti-displacement and Relocation Assistance Plan (Exhibit 2A), if applicable (Refer to Chapter 8)
	4. Complete any Special Conditions of Award (Exhibit A of Grant Contract)
Prior to First Draw for <u>Non-Construction</u> Activities:	
	5. Obtain Environmental Clearance for all non-construction activities (Refer to Chapter 3)
	6. Adopt and publish a Fair Housing Resolution (Exhibit 2B) and submit the affidavit of publication to OBDD within 6 months prior to the First Draw for non-construction activities/funds.
	7. Distribute and post the Fair Housing Poster and Brochures at City Hall and/or the County Court House and other locations within the community and submit documentation that this was completed within 6 months prior to the First Draw for non-construction activities/funds
	8. Complete and submit the "Self-Evaluation Checklist" (Exhibit 2C)
	9. For recipients with 15 or more employees, adopt and publish a Nondiscrimination Policy and Grievance Procedures (Refer to Chapter 7)
	10. Complete an OBDD reviewed Section 3 Plan (Exhibit 2G and Refer to Chapter 5)
	11. 2012 and later grant recipients must complete an OBDD reviewed Limited English Proficiency Language Access Plan (LAP) (Refer to Chapter 7) <i>NOTE: The LAP requirement applies to the CDBG grant recipient and their sub-grantees/sub-recipients (including housing rehabilitation non-profit providers and Micro-enterprise Assistance non-profit providers).</i>
Prior to Advertisement for Bid for <u>Construction</u> Activities:	
	12. Obtain all necessary Environmental Clearance from OBDD (Refer to Chapter 3)

	13. Submit all draft bid documents and advertisements for OBDD review and receive OBDD approval prior to proceeding with bid advertisement (Refer to Chapter 5)
Prior to First Draw for <u>Construction</u> Activities:	
	14. Hold Pre-Construction Conference and submit minutes (Refer to Chapter 6)
	15. Submit Notice of Construction Contract Award (Refer to Chapter 6)
	16. Submit copies of the first Certified Payroll Reports along with evidence of recipient review (Refer to Chapter 6)
Prior to Final Draw for <u>Construction</u> Activities:	
	17. Prior to final draw for construction projects over \$100,000 a final Section 3 Summary Form contained in Exhibit 5C , for construction activities.
Prior to Final Draw:	
	18. Submit Minority and Women Business Enterprises form (Refer to Chapter 5)
	19. Undertake and complete at least one an additional fair housing activity for each grant prior to the <u>final</u> draw for grant funds. (Refer to Chapter 7)
	20. For projects with a grant that exceeds \$100,000, submit <i>Section 3 Summary Form</i> (Refer to Chapter 5) for all non-construction activities.
Prior to Administrative Closure:	
	21. If applicable, submit the <i>Public Works for New Housing–Beneficiaries Report</i> (Refer to Chapter 7)
	22. Hold second public hearing. (Exhibit 2E and 2F when applicable) Provide copy of Notice, affidavit of publication, and final approved hearing minutes to OBDD. The final approved hearing minutes can be submitted using a written format or a MP3 format.
	23. Submit final user rate resolution for public works construction projects.