



2022 CDBG-DR Policies and Procedures Manual

CDBG-Disaster Recovery

Applicable to: May 2022 Tornadoes and Flooding (Pub. L. 117-180, CDBG-DR 22)

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1 Introduction

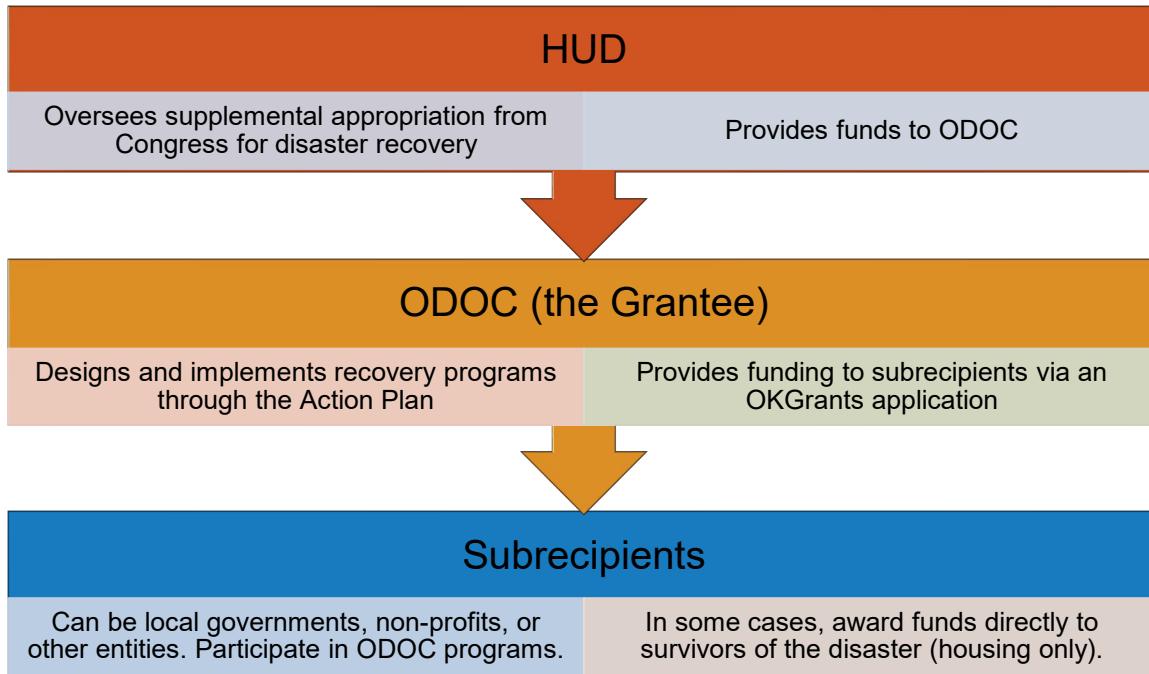
The Community Development Block Grant-Disaster Recovery (“CDBG-DR”) Program is authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended and, in the event of a Presidentially declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S. 5121 et seq.), provides the vehicle through which Congress may appropriate funding to aid disaster impacted areas in the recovery process. The U.S. Department of Housing and Urban Development (“HUD”) is the federal authoritative agency for these Congressionally allocated CDBG-DR funds and promulgates the specific rules to govern each of those allocations.

The Oklahoma Department of Commerce (ODOC) is designated as the lead state agency to provide the administration of CDBG-DR grant programs. The Community Development division of the Oklahoma Department of Commerce (ODOC-CD) oversees the administration of CDBG-DR funds allocated to Oklahoma by HUD following a disaster.

Since designation as the state’s lead agency for HUD CDBG-DR grants, ODOC-CD has assumed the responsibility for, or received an appropriation for three disaster recovery grants. Each grant must have funds appropriated by Congress with enabling language before the program can begin.

To distribute CDBG funds and ensure the intent of Congress is met, HUD divides the funds among states, territories and, sometimes, individual communities and issues specific regulations that ensure their equitable usage and provides management rules in order to safeguard the taxpayer’s money. HUD does this through a Federal Register Notice. Once this notice is published, the local entity, in this case ODOC, drafts an Action Plan which further breaks down the fund allocation into specific programs, and possible subrecipients, translates the federal register rules, and describes how the funds are to be spent in a manner that is applicable to the needs of the communities in Oklahoma. The Action Plan must be made available for public comment, all comments considered, edited to account for all changes made during the public comment period and then submitted to HUD for final approval. Once HUD has approved the Action Plan, they will initiate a grant agreement with ODOC in order to begin funding grant programs. This Policies and Procedures Manual is the tool ODOC uses to implement the nuts and bolts of administering CDBG-DR programs identified in the Action Plan.

Should conditions require it, the Action Plan can be changed through an amendment process. This process is similar to Action Plan development process and requires public comment, addressing all public comments, and HUD approval. The graphic below portrays the overall process.



1.1 Purpose

This Policies and Procedures Manual is intended to provide guidance and training for entities identified as subrecipients of CDBG-DR grant allocations. The Manual outlines the policies and procedures to ensure effective implementation of a CDBG-DR program within the requirements for timely expenditure of funds.

It is the responsibility of each recipient of CDBG-DR funds to understand the federal and state requirements that apply to these funds and to adhere to them. It is important to thoroughly read this manual and the referenced regulations, Federal Registers, Action Plans, and guidance documents prior to implementing a program. Subrecipients must carry out proper and efficient grant administrative practices. Each federal register notice has its own unique set of rules; therefore, it is imperative to ensure that each recipient and subrecipient adhere to the Action Plan for each specific allocation.

1.2 Manual Structure

Each chapter describes the tasks to accomplish CDBG-DR activities. Throughout each chapter supporting materials (forms, documents, letters, checklists) may be referenced or provided to assist with implementation. These will be listed at the end of each chapter in Attachments and Resources. It should be noted that supporting materials are periodically updated and ODOC staff should be consulted to verify the most recent version.

This manual shall remain available on the ODOC CDBG-DR website so interested parties may easily search for terms, rules, procedures, and forms needed to implement activities. It will be periodically updated, and no print versions will be available. The online version is the definitive copy.

During the grant lifecycle each subrecipient, those who have applied for and received funding for a project, will be assigned an ODOC-CD Program Manager, an ODOC specialist in managing CDBG programs, and given the Program Manager's contact information. Program Managers will conduct

regular meetings and, if safety allows, on-site visits. They serve as the main point of contact for the subrecipients. The ODOC Program Manager shall be available to answer any questions and receive all requests related to the administration of the grant. Subrecipients will also be given back-up contact information when their Program Manager is unavailable.

Subrecipients may request the name and contact information for their assigned Program Manager by contacting ODOC by email at disasterrecovery@okcommerce.gov.

Please note that certain chapters and sections within the Manual and the supporting documents provided in Resources may not apply to every activity or program. Subrecipients should contact their assigned ODOC Program Manager with questions regarding specific requirements.

This manual is currently applicable to the following CDBG-DR grants administered by ODOC. Any other CDBG-DR grants administered by ODOC have their own respective manuals and procedures.

1.3 Grants Covered by this Policies and Procedures Manual

Grant	Allocation Notice	Disaster Declaration(s)
2022 CDBG-DR	88 FR 32046	DR-4657 and DR-4670

2 Application and Project Eligibility

This chapter describes general grant application and eligibility requirements. It also provides an overview of common programmatic requirements that should be considered before applying for a CDBG-DR grant. Application requirements vary depending on the Federal Register and Action Plan requirements for that disaster. Specific application guidance will be available through an Application Guide developed by the program managers and issued for the respective event. Application Guides can be found at the CDBG-DR website.

Subrecipients are required to apply to ODOC for CDBG-DR funding prior to the execution of a grant agreement. Subrecipients may receive funds via an application process, through methods of distribution, or a competition. The process for funding will be available on the ODOC CDBG-DR website. Applicants may request technical assistance during the application phase to facilitate the successful completion of an application. The application establishes and documents, among other items, meeting National Objectives (which can be found in the relevant Action Plan and the Housing and Community Development (“HCD”) Act of 1974 (12 U.S.C. 1706e), project beneficiaries, tie-back to the disaster event, Duplication of Benefits calculations, project budgets, and describes eligible project activities to implement upon application approval and contract execution.

2.1 Action Plans

The Action Plan includes requirements for eligibility and how the use of these funds will address long-term recovery and restoration of housing, infrastructure, planning, and economic development in areas affected by the disaster. The development criteria are defined under the Federal Register and will detail the proposed use of all funds. As the state receives additional funding, allocates funds, or changes activities, amendments to the Action Plan are submitted for public comment and HUD approval. Subrecipients must become familiar with the HUD-approved Action Plan and all applicable amendments.

Action Plans consist of, at a minimum, the following components:

- Disaster impact and unmet recovery and mitigation needs;
- Eligible activities, applicants, and allocations;
- Information regarding funding Method of Distribution (MOD); and
- Public comments and responses.

In addition, citizen participation requirements as outlined in the applicable Federal Register and action plan(s) must be followed for approval of long-term disaster recovery plans.

The applicable Action Plan can be found on ODOC’s CDBG-DR website and is linked in the Resources section of this chapter.

2.2 Distribution of Funds

ODOC will collaborate with affected communities to establish the best method for distributing funds to communities and survivors. There may be different methodologies for the distribution of those funds. For instance, ODOC may distribute funding directly, may utilize a competitive process, may employ the assistance of Council of Governments or Counties to develop distribution models, or use other means.

The approved Action Plan will detail how ODOC will allocate funds to carry out projects. Subrecipients must maintain familiarity with the method of distribution and all applicable amendments used to provide funding to their jurisdiction. The approved Action Plan, with any amendments, will detail how ODOC will allocate funds.

2.3 National Objectives

Disaster recovery projects using CDBG-DR funds must meet one of the following HUD-designated National Objectives and must document how they will meet the National Objectives specified in their application. The National Objective is not considered met until project funds have been expended and final monitoring documentation has been completed. Additional information is available within the Federal Registers (see Resources).

Every grant must meet one of the National Objectives below:

- Principally benefit low- and moderate-income (“LMI”) persons;
- Eliminate or prevent slums and blight; or
- Address an urgent need.

The Housing and Community Development (HCD) Act of 1974 as amended created the CDBG program and drives many of its objectives. The primary objective of the HCD Act is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income” (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that not less than 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate-income persons. ODOC aims to spend 100 percent of CDBG-DR funds on low- to moderate-income households. Except in specific programs documented in the associated program guidelines, all subrecipients should meet a low-to moderate-income national objective.

Subrecipients must maintain records showing that funded activities meet one of the National Objectives. Each program or activity may have a limited number of National Objectives that can be used in that program. The eligible national objectives for each program are included in the Action Plan and the specific program guidelines. Depending on the objective, the files must contain, at a minimum, the following specific documentation for the purposes of proving that a National Objective was met:

Benefit to Low- and Moderate-Income Persons or Households	
National Objective	Required Documentation
LMI Area Benefit (LMA)	Boundaries of service area
	Census data including total persons and percentage low/mod
	Evidence area is primarily residential
	Income survey documentation (if applicable)

LMI Limited Clientele (LMC)	Documentation beneficiaries are low/mod or presumed to be low/mod (by category)
LMI Housing (LMH)	Housing income verification of households (using the Section 8 definition) including source*
LMI Buyout (LMB)**	Housing Income verification of households (using the Section 8 definition) including source*
LMI Housing Incentive (LMHI)	Housing income verification of households (using the Section 8 definition) including source*
LMI Job Creation or Retention	<p>Number of jobs created or retained</p> <p>Type and title of jobs created or retained</p> <p>Income of persons benefitting from the jobs created or retained</p>

Elimination of Slum and Blight***

Area designation (e.g., boundaries, evidence area meets slum and blight requirements)

Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)

If applicable, evidence that the property meets spot designation requirements (e.g., inspections)

Urgent Need

Description of disaster-related impact being addressed by the activity in terms of type, scale, and location****

*Additional LMI criteria, allowed for most CDBG-DR allocations, see relevant Action Plan.

**Only allowed for 2019 CDBG-DR allocation, see relevant Action Plan.

***Generally, not eligible for ODOC programs, see relevant Action Plan and Program Guidelines.

****Certification requirements waived for CDBG-DR, see relevant Action Plan.

Most housing activities provide an individual benefit, where the occupants of specific housing units receive a benefit from the proposed activity. Public facilities activities generally qualify under the low- to moderate-income area (LMA) benefit. A link to HUD's LMI Summary Data ("LMISD") for use in determining whether projects meet the LMI Area Benefit National Objective can be found in the Resources at the end of this chapter. ODOC does not allow the slum and blight national objective to be used for its CDBG programs. ODOC aims for 100 percent of the funded projects to meet an LMI National Objective. For specific CDBG-DR programs, the Urgent Need national objective may be used on a case-by-case basis.

If proposed activities respond to a disaster-related impact but cannot meet another National Objective, the urgent need National Objective may be used. Subrecipients shall describe the disaster-related impact in terms of type, scale, and location for each infrastructure or housing activity where the urgent need National Objective is used. ODOC limits the use of the urgent need national objective to specific programs, as described in the applicable Action Plan.

While urgent need and slum and blight are allowable National Objectives for CDBG-DR, the overall benefit requirement of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) remains in place. This means that subrecipients must use no less than 70 percent of their CDBG program funds to support activities benefitting LMI persons. ODOC aims for 100 percent of the funded projects to meet an LMI National Objective.

2.4 Beneficiaries

In order for **LMI Area benefit (LMA)** projects to qualify for funding under the LMI National Objective, documentation must be maintained to verify that at least 51 percent of the project beneficiaries are low- and moderate-income persons.

An area-wide project benefit is achieved when the beneficiaries of an activity reside in the target area directly served by the activity. Some examples of typical LMI Area benefit projects include:

- Water/sewer line replacement;
- Street reconstruction; and
- Utility work benefiting a water supply corporation service area.

A city-wide benefit project occurs when an activity will benefit the entire incorporated city or town. Some typical examples of city-wide benefit projects where the infrastructure may serve an entire community include:

- Water/sewer plant improvements;
- Water storage tank; and
- Water wells.

A project with **individual benefit** includes LMI Limited Clientele, LMI Housing, LMI Buyout, and LMI Housing Incentives. For an individual benefit project to qualify for funding under the LMI National Objective, documentation must be maintained to verify that individual income levels comply with HUD's regulations established in the Federal Register.

Some examples of individual LMI benefit projects include:

- Housing rehabilitation or reconstruction for single family homes;
- Reimbursement of costs to repair disaster event-damaged homes; and
- Relocation and down payment assistance.

CDBG-DR requires applicants to document and report the beneficiaries of each funded activity regardless of the national program objective met by the activity. This includes documenting the number of LMI beneficiaries, as well as their race, ethnicity, female head of household, and persons with disabilities.

2.5 Unmet Need/Duplication of Benefits (DOB)

Federal funds cannot be used to pay an expense that has been paid by another source, such as insurance proceeds or other federal programs. This situation is known as “Duplication of Benefits (DOB). Many federal and state agencies are involved in responding to Presidentially declared disasters under the Stafford Act. Subrecipients and ODOC must be aware of DOB prohibitions contained in the CDBG appropriations acts, the Stafford Act, Federal Register Notice 88, 32046 and 2 CFR 200 Subpart E. DOB will be tested in the application process and in subsequent monitoring reviews conducted by ODOC and audits conducted by state and federal agencies. Failure to comply with DOB rules can result in repayment of the federal funds, and removal from the program. However, some CDBG appropriations are eligible to pay the local match for other federal programs in some circumstances. The applicable Federal Register notice and Action Plan will provide details if that is the case.

The Stafford Act contains eligibility requirements for recipients who have received prior disaster funding based upon whether they are following requirements associated with the receipt of those funds. For example, recipients may be required to maintain Federal Flood Insurance to be eligible for further federal assistance. DOB requirements and policy are outlined in the [Duplication of Benefits Chapter](#) of this manual. Failure to verify DOB and follow DOB policy can result in denial of funding, De-obligation, or repayment of grant funds.

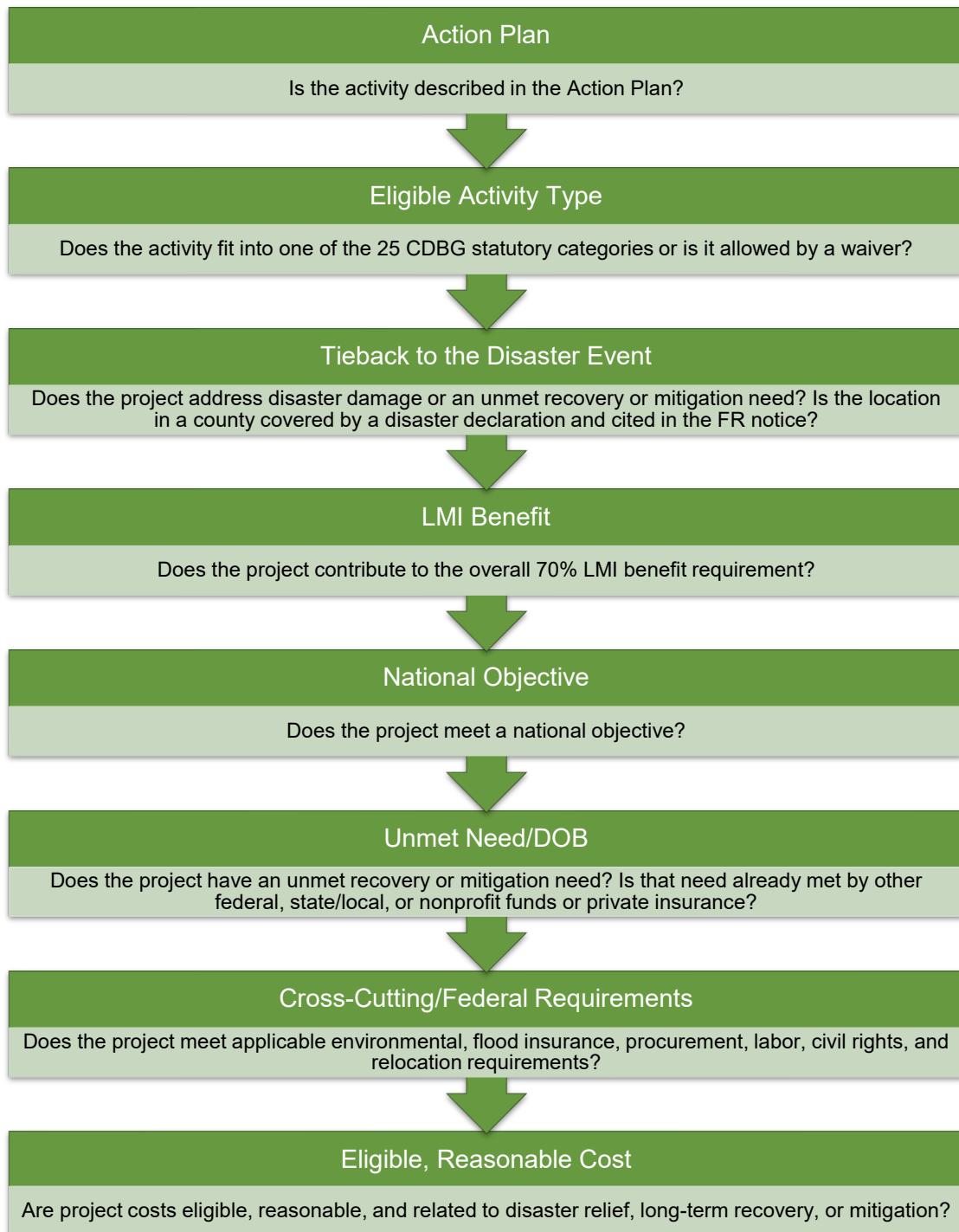
2.6 Eligible Activities

Categories of eligible activities are first presented in the Federal Register governing each specific allocation. ODOC then designs programs to carry out those eligible activities and is permitted to do so if the Action Plan is approved. Examples of eligible activities may include, but are not limited to, acquisition, buyouts, infrastructure, new housing construction, rehabilitation, reconstruction, or public facilities. For details, please see the specific Action Plan. They can be found at www.okcommerce.gov.

Public facilities include water facilities, sewer facilities, solid waste disposal facilities, other publicly owned utilities, public systems, fire stations, fire protection equipment, and community or senior citizen centers. Street improvements and drainage/flood control improvements are examples of potentially eligible public facility activities. In general, public facilities that are part of the normal operation of government such as jails, police stations, and court houses are not eligible. For more comprehensive information about eligible project types refer to the program-specific CDBG-DR application guides found on the ODOC website.

All activities and projects must address an impact from the disaster event, referred to as “tie back.” For physical losses, damage assessments or insurance estimates may be used. For economic or other non-physical losses, post-disaster assessments and analyses documenting the relationship between the loss and the disaster may be used. Funds may be used to address an unmet need that arose from a previous disaster, which was exacerbated by the disaster cited in the applicable Federal Register notice. Simply being located within a declared county is not sufficient to document impact from the disaster event.

Determination of Eligibility: When assessing an activity and project for an application all of the below questions must be answered in the affirmative and documented before a funding award is made:



2.7 Ineligible Activities

Any activity not authorized under the Action Plan, CDBG-DR statute and/or regulations, as noted in the applicable Federal Register Notices, is ineligible to be assisted with CDBG-DR funds. In addition, the following activities, as referenced in 24 CFR 570.207, are specifically deemed ineligible for CDBG-DR funding assistance:

- Duplicative projects;
- Projects that do not comply with local, state, and/or federal regulations;
- Rehabilitation of housing units in the floodplain;
- Buildings for the general conduct of government, except to create accessibility for the disabled population, and as waived by HUD;
- General government expenses;
- The financing of political activities;
- Faith-based organizations are eligible for CDBG-DR funding but may not use CDBG-DR funding to support inherently religious activities and must serve all eligible beneficiaries without regard to religion;
- Purchase of equipment that is not fixed in place, including construction equipment, is generally ineligible;
- Purchase of equipment or furnishings for a property except under certain conditions, including authorization as a special economic development activity or activities carried out by a special nonprofit;
- Operation and general maintenance (O&M) expenses of public facilities, improvements and services;
 - Infrastructure O&M example: Smoke testing, line televising, and line cleaning (vacuuming, jetting, etc.) and other methods used to identify specific sections of wastewater line that require maintenance to reduce or eliminate the amount of inflow or infiltration routed to treatment facilities are considered maintenance activities. The process of identifying target areas for wastewater line replacement must be completed prior to the submission of an application in order for the scope of the project to be fully identified and to expedite construction completion. Similar methods may also be used as a part of construction and inspection of the new lines. Use of line televising, and similar methods, is considered acceptable only for:
 - Pre-construction testing on a specific reach of line (manhole to manhole); and/or
 - Inspection of newly constructed lines to verify proper installation.
- Income payments, except under certain conditions (income payments are defined as direct payments to subsidize rent and/or utilities);
- Law enforcement;
- Emergency Operation Centers (“EOC”);
- Duplication of Benefits with other loans, grants, or insurance proceeds;
- Software is generally ineligible unless it is integral to the function of an improvement and not utilized for billing or other O&M purposes. For example, software required for the operation of a SCADA system is eligible. If software is used for both functional and O&M (billing) purposes, up to 50 percent of the software costs may be considered eligible.

2.8 Pre-Award and Pre-Application Costs

Subrecipients are permitted to charge to 2022 CDBG-DR grants otherwise allowable costs incurred by beneficiaries and subrecipients in response to the May 2022 DR-4657 or DR-4670 eligible disaster.

Pre-award or pre-application costs are only eligible for reimbursement if they were incurred on or after May 2, 2022. All reimbursed pre-award or pre-application costs must meet all procurement, environmental, and cross-cutting requirements documented herein. The relevant Action Plan will state whether pre-award or pre-application costs are eligible for a particular program. The best practice is to contact your ODOC Program Manager before incurring any pre-agreement costs intended to be reimbursed by CDBG-DR funds.

For purposes of this grant, pre-application costs are costs incurred by an applicant or beneficiary to the 2022 CDBG-DR program before the time of application to ODOC or a subrecipient, which may be before (pre-award) or after the ODOC signs its CDBG-DR grant agreement.

More information on pre-agreement costs can be found in Chapter 5: Procurement Manual.

2.9 Recordkeeping Requirements

Project records should provide a historical accounting of the CDBG-DR project and must be available for examination and review by local staff, ODOC, HUD, state and federal auditors, other state agencies, and any other interested parties.

Each subrecipient must maintain a complete set of files at the local office level. Subrecipients should take reasonable caution to protect the records and documents from destruction such as flood or fire damage. All official documents must be maintained by the subrecipient.

Subrecipients are required to maintain records sufficient to document compliance with all CDBG program requirements. For fair housing and equal opportunity purposes, where such data is already being collected and where applicable, records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

Examples of records to retain include, but are not limited to:

Category	Types of Files
Overall administration files and records of your CDBG activities.	Personnel files Property management files General organizational management files: Articles of incorporation Bylaws Tax status. Board minutes. Contracts Other agreements (memorandum of understanding)
Program funding award files.	Application and all related records requesting CDBG funds. Program policies and guidelines. Subrecipient/ODOC correspondence Subrecipient agreement Compliance reports
Financial Records	Chart of accounts Accounting procedures manual Accounting journals and ledgers Source documentation (purchase orders, invoices, bank records, etc.) Procurement files

	Bank account records. Financial reports Audit files
Project or Case Files	Project activities Regulatory compliance (e.g., cross-cutting requirements, etc.) Individual beneficiaries Property owners and/or properties

2.9.1 Record Retention

Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three (3) years from closeout of the State's Grant to HUD, or the period required by other applicable laws and regulations as described in §570.487 and §570.488. The three-year rule may be extended under the following extenuating circumstances:

- Any litigation, claim or audit is started before the expiration of the three-year period. In this instance, the records will be retained until all actions involving the records have been resolved; or
- The records pertain to non-expendable property acquired with CDBG-CV funds. Such records must be retained for five years after the final disposition of such property; or
- ODOC transfers records to its custody or to HUD's when ODOC determines that the records possess long-term retention value.

2.9.2 Access to Records

Except for confidential records, all documents required to be maintained by, or reasonably considered as pertinent to, the CDBG-DR award must be available for viewing and/or examination by:

- Any citizen, pursuant to the requirements of State law and local ordinance; and
- Representatives of ODOC, HUD, the Office of the Inspector General, the Attorney General, the General Accounting Office, the Comptroller General of the United States or the State Auditor's office.

2.9.3 Confidential Records

Subrecipients may receive confidential information. In some cases, an individual's right to privacy protection will necessitate those confidential records be maintained. In other circumstances, the individual's job security and safety require that information be kept confidential. The latter is particularly true where worker-provided information results in a finding that labor standards are being violated. Confidential records include but are not limited to, staff personnel files, labor and civil rights complaints, and the incomes of project beneficiaries.

Access to confidential records is strictly limited. They are to be kept in a locked file cabinet separate from other records accessible only to the CDBG Administrator. If a subrecipient delegates the responsibility to an administrator or other organization for tasks that may yield confidential records, very specific controls must be established in the contract to ensure that the subrecipient understands the responsibility for maintaining confidential records. The subrecipient is responsible for protecting these records. Any violations of confidentiality requirements, including a determination by State monitors that proper records management procedures are not being employed, could result in a serious finding of deficiency. This could adversely affect the subrecipient's right to apply for funds.

2.10 Complaints

ODOC will investigate and resolve issues arising from its administration of CDBG-DR programs. Subrecipients should address all complaints arising out of the administration of CDBG-DR programs. Subrecipients must retain records related to any complaint received and the resolution of the complaint.

Citizens can file complaints via email to disasterrecovery@okcommerce.gov.

2.11 Training

ODOC is committed to providing training and resources to subrecipients to ensure effective and efficient implementation of programs. This training shall be provided on an as-needed basis and upon request.

2.12 CDBG-DR Toolkit

HUD's CDBG-DR Toolkit (<https://www.hudexchange.info/programs/cdbg-dr/toolkits/programlaunch>) provides additional information to assist subrecipients in creating and implementing an effective CDBG-DR program. It includes guidance on program rules, lessons learned from previous CDBG-DR grantees, and sample tools to assist in program design and implementation.

The Program Launch section accessible via the link above provides critical information on program rules and offers tips and tools for establishing the systems, procedures, and capacity needed to implement CDBG-DR-funded programs.

The Program Implementation section describes important design considerations and provides implementation tools for common CDBG-DR activities including homebuyer, homeowner rehabilitation, rental rehabilitation, buyouts, economic development activities, and others. Because no two grantees are identical and every disaster presents new challenges, the tools should be adapted to meet your local circumstances and recovery needs.

2.13 Attachments and Resources

#	Resource	Description	Link (if applicable)
2.1	ODOC's 2022 CDBG-DR Action Plan	Action Plan outlining the requirements for \$7.4 million in CDBG-DR funding.	https://okcommerce.gov/wp-content/uploads/CDBG-DR-2022-Action-Plan.pdf
2.2	CDBG-DR Laws, Regulations, And Federal Register Notices (all years)	HUD website with all CDBG-DR laws and regulations.	https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations
2.3	2022 CDBG-DR Applicable Federal Register Notice (88 FR 32046)	FRN outlining HUD's allocations and requirements for the 2022 CDBG-DR grant	88 FR 32046
2.4	CDBG Low- and Moderate-Income	Low to moderate-income data by county and city. Used for	https://www.hudexchange.info/news/updates-to-low-moderate-income-summary-data/

	Summary Data (LMISD)	qualifying for the LMA National Objective.	
2.5	HUD's CDBG-DR Toolkit	Information to assist subrecipients in creating and implementing an effective CDBG-DR program	https://www.hudexchange.info/programs/cdbg-dr/toolkits/programlaunch

3 Program Management

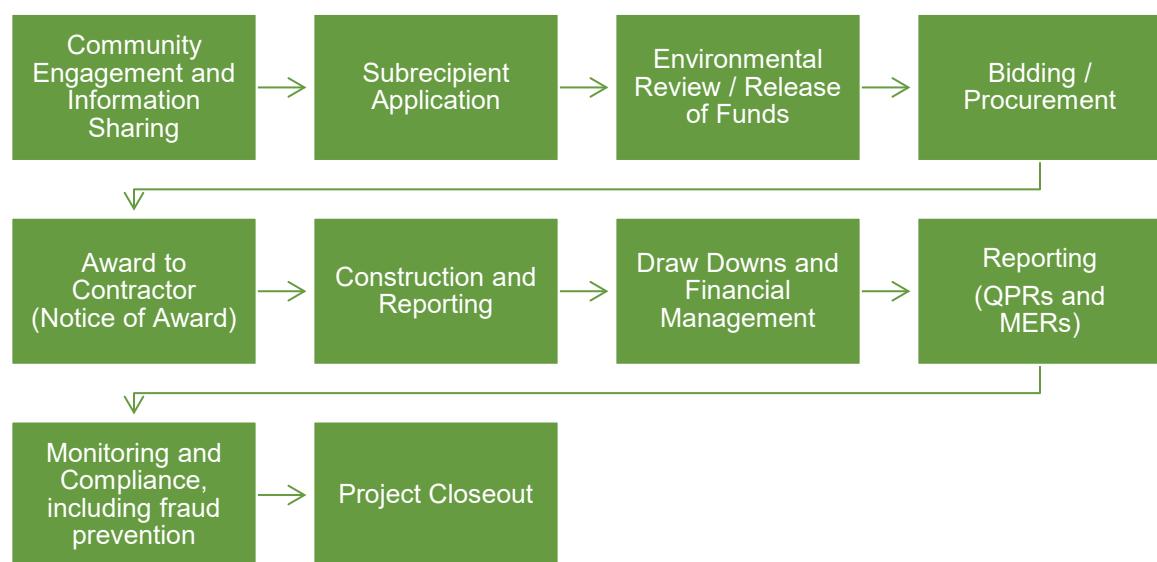
3.1 Introduction

This chapter introduces steps for implementing successfully managed CDBG-DR programs. Before implementing a program, subrecipients should put systems in place that will allow them to track and report on the activities required within their contract with ODOC. While the subrecipients are ultimately responsible for each project, they may choose to administer their program in-house or use a hired grant administrator. Ultimately, coordination is essential to ensure that all aspects of the Subrecipient Agreement remain compliant with all applicable regulations of the CDBG-DR programs.

CDBG-DR grants differ from ODOC's regular CDBG programs. The purpose of this section is to provide an overview of grant administration and reporting requirements to be used by CDBG-DR subrecipients. These requirements may vary from those applied to local governments, the state, or other state agencies also involved in administering CDBG programs.

The requirements for citizen participation, waivers, alternate requirements, and eligible activities are provided to subrecipients through the applicable Federal Register publication, the approved Action Plan, and the Program Application Guide, in accordance with the applicable program. Further guidance is available through the assigned ODOC Program Manager for your program.

3.1.1 General Subrecipient Timeline



3.2 Grant Administrators

Subrecipients may directly administer projects or procure and use the support of external parties (vendors and grant administrators) to serve their needs.

Subrecipients are ultimately responsible for the implementation of programs and ensuring expenditure of funding adheres to all applicable federal and state requirements. Vendors and contractors employed by the state and subrecipients will be required to comply with federal and state provisions in executed contracts and work orders.

Unlike in the regular CDBG program, grant administrators are not required to be CDBG-certified. However, it is highly recommended that a grant administrator has CDBG certification from ODOC and/or administrative experience with CDBG-DR. The CDBG-DR program differs in requirements and scrutiny from ODOC's regular CDBG programs.

Full-time employees of the subrecipient do not have to be certified to administer CDBG grants, but their salaries or wages cannot be charged as an administrative expense unless they are certified.

The subrecipient should consider the size of the municipality or organization and, more importantly, the number of employees who can devote some significant time to routine contract administrative requirements. If no staff would be available to dedicate the necessary amount of time to the grant, the subrecipient should consider hiring a grant administrator.

ODOC will not recommend any individual or firm for providing these services. ODOC can provide the following:

- A list of all firms or individuals currently certified to administer CDBG grants
- A referral to other similar communities with similar projects
- A list of firms with experience administering CDBG-DR grants from ODOC

If the services of an administrator are retained, the subrecipient's staff must understand, to the best of their ability, the CDBG-DR program processes and requirements well enough to evaluate your administrator's work and progress. Even if a grant administrator has been certified, it is necessary for the subrecipient to make sure the grant administrator stays on track with the project to avoid delays and possible de-obligation of the contract. Remember, the Chief Elected Official or authorized official is ultimately responsible for contract performance.

Requirements for the CDBG Certification Program, disciplinary action, complaint process, penalties, and the process to impose penalties as set forth in Title 150 of the Oklahoma Administrative Code, Chapter 15, Subchapter 9, can be located at: <https://rules.ok.gov/code>.

3.2.1 Mentorship

In the event an individual wishes to act as an administrator, and the individual has not previously been tested and failed, the individual can act as an interim CDBG administrator upon the completion of the following:

- The individual must provide written notice to the Oklahoma Department of Commerce of the interim CDBG administrator's name, address, telephone number; and the name of the certified CDBG administrator that has agreed to be the mentor and supervise the interim CDBG administrator.
- A statement that the interim CDBG administrator understands that they are subject to all the same rules and standards as if they were a certified CDBG administrator and is also subject to discipline.
 - Interim certification is effective only until the next certification class and examination.

- The mentor must be a certified CDBG administrator in good standing and will cosign all forms, applications, and other documents with the interim CDBG administrator. If a grievance or request for investigation is filed against the interim CDBG administrator, an automatic investigation will be instituted against the mentor to determine if the mentor properly supervised the interim CDBG administrator. The mentor may be subject to discipline for failure to properly supervise an interim CDBG administrator.

Any person or entity adversely affected by an act or decision by Oklahoma Department of Commerce is entitled to an individual hearing and shall file a Petition for Hearing before the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma, 73104 Attention: General Counsel. This petition must be filed on the appropriate form as detailed in the Administrative Rules and must be received by the Department within thirty days of the adverse action. The rules governing this process and all related filings can be found at Title 150 of the Oklahoma Administrative Code, Chapter 15, Subchapter 9, and can be located at: <https://rules.ok.gov/code>. Failure to follow these rules and to timely file the Petition for Hearing may cause your petition to be dismissed by the Department.

3.2.2 Grant Administration Contract Requirements

All contracts with contractors used to provide goods and services for CDBG-DR, either procured by ODOC, a partner, a subrecipient, or any other procuring entity must include:

- A clearly stated period of performance or date of completion
- Performance requirements; and
- Liquidated damages. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages.¹
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions; and,
- All Section 3 covered contracts shall include the Section 3 clause.²

The procuring entity may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

Further information on procurement and contracting can be found in Chapter 5 Procurement Manual.

3.3 Application

Subrecipients must apply to ODOC for CDBG-DR funding before execution of the Subrecipient Agreement. The application guide for each program can be found on the CDBG-DR website. ODOC reviews the application to ensure CDBG-DR eligibility, that it meets a national objective, that the budget is cost-reasonable, and that the scope of work encompasses eligible activities. Please note that applications are specific to the disaster event and associated activities. As such, application requirements may be tailored to meet a specific need, and the ODOC Program Manager may request additional information after the application is reviewed. Subrecipients may request ODOC assistance

¹ 88 FR 32078

² 24 CFR §135.38

when preparing an application. All applications must be submitted in the state's grant management system.

3.4 Subrecipient Agreement Execution

The subrecipients must, at minimum, have an executed Subrecipient Agreement with ODOC before funds can be drawn.

In addition to the contractual obligations between ODOC and the subrecipients, the agreement may, depending on the contract structure, specify the following:

- Statement of Work: A detailed narrative description of specific CDBG-funded activities, deliverables, and the timeline for its completion. This description should include:
 - The purpose and nature of the activities,
 - A detailed narrative description of the activity (often referred to as a scope of work or scope of services),
 - The individual tasks required to complete these activities,
 - Quantitative measures to gauge the progress and the success of each activity, and
 - An estimate of total beneficiaries and percentage of LMI;
- Budget: A detailed line-item budget identifying activity and administration costs. The budget must identify all sources of funding.
- Project Implementation Schedule: Specifies a timetable for milestones in project implementation and completion.
 - The contract includes two required milestones for every subrecipient:
 - 120 days to obtain release of funds and complete the environmental review
 - 270 days to begin construction
- Special Conditions: Conditional requirements that may apply to a project or activity listed in the subrecipient agreement.

The chief local elected official or designee for the subrecipient and the ODOC-CD Division Director both must sign the Subrecipient Agreement before the Subrecipient Agreement is considered fully executed. Please contact your ODOC Program Manager for signature procedures.

The CDBG-DR program does not require match or leverage funds; however, if matching funds are included in the project activity budget, they must be tracked and reported. The announcement and subsequent award of a CDBG-DR contract does not authorize the subrecipient to incur costs or obligate the expenditure of funds, whether paid with grant or leverage/matching funds.

Obligating or expending funds for a conditioned activity that has not yet been cleared by ODOC is an ineligible use of contract funds and the CDBG-DR contract may be de-obligated. See the [Pre-Award Cost section in Chapter 5: Procurement Manual](#) for more information on exceptions.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) requires ODOC/CD to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery

Reform Act of 2018 (division D of Public Law 115-254; 42 U.S.C. 5121 et seq.). Please see [Chapter 10: Duplication of Benefits](#) for more information.

3.5 Establish a Local Administrative Structure

Subrecipients must establish a local administrative structure to administer the grant. The eligible activity and National Objective requirements are not met until the project(s) is/are complete, fully compliant, and there is sufficient documentation to ensure that the project has met the designated National Objective.

Subrecipients must, at a minimum, ensure the performance of the following tasks:

- Establish or update and adopt local charters, resolutions, ordinances, procedures, and policies that may be relevant to the project;
- Establish a record-keeping system to document compliance with all federal, state, local, and program requirements;
- Submit all necessary documents in the ODOC system of record, if applicable. ODOC's system of record may be an electronic file-keeping system or software system such as the state's grant management system;
- Subrecipient Agreement files must be kept at city or county offices or buildings in which government records are maintained. These must be accessible to the public throughout the Subrecipient Agreement period.
- Records shall be retained for the greater of three years from closeout of the grant between the state and HUD, or the period required by other applicable federal and state laws and regulations.
- Establish whether day-to-day administration of the project will be conducted by local staff or by third-party grant administrator, and which party will conduct each administrative activity and ensure compliance throughout the Subrecipient Agreement period.

CDBG-DR subrecipients have the final legal responsibility for the locally managed and maintained Subrecipient Agreement files, the timely submission of reports, and compliance with program requirements.

ODOC recommends that subrecipients review this Manual item-by-item and clearly identify the activities that will be performed by the subrecipient's staff and those that will require outside assistance. Each staff member or vendor must fully understand their responsibilities in implementing the Subrecipient Agreement. Training and information are available on the HUD and ODOC websites regarding CDBG-DR program requirements.

3.6 Reporting

This section outlines CDBG reporting requirements for Subrecipients.

HUD requires the following data elements for nearly all program activities.

- Amount of money leveraged from other Federal, state, local, and private sources, per activity.
- Number of persons, households, businesses, units, or beds assisted, as appropriate.

- Income levels of persons or households by 30 percent, 50 percent, or 80 percent of area median income.
 - For CDBG activities that benefit an area, the data reported for that activity will need to show the total number of persons served and the percentage of LMI persons served based on the primarily residential service area selected (e.g., census tracts or block groups).
- Race, ethnicity, and disability data for activities that currently report these data elements.
 - Under CDBG, race/ethnicity data is required only when the activity is specifically undertaken to directly benefit persons or households, such as job creation activities or housing rehabilitation. Race and ethnicity data is not required for activities under the CDBG LMI area benefit, slum/blight, or urgent need national objectives.
- Number of households assisted that are headed by females.
 - Under CDBG, female head of household data is required only when the activity is specifically undertaken to directly benefit persons or households, such as job creation activities or housing rehabilitation. Female head of household data is not required for activities under the CDBG LMI area benefit, slum/blight, or urgent need national objectives.

ODOC collects this data in the Quarterly Progress Report and in a comprehensive spreadsheet at closeout.

For construction activities, subrecipients are also required to report Section 3 Labor Hours where applicable. This data is collected when advance requests are submitted. More information on Section 3 can be found in Chapter 7 Labor Standards and Construction Management.

3.7 Needs Assessment

Subrecipients may be required to determine the unmet needs of the disaster-affected population prior to implementation of the program. The Subrecipient's Needs Assessment (NA) will be described more fully in the Application Guide for a specific program. The needs assessment will inform subrecipients on how they are to offer activities to meet the types of needs experienced by the affected population and their demographics in order to maximize recovery efforts. Infrastructure projects must describe the available resources, and the unmet need.

3.8 Citizen Participation, Marketing, and Outreach

3.8.1 Citizen Participation

UGLG subrecipients are required to conduct a public hearing during the application phase of the project as well as at the end of the project. The purpose of these public hearings is to advise citizens of the proposed project and actual accomplishments. The public hearing, sample DR UGLG Citizen Participation Plans, and requirements for Citizen Participation are detailed in the applicable DR Citizen Participation Plan on ODOC's website.

The requirements for all public hearings are essentially the same as for the hearing conducted prior to the original submission of an application for funding. These requirements include:

- Reasonable advance notice, as stated in the UGLG's Citizen Participation Plan, prior to conducting the meeting, not including the date of notice, or posting of the day of the hearing;

- Publication of a notice specifying the purpose, date, time, and location of the hearing in a newspaper of general circulation in the municipality, or posting of a legal notice in at least three public places within the municipality;
- Holding the hearing at a location that is convenient to the low- and moderate-income persons who are affected by the project;
- Conducting the meeting in a manner that accommodates the disabled and meets the needs of non-English speaking residents who might be expected to participate;
- Providing citizens with the address, phone number and times for submitting complaints and grievances; and
- Providing written answers to written complaints and grievances within **15 working days**, where applicable.

The subrecipient must take thorough minutes of the hearing. The project files must contain:

- Signed minutes of the hearing;
- An attendance roster (sign-in sheet);
- Written complaints, if any;
- Responses to those complaints;
- A copy of the legal notice with a notation of where and when the three notices were posted (three different addresses) and
- Proof of publication from the newspapers or website postings.

Non-UGLG subrecipients are subject to ODOC's Citizen Participation Plan and should follow the guidance in Section 3.8.2: Marketing and Outreach.

3.8.2 Marketing and Outreach

All subrecipients shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from participating in and accessing disaster recovery resources. If the subrecipient identifies barriers that may limit or prohibit equitable participation, the subrecipient must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.

To this effect, for housing programs, ODOC requires subrecipients to submit a marketing and outreach plan. The plan should outline:

1. Potential barriers that may limit or prohibit equitable participation
 - Note: information about disaster-impacted communities and potential barriers can be found in the applicable Action Plan.
2. Steps that the subrecipient will take to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP. Examples of such steps include:
 - Outreach in languages other than English
 - Outreach to community organizations, centers, and gathering places
 - Public hearings or meetings outside of traditional venues

- Social media, newspaper postings, or other forms of marketing to underserved or vulnerable communities.
- Collaboration with disaster case management organizations

3. Explain how the use of funds will promote equity for protected class groups.

3.9 Program Guidelines

ODOC publishes Program Guidelines that provide a blueprint for designing and implementing CDBG-DR programs. For certain programs, subrecipients may be required to develop their own local program guidelines and will be responsible for the implementation of their programs in their jurisdictions. Guidelines for specific programs are published in this manual and on the CDBG-DR website.

3.10 Conflicts of Interest

Conflicts of interest occur when officials, staff, or applicants stand to benefit, either directly themselves or indirectly through business partners or relatives, from the awarding or contracting of CDBG grant funds. ODOC has measures in place to build an organizational culture that is conscious of potential conflicts of interest, including mechanisms to promptly identify, disclose, and manage conflicts of interest as they arise to comply with applicable Federal and State rules and regulations.

CDBG program managers and project managers are responsible for ensuring conflict of interest rules are implemented and followed, including independent checks or monitoring to ensure conflicts do not exist.

The CDBG requirements for conflict of interest are as follows:

Applicability. In the procurement of supplies, equipment, construction, and services by ODOC and its subrecipients, the following conflict of interest provisions apply.

Conflicts Prohibited: Except for the use of CDBG-DR funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons covered (defined below) who exercise or have exercised any functions or responsibilities concerning CDBG-DR 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 a CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Persons Covered: The conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, the unit of local government, or of any designated public agencies or subrecipients that are receiving CDBG-DR funds.³

3.10.1 Conflict of Interest Disclosure

ODOC requires the disclosure of potential conflicts of interest from CDBG-DR subrecipients, beneficiaries, and ODOC staff involved in CDBG-DR. Any party involved in awarding contracts of CDBG-DR funds with an actual, potential, or perceived conflict of interest must inform ODOC in writing

³ 24 CFR Part 570.489 (g) and (h)

as soon as possible. Subrecipients may disclose conflicts using the attached Conflict of Interest Disclosure Form.

ODOC's subrecipients are subject to the "No-Conflict Covenant" in the contract for CDBG funds, which states:

The Subrecipient covenants that no officers or employees of any governing board of the Subrecipient have any interest, direct or indirect, and that none shall acquire any such interest during their tenure or for one year thereafter that would conflict with the full and complete execution of this contract. The Subrecipient further covenants that in the performance of this contract no person having any such interest will be employed. The Subrecipient covenants that no employee of ODOC has any interest, direct or indirect, nor has any employee of ODOC received anything of value in connection with this contract.

Subrecipients are required to disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the CDBG-DR award, or any situations that meet the conditions outlined here.

In addition, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements (see 2 CFR 200.319). For example, an administrative consulting firm that participates in developing or distributing the request for proposals (RFP) may not then submit a proposal in response to that RFP.

Some examples of conflicts of interest:

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

Questions regarding Conflicts of Interest: If there is any question regarding a potential conflict of interest, the subrecipient should contact the ODOC Program Manager.

3.11 Fraud Reporting

Any person, including any employee of the CDBG-DR Program, who suspects, witnesses, or discovered any fraud, waste, or abuse, relating to the CDBG-DR Program, should report it immediately by any of the means listed below. A citizen may disclose acts of fraud, waste, or abuse of CDBG-DR funds to any CDBG-DR Program staff (e.g., at intake centers, field/regional offices, events, etc.). ODOC is dedicated to addressing fraud in Oklahoma. If you think you might have encountered fraudulent behavior involving ODOC, please contact the Oklahoma Attorney General's Office.

The following table outlines the various agencies and methods for reporting potential fraud, waste, and abuse.

To ODOC Staff	
Email	DisasterRecovery@okcommerce.gov
Phone	(405) 343-3622

To ODOC's Internal Auditor	
Email	Jake Winkler - Jake.winkler@arledge.cpa
Phone	(405) 348-0615
Phone (Toll-Free)	877-348-0615
Additional Email Contact	LaDonna.Sinning@arledge.cpa
Additional Email Contact	Kency.Duarte@arledge.cpa

To the Oklahoma Attorney General	
Email	ConsumerProtection@oag.ok.gov
Phone (Toll-Free)	1-833-681-1895
Phone	405-521-2029

To the HUD OIG	
Email	hotline@hudoig.gov
Phone (Toll-Free)	1-800-347-3735

To the Oklahoma State Auditor (for government fraud only)	
Web Form (must be filled out and mailed or emailed)	https://www.sai.ok.gov/report-government-fraud/
Email	fraud@sai.ok.gov
Phone (Toll-Free)	1-855-372-8366

ODOC's complete Anti-Fraud, Waste, and Abuse Policies can be found on the ODOC CDBG-DR 2022 website.

3.12 Removing Contract Conditions & Release of Funds

Every contract has two basic sets of conditions: standard and special. Some standard conditions and special conditions must be satisfied or cleared before the project funds can be requested. The subrecipient is required to take the actions necessary to satisfy these conditions and, after the actions are completed, submit the Request for Authority to Use Grant Funds/Release of Funds (ROF) using the state's grant management system.

Special conditions are identified in Part II of the contract between ODOC and the subrecipient.

The grant contract provides for 120 days to complete and submit for the removal of these conditions.

The Release of Funds Checklist must be uploaded with all required documentation. This checklist form is very helpful in making sure correct documentation is submitted. All forms referenced below can be found in the Attachments and Resources Section of Chapter 6: Environmental Review. The following conditions must be met before the subrecipient can expend any grant funds:

- Environmental Review
 - Every activity is subject to one of five levels of environmental review:
 - Exempt activities: 24 CFR Part 58.34 and 58.6
 - Categorically excluded not subject to 24 CFR Part 58.5; 58.35(b)
 - Categorically excluded subject to 24 CFR 58.5; 58.35(a)
 - Environmental Assessment 24 CFR Part 58.36; and 58.40; 58.5 & 58.6
 - Environmental Impact Statement (Rare instances)
 - Each activity must be cleared, using specific procedures and forms designed for that purpose. The Subrecipient may draw down funds to carry out various project activities after appropriate reviews have been conducted and cleared and a Notice of Removal of Contract Conditions and Authority to Use Grant Funds is received from ODOC. [See Chapter 6 Environmental Review]
- Leverage/Matching Funds Certification
- Insurance and Bonding
 - The subrecipient shall submit evidence of:
 - The subrecipient's current policy showing general liability insurance covering the funded activities; and
 - Bonding of all officials who are responsible for financial transactions relating to this contract.
- Residential Anti-Displacement and Relocation Assistance Plan
 - All UGLG subrecipients must have a current Disaster Recovery Residential Anti-displacement and Relocation Assistance Plan (RARAP) adopted by council resolution on the subrecipient's letterhead. [See Chapter 9 Acquisition & Relocation & Chapter 8 Civil Rights Requirements.]
- Fair Housing Activity (See Chapter 8 Civil Rights Requirements)
- Engineer or Architect Acknowledgement Form
- DEQ Permit to Construct (as applicable)
- Appointment of Labor Standards Officer
- Appointment of Civil Rights Officer

3.12.1 Updated Disclosure Report

Before signing the contract agreement, there should be a completed initial Disclosure Report. Submit a partial or full report, depending on several factors. You are required to submit an updated report if:

- Omissions were made in the initial Disclosure Report;

- Additional persons can be identified as interested parties who were not identified in the initial Disclosure Report;
- There is an increase in the amount of pecuniary interest of a person or entity identified in the last report, if the total interest is more than \$50,000 or 10% of the contract amount, whichever is lower;
- There is a change in the other governmental assistance previously reported by more than \$250,000 or 10%, whichever is lower; or
- There is a change in the sources or uses of funds since the last report that exceeds the amount of all previously disclosed sources and uses of funds by more than \$250,000 or 10%, whichever is lower.

Updates must be submitted to ODOC within **thirty (30) days** of the occurrence of any of these circumstances and as frequently as they occur throughout the life of the contract.

All other requirements for the Release of Funds and Removal of Contract Conditions are detailed on the ROF Checklist, and can be described or clarified by the ODOC Program Manager

3.13 Project or Budget Modifications

Project and budget modifications will be performed in the state's grant management system. Please contact your project manager or review the state's grant management system guides for instructions. The information described below will be necessary for any contract changes.

Changes to the scope, budget, or completion date of the project are accomplished by a modification.

A modification is a change from the original project description because of one or multiple of the following:

- New or additional activities;
- Changes in the proposed scope of services or beneficiaries;
- Changes in the project location or target area;
- Extensions of the contract ending date;
- Changes in the amount of any budget line item (or total budget).

For new or additional activities, a change of scope, or changes in the project location or target area, subrecipients must follow the applicable Citizen Participation Plan and may be required to hold a public hearing. In addition, ODOC requires a description of the change and the reason for the change on the subrecipient's letterhead.

For contract extensions or simple budget revisions, a letter on the subrecipient letterhead describing the change will be required. Subrecipients should contact their ODOC Program Manager for complete instructions. All modifications must be submitted on the state's grant management system.

3.13.1 Project Expansion

During implementation of the grant project, there are occasions when project costs are less than anticipated. During these occasions, the subrecipients may be able to undertake additional work that is the same scope of the original project. The subrecipient is required to consult with an ODOC Project Manager for approval.

Examples of a project expansion versus a change of scope are listed below:

- Example #1: A subrecipient has a grant for repairing and upgrading 2 miles of road in a community to prevent future flooding. The cost of the project comes in underbudget, and the community adds an additional one mile of road to the project area to use the remaining funds. The additional road repair would not be considered a change of scope. The subrecipient may use remaining funds to repair additional adjacent road if the individuals benefiting meet the requirement of being at least 51% low to moderate income.
- Example #2: A subrecipient has a grant for purchasing homes in floodplain. Upon completion of the project as described in the application, the subrecipient has funds remaining. The subrecipient desires to utilize the remaining funds to repair homes damaged by the disaster that were not purchased in the buyout. This would be an example of a change of scope.

Regardless of whether the project is a project expansion or a Change of Scope, the additional work must have achieved Environmental Review and approval from ODOC.

3.13.2 Documentation Required

Requests for a program modification (Change of Scope) must provide the following documentation:

- Narrative explanation of reasons, including:
 - A detailed description of the new or significantly altered activities, existing activities being altered or eliminated (if any) and why these changes are being proposed. Submit a revised Project Description; and
 - A detailed description of any changes in the number, percentages or scope of services that are to be provided to low- and moderate-income persons and/or other project beneficiaries. This may require revisions to existing or new beneficiary documentation (income surveys, census data, etc., as appropriate).
- If the proposed modification involves reduced and/or substantially altered activities from the original contract:
 - Documentation confirming the public notice and conduct of a public hearing or posting consistent with the Subrecipient's Citizen Participation Plan is required;
 - The Subrecipient's legislative body must adopt a resolution supporting the modifications and submit:
 - Either a Certification of Continued Environmental Compliance or, if appropriate, documentation of a different level of environmental review [See Chapter 7 Environmental Review]
 - Documentation of permits or regulatory approvals from appropriate agencies such as DEQ, if applicable
 - Determination of whether an Updated Disclosure Report must be submitted. If the modification causes any changes from the Initial Disclosure Report, the Updated Report must be submitted with the modification request.

The project modification may trigger the need for a budget modification. If the existing budget needs a modification, the subrecipient must submit a Budget Modification in the state's grant management system. The Budget Modification must include a letter on letterhead signed by the Authorized Official requesting the modification, a revised budget and updated CDBG Certification of Leverage Form if leverage amounts have changed.

ODOC will evaluate the proposed modification against the following criteria:

- Eligibility: Will the proposed changes still be eligible for CDBG-DR funding?
- Ratability: Would the proposed changes have caused a lower scoring on the original application? Would this lower score have meant that the application would not have been competitive and, subsequently, not have been authorized to enter into a contract agreement? If the answer to this question is “yes”, the modification will not be approved.

No increases above the maximum established by ODOC in either the administrative or engineering line items will be approved.

3.14 Attachments and Resources

#	Resource	Description	Link (if applicable)
3.1	Conflict of Interest Disclosure Form	Subrecipients must disclose conflicts of interest using this form.	Attachment
3.2	ODOC's Anti-Fraud, Waste and Abuse Policy	Describes ODOC and subrecipient requirements for preventing fraud, waste, and abuse.	https://www.okcommerce.gov/wp-content/uploads/Anti-Fraud-Waste-and-Abuse-Policy-2022-CDBG-DR.pdf
3.3	The state's grant management system Guides and Logon	Multiple step-by-step guides for various The state's grant management system tasks.	

4 Financial Management

4.1 Introduction

To assist subrecipients in fulfilling their financial management obligations, this policy will outline the steps for the successful financial management of a CDBG-DR grant.⁴

The state's grant management system is required for the submission of applications, implementation of projects, and subsequent closeout. It is important to note that some documents will be completed on forms that are programmed into the state's grant management system. Certain documents will be completed by the subrecipient and then uploaded into the state's grant management system. Additional paper documents must be maintained by the subrecipient at the subrecipient's main office. ODOC will provide guidance as to what documentation must be uploaded in the state's grant management system and which documentation must be maintained at the subrecipient's office.

4.1.1 CDBG-DR Contract De-obligation

There may be a time during a CDBG-DR Contract when the budgeted activity(s) cannot be completed as planned, such as bids are more than funds available, environmental clearance cannot be achieved, DEQ requirements cannot be met, the project cannot meet ODOC contractual requirements, etc. When an issue arises that may cause this occurrence, the assigned ODOC CDBG-DR Program Representative will prepare a file that details the project status, financially and programmatically, and the pertinent information leading to a possible contract De-obligation for discussion with the ODOC CDBG Review Committee. The Review Committee will meet and discuss the issues and possible outcomes with a final decision to proceed with an alternative resolution or a De-obligation that is followed up in a letter signed by the Division Director. The ODOC CDBG Review Committee may consist of the CDBG-DR Program Representative assigned to the subrecipient, the ODOC Planner assigned to the subrecipient, the Director of Programs (Planning), the Director of Programs (Monitoring), and the Division Director.

4.2 Accounting System Requirements

The seven major elements and actions of a complete financial management system include but are not limited to:⁵

- Accounting Records
- Accounting Systems
- Internal Controls
- Purchase Order System
- Leverage Funds Requirements
- Allowable and Unallowable Expenses
- Financial Management Files

More information on each of these elements and actions can be found below. At the time of application, subrecipients must provide their financial management policies and procedures for ODOC to verify their

⁴ 24 CFR 570, Subpart I, §489(d)

⁵ 11 O.S. §§17-207, 68 O.S. §3003

adherence to the standards described in this manual. In addition, ODOC verifies adherence to financial management policies and procedures during the monitoring of a subrecipient.

4.2.1 Accounting Records

All subrecipients are required by State statute to track Federal dollars by the fund. This means that a separate set of accounting records (books) must be set up for each CDBG-DR contract received. Each set of books will be considered a fund, much like the funds subrecipients are already required by law to operate under, i.e., water, street and alley, general, special revenue, etc. Within each fund, however, specific accounts are required to track expenditures by budgeted line-item activity (construction, administration, engineering, rental assistance, etc.).

At a minimum, each fund should contain:

- A cash receipts and disbursements journal. Please note that a subrecipient may utilize a manual accounting, i.e., paper books such as a green columnar pad or a computerized set of books. ODOC strenuously requires that the accounting system accurately account for the receipt and disbursement of CDBG-DR funds. This ledger format should also be used to account for the receipt and disbursement of leveraged funds.
- A complete set of expense accounts for each budgeted line item, i.e., construction, engineering, administration, rental assistance, etc.
- A payroll register for any subrecipient employees paid from CDBG-DR funds.

The accounting records may be maintained on a cash or accrual basis.

All entries recorded in the cash disbursements journal must be traceable to some form of source documentation, i.e., invoices, partial pay estimates, employee time sheets, etc. Additionally, subrecipients will need to have all original documentation filed in an orderly manner and readily available for review in the event ODOC performs financial monitoring on their CDBG-DR project.

4.2.2 Accounting Systems

Subrecipients may apply their normal accounting systems to CDBG-DR funds, provided that all applicable State and Federal requirements can be met. The requirements are documented below.

Funds should be placed in a non-interest-bearing checking account. The interest must be tracked if funds are placed in an interest-bearing checking account. Any interest earned more than \$500 must be paid to ODOC (See Chapter 4.9 Program Income). The one-year time frame begins from the date of the first deposit into the account. subrecipients may keep interest amounts up to \$500 per year if they can document allowable CDBG-DR administrative expenses per 2 CFR 200.305 Federal Payment and Interest Earned on Advances.

Subrecipients must contact Oklahoma Management and Enterprise Services (OMES) to receive CDBG-DR by electronic transfer. Contact via the [OMES website](#) or phone at 405-521-2930 or email to OKSuppliers@omes.ok.gov. Once CDBG funds are requested, they will be automatically deposited by electronic funds transfer (EFT) into the checking account that has been designated for receipt of CDBG funds.

Subrecipients are allowed **fifteen (15) working days** to expend the funds. Any money not expended after the maximum time allowed is considered excess cash on hand and must be returned to ODOC. The returned funds can be drawn later when needed. [Treasury Circular 1075]

An exception to the "cash-on-hand" prohibition is that subrecipients are allowed to maintain funds (up to \$2,000) after the final drawdown of funds for the payment of the CDBG-DR pro-rata share of a State-required "Yellow Book" audit. Although the subrecipient may technically have cash on hand at the time of closeout, these funds will be reported as expended on the closeout documents.

Additionally, subrecipients administering Single-family Housing Rehabilitation (SFH) programs shall expend all funds within sixty (60) days of receipt. This exception extends the standard 15-day requirement to 60 days specifically for Single-family Housing Rehabilitation programs.

4.2.3 Internal Controls

Adequate internal controls must be established to ensure CDBG-DR funds are properly safeguarded. These controls must include the following:

- Payment approval procedures must be defined. All invoices must be approved by the Municipal Council or Board of County Commissioners before payment. Subrecipients may use an authorized official if normal approval procedures by the Council or Board cannot be used. [Per the requirements of 62 O.S. 310.1]
- An authorized official is defined as any municipal or county officer or employee the Council or Board gives the authority to approve invoices on their behalf. [11 O.S. §17A-102]
- The subrecipient ordinance must reflect any departure from the normal approval procedures. An authorized official may approve all invoices before payment by initialing and dating each invoice. [11 O.S. 2014, §§17A-102]
- All paid invoices must be defaced by writing the check number and date paid on each invoice or purchase order. A copy of the approved purchase order must be attached to each invoice. REMEMBER, purchase orders must be signed and dated before ordering goods and services and before receipt of the invoice (including contracts). If Council or Board members do not sign purchase orders, documentation of approval of purchase orders as reflected in the meeting minutes must be readily available for review. **Every purchase order issued for invoices paid from CDBG-DR funds must be identified in the meeting minutes.**
- Non-collusion affidavits are required to be attached to all contracts for \$25,000 or more. Subrecipients executing contracts for goods or services on a continuing basis may accept a single Non-Collusion Affidavit at the time of initial execution of the contract, which applies to all future work, services, or materials completed or supplied under the terms of the contract. [74 O.S. §85.22]
- CDBG-DR checks must be pre-numbered and signed by the proper officials as authorized by local ordinance or State statute. In the absence of such an ordinance, the treasurer must sign all checks.
- Blank checks, undelivered checks, and signature stamps must be locked in a safe, drawer, or file cabinet with access restricted to individuals authorized for their use.
- Every CDBG-DR bank statement should be reconciled. The statement balance (not including other sources of funds) should be reconciled back to the CDBG-DR general ledger cash account. It is recommended that the reconciliation be performed by someone other

than the CDBG-DR accountant. All persons performing the reconciliation must initial and date the reconciliation to indicate approval.

- CDBG-DR dollars cannot be placed in a petty cash fund.

4.2.4 Purchase Order System

Subrecipients must use purchase orders as required by Oklahoma Statute, Title 62, Contracts and Expenditures, §310.1. Please note that this is not optional and is a statutory requirement.

Unless otherwise provided by ordinance, officers, boards, commissions, and designated employees of cities and towns, hereinafter referred to as the purchasing officer, having authority to purchase or contract against all budget appropriation accounts as authorized by law shall submit all purchase orders and contracts before the time the commitment is made, to the officer charged with keeping the appropriation and expenditure records or clerk, who shall, if there be an unencumbered balance in the appropriation made for that purpose, so certify in the following manner:

I hereby certify that the amount of this encumbrance has been entered against the designated appropriation accounts and that this encumbrance is within the authorized available balance of said appropriation. Dated this _____ day of _____, 20_____. Encumbering Officer or Clerk of _____.

In instances where it is impossible to ascertain the exact number of expenditure(s) to be made when recording the encumbrance, an estimated amount may be used, and the encumbrance made as described above.

No purchase order or contract shall be valid unless signed and approved by the purchasing officer and certified as above by the officer or clerk charged with keeping the appropriation and expenditure records. The clerk or encumbering officer shall retain and file one copy of the purchase order.

After satisfactory delivery of the merchandise or completion of the contract, the supplier shall deliver an **invoice**. Such invoice shall state the supplier's name and address and must be sufficiently itemized to clearly describe each item purchased, its unit price, where applicable, the number or volume of each item purchased, its total price, the total of the purchase, and the date of the purchase. The appropriate officer shall attach the itemized invoice with delivery tickets, freight tickets, or other supporting information to the original of the purchase order and, after approving and signing said original copy of the purchase order, shall submit the invoices, the purchase order, and other supporting data for consideration for payment by the governing board. The governing board shall examine all invoices submitted to determine their legality. The governing board shall approve such invoices for payment in the amount the board determines just and correct.

As an alternative to the provisions of subsection B of this section, the governing body may elect to pay claims and invoices according to the provisions of subsection A of Section 17-102 of Title 11 of the Oklahoma Statutes, which provides for the adoption of an ordinance to ensure adequate internal controls against unauthorized or illegal payment of invoices. The governing body may also authorize the chief executive officer or designee to approve payment of such invoices. Without such authority, the governing board shall approve the payment.

Purchase Orders shall be submitted with each invoice as supporting documentation to each pay advance in the state's grant management system for staff review.

4.2.5 Leverage Funds Requirements

The CDBG-DR program does not require match funds; however, leverage funds must be tracked and reported if included in the project activity budget.

4.2.5.1 Accounting for leveraged/matching funds

At a minimum, each fund should contain cash receipts and a disbursement journal. Please note that a subrecipient may utilize a manual accounting, i.e., paper books such as a green columnar pad or a computerized set of books. ODOC requires the accounting system to accurately account for the receipt and disbursement of CDBG funds.

4.2.5.2 Economic development projects and leverage (assistance to for-profit businesses)

For economic development projects, financial leverage is defined as new money, recently contributed to the project for the express purpose of implementing the proposed project. The source of the new money may be cash or other valuable consideration, e.g., land, bank loans, proceeds from the sale of stocks or bonds, or loans from other public agencies. Private and public investments that do not qualify as financial leverage are existing net worth, existing debt, future operating expenses, and inventory. Additionally, In-Kind Leverage is ineligible.

4.2.5.3 Community Development Projects and Leverage

For community development projects, leverage may consist of cash or in-kind contributions. Cash includes other Federal/State grants and loans and local capital improvement funds set aside for a specified purpose in the subrecipient budget.

- **In-kind labor** includes the value of force account labor, voluntary labor, the value of services and supplies provided by another local entity, the fair market value of land, buildings, or materials that are a part of the project, and the cost of using subrecipient- owned equipment.
- **Force account labor** is defined as subrecipient labor used on the project that has been paid for from local funds.
- **Voluntary labor** is defined as labor performed by individuals who are not compensated for their services and time. The labor performed must be for services considered to be an integral part of the project and can only be charged at the rate of \$10.00 per hour for non-skilled labor and the current hourly market rate for skilled labor, i.e., electricians, plumbers, etc. If subrecipient-owned equipment is used on the project, the FEMA rate schedule will be used as a guide in determining the proper equipment costs.

4.2.5.4 Documentation of leveraged funds must be maintained on file by the subrecipient for review.

Documentation includes invoices, partial pay estimates, monthly billings, executed contracts, etc. For in-kind labor, the required documentation includes signed time sheets showing the amount of time charged to the CDBG project, the rate per hour paid to each employee, and a brief description of the work performed. Each employee/volunteer and the employee's immediate supervisor must sign the time sheets. The employee's payroll records must also be available for review.

Documentation of subrecipient-owned equipment use must consist of a written log showing the type of equipment used, the date(s) used, the total number of hours used, the appropriate FEMA hourly rate, and a brief description of how the equipment was used and must be signed by the on-site supervisor.

Documentation should also include accounting records and bank statements of the paid leveraged funds, if applicable. If changes to either the source or use of leverage funding from those identified in the application are required, the subrecipient must secure prior ODOC approval. Allowable and unallowable leverage sources will be defined in each year's application for funding. [See Chapter 3 Program Management for guidance on budget revisions.]

4.2.6 Allowable and Unallowable Expenses

The most important thing to remember is that subrecipients can only expend funds on the items that are listed in the detailed budget submitted with the funding application. The budget has been reviewed and approved for funding through ODOC; therefore, all costs set out in the budget are considered approved. Any requests to deviate from the budget must be approved in writing by ODOC. Any CDBG-DR funds expended on items not pre-approved by ODOC will be considered disallowed expenses and must be paid for from local funding sources.

Procurement for services (non-construction and construction) records will need to be uploaded in the state's grant management system along with approval processes for review.

The budget may contain three separate categories for administration:

1. **Activity Delivery Costs:** Allowable costs incurred for implementing and carrying out eligible CDBG-DR activities. All ADCs must be allocable to a CDBG-DR activity. ADCs include direct costs integral to the delivery of the final CDBG-DR-assisted activity. In some circumstances, ADCs may include indirect costs, as further described in the CPD Notice 2023-06⁶. Most, if not all, subrecipient administrative costs will be classified as ADC.
2. **Planning Costs:** Costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans. Only planning subrecipients will be eligible to charge the grant for planning costs.
3. **Program Administration Cost (PACs):** Reasonable general costs (including carrying charges) of grant management that do not include staff and overhead costs directly related to carrying out other CDBG-DR eligible activities, since those costs are eligible as part of such activities. Most, if not all, PAC funds associated with the CDBG-DR program are charged by ODOC to the grant. Subrecipients can only charge PACs to the grant with prior written approval and documentation.

As a rule, administrative costs for the subrecipient may include:

- Contracted certified CDBG administrative consulting services.
- Personnel costs (payroll and fringe) for staff time on the project. The subrecipient's payroll account can be reimbursed with CDBG funds rather than creating an additional payroll for employees performing CDBG work activities. Timesheets are required for all employees paid with CDBG funds.
- Pro-rata portion of the annual audit expense.
- Miscellaneous: Legal fees, title opinions, bid advertisement expenses, and postage.
- Travel: If subrecipients are planning to charge subrecipient travel expenses to their CDBG contract, subrecipients will need to contact ODOC for the current reimbursement rates.

⁶ <https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf>

- If the subrecipient's existing travel policies are more restrictive than the State's, the more restrictive local policies will take precedence. [Consistent with 74 O.S. §500.1, et seq.]

4.2.7 Financial Management Files

The State's official subrecipient books of record will be maintained in the state's grant management system. However, the subrecipient may choose to keep traditional paper files for their records.

Correspondence and other financial management documentation, such as the general ledger and internal controls not uploaded in the state's grant management system, must be maintained conventionally at the subrecipient's main office.

4.3 Drawing Down Funds (Advance Request or Reimbursement Claim)

The term "advance request" is a misnomer in the state's grant management system. Most, if not all, advance requests are requests for the reimbursement of funds already expended by the subrecipient. The terms advance request, pay request, and reimbursement claim are used interchangeably.

All requests for payments must be entered into the state's grant management system. Hard copies will not be accepted. The subrecipient may request a withdrawal of funds necessary to meet immediate needs. This is accomplished through submitting an Advance Request initiated and submitted in the state's grant management system. The CDBG-DR grant writer/grant administrator may prepare this form, but the authorized official or financial officer in the state's grant management system must review and submit it. The Grant Administrator emails ODOC, informing them that an Advance Request has been submitted. Upon receipt of the email, ODOC staff will typically review the Advance Request within three (3) business days.

Please note that CDBG-DR usually requires documentation of expenditures to receive funds. Subrecipients will be required to submit the following documentation to receive CDBG-DR funds, as applicable.

4.3.1 Required Documentation for Advance Requests (as applicable)

- Signed Purchase Orders
- Invoices
- Personnel Timesheets
- LMI Beneficiary by Beneficiary Tracker
- Wage and Hour Division (WHD) Payrolls (Form WH-347) - subrecipients will not be required to use this exact form. However, the form used must capture the same detail shown on the WHD Payroll form
- Employee Interview Forms
- Payroll Certification Form - Must be submitted one time with the first funding request.
- Certificate of Appointing Officer to Approval Payroll - Must be submitted one time with the first funding request.
- Section 3 Worker Status Certification - Must be submitted with payroll on the first draw request for each employee.
- Section 3 Monthly Utilization Report.

- DOB Award Calculations and Verifications.

4.3.2 ODOC Staff Process for Advance/Reimbursement Requests

CDBG-DR staff will use the following procedures to evaluate Advance/Reimbursement Requests:

- Verify the contract has not expired.
- Verify the Advance/Reimbursement Request is an eligible CDBG-DR activity and compare it against available funds and approved activities in the contract budget.
- Verify approval of Release of Funds (Environmental Review, Wage Determination, and Notice of Award approved).
- Verify that the subrecipient is not past due on Quarterly Performance Reports, Monthly Expenditure Reports, or other ODOC requirements.
- Verify that all required supporting documentation has been uploaded and all requested amounts are documented.

Any advance/reimbursement requests that do not meet all the above items will be returned to the subrecipient for changes. If there are no issues, the complete process can take between 10-12 days until funds are deposited into the subrecipient's bank account

4.4 CDBG-DR Monthly Expenditure Reports

The Monthly Expenditure Report (MER) must be prepared and submitted in the state's grant management system by the 4th of every month following a month in which there has been a draw, expenditure, or cash balance of CDBG-DR funds. The purpose of the expenditure report is to document that funds received were expended by the subrecipient.

Subrecipients are only required to submit a monthly expenditure report following the month in which funds were spent. As a reminder, subrecipients have 15 working days to spend funds. For example, if a subrecipient receives funds on July 8th, a monthly expenditure report is due by August 10th.

Timely submission of the Monthly Expenditure Report is important. Advance/Reimbursement requests will not be processed if there are any Quarterly Performance Reports, Monthly Expenditure Reports, or other ODOC requirements that are outstanding.

Supporting documentation such as canceled checks should be included to document expenditures, if pay requests were not reimbursements.

Inaccurate reports will be rejected and returned for corrections by ODOC staff.

4.5 CDBG-DR Quarterly Performance Reporting

Every quarter, subrecipients must submit a report to reflect program performance on contracts, expenditures, and beneficiaries. This will be submitted via the state's grant management system by the 4th of January, April, July, and October until closeout documents are submitted. The data submitted on the quarterly report should be cumulative and reflective of the advance requests.

The QPR should be based on the date the payment is processed in the state's grant management system. For example, if payments are processed on August 15th, September 7th, and another on October 17th, data reported on the QPR should only include information from the August 15th and September 7th payments. Payments can be confirmed in the state's grant management system by the

timestamp labeled “Grant System” shown in the screenshot below. The payment processed on October 17th should not be reported until the following quarter because it falls after the 4th of the month when the report is due.

ODOC Advance	18490-002-CDBG-COVID	Advance Paid	03/22/2014 - 01/15/2025 01/15/2025 11:59PM	Laura Girty 8/18/2022 11:24:55 AM	Grant System 9/12/2022 11:45:05 PM
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The QPR should not count beneficiaries more than once. For instance, if Sue receives assistance in May and July, Sue should only be counted once in the total number of beneficiaries receiving assistance.

QPRs require subrecipients to report data on current program performance, primarily performance metrics, expenditures, contracts, beneficiaries, changes to staff capacity, translation requests, and ADA accommodation requests. In addition, the QPR will require subrecipients to project expenditure and performance metrics based on current conditions. ODOC staff will use all uploaded documents from subrecipients on the state’s grant management system to check the accuracy of the report submitted. ODOC staff will reject and return inaccurate reports.

4.5.1 Cumulative Beneficiary Data Required

Subrecipients with activities that serve and track individual beneficiaries (primarily housing activities) are required to submit cumulative beneficiary data on an Excel sheet as an attachment for those activities with each QPR. This cumulative beneficiary data serves as backup documentation to enable ODOC staff to verify the numbers submitted on the QPR. The documentation also serves to ensure that subrecipients do not count beneficiaries more than once. This cumulative beneficiary data can be tracked using the attached beneficiary tracker and must contain all beneficiaries assisted by the program up to that point. The cumulative beneficiary data should also be divided by type of activity. For example, buyout assistance beneficiaries should be separated from rehabilitation assistance beneficiaries. The tracker must be uploaded in Excel format. The tracker should be accurate and complete to the best of the subrecipient’s ability.

4.6 Timely Expenditure Plan

ODOC must expend 100 percent of its allocation of CDBG-DR funds on eligible activities within six (6) years of HUD’s execution of the initial grant agreement (88 FR 32080). To meet this federal requirement, ODOC will utilize the Timely Expenditure Plan. Subrecipients are required to adhere to the following conditions as indicated in the table below:

4.6.1 Subrecipient Timely Expenditure Plan Milestones

Milestone	Deadline for Non-construction (3-year)	Deadline for Construction (5 years)
Complete the Environmental Review and Release of Funds (ROF)	120 days of contract execution	120 days of contract execution
Award a construction contract for every activity	270 days of contract execution	270 days of contract execution
10% of funds drawn and expended	1 year of contract execution	1 year of contract execution

80% of funds drawn and expended	876 days (2 years, 4 months) of contract execution	1460 days (4 years) of contract execution
100% of funds drawn and expended	At project closeout submission	At project closeout submission
Monthly Expenditure Report (MER)	10th day of the month following a drawdown	10th day of the month following a drawdown
Quarterly Performance Report (QPR)	10th day of the quarter following a drawdown	10th day of the quarter following a drawdown

ODOC can take any or all the following actions for failure to meet the deadlines above:

- Require a meeting or TA with ODOC staff.
- Require a written explanation of the cause of the missed deadline and a plan that describes how future timely expenditures and milestones will be met.
- Require weekly email updates on progress toward meeting expenditures and milestones.
- De-obligate all or partial funds from the subrecipient.
- Terminate the contract with the subrecipient.
- Identify greater risk associated with the subrecipient on future CDBG-DR applications

ODOC will communicate clearly with the subrecipient when a deadline has been missed, and corrective actions are required.

4.6.2 Procedures for Monitoring Expenditures and Milestones

ODOC is committed to ensuring that CDBG-DR projects are completed promptly. To achieve this goal, ODOC utilizes the following procedures:

- On the twentieth (20th) day of each month, ODOC staff updates the 2022 CDBG DR Consolidated Report. The 2022 CDBG DR Consolidated Report is an Excel Workbook that tracks subrecipient performance. At this point, the program manager or representative will contact the grant administrator to check on any projects without activity from the previous month. The Consolidated Report includes expenditure data, progress notes, deadlines, and contact information for grant administrators.
- Monthly Expenditure Reports (MERs) must be prepared and submitted in the state's grant management system by the subrecipient by the 4th of every month following a month in which there has been a draw, expenditure, or cash balance of CDBG-DR funds. Subrecipients are only required to submit a monthly expenditure report following the month in which funds were expended.
- Quarterly Progress Reports (QPRs) are submitted every quarter, regardless of drawdowns. QPRs will be completed and submitted via the state's grant management system by the 4th of January, April, July, and October until closeout documents are submitted. QPRs require subrecipients to report data on current program performance, primarily performance metrics, expenditures, contracts, beneficiaries, changes to staff capacity, translation requests, and ADA accommodation requests. In addition, the QPR will require subrecipients to project expenditure and performance metrics based on current conditions.
- HUD Monthly Data Calls: This report is submitted to HUD by the 15th of every month.

4.7 Recapture Policy

ODOC may recapture or de-obligate funds from a subrecipient when the subrecipient fails to meet contract requirements, a project is stalled, or other circumstances require the removal of funds. In the event of recapture or de-obligation, ODOC will promptly reprogram funds to existing subrecipients with an additional unmet need or reopen the competitive grant application process. Any funds that are unable to be reprogrammed promptly will be returned to HUD.

4.7.1 Voluntary De-obligation, No Funds Expended

If a subrecipient decides to return their grant voluntarily, ODOC requires the subrecipient to initiate a closeout in the state's grant management system and upload an official letter signed by the chief local elected official stating they would like to voluntarily de-obligate the contract.

The subrecipient must also fill out the Closeout Certification page embedded in the state's grant management system. The ODOC Program Representative then reconciles the financial records to see if any CDBG funds had been drawn and expended. If no funds were drawn or expended, then the ODOC representative sends the closeout to the ODOC Program Manager and/or ODOC Director of Programs to review the accuracy.

The ODOC Director of Programs then emails the budget officer that the contract is voluntarily de-obligated and that ODOC should recapture funds to be used for future contracts. Next, the Director of Programs/Program Manager sends the closeout documents to financial services for their review and completion of the closeout process.

4.7.2 Voluntary De-obligation, Funds Expended

If a subrecipient decides to return their grant voluntarily, ODOC requires the subrecipient to initiate a closeout in the state's grant management system and upload an official letter signed by the chief local elected official stating they would like to return the contract voluntarily.

The subrecipient must also fill out the Closeout Certification page embedded in the state's grant management system. The ODOC Program Representative then reconciles the financial records to see if any CDBG-DR funds have been drawn and expended. If funds were drawn or expended, then the ODOC representative would notify the subrecipient of the number of funds to be returned to ODOC by a given date. These funds must be returned via check to the Oklahoma Department of Commerce Financial Services Division. The subrecipient would also be told that they would be ineligible for any future CDBG-DR funding until all the funds drawn from the de-obligated contract were paid back to ODOC.

The subrecipient must also submit a new advance request showing the negative amount and a revised expenditure report that indicates the return of all CDBG-DR funds drawn and expended. The ODOC Program Representative sends the closeout to the ODOC Program Manager/ ODOC Director of Programs to review the accuracy. The ODOC Director of Programs then emails the budget officer that the contract is being voluntarily de-obligated, and ODOC should recapture said funds to be used for future funding or returned to HUD, depending on the stage of the grant lifecycle. The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

4.7.3 Involuntary De-obligation, No Funds Expended

When a subrecipient does not meet the contractual requirements of their project, then ODOC will notify the subrecipient by official letter notification that they are in violation of their contract (with citations provided) and the subrecipient is being considered for de-obligation.

The subrecipient will be given a deadline to explain why their contract should not be de-obligated.

An ODOC review committee comprised of the Division Director, Director of Programs – Planning, Director of Programs – Monitoring, Planner, and Program Representative will meet and review all documentation related to the decision of whether to de-obligate. After the ODOC review committee has made its decision, an official letter is sent via email to the subrecipient.

If the decision was to de-obligate and no CDBG funds had been drawn or expended, then the subrecipient would be informed that ODOC would be performing a One-page closeout, and nothing further would be necessary for them to do. They will also be informed that they will be eligible to apply for future funding when the next eligibility period occurs.

The ODOC Program Representative would then fill out the One-Page Closeout in the state's grant management system, upload all pertinent documentation, and send the closeout to the ODOC Programs Manager/Director for review. The ODOC Director of Programs then emails the budget officer that the contract is being de-obligated, and ODOC should recapture said funds to be used for future funding or returned to HUD depending on the stage of the grant lifecycle.

The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

4.7.4 Involuntary De-obligation, Funds Expended

When a subrecipient does not meet the contractual requirements of their project, then ODOC will notify the subrecipient by official letter notification that they violated their contract (with citations provided) and the subrecipient is being considered for De-obligation.

The subrecipient will be given a deadline to respond with explanations as to why their contract should not be de-obligated.

An ODOC review committee comprised of the Division Director, Director of Programs – Planning, Director of Programs – Monitoring, Planner, and Program Representative will meet and review all documentation related to the decision of whether to de-obligate. After the ODOC review committee has made its decision, an official letter is sent via email to the subrecipient.

If the decision is to de-obligate the contract and the subrecipient has drawn funds, then the decision letter will include a statement about paying back all funds drawn and expended. These funds must be returned via check to the Oklahoma Department of Commerce Financial Services Division. The subrecipient will also be advised that they will be ineligible for any future CDBG-DR funding until all the funds from the de-obligated contract are paid back to ODOC.

Corrected pay requests and expenditure reports must be submitted to ODOC through the state's grant management system along with the required Closeout Certification Page. The next step is for the ODOC Program Representative to ensure all required documents have been reconciled and then send the closeout to the Programs Manager/Director of Programs for review.

The ODOC Director of Programs then emails the budget officer that the contract is being de-obligated, and ODOC should recapture said funds to be used for future funding or returned to HUD depending on the stage of the grant lifecycle. The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

4.7.5 Contract Closed, Funds Remaining

If a contract has been closed and it comes to the attention of ODOC that CDBG-DR funding was not all spent, then the ODOC the state's grant management system Administrator would have to re-open the contract, and the subrecipient would be notified in writing of which of the above processes they would need to follow to remedy the situation.

4.8 Audit Requirements

Each ODOC contract includes an audit requirement. Several factors affect the audit that is required, including:

- Whether the jurisdiction is a municipality or county (11 O.S. Subsection 17-105 or 19 O.S. Subsection 171).
- The total level of funding received each year from all sources, and
- The total level of federal funds expended in a given fiscal year (OMB Circular A-133)

The thresholds for audit requirements are as follows:

- If the subrecipient's annual revenue is \$50,000 or more in funds (from all sources), it must conduct an annual audit of all funds received that comply with the Oklahoma statute, or
- If the subrecipient's revenue is \$50,000 or more, but its population is less than 2,500, it has the option of having an agreed-upon procedures agreement conducted by an independent licensed public or certified accountant instead of an independent audit as cited in O.S. 17-105; or
- If the subrecipient expends \$750,000 or more in total federal funds (regardless of the source), it is subject to the requirements of the Single Audit Act (2 CFR 200.501(d)).

Subrecipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

Audits should be uploaded on the state's grant management system in a PDF file if required. Hard copies of the audit will be accepted if necessary and can be mailed in. Financial Services will communicate with subrecipients that need to submit an audit.

4.9 Program Income

Program income is money received by the subrecipient, in the amount of \$35,000 or more per year that has been generated from the use of CDBG-DR funds.⁷ Program income is not the initial receipt of CDBG-DR funds, but money made from the use of those funds. Examples of program income are:

- Proceeds from the sale of real property purchased or improved with CDBG-DR funds.
- Proceeds from the disposition of equipment purchased with CDBG-DR funds.

⁷ 88 FR 32074, Section III.E.1.a.

- Payment of principal and interest on loans made using CDBG-DR funds.

More examples of program income can be found in the CDBG-DR Consolidated Notice (88 FR 32074, *Section III.E. Program Income*).

Based on CDBG-DR programs, it is unlikely that any CDBG-DR projects will generate program income.

If a subrecipient earns less than \$35,000 per year from the use of CDBG-DR funds, such earnings are not considered program income. The subrecipient may keep any amount less than \$35,000 for its own use. However, the subrecipient is encouraged to use the funds for community development disaster-related activities.

If any program income is generated in the amount of \$35,000 or more per year in connection with a subrecipient's administration of the CDBG-DR funding, such funds will remain with the subrecipient and will be expended in the same method as the awarded grant funds. If the subrecipient cannot successfully fulfill this program income obligation, the State will assume the program income and reallocate the funds based on its current method of distribution as described in the applicable Action Plan or return the funds to HUD if necessary.

Subrecipients are required to use program income before drawing additional grant funds.

Program income received and retained by a subrecipient before the closeout of the grant that generated the program income must be used to continue the approved CDBG-DR activities. The program income is treated as additional CDBG-DR funds subject to the requirements of the grant award, and ODOC's applicable action plan for CDBG-DR funds. Program income remains governed by CDBG-DR rules as long as they are used to continue disaster recovery activities. Program income is subject to all rules and regulations governing CDBG-DR funds including, but not limited to, compliance with national objectives, procurement, equal opportunity, environmental, and labor standards, lead-based paint hazard treatment, etc.

When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used. If CDBG funds are used with CDBG-DR funds on an activity, any income earned on the CDBG portion would be subject to the requirements of that program.

Any program income (\$35,000 or more per year) must be reported to ODOC. To obtain this information for tracking and reporting to HUD, the subrecipient is required to report program income on the Quarterly Performance Report (QPR) in the state's grant management system. The QPR will reflect the amount earned/received per program activity that earned the funds as program income. Any amount reported as earned must also be reported as expended in the Monthly Expenditure Report (MER) per eligible program activity before additional grant funds can be drawn. ODOC may request additional information when reviewing the QPR or MER.

CDBG-DR staff will note for Financial Services that program income has been reported as earned and/or expended and that additional grant funds cannot be drawn until all program income has been reported as expended.

Any recapture of grant funds shall be tracked by the subrecipient to be reported to ODOC as potential program income and shall be used per program income requirements.

In the event the funds cannot be used within the same program activity, or in the case of funds received following a completed program activity, the funds shall be returned to ODOC. ODOC will report the program income in DRGR.

Program income earned by Tribal Nations that are ODOC's subrecipients are subject to the above requirements.⁸

4.9.1 Summary of Subrecipient Requirements for Program Income:

- Amounts generated over \$35,000 per year are considered program income.
- Program income must be reported on the QPR and MER in the state's grant management system.
- Program income must be expended on approved CDBG-DR activities and is subject to all CDBG-DR requirements.
- Program income must be expended before drawing additional grant funds.
- If program income cannot be used for CDBG-DR activities or is generated after a subrecipient's grant closeout, it must be returned to ODOC.

5 Procurement Manual

5.1 Introduction

ODOC's Community Development Division has adopted 2 CFR 200.317 as it relates to the administration of CDBG-DR programs. Subrecipients of CDBG-DR funds must comply with the requirements of [2 CFR 200.318 through 2 CFR 200.327](#) regarding the procurement of equipment, materials, property, or services. Subrecipients must also comply with State and local procurement standards.

Moreover, procurement under the CDBG-DR program must comply with the most restrictive Federal, State, or local requirements.⁹ In addition, in the event any provision of the Public Competitive Bidding Act of 1974 conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government that is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith.¹⁰ If the subrecipient's procurement standards conflict with the policies outlined in this document (based on 2 CFR 200), the subrecipient should follow the most restrictive rule and seek ODOC guidance.

The following standards and guidelines are being furnished to ensure subrecipients of CDBG-DR funds procure materials and services efficiently and economically in compliance with the applicable provisions of federal law, state laws, and executive orders. The foregoing standards do not relieve CDBG-DR subrecipients of any contractual responsibilities under its contracts or local, state, or federal law. Subrecipients are responsible, in accordance with good administrative practice and sound business

⁸ 88 FR 32074

⁹ 61 O.S. §133

¹⁰ 61 O.S. §136

judgment, for the settlement of all contractual and administrative issues arising out of procurement entered in support of the grant.

ODOC CDBG-DR staff will relay the information contained herein to subrecipients via the CDBG-DR website, through training and checklists, and during on-site monitoring and reviews. Additional resources may be found on the HUD Exchange website, www.hudexchange.info, including example procurement documents and checklists. These samples can be used to assist subrecipients in complying with federal regulations; however, subrecipients should review all procurement documents and procedures to ensure compliance with local and state laws and regulations.

Non-compliance with required procedures may result in the disallowance of any or all costs associated with the procurement action.

Subrecipients shall follow 2 CFR Part 200.318-327 federal guidelines for procurement as well as:

- **Counties** are required to follow 2 CFR Part 200.318-327. County purchasing practices in Oklahoma are regulated by Sections 1500 through 1505 in Title 19, Chapter 33, "County Purchasing Procedures", of the Oklahoma Statutes, commonly referred to as the County Purchasing Act.¹¹ These practices are also regulated by the "Public Competitive Bidding Act" (PCBA) in Title 61, Sections 101 through 138 in the Oklahoma Statutes.¹² These Statutes are revised each year by the Oklahoma Legislature to keep them current and beneficial. Where local policies and 2 CFR Part 200 conflict, the more restrictive policy should be followed. Counties should seek ODOC guidance when rules conflict.
- **Cities and Towns** are required to follow 2 CFR Part 200.318-327 and their procurement procedures as established by local ordinance for the purchase of all goods and services. These practices are also regulated by the "Public Competitive Bidding Act" (PCBA) in Title 61, Sections 101 through 138 in the Oklahoma Statutes.¹³ These Statutes are revised each year by the Oklahoma Legislature to keep them current and beneficial. Where local policies and 2 CFR Part 200 conflict, the more restrictive policy should be followed. Cities and towns should seek ODOC guidance when rules conflict.

Subrecipients are required to provide ODOC with their procurement policy at the time of application. If the subrecipient does not have a current procurement policy, then no funds will be distributed until the Governing Board approves such policy and it is submitted to ODOC for verification.

Subrecipients are required to maintain documentation of all procurement procedures and actions on file for ODOC review for a minimum of three (3) years after contract closeout. Documentation required includes Requests for Proposals (RFPs), Request for Qualifications (RFQs), newspaper or online advertisements, written solicitations, board minutes, email communications, etc.

All costs must comply with general cost principles and must be allowable, reasonable, and allocable (as defined in 2 CFR 200).

24 CFR 570, Subpart I, §489(g) requires that: "The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition". "FULL AND OPEN" competition is defined as procurement procedures that provide all suppliers of

¹¹ <https://www.oscn.net/applications/oscn/Index.asp?ftdb=STOKST19&level=1>

¹²<https://www.oscn.net/applications/oscn/index.asp?level=1&ftdb=STOKST61#PublicCompetitiveBiddingActof1974>

¹³<https://www.oscn.net/applications/oscn/index.asp?level=1&ftdb=STOKST61#PublicCompetitiveBiddingActof1974>

goods and services the ability to be made aware of the proposed procurement action with no restriction placed on their ability to compete. Methods of procurement shall include micro-purchase, small purchase, sealed bid (formal advertising), competitive proposals, and non-competitive proposals.

5.1.1 Self-Procurement Warning

Any Certified Administrator who engages in either of the following practices shall be de-certified consistent with the following procedures listed in the certification regulations:

- Assisting the municipality or county in the conduct of the procurement process, ultimately resulting in the selection of that administrator to provide CDBG-DR administrative services (self-procurement).
- Offering to prepare an application to ODOC for funding assistance for no fee, with the understanding that if the application is awarded, the administrator will be selected to administer the grant (kickback).
- Executing a contract with a subrecipient for administrative services before the award of CDBG-DR funding assistance.

5.1.2 Substate Planning Districts (COGs)

Councils of Government (COGs) are voluntary associations of local governments formed under Oklahoma law. These associations deal with the problems and planning needs that cross the boundaries of individual local governments or that require regional attention. COGs go by several different names, including regional councils, regional planning commissions, associations of governments, substate planning districts, and area councils. No legal distinction exists among the different names. Regional councils are defined by law as political subdivisions of the state, but they have no regulatory power or other authority possessed by cities, counties, or other local governments.

House Bill No. 1709, Section 35, effective July 1, 1995, requires: Municipalities and counties assisted with federal pass-through funds may elect to utilize the services of their sub-state planning district, private contractors, or their own staff in implementing the projects. In selecting private professional contractors, including engineers, architects, planners, administrators, and accountants, the municipalities and counties may utilize their own procedures, if those procedures are consistent with state statutes, federal regulations, and the requirements of particular federal funding sources, including requests for proposals or bids.

5.1.3 State Agencies

State agencies working as partners or subrecipients with ODOC are required to follow their procurement policies and procedures, which are the same as ODOC's. State agencies will be required to submit their procurement policies at the time of application. ODOC will verify the standards are consistent with the Oklahoma Central Purchasing Act, State Use Committee Rules, State of Oklahoma Policy and Procedures for Purchase Card and Online Booking Tool, Office of Enterprise and Management Services (OMES) Central Purchasing Administrative rules, these internal purchasing procedures, and all other Federal grants and guidelines associated with funds used in the procurement process.¹⁴

¹⁴ 88 FR 32078

5.2 Pre-Award and Pre-Application Costs

All reimbursed pre-award or pre-application costs must meet all procurement, environmental, and cross-cutting requirements documented herein. The relevant Action Plan will state whether pre-award or pre-application costs are eligible for a particular program. The best practice is to contact your ODOC Program Manager before incurring any pre-agreement costs intended to be reimbursed by CDBG-DR funds.

Subrecipients are permitted to charge to 2022 CDBG-DR grants otherwise allowable costs incurred by beneficiaries and subrecipients in response to the May 2022 DR-4657 or DR-4670 eligible disaster. Pre-award or pre-application costs are only eligible for reimbursement if they were incurred on or after May 2, 2022. Not all programs for the 2022 CDBG-DR grant are eligible for pre-award costs.

For purposes of this grant, pre-application costs are costs incurred by an applicant or beneficiary to the CDBG-DR program before the time of application to ODOC or a subrecipient, which may be before (pre-award) or after ODOC signs its CDBG-DR grant agreement.

Subrecipients may only charge costs to the grant that meet the following requirements:

- Subrecipients may only charge the costs for rehabilitation, demolition, and reconstruction of single-family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to ODOC or a subrecipient for CDBG-DR assistance;
- For rehabilitation and reconstruction costs, subrecipients may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
- As required by 2 CFR 200.403(g), costs must be adequately documented; and
- Subrecipients must complete a duplication of benefits check before assisting beneficiaries per section IV.A. in the Consolidated Notice ([88 FR 32046](#)).

Subrecipients are required to ensure that all costs charged to a CDBG-DR grant are necessary expenses related to authorized recovery purposes.¹⁵

Subrecipients may charge to CDBG-DR grants the eligible pre-application costs of individuals and private entities related to single-family, multifamily, and nonresidential buildings only if:

1. The person or private entity incurred the expenses within one year after the applicability date of ODOC's initial Allocation Announcement Notice (May 23rd, 2023) (or within one year after the date of the disaster, whichever is later); and
2. The person or entity pays for the cost before the date on which the person or entity applies for CDBG-DR assistance.¹⁶

Exempt activities as defined at 24 CFR 58.34, but not including 24 CFR 58.34(a)(12), and categorical exclusions as defined at 24 CFR 58.35(b) are not subject to the time limit on pre-application costs outlined above. Actions that convert or potentially convert to exempt under 24 CFR 58.34(a)(12) remain

¹⁵ 88 FR 32075

¹⁶ 88 FR 32056

subject to the reimbursement requirements provided herein. If a subrecipient cannot meet all requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG-DR funds.

Subrecipients must comply with the necessary and reasonable cost principles for state, local, and Indian tribal governments (described at 2 CFR 200.403). Subrecipients must incorporate into their policies and procedures the basis for determining that the assistance provided under the terms of this provision is necessary and reasonable.

Pre-award costs are also allowable when CDBG-DR assistance is provided for the rehabilitation, demolition, or reconstruction of government buildings, public facilities, and infrastructure. However, in such instances, the environmental review must occur before the underlying activity (e.g., rehabilitation of a government building) begins.¹⁷

Subrecipients are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

All subrecipients must follow all cross-cutting requirements, as applicable, for all CDBG-DR funded activities, including but not limited to the environmental requirements above, the Davis Bacon Act, Civil Rights Requirements, HUD's Lead Safe Housing Rule, and the URA.¹⁸

5.3 Subrecipient Procurement Policies

Before securing contract services, subrecipients should determine whether their procurement policies and procedures comply with all federal requirements contained in 2 CFR §200.318-327. If the subrecipient intends to use federal funds to pay for goods or services and the policy does not contain all federal requirements, it must be amended accordingly. Inadequate policies and procedures do not eliminate the subrecipient's responsibility to comply with all federal, state, and local laws regarding purchases of goods or services.

Each subrecipient must have a written and adopted procurement policy that addresses, at a minimum, the following:

1. **Oversight.**¹⁹ Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Standards of Conduct.**²⁰ Every subrecipient must maintain written procedures covering conflicts of interest governing the actions of its 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. The subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489.
 - a. For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of

¹⁷ 88 FR 32076

¹⁸ 88 FR 32076

¹⁹ 2 CFR §200.318(b)

²⁰ 2 CFR §200.318(c)(1)

his/her immediate family, his/her partner, or an organization which 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.²¹

- b. 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;
- c. The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.
- d. The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.²²

3. Avoidance of Unnecessary or Duplicative Items.²³ Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items by considering consolidating or breaking out procurements to obtain a more economical purchase.
4. Value Engineering Clauses.²⁴ Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. Awarding to Responsible Contractors.²⁵ Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. Record Keeping. Subrecipients must maintain records sufficient to detail the history of procurement. These records shall include, but are not limited to, the following:
 - a. Rationale for the method of procurement
 - b. Selection of contract type
 - c. Contractor selection or rejection, and
 - d. The basis for the contract price²⁶
7. Time and Materials Contracts. Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contracts are the sum of:
 - a. The actual cost of materials; and

²¹ 24 CFR 570.489(g), 2 CFR §200.318(c)(1)

²² 61 O.S. § 114

²³ 2 CFR §200.318(d)

²⁴ 2 CFR §200.318(g)

²⁵ 2 CFR §200.318(h)

²⁶ 2 CFR §200.318(i)

- b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.²⁷
- 8. Dispute Resolution. Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve subrecipients of any contractual responsibilities under their contracts.²⁸
- 9. Prohibition on Geographic Preference. Subrecipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.²⁹

5.4 Subrecipient Procurement Procedures

Subrecipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements which the offerors must fulfill;
- Identify all other factors to be used in evaluating bids or proposals;³⁰ and
- Are conducted in a manner providing full and open competition;³¹
 - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, 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.
 - Some situations considered to be restrictive of competition include, but are not limited to, the following:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Noncompetitive pricing practices between firms or between affiliated companies;
 - Noncompetitive contracts to consultants that are on retainer contracts;
 - Organizational conflicts of interest;

²⁷ 2 CFR §200.318(j)

²⁸ 2 CFR §200.318(k)

²⁹ 2 CFR §200.319(c)

³⁰ 2 CFR §200.319(d)

³¹ 2 CFR §200.319(a)

- 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; and
- Any arbitrary action in the procurement process.³²

When using prequalified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not preclude potential bidders from qualifying during the solicitation period.³³

Domestic Preference: As appropriate and to the extent consistent with law, subrecipients should, to the greatest extent practicable under a CDBG-DR 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.³⁴

All contractors are required to be registered in sam.gov and must not be debarred or have exclusions.

All subrecipients must comply with the following:

- Title VI of the Civil Rights Act of 1964
- Section 3, Housing and Urban Development Act of 1968, as amended;
- Section 504 of the Rehabilitation Act of 1973, as amended
- Age Discrimination Act of 1975
- Section 109, Housing and Community Development Act of 1974, as amended
- Section 402, Veterans of Viet Nam Era (if \$10,000.00 or over)
- Minority and Women-Owned Business Enterprises (See Section 5.6).

ODOC and its employees, including subrecipient and pass-through entity employees, are obligated to ensure CDBG assets and resources are used in accordance with regulatory requirements. All employees must take proactive measures to prevent fraud, waste, and abuse. If you suspect fraud, waste, or abuse please report it to the HUD OIG by calling 1-800-347-3735 or see other methods of reporting in ODOC's Anti-Fraud, Waste, and Abuse Policy.

5.5 Price and Cost Analysis

For all procurement actions in excess of the Federal Simplified Acquisition Threshold, including change orders or contract modifications, subrecipients must perform a cost or price analysis as described in 2 CFR §200.324. If the local or state acquisition threshold is more restrictive, then use the stricter of the two. Note that subrecipients must consider price reasonableness for micro-purchases as well as small purchases (see Micro-Purchase Section below).³⁵

³² 2 CFR §200.319(b)

³³ 2 CFR §200.319(e)

³⁴ 2 CFR §200.322

³⁵ 88 FR 32078

5.5.1 Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services without evaluating separate cost elements and should be documented in the procurement file. Price analysis techniques include comparing proposed prices received in response to the solicitation or historical prices for the same or similar items.³⁶ Price analysis is essential price comparison.

Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, it must be determined if the goods or services are comparable. It is the subrecipient's responsibility to determine that the price is fair and reasonable.

Micro Purchase and Small Purchase procurement methods require Price Analysis when selecting vendors and suppliers. There are a variety of ways of analyzing price, some of which are illustrated below, but the method and degree of analysis grantees used is dependent on the facts surrounding the particular procurement situation. Price Analysis should be documented in the procurement file.

- Compare competitive prices received in response to the solicitation to each other.
- Compare proposed prices to prices on existing contracts or contracts proposed in the recent past. Be sure to factor in any changing conditions, including market, inflation, material price changes.
- Apply rough approximations and review significant inconsistencies, which may require a deeper look at prices to determine if the items are truly comparable. The types of approximations might include price per pound, per square foot, per hour or other typical unit pricing mechanism.
- Review price lists, catalogs or market prices of similar products to determine the market prices generally available to the public.

5.5.2 Cost Analysis

Subrecipients will utilize this process to help determine if proposed costs are allowable, reasonable, and allocable as described in 2 CFR §200.403-405. Before receiving bids or proposals, subrecipients must establish an independent cost analysis for the goods or services to be procured. Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable.

When conducting a cost analysis, subrecipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal. The analysis includes a review and evaluation of separate cost elements and profits or fees in a proposal.³⁷ It is the subrecipient's responsibility to determine that the cost is fair and reasonable. An independent cost analysis is required when price competition does not exist.

An independent estimate must be made before receiving bids or proposals if one of the following applies: The competitive proposal method is used;

- When evaluating competitive proposals
- When there is a sole source or non-competitive proposal

³⁶ Federal Acquisition Regulation 15.404-1 (b) (2)

³⁷ Federal Acquisition Regulation 15.404-1 (c) (1)

- When only one bid is received after soliciting bids, the grantee does not have enough data to establish cost reasonableness, and the grantee is considering awarding the contract to the single bidder.
- When negotiating modifications to contracts that impact the price or estimated cost.
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred.
- When awarding a cost-reimbursement contract.

A sample Independent Cost Estimate form is included as an attachment to this manual.

5.5.3 Conducting a price or cost analysis

Subrecipients should document the following in their analysis:

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

A sample Independent Cost Estimate form is included as an attachment to this manual.

5.5.4 Profit Negotiation

Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.³⁸ Per HUD's "Buying Right: CDBG-DR and Procurement" (see Attachments), all of the following criteria should be considered when negotiating profit:

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

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation. Note: Subrecipients must ensure that the contract is not a prohibited cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

³⁸ 2 CFR §200.324(b)

5.6 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.³⁹

Affirmative steps, as presented in 2 CFR §200.321(b), must include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

5.7 Suspension and Debarment

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.⁴⁰

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

- Contractors: All contractors, including professional consulting and engineering firms, should be registered, maintain active status, and cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/search/>
- Subcontractors: 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.

³⁹ 2 CFR §200.321(a)

⁴⁰ 2 CFR §200.214

It should be noted that if any of the above-listed parties are deemed ineligible to receive CDBG-DR funds after the award of the contract, the contract will be immediately terminated. The matter must be reported to ODOC for further action (via email).

5.8 Methods of Procurement

The methods of procurement should follow the more stringent local, state, or federal requirements. If it appears requirements contradict federal procurement standards, subrecipients may request Technical Assistance to determine the best method of procurement. Below are the minimum requirements that subrecipients must utilize.

The appropriate method for any given product or service is dependent on the estimated cost or price, whether the procurement is for a service or product and the type of contract to be utilized, whether the service or product is unique or available from only one source and whether there is any eligible, qualified competition. The following are brief descriptions of each of the procurement methods. More detailed information on CDBG-DR and procurement can be found in the "[Buying Right: CDBG-DR and Procurement](#)" Guide, published on the HUD Exchange.

5.8.1 Micro-Purchases

The micro-purchase method is used for the acquisition of supplies or services which do not exceed the micro-purchase threshold and must be distributed equitably among qualified suppliers. In most instances under CDBG-DR the micro-purchase threshold is \$10,000, except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is \$2,000; and
- Procurement of services subject to Service Contract Labor Standards, the threshold is \$2,500.

Micro-purchases may be awarded without soliciting competitive price or rate quotations if the subrecipient considers the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly. Researching market prices to have two or more quotes before making a micro-purchase will help ensure that the acquisition price is reasonable. Purchase cards can be used for micro-purchases if procedures are documented and approved by the subrecipient.

As with all procurements, subrecipients must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.⁴¹

5.8.2 Small Purchase

The small purchase method is used for the acquisition of supplies or services greater than the micro-purchase threshold and less than or equal to the small purchase threshold. Small purchase procedures are relatively simple and do not require a formal solicitation for securing services, supplies, or other property.⁴²

Small Purchases are those made for services, supplies, or other items costing between \$10,000.00 and \$100,000.00 in the aggregate. If small purchase procedures are used, price or rate quotations must be

⁴¹ 2 CFR 200.320(a)(1)

⁴² 2 CFR 200.320(a)(2)

obtained from three qualified sources. Documentation of the rate quotations must be maintained for recordkeeping requirements.

Subrecipients should note that the simplified acquisition threshold for federal awards is \$250,000. However, Oklahoma's Public Competitive Bidding Act requires sealed bids for all public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00).⁴³

A public construction contract is defined as a contract "awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same..."⁴⁴ If a subrecipient's contract does not meet the definition of a public construction contract, the federal threshold of \$250,000 for small purchases may be used.

Documentation of the reasoning and justification for the purchase method must be submitted. Nearly all public infrastructure projects funded by CDBG-DR will meet the public construction definition and will require sealed bids.

As with all procurements, subrecipients must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

5.8.3 Sealed Bids

Sealed bids are publicly solicited and result in a firm fixed-price contract (lump sum or unit price). The contract is awarded to the responsible bidder that conforms with all the terms and conditions of the invitation for bids and is the lowest price. **Sealed bids are the preferred method for construction contracts.** If the purchase exceeds \$100,000.00 (in the aggregate)⁴⁵ the subrecipient is required to advertise, solicit, and receive sealed bids.⁴⁶

Subrecipients should note that the simplified acquisition threshold for federal awards is \$250,000. However, Oklahoma's Public Competitive Bidding Act requires sealed bids for all public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00).⁴⁷

A public construction contract is defined as a contract "awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same..."⁴⁸ If a subrecipient's contract does not meet the definition of a public construction contract, the federal threshold for small purchases may be used. Documentation of the reasoning and justification for the purchase method must be submitted. Nearly all public infrastructure projects funded by CDBG-DR will meet the public construction definition and will require sealed bids.

In a sealed bid process, the subrecipient publishes a detailed scope of work, inviting qualified candidates to submit bids that are then publicly opened and announced with the award going to the lowest-priced, responsible bidder. This is the method most often used for construction services.

Because bid instructions often include very detailed scopes of work (for construction, the design, and specifications) the bid submissions do not generally vary on timing, quality of materials, method of

⁴³ 61 O.S. § 103

⁴⁴ 61 O.S. § 102

⁴⁵ 61 O.S. § 103

⁴⁶ 2 CFR §200.320(b)(1)

⁴⁷ 61 O.S. § 103

⁴⁸ 61 O.S. § 102

delivery, and the like. Price then becomes the major factor determining which contractor receives the award.

1. The subrecipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The subrecipient shall select the lowest and best bid based in accordance with the bid specification. The subrecipient shall award the contract within thirty (30) days of the meeting. The subrecipient can extend this period by formal recorded action and for good cause shown, for an additional 90 days with ODOC approval.⁴⁹
2. Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site, and life-cycle costs should be considered in determining which bid is lowest.
3. The subrecipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.⁵⁰
4. When bids have been solicited as provided and no bids have been received, the subrecipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.

Full requirements for the sealed bid process and procurement of construction contracts can be found in Section 5.11 Sealed Bid Procedures (Formal Advertisement).

5.8.4 Competitive Proposals

The procurement by competitive proposals technique is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used in evaluating proposals and is the preferred method for administrative services and environmental assessments. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used in evaluating proposals and price is not used as a selection factor.⁵¹

The following requirements must be met when using competitive proposals:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- The subrecipient 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 subrecipient, with price and other factors considered; and
- The subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection

⁴⁹ 61 O.S. § 111

⁵⁰ 61 O.S. § 117

⁵¹ 2 CFR §200.320(b)(2)

factor, can only be used in the 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.

5.8.5 Non-Competitive Proposals

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of several sources, competition is determined inadequate.⁵²

ODOC published a Non-competitive Procurement Checklist to guide communities in documenting the efforts taken to procure goods and services that lacked competition or followed a traditional noncompetitive procurement. While the checklist is meant to be a general tool, the circumstances of some procurements may require additional support or documentation.

5.8.5.1 Single Bid

After solicitation of several sources, competition is determined to be inadequate or only one response is received.

The subrecipient is required to request, by email to the ODOC CDBG Project Manager, a review of all single bids for professional or construction procurement, AND all sole source items, along with the supporting documentation to show adequate outreach for solicitation of services for review by ODOC before executing a contract. This would include the following (as applicable):

- RFQ/RFP for professional services.
- a copy of the bid advertisement (affidavits) from the newspaper.
- Documentation of solicitation, such as including emails or certified mail receipts.
- Plan Rooms
- WBE/MBE & Section 3 Businesses
- SAM.gov review must also be performed and provided with the request.

All non-competitive proposals require written approval from ODOC before award. Failure to secure written approval can result in disallowed costs from the grant. The letter of approval from ODOC, if provided, should be stored in the subrecipient grant files.

5.8.6 Methods Summarized

The following table outlines the five procurement methods used to procure materials, supplies, construction, and services.

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
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⁵² 2 CFR §200.320(c)

Micro-Purchase	Price Analysis	Purchase Order Fixed Price	No solicitation required	Supplies Produced Items Single Task Service
Small Purchase	Price Analysis	Purchase Order Fixed Price	Quotations Submitted Bids	Supplies Produced Items Single Task Service
Sealed Bid (formal advertising)	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items Produced or designed items
Competitive Proposals	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Professional Services Multi-task services Designed items
Non-Competitive Proposals	Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Produced items Single task service Professional services Multi-task services Designed item

5.9 Micro-Purchase Procedures

Before utilizing the Micro-Purchase method of procurement, subrecipients should plan and document how many products or services will be required. To use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro-purchase threshold (see Section 5.8.1 above). For micro-purchases for construction services over \$2,000, subrecipients must adhere to the Davis-Bacon and Related Acts.

To the extent practicable, subrecipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable by conducting a price analysis (see Section 5.5). Before issuing a purchase order under this method, subrecipients must verify that the vendor is not debarred under the System for Award Management (see Section 5.7 above).

5.9.1 Documentation

Documentation is required, even for small acquisition dollar amounts, as under the micro-purchase method.

Pre-Award Documentation:

- Document the “Need” – that is, assure that the items or services to be procured are needed for disaster recovery work, and not another project or initiative.
- Document the rationale for the micro-purchase method of procurement.

- Document the market research or other means by which the prices were determined to be reasonable.
- Document the efforts to distribute micro-purchase contracts among qualified suppliers.
- Document marketing and outreach efforts to include minority and women-owned businesses among interested suppliers. (This initiative may be broader than just for suppliers under the micro-purchase method and should be for all disaster-related procurement).

Post-Award:

- Post-Award documentation will depend on the administrative method for procurement (i.e., purchase order) and whether the micro procurement involves construction. Subrecipients will also have locally established procedures for contract administration. In general, a purchase order will be required.

The issuance of a Purchase Order (PO) by the subrecipient and its acceptance by the vendor (through either performance or signature on the PO) constitute a contract. For this reason, the PO must specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.

5.10 Small Purchase Procedures

Before utilizing the Small Purchase method of procurement, subrecipients should consider the aggregate cost of the goods or services. To use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the small purchase threshold (see Section 5.7 above).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding competitive bidding and competitive proposal requirements.⁵³

When seeking quotes, subrecipients must clearly explain to all vendors providing quotations that the information provided is being sought for informational purposes only and that the request for quotation does not constitute a formal solicitation. Extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

Step 1: Comply with Davis-Bacon Act requirements, if applicable.

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 2: Contact a minimum of three (3) vendors.

Subrecipients must use the Small Purchase Procurement Record (Attachment) to document quotes received. Quotations may be requested via telephone, fax, email, mail, or any other reasonable method.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

Step 3: Award the contract.

⁵³ Title 61 O.S. § 131

Subrecipients should conduct a price analysis and award the lowest priced quote. If the subrecipient does not award the contract to the lowest-cost respondent, the reasoning must be documented and in compliance with federal, state, and local regulations. Subrecipients must verify that the vendor is not debarred under the System for Award Management (see Section 5.6 above). See Section 5.13.5 for details on change orders.

Step 4: Execute the contract.

When using Small Purchase Procurement for construction contracts, subrecipients must submit the Small Purchase Procurement Record and Notice of Award to ODOC within 30 days of executing a prime contract. For subcontractors, the Notice of Award is due before the final construction draw.

5.10.1 Documentation

Documentation is required.

Pre-Award Documentation:

- Document the rationale for the procurement method chosen.
- Document the “Need” – that is, assure that the items or services to be procured are needed for disaster recovery work, and not another project or initiative.
- Document the basis for the contract price.
- Document the basis for determining that price or rate quotations were obtained from an adequate number of qualified sources.
- Document efforts to solicit from minority and women’s business enterprises when they are potential sources.
- Document the process of soliciting bids and the vendors contacted through the solicitation

Post-Award Documentation:

- Post-award documentation will depend on the administrative method for procurement (i.e., purchase order) and whether the small procurement involved construction. Subrecipients will also have locally established procedures for contract administration. In general, a purchase order will be required.

The issuance of a Purchase Order (PO) by the subrecipient and its acceptance by the vendor (through either performance or signature on the PO) constitute a contract. For this reason, the PO must specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.

5.11 Sealed Bid Procedures (Formal Advertisement)

Procurements for materials, equipment, and construction services with a total cost over the small purchase threshold (see Section 5.8.2 above) must formally advertise for sealed bids. Procurement by sealed bids is the preferred method for procuring materials, equipment, and construction services if the following conditions apply:

- 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; and

- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

State law requires the use of the sealed bid procurement process for any public construction project exceeding \$100,000.00. This applies to counties, cities, and towns.⁵⁴

Note: The splitting of bids to avoid the competitive bidding act is a violation of state law.

An architect shall be required to plan, design, and prepare plans and specifications for all buildings used by a municipality, county, state, public trust, public agency, or the federal government with a construction value over \$158,000.00.⁵⁵

Step 1: Creation of Sealed Bid Packages

Subrecipients must create a bid package, usually written by an architect or engineer and based on prepared plans or working drawings, that provides a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. This package must:

- Be sealed by an architect or engineer registered in The State of Oklahoma and, if the project falls under the jurisdiction of another state agency, approval is required before construction;
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility by the handicapped have been or will be satisfied must be executed and co-signed by a local jurisdictional official and filed in the contract documents;
- Include details for all properly acquired lands, rights-of-way, and/or easements necessary for carrying out the project;
- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project; and
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations.

The base bid should include all components of the approved project and should not include any items which were not included in the approved application, or which have not received subsequent approval.

Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance notices have been included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations.

Note: For fixed price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.

NOTE: 59 O. S. § 46.21 b utilizes the guidelines of the 2003 International Building Codes which requires, in part, that: a licensed architect be used in the planning, designing, and preparation of drawings and specifications for the alteration or construction of any building to be used as an assembly hall, municipal building or county building where the reasonably estimated total cost for constructing,

⁵⁴ 61 O.S. §101 et seq.

⁵⁵ 59 O.S. § 46.21b

remodeling or repairing such building exceeds the sum of One Hundred Fifty-Eight Thousand Dollars (\$158,000).

Step 2: Comply with Davis-Bacon Act Requirements

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 3: Advertise for Bids

The invitation for bids, or bid notice, must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time before the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond.

The Bid Notice should include but not be limited to the following:

- The nature of the proposed project in sufficient detail that all bidders will know exactly what their obligations will be, either in the Bid Notice or by reference to the bidding documents;
- The name and location (address) of the officer, agent, or employee from whom a complete set of bidding documents can be obtained and the cost of obtaining those documents;
- The date, time, and place of opening the sealed bids;
- The name of the individual and location (address) of the office where bids should be submitted;
- The publication must call bidders' attention to the requirement for prevailing wages as well as equal opportunity requirements;
- Any other information considered appropriate for prospective bidders or the public.⁵⁶
- Subrecipients must make a good-faith effort to seek contracting possibilities with small businesses, women's businesses, and minority-owned businesses.

This notice is to be advertised and distributed as follows:

- Provision of a notice to all known prospective bidders via first-class mail or email at least **21 days before** the scheduled bid opening;
- Request for Bids must be published in **two (2)** consecutive weekly issues of a general circulation newspaper and published in the county where the work, or the major part of it, is to be done. The first publication must be at least **21 days before** the date set for opening bids;
- If the project is expected to exceed \$50,000, submit a bid notice to industry, trade, or construction publications. However, providing this notice is **not** a requirement to publish the notice in these publications.⁵⁷

Proof of the mailing shall be made by the affidavit of the person mailing the request for bids and a copy of the certified return receipt. If the document is emailed a copy of the email and attachments must be included in the subrecipient file. All proof of mailing or emailing shall be made a part of the official records of the subrecipient files.

Bidders shall accompany their bids with

⁵⁶ 61 O.S. § 105 (OSCN 2023), Public Competitive Bidding Act of 1974

⁵⁷ 61 O.S. § 104 (OSCN 2023), Public Competitive Bidding Act of 1974

1. A certified check, cashier's check, or bid bond equal to five percent (5%) of the bid, which shall be deposited with the subrecipient as guaranty; or
2. An irrevocable letter of credit issued by a financial institution on behalf of the subrecipient in an amount equal to five percent (5%) of the bid.⁵⁸

Each bidder shall accompany the bid with a written statement under oath disclosing the following information:

1. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with the architect, engineer or other party to the project;
2. Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project; and
3. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business relationships hereinabove mentioned exist, then a statement to that effect.⁵⁹

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see Section 5.6 above).

Late bids shall not be opened or considered.⁶⁰

Step 4: Public Opening of Sealed Bid Packages

All bids will be publicly opened at the time and place prescribed in the invitation for bids. All sealed bid packages must be opened in accordance with the following standards in addition to any requirements imposed by local, state, and federal law.

- All bids shall be opened and read aloud during the bid opening and the apparent low bidder should be determined during this time;
- Bids shall undergo a review for both technical and legal responsiveness;
- Bidders must be evaluated as having the capacity to furnish the products and/or services required; and
- Minutes of the bid opening along with a tabulation of bids shall be placed in the contract file.

Bids whether submitted in paper or electronic format shall be opened only at the time and place listed in the bidding documents. Paper bids shall be opened in the presence of an administrative officer of the awarding public agency and be read aloud at the time of opening. Such bid opening shall be open to the public and to all bidders. Electronic bids shall not be viewable prior to the time listed for bid opening in the bidding documents. Electronic bids may be opened in a public bid opening in the same way as for paper bids. A public bid opening is not required for electronic bids if the awarding public agency electronically publishes the bids on its website at time of bid opening.⁶¹

⁵⁸ 61 O.S. § 107 (OSCN 2023), Public Competitive Bidding Act of 1974

⁵⁹ 61 O.S. § 108

⁶⁰ 61 O.S. § 109

⁶¹ 61 O.S. § 110

The subrecipient shall select the lowest and best bid based in accordance with the bid specification. The subrecipient shall award the contract within thirty (30) days of the meeting. The subrecipient can extend this period by formal recorded action and for good cause shown, for an additional 90 days with ODOC approval.⁶² Any or all bids may be rejected if there is a sound documented reason.⁶³

If an award is made to other than the lowest bidder, the awarding public agency shall accompany its action with a publicized statement setting forth the reason for its action. Such statement shall be placed on file, open to public inspection and be a matter of public record.⁶⁴

If only one bid is received, the bid should be compared to an in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace should be gathered if it was not done so when developing the estimate. If the sealed bid is canceled and negotiations proceed with the single bidder, a complete cost breakdown must be obtained, and cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented (See Section 5.5).

Any final contracts awarded must be done so in compliance with the federal wage decision (See Labor Chapter 9.3, Step 4 for details). Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained by the awarding public agency for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, and shall be open to public inspection and shall be matters of public record.⁶⁵

Step 5: Award the Contract

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 costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

Subrecipients must verify that the vendor is not debarred under the System for Award Management (Sam.gov) before awarding a contract. If only one bid is received, the subrecipient must receive approval from ODOC before awarding the applicable contract.

Procedures for Bids that Exceed Cost Estimates

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the subrecipient shall determine the best course of action in consideration of the following options:

- Reject all bids received and re-advertise the project;
- Revise or reduce specifications and re-advertise the project, if scope changes are approved by ODOC via a contract change request;

⁶² 61 O.S. § 111

⁶³ 61 O.S. § 119

⁶⁴ 61 O.S. § 117

⁶⁵ 61 O.S. § 112

- Reallocate funds to cover the overage;
- Seek other funding sources such as local funds to cover the overage

See Section 5.14 for more information on Contracting and requirements.

Step 6: Execute the Contract

Subrecipients must submit the Notice of Award to ODOC within 30 days of executing a prime contract. For subcontractors, the Notice of Award is due before the final draw.

Once a responsible bidder has been selected for a cost within budget, the next step is to issue a Notice of Contract Award (Attachment – Notice of Contract Award) to the successful bidder. The Notice must include a statement signed by the construction firm, certifying that the firm does not appear as excluded from federal awards on sam.gov.

A copy of the executed Notice of Award is submitted to ODOC, along with the supporting documentation for bidding. The subrecipient shall return a certified check or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on the execution of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them per the terms of the bid solicitation.⁶⁶

See Section 5.14 for more information on Contracting and requirements.

5.11.1 Documentation

Documentation is required.

Pre-Award Documentation:

- Documentation of how a determination was made for the procurement method
- Document the “Need” – that is, assure that the items or services to be procured are needed for disaster recovery work, and not another project or initiative.
- Document the drafting of the Bid Notice or Invitation for Bids, including participation from anyone other than subrecipient staff
- If necessary, document the cost or price analysis.
- Document the efforts to publish the Bid Notice or Invitation for Bids
- Document efforts to solicit from minority and women’s business enterprises when they are potential sources.
- Document the process of receiving bids, opening bids, and a written review of each bid received.

Post-Award:

- Post-award documentation will depend on the administrative method for procurement (i.e., purchase order, construction contract). Subrecipients will also have locally established procedures for contract administration. In general, a purchase order will be required.

⁶⁶ 61 O.S. § 107

5.11.2 Deductive Alternatives

The use of deductive alternatives is highly recommended if there is any chance that all bids will exceed available funding. The bid document must be specific in describing the method and order in which alternates will be applied in determining the low bid and such alternates in the plans and specifications.

Deductive alternates may be used only if the bid package was specific in defining what they were and how they would be applied.

Deductive alternates must be applied to every bid, not just the lowest original bid.

5.11.3 Davis-Bacon Wage Rate Determinations

Construction Contractors are required to pay their laborers at the "prevailing wage rate" for any project involving CDBG-DR funds if the project costs more than \$2,000. These rates are periodically adjusted. This request must be submitted at least 45 days before the formal bid opening date. This is a critical step since these rates can significantly affect construction cost estimates.

The subrecipient may obtain the wage rates from the website sam.gov and submit wage rate information to the state's grant management system.

Certified wage rates are valid for 180 days. Subrecipients must contact CDBG-DR Staff by e-mail 10 days before bid opening to determine if wage decisions included in the bid document are still current. If rates have changed, this information must be included in an addendum, which will allow prospective bidders to amend their bids. The subrecipient must document the 10-day call for the CDBG-DR file.

When seeking approval for the 10-day call, subrecipients will be required to email the CDBG-DR Staff to confirm the wage rates have not changed. The email should include the wage decision number, modification number, and last revised publication date. For example, OK20220035, Mod #3, 09/02/2022

It is normally the responsibility of the Certified Grant Administrator to furnish a current wage rate determination to the architect/engineer for inclusion in the bid document. However, the subrecipient is not relieved of the responsibility to ensure the wage rates are correct.

If a specific job classification is not included in the wage determination, contact an ODOC Project Manager for specific instructions.

5.11.4 Pre-Bid Conferences

A pre-bid conference may be held by the architect/engineer if there are multiple funding agencies, and they desire it or if the project has been determined to be complex. The primary purpose of such a meeting is to explain to prospective bidders the requirements of the project and answer any questions of the bidders.

If a pre-bid conference is to be held, all prospective bidders and any other interested individuals must be notified at least 10 days before holding such a meeting.

The subrecipient may also desire to pre-qualify bidders to ensure that only responsible proposals are submitted. Under this arrangement, the subrecipient may evaluate potential bidders to determine that they have the experience, manpower, financial strength, or other relevant characteristics sufficient to presume they could undertake the project if selected.

5.12 Competitive Proposal Procedures

Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

5.12.1 Request for Proposals (“RFPs”)

RFPs are used to procure professional services for project delivery such as grant administration and environmental services. This does not include architectural and engineering (“A/E”) professional services where the competitive negotiation method is utilized.

5.12.2 Request for Qualifications (“RFQs”)

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

This method, where the price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. RFQs cannot be used to procure project management or construction management services.

All A/E contracting fees, even those provided for under either a fixed price contract or a cost-reimbursement contract must be deemed reasonable and justifiable. If, after a project has been funded, there is a change in the scope of the project, a contract change request must be submitted for consideration by ODOC. Changes to the scope of the project may impact the service provider’s fees as established by the applicable fee caps and the overall award amount.

The provision of funds for A/E services is entirely contingent upon the amount of funds deemed allowable by ODOC. Firms will not be compensated from the applicable CDBGDR program in the event a project is not funded.

5.12.3 Conducting an RFP/RFQ

Step 1: Develop the Request for Proposals (RFP)/Request for Qualifications (RFQ) package

The RFP/RFQ should include a clear and accurate description of the technical requirements for the material, product, or service to be procured. At a minimum, the RFP/RFQ package should include the following:

- Description of the subrecipient’s requirements and the scope of services.
- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements
- Anticipated start and completion dates of both the project and the services being requested
- Statement of minimum acceptable qualifications;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.

- A solicitation may authorize offerors to propose alternative terms and conditions.
- When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

The Sample "Request for Proposals for Administrative Services for the Community Development Block Grant" can be used in its entirety. This Sample meets the requirements above.

The procurement process shall be carried out only upon completion of the final RFP. The process will include public advertisement as applicable, solicitation of proposals from known service providers, evaluation, and selection.

NOTE: Any person or firm preparing or assisting in the preparation of RFP documents shall be precluded from submitting a proposal.

Step 2: Advertise or Solicit the RFP/RFQ

Requests for proposals/requests for qualifications must identify all evaluation factors and their relative importance. Subrecipients should allow sufficient time between the solicitation date and the proposal deadline. The subrecipient may choose to advertise in a newspaper with the largest general circulation within the county, or directly solicit proposals from known individuals or firms.

Advertising: When advertising for these services the RFPs or RFQs must be publicly advertised 10 days before opening regardless of cost. Any response to publicized requests for proposals must be considered to the maximum extent practical.

Direct Solicitation: The subrecipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of three (3) professional service providers must be contacted to obtain proposals. The subrecipient must maintain documentation of the solicitation, including names and dates of the firms or individuals that were contacted and documentation of emails or certified mail receipts.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see Section 5.5 above).

Step 3: Evaluate and rate the proposals

Subrecipients must have a written method for conducting technical evaluations of the proposals received and for selecting respondents. Materials received in response to RFPs and/or RFQs are typically reviewed in accordance with one of the following processes:

- **Competitive Point Range.** In using this review process, the subrecipient shall establish a predetermined range of points for proposals that would be considered adequate for qualifying a responder for a particular solicitation. All responders whose proposals or qualification statements score within that range would be invited to an oral interview and asked to submit a best and final offer. The proposals would then be re-evaluated, and the highest-scoring firm would be selected;
- **Highest Point Earner.** In using this review process, the subrecipient shall evaluate all proposals or qualification statements in accordance with predetermined selection criteria and award the contract to the overall highest scoring firm. For counties, municipalities, and other public entities the local governing body has the final authority to award contracts and may select another respondent if the minutes of the local governing body meeting include justification for the

selection. Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

Specific evaluation criteria to be used in rating all proposals are listed below:

- Each applicant must provide a Statement of Qualifications to demonstrate their level of qualification. Minimum standards of qualification must be established for consideration.
- Applicants must provide a brief explanation of their technical competence. Minimum competency standards can be established if desired.
- Statement of Price Requirements: All RFPs, except for A/E services, must include a firm, fixed total cost or fee for all requested services, along with an established rate or fee for each service provided.

Step 4: Award the contract

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (see Section 5.5 above).

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract (see Section 5.7 above). If only one bid or proposal is received, the subrecipient must receive approval from ODOC before awarding the applicable contract.

Step 5: Execute the Contract

ODOC requires subrecipients to submit the Notice of Award within 30 days of executing the contract.

5.13 Noncompetitive Procurement Procedures

Subrecipients MUST obtain written approval from ODOC prior to using this procurement method. All requests to utilize non-competitive procurement must be submitted in writing by the subrecipient to ODOC and include a justification as to why the contractor is the only known source to provide the goods or services under the contract. The justification and ODOC approval must be maintained for record-keeping requirements.

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the subrecipient; or
- After solicitation of a number of sources, competition is determined inadequate. Subrecipients must conduct a cost analysis to determine if proposed costs are allowable, reasonable, and allocable (see Section 5.4 above).

Subrecipients must also verify that the vendor is not debarred under the System for Award Management (see Section 5.7 above).

5.14 Contracting

Once necessary services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This section provides general guidance concerning the compliance aspects of contract administration. As with all contractual obligations, the Subrecipient is advised to seek legal counsel regarding rights, duties, obligations, and liabilities arising from these legal arrangements. ODOC will also provide general advice concerning contract administration.

5.14.1 Types of Contracts

Purchase Order. 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. Local Governments are required to use Purchase Orders under state law.⁶⁷ A Purchase Order should contain, at a minimum, the following:

- Agency name and address;
- Agency contract or Purchase Order number;
- Date of the order;
- Term of contract (delivery period after receipt of order or beginning and end dates);
- Contractor's name, payee/vendor identification number, and address, including zip code;
- List of contract documents and their order of precedence;
- List of awarded items with quantity, unit of measure, and unit price with extended totals; and
- Signature of authorized/certified purchasing representative.

Fixed Price Contract. A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset. This contract type (1) places maximum risk and full responsibility for costs and resulting profit loss on the contractor, (2) provides maximum incentive for the contractor to control costs and perform effectively, and (3) imposes a minimum administrative burden upon the contracting parties.

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 estimate total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at their own risk).

Time and Materials Contract. A time and materials contract is suitable for use only after it has been determined that no other contract is suitable. This type of contract provides for the payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general, and administrative expenses, and actual cost for materials. Subrecipients may only use a time and materials type contract

⁶⁷ Title 61 O.S. §310.1

after a determination is made that no other contract is suitable and if the contract includes a cost ceiling that the contractor exceeds at its own risk.

The subrecipient must not use cost plus a percentage of cost and percentage of construction cost methods of contracting.⁶⁸

5.14.1.1 Interlocal Agreements with Subrecipient

It is not uncommon for the ODOC's subrecipients to carry out project activities through a subrecipient. A subrecipient is defined as a public or private non-profit agency, authority or organization or other eligible entity provided CDBG-DR funds to carry out eligible activities on behalf of ODOC's subrecipient, rather than directly and immediately by ODOC's subrecipient.

If a Subrecipient plans to carry out eligible activities in conjunction with another entity, the Subrecipient's legal counsel needs to review the Inter-local Cooperation Act [74 O.S. 31-1001 et. seq.] A typical example might include ODOC's subrecipient working with a Community Action Agency to provide housing rehabilitation to beneficiaries.

ODOC's subrecipient has some latitude in selecting its own subrecipient to undertake activities on its behalf. In most cases, ODOC's subrecipient simply designates a non-profit agency to carry out the activities.

ODOC's subrecipient does not reduce its responsibilities by utilizing a subrecipient to carry out project activities. In fact, many activities cannot be undertaken by anyone but ODOC's Subrecipient (such as environmental findings and requesting funds from ODOC). All CDBG-DR requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, etc.).

In order to protect ODOC's Subrecipient and to ensure the subrecipient's compliance with all relevant requirements, the relationship between the two entities must be formally defined through an agreement or contract. Such an agreement's purposes are to clearly establish the terms and conditions under which the CDBG-DR funding is provided and establish a legal basis for action if those terms and conditions are not met. This agreement must contain all of the following provisions:

- Scope of Work in sufficient detail to provide a sound basis for evaluating performance in schedule and budget.
- Records and Reporting specifying the records that must be maintained and reports that must be submitted in order for the Subrecipient to meet its own record-keeping and reporting responsibilities.
- Administrative Requirements specifically requiring compliance with all applicable uniform administrative mandates such as A-110, A-122 and A-133.
- Program Requirements specifying the conditions for convenience and cause.
- Reversion of Assets stipulating that, upon expiration of the agreement, the subrecipient must transfer to the Subrecipient any CDBG-DR funds on hand and any accounts receivable [Consistent with 24 CFR 570.503]. This must also include provisions designed to ensure that any real property acquired or improved, in whole or in part, with CDBG-DR funds in excess of \$25,000 is either:

⁶⁸ 2 CFR 200.324(d)

- Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement or longer if stipulated by the Subrecipient; or
- Disposed of in manners that result in the Subrecipient's being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-CDBG-DR expenditures. (Reimbursement is not required after five years.)
- Cessation of the subrecipient: providing remedies and procedures in the event the subrecipient ceases to exist.
- Standard Provisions required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.). These can be found in Section 5.14.2 Required Contract Provisions.

5.14.2 Required Contract Provisions

All contracts with contractors used to provide goods and services for CDBG-DR, either procured by ODOC, a partner, a subrecipient, or any other procuring entity must include:

- A clearly stated period of performance or date of completion
- Performance requirements; and
- Liquidated damages. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages.⁶⁹
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions; and,
- All Section 3 covered contracts shall include the Section 3 clause.⁷⁰

The procuring entity may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

Other Federally Required Provisions. The subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.⁷¹ These requirements are included in sample bid documents provided as an attachment to the manual.

- A. **Remedies.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.⁷²

⁶⁹ 88 FR 32078

⁷⁰ 24 CFR §135.38

⁷¹ 2 CFR §200.327

⁷² 2 CFR §200 APPENDIX II (A)

B. **Termination for cause and for convenience.** All contracts more than \$10,000 must address termination for cause and for convenience by the Non-Federal entity including how it will be affected and the basis for settlement.⁷³

C. **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), under 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.”⁷⁴

D. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts of more than \$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 Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Per 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 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 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 or she is otherwise entitled. The Non-Federal entity must report all suspected or reported violations to the Federal awarding agency.⁷⁵

E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the Non-Federal entity more than \$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 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 based on a standard work week of 40 hours. Work more than 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 more than 40 hours in the work week. The requirements of 40 U.S.C. 3704 apply to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements

⁷³ 2 CFR §200 APPENDIX II (B)

⁷⁴ 2 CFR §200 APPENDIX II (C)

⁷⁵ 2 CFR §200 APPENDIX II (D)

do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.⁷⁶

- F. **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.⁷⁷
- G. **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 over \$150,000 must contain a provision that requires the Non-Federal award to agree to comply with all applicable standards, orders or regulations issued under 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).⁷⁸
- H. **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 government-wide exclusions in the System for Award Management (SAM), per the OMB 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 12549.⁷⁹
- I. **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.⁸⁰
- J. **Solid Waste Disposal Act.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the 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

⁷⁶ 2 CFR §200 APPENDIX II (E)

⁷⁷ 2 CFR §200 APPENDIX II (F)

⁷⁸ 2 CFR §200 APPENDIX II (G)

⁷⁹ 2 CFR §200 APPENDIX II (H)

⁸⁰ 2 CFR §200 APPENDIX II (I)

waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.⁸¹

K. Prohibition on certain 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) to procure or obtain equipment, services, or systems that uses 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).

(i) For the purpose of 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the 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.⁸²

L. Domestic preferences for procurements. As appropriate and to the extent consistent with 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.⁸³

5.14.3 Bonding Requirements

Subrecipients are encouraged to accept the bonding policy and requirements of ODOC for construction and facility improvement contracts and subcontracts exceeding the threshold.

For public construction contracts over \$100,000, construction management trade contracts over \$50,000 (rare), or all other contracts over \$250,000, subrecipients must require the bidder to submit the following with the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified:

- A certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the awarding public agency as a guaranty; or

⁸¹ 2 CFR §200 APPENDIX II (J)

⁸² 2 CFR §200 APPENDIX II (K), 2 CFR §200.216

⁸³ 2 CFR §200 APPENDIX II (L), 2 CFR §200.322

- An irrevocable letter of credit containing terms the Office of Management and Enterprise Services prescribes, issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit the irrevocable letter of credit with the Office.⁸⁴

When a contractor is selected, for all public construction contracts over \$100,000, construction management trade contracts over \$50,000 (rare), or all other contracts over \$250,000, subrecipients should require:

- A payment bond equal to the contract price to ensure the proper and prompt completion of the work in accordance with the contract, and to ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.
- A performance bond in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;
- A maintenance bond in a sum equal to the contract price to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project.⁸⁵

If the contractor needs additional time in which to obtain bonding required, the contractor may request, and the awarding agency may allow the contractor an additional 60 days in which to obtain the bonds.

5.14.4 Public Liability and Worker's Compensation

Subrecipients must require contractors to furnish public liability and workers' compensation insurance during construction in reasonable amounts, for all construction contracts over \$100,000. The subrecipient may require the contractor to name the subrecipient and its architects or engineers, or both, as an additional assured under the public liability insurance. If the subrecipient requires this, it must be specifically outlined in the bidding documents.⁸⁶

5.14.5 Work Authorization Required

Effective July 1, 2008, Oklahoma and U. S. Government laws require that all U. S. employers check to ensure that all employees, regardless of citizenship or national origin, are allowed to work in the United States. If an employee is not a citizen or a lawful permanent resident, he/she may need to apply for an Employment Authorization Document (EAD) to prove that he/she may work in the United States. Contractors may retrieve the appropriate forms from the U. S. Citizenship and Immigration Services website at www.uscis.gov. Although the project managers under ODOC's CDBG-DR program are required to monitor the CDBG-DR subrecipients and their contractors, the burden to ensure compliance with this requirement lies with the Subrecipient.

5.14.6 Notice of Contract Award

The Notice of Contract Award is a formal method whereby the Subrecipient reports the execution of contracts and subcontracts to ODOC.

⁸⁴ 61 O.S. § 107 (OSCN 2023), Public Competitive Bidding Act of 1974

⁸⁵ 61 O.S. § 113 (OSCN 2023), Public Competitive Bidding Act of 1974

⁸⁶ 61 O.S. § 113 (OSCN 2023), Public Competitive Bidding Act of 1974

The Contractor shall accomplish release of funds of the funded project within 120 days or less. The Contractor shall commence actual construction of the funded project within 270 days from contract date on all construction contracts. There are several steps required to ensure compliance with Section 3 and Labor Standards that should occur prior to the Notice of Award. These steps can be found in Section 7 Labor Standards and Construction Management and Section 8 Civil Rights Requirements.

The Subrecipient Information section of the Notice of Award includes type of trade, business ownership, and racial, ethnic, minority and Section 3 status. Please submit this form to ODOC within seven (7) days of execution by all parties.

The Notice of Award must be uploaded in the state's grant management system in Release of Funds, with appropriate status change as necessary and an email notification to the project manager that the upload is complete. Please note that ODOC will not process payment for construction funds such as materials or equipment until the Notice of Award has been received.

When submitting a Notice of Award for approval subrecipients will also be required to submit the following documents:

- Notice of Contract Award
- 10- Day Confirmation Form
- Pre-Construction Conference Report
- Payroll Certification Form
- Certificate Appointing Officer to Approve Payroll
- Fringe Benefit Determination
- Grantee Debarment Review Certification Form
- Contractor Debarment Review Certification Form
- Section 3 Contractor Plan
- Section 3 Business Self-Certification
- Section 3 Estimated Workforce Breakdown
- Sam.gov check (printout from website)

All the above documents are included in the Notice of Contract Award Packet (See Attachments and Resources). They are also included as individual attachments.

5.15 Independent Auditors

5.15.1 Audit Requirements

Each ODOC contract includes an audit requirement. Several factors affect the audit that is required including:

- Whether the jurisdiction is a municipality or county (11 O.S. Subsection 17-105 or 19 O.S. Subsection 171).
- The total level of funding received each year from all sources; and
- The total level of federal funds expended in a given fiscal year (OMB Circular A-133)

The thresholds for audit requirements are as follows:

- If the subrecipient's annual revenue is \$50,000 or more in funds (from all sources), it must conduct an annual audit of all funds received that complies with the Oklahoma statute; or
- If the subrecipient's revenue is \$50,000 or more, but its population is less than 2,500, it has the option of having an agreed-upon procedures agreement conducted by an independent licensed public or certified accountant instead of an independent audit as cited in O.S. 17-105; or
- If the subrecipient expends \$750,000 or more in total federal funds (regardless of the source), it is subject to the requirements of the Single Audit Act (2 CFR 200.501(d)).

Subrecipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

Audits should be uploaded on the state's grant management system in a PDF file if required. Hard copies of the audit will be accepted if necessary and can be mailed in. Financial Services will communicate with subrecipients that need to submit an audit.

5.16 Attachments and Resources

#	Resource	Description	Link (if applicable)
5.1	Procurement Policy (2 CFR Part 200.31-326)	Federal regulations for CDBG procurement which all subrecipients must follow.	https://www.ecfr.gov/current/title-2/part-200/subject-group-ECFR45ddd4419ad436d
5.2	Buying Right: CDBG-DR and Procurement	HUD Guide to CDBG-DR Procurement Processes	https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/
5.3	Guide to Cost and Price Analysis		https://clark.wa.gov/sites/default/files/dept/files/community-services/CDBG/CostandPriceAnalysis020510.pdf
5.4	Independent Cost Estimate/Analysis Form		Attachment
5.5	Sample Procurement Checklist		Attachment
5.6	Sample Contract Documents including Bid Ads		Attachment
5.7	Notice of Contract Award		Attachment
5.8	Subrecipient Debarment Review Certification Form		Attachment
5.9	Contractor Debarment Review Certification Form		Attachment

5.10	Administrator Responsibilities Checklist		Attachment
5.11	Request for Proposals (SAMPLE)		Attachment
5.12	Statement of Price (SAMPLE)		Attachment
5.13	Required Provisions for Non-Construction		Attachment
5.14	Notice of Award Packet		Attachment
5.15	Payroll Certification Form		Attachment
5.16	Notice to Proceed		Attachment
5.17	Small Purchase Procurement Record		Attachment
5.18	Contract Provisions (2 CFR 200 Appendix II)		Attachment
5.19	Notice of Award Checklist		Attachment

6 Environmental Review

6.1 Overview

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.

The environmental review is required for every grant. Every activity will be defined under one of the following five levels of review:

- Exempt
- Categorically Excluded Not Subject To 58.5
- Categorically Excluded Subject To 58.5
- Environmental Assessment
- Environmental Impact Statement

Each activity must be cleared using specific procedures and forms designed for that purpose. The subrecipient may draw down funds to carry out various project activities after appropriate reviews have been conducted and cleared and a Notice of Removal of Contract Conditions and Authority to Use Grant Funds is received from ODOC (if applicable).

Contract responsibilities require a complete environmental review of all project activities related geographically or functionally even if some activities are funded by other sources or provided by any type of volunteer or in-kind resources (24 CFR 58.32)

6.2 Timing the Review

HUD's regulations at 24 CFR 58.22 prohibit subrecipients and their partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review once a project has become "federal."

This prohibition on committing funds to "choice-limiting actions" prohibits physical activity including acquisition, rehabilitation, and construction, as well as contracting for any of these actions considered and followed prior to any work being initiated or funded.

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

It is imperative to discuss choice-limiting actions as they relate to project re-evaluations (24 CFR 58.47). If a RE fails to comply with 24 CFR 58.47, a choice limiting action as described in 24 CFR 58.22(a) may have occurred. For brevity, a re-evaluation is required when the project footprint or area of potential effect (APE) changes regardless of the amount of linear feet/area, project activities are added/removed, unexpected conditions arise, or changes are made to the nature, magnitude, or extent of the project. If the original finding is assessed as still valid, the environmental review record (ERR) would be updated with a memo to the file, which is commonly referred to as a Letter of Re-evaluation or LRE. If the original finding is no longer valid, the RE may have to prepare a new environmental review record and proceed with the approval process. This includes but is not limited to a new environmental review record, public notices, public comment and objection periods, and a new Request for Release of Funds (RROF) and Authority to Use Grant Funds.

According to 24 CFR 58.72, in cases where ODOC is exercising HUD's responsibilities outlined in 24 CFR 58.18 and has approved an environmental certification and RROF but subsequently learns that the RE violated 58.22(a), or otherwise failed to comply with any applicable environmental authority, ODOC can impose appropriate remedies and sanctions in accordance with the law and regulations for the program under which the violation was found. This may include repayment of federal funds.

6.3 Responsible Entity and Certifying Officer

HUD regulations use the term Responsible Entity (RE) to refer to the unit of general government (city or county), a state, or federally recognized tribe responsible for meeting environmental review requirements. A subrecipient that is a city or county may assume the role of RE for the ODOC-administered CDBG-funds. The RE/subrecipient is responsible for completing the environmental review, with or without assistance from a third party.

Some subrecipients may not be eligible to become the Responsible Entity and complete the environmental review. UGLG subrecipients can become the Responsible Entity and complete

the environmental review. Non-profits and COGs may require additional ODOC guidance for the environmental review process. These subrecipients should contact their ODOC Program Manager for additional information on the environmental review process when they cannot become the Responsible Entity.

The RE must designate a Certifying Officer under the terms of the certification required by Sec. 58.71, a REs certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). This person is the chief elected official (e.g., County judge or City mayor), chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all federal, state, and local environmental requirements have been followed. This function may not be assumed by administering agencies or consultants. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also: (a) represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and (b) ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

In administering the program, the State of Oklahoma accepts no responsibilities or liabilities for the quality or accuracy of the local environmental review process. ODOC's responsibility is to ensure that the Subrecipient has complied with the procedural requirements of various environmental statutes, regulations, and executive orders.

This chapter provides highlighted components of the HUD Environmental review process but is not all-inclusive. The RE is responsible for understanding and adhering to all environmental requirements provided in 24 CFR 58 (see [Attachments and Resources](#)). Periodic updates may be provided by HUD environmental compliance staff. CDBG-DR subrecipients and personnel completing the environmental review should be familiar with all federal and state environmental requirements and the resources and forms found on the HUD Exchange— Environmental Review website (see [Attachments and Resources](#)) and contact their ODOC Program Manager for guidance.

6.4 Environmental Review Process

The following illustration provides a basic overview of the environmental review process:

Define project. Consider entire project, even if HUD funding is only going to be part of the project.

Determine level of review, based on project description

Exempt

(By definition)

See 24 CFR 58.3

Categorically Excluded,
not subject to 58.5
(CENST)

See 24 CFR 58.35(b)

Categorically Excluded
and subject to 58.5
(CEST)

See 24 CFR 58.35(a)

Environmental Assessment (EA)

(If project involves new work or
greater than 20% increase in size or
capacity then an EA is required)
See 24 CFR 58.28

Complete Part 58
Environmental Review –
Exempt or Categorically
Excluded (Not Subject to
58.5) Form

- No Requests for Release of Funds (RROF/7015.15) needed
- Record Determination in Environmental Review Record
- Environmental Review is complete!

Complete HUD Part 58
CEST Form
(Including worksheets)

No compliance issues or
consultation required:
Converts to Exempt
[58.34(a)(12)]

- RE must publish NOI/RROF
- 7-day notice in paper
- 10 days if posting

After conclusion of
public comment period, RE sends
RROF (7015.15) and
proof of public
notice to HUD/State

15-day period for
HUD/State to
receive objection to
release of funds

- After objection period,
HUD/State issues 7015.16
– Authority to Use Grant
Funds or release letter.
- Environmental Review
complete!

Complete Part 58
Environmental Assessment
Form and Statutory Checklist

Finding of No
Significant
Impact (FONSI)
is made

- RE must publish
combined
NOI/RROF and
Notice of
FONSI
(Combined
Notice)
- 15 days in
paper
- 18 days if
posted/mailed

- If Finding of
Significant
Impact made,
then require
Environmental
Impact
Statement (EIS)
- Publish Notice
of Intent to
Prepare EIS

Prepare and
publish Draft
EIS

Prepare and
publish Final
EIS

*Note that 24 CFR 58.6 – Flood Insurance, Coastal Barriers Resource Act, and Runway Clear Zone Requirements – apply to ALL projects, whether exempt, categorically excluded, or requiring the EA or EIS level of review

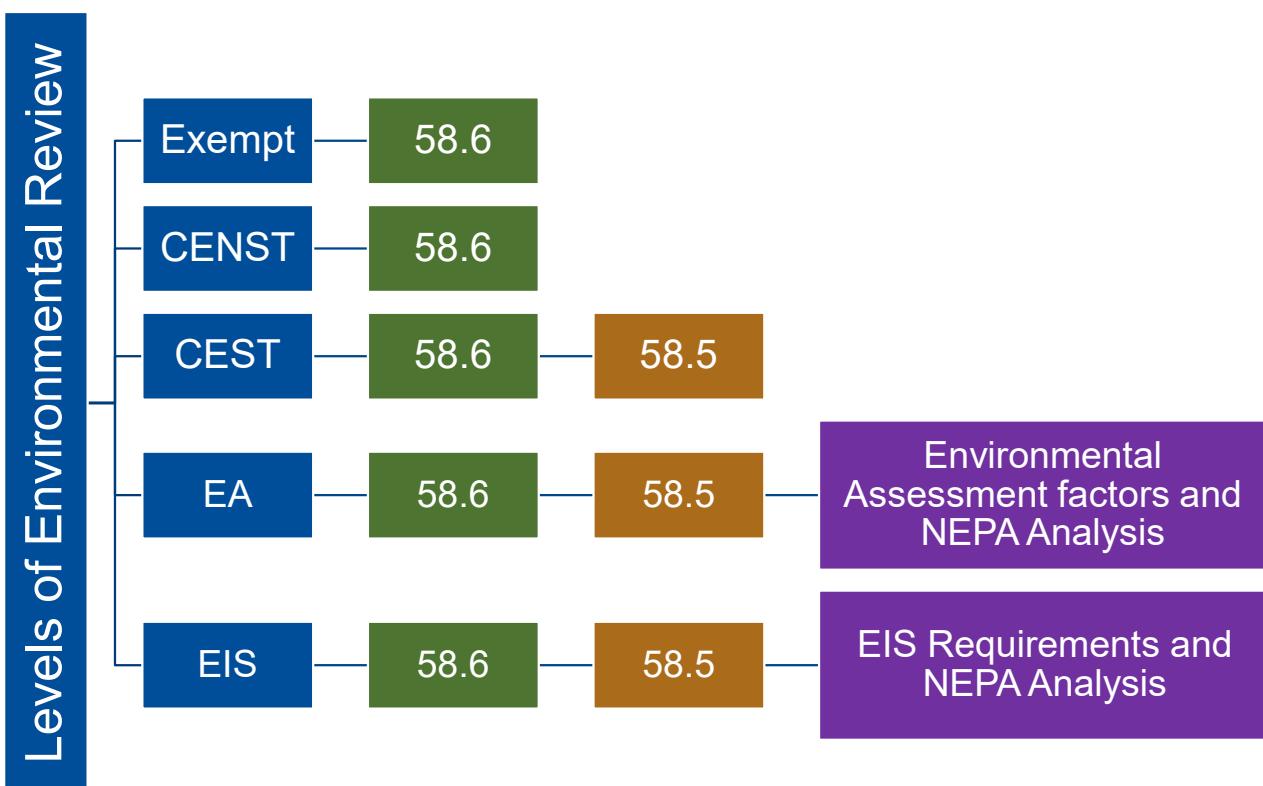
6.5 Levels of Environmental Review

The RE should take adequate time to clearly establish the scope of work and project description before initiating the environmental review. Once the project scope is known the subrecipient can determine the appropriate level of environmental review. Accurate scoping, project description, and project aggregation are critical success factors.

Project Aggregation, as defined in 24 CFR 58.32, requires the RE to group together and evaluate, as a single project, all individual activities that are related either on a geographical or functional basis or are logical parts of a composite of contemplated actions. The purpose of project aggregation is to adequately analyze, in a single environmental review, the separate and combined impacts of similar, connected, and closely related activities or those dependent upon other activities and actions (see 40 CFR 1508.25(a)). The RE may choose:

- functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions;
- geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities);
- or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

There are five levels of environmental review as depicted below and discussed in the following pages.



Please refer to the **Release of Funds Checklist Form** ([Attachments and Resources](#)) for submittals in the state's grant management system.

For the required steps after completing the partner worksheets, see Section 6.7 Environmental Review Findings.

6.5.1 Exempt Activities - 24 CFR 58.34

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review:

- Environmental and other studies;
- Information and financial services
- Administrative and management activities;
- Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training
- Payment of principal and interest on loans made or guaranteed by HUD;
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations (see [Attachments and Resources](#)).

6.5.2 Categorically Excluded, Not Subject to 58.5 (CENST) – 24 CFR 58.35(b)

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 24 CFR 58.5 compliance determinations.

- Tenant-based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local state and federal government services and services;
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, 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;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

Exempt and CENST activities may submit for release of funds upon executing a contract with ODOC before procurement of professional services or equipment. Please complete and submit the RROF checklist and HUD Exempt/CENST forms (see [Attachments and Resources](#)).

<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>

6.5.3 Categorically Excluded, Subject To 58.5 (CEST) – 24 CFR 58.35(a)

The list of categorically excluded activities is found in 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the RE must demonstrate compliance with the laws, authorities, and Executive Orders listed in 24 CFR 58.5. The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For residential properties with one to four units:
 - The density is not increased beyond four units;
 - The land use is not changed; and
 - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
 - For multifamily residential buildings (with more than four units):
 - Unit density is not changed more than 20 percent;
 - The project does not involve changes in land use from residential to non-residential and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
 - For non-residential structures, including commercial, industrial, and public buildings:

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and
- The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to a four-family dwelling with a maximum of four units on any one site. “Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation, which was covered previously). The units can be four one-unit buildings, or one four-unit building, or any combination in between;
- An individual action on a project of five or more housing units developed 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; and
- Acquisition (including leasing) or disposition of 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.

6.5.4 Environmental Assessment (EA) - 24 CFR 58.28

Activities that are neither exempt nor categorically excluded (under each category) will require an environmental assessment to document compliance with the other federal laws and authorities and the requirements of NEPA, 24 CFR 58.5 and 58.6. More information on completing this level of environmental review can be found on the [HUD EA website](#).

This level of review, prepared under the National Environmental Policy Act, is typically required when a proposed project has activities such as new construction or a change in land use.

6.5.5 Environmental Impact Statement (EIS) - 24 CFR 58.28

An Environmental Impact Statement (EIS) is required when the Subrecipient’s Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that a funded activity will trigger an EIS. If a subrecipient finds itself involved with this level of review, the subrecipient should contact the ODOC immediately for further instructions.

6.5.6 Other Types of Environmental Review and Reports

6.5.6.1 Categorical Exclusion Converted to Exempt 24 CFR 58.34(a)(12) & 58.35(a):

Under some circumstances, the subrecipient could find their Categorically Excluded project falls under Exempt status per section 58.34(a)(12) and that none of the statutory requirements under section 58.5 apply to the project. Using the Categorical Exclusion Subject to §58.5, the subrecipient will determine if the project it is preparing to undertake can be converted to Exempt under section 58.34(a)(12) if there are no circumstances that require compliance with any other Federal laws and authorities cited in § 58.5.

6.5.6.2 Project Re-evaluations (24 CFR 58.47)

Reevaluation of a project is necessary under the following circumstances:

- The recipient proposes substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions that may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity that is proposed to be continued or
- The recipient proposes selecting an alternative that is not in the original finding.
- It has been over twelve (12) months since any action has been taken.

The purpose of a re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the subrecipient needs provide appropriate documentation to the ERR file.

However, if the re-evaluation is the result of a change in the scope of work requiring an amendment to the contract, the subrecipient must submit a Certification of Continued Environmental Compliance ([Attachments and Resources](#)) with its request to ODOC for amendment approval.

If the subrecipient determines the original finding is no longer valid, it must complete a new environmental review.

6.5.6.3 Tiered Reviews

A tiered environmental review may be appropriate for projects with multiple, non-contiguous locations, such as a housing rehabilitation project with work sites scattered throughout a county or city. However, tiering is not appropriate for projects where specific locations have been identified and for which the development of site-specific reviews is feasible.

For the entire project, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website ([Attachments and Resources](#)). This review will identify which review requirements must be addressed site-by-site. For each site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review. The subrecipient may request an RROF based on the Broad-Level review; however, the Site-Specific review must be completed before obligating funds for each site. Contact your ODOC Program Manager and refer to the HUD Exchange website on [Tiered Reviews](#) for additional information (see [Attachments and Resources](#)).

6.5.6.4 ASTM Phase I and II Environmental Site Assessment

Some projects may require additional environmental review of a property's current and historical uses when there is potential soil contamination or groundwater contamination at the project site. Typically, these assessments are incorporated in the Environmental Review Record and may result in specific mitigation actions that must occur before purchasing the property or constructing an improvement. A Phase II ESA may be required depending on the findings of the Phase I report.

6.6 Environmental Worksheets

Environmental Worksheets are provided to complete an environmental review of a project's compliance with Federal environmental laws and authorities. These worksheets and all

supporting documentation are required as part of the Request of Release of Funds checklist and submittal in the state's grant management system. The worksheets and accompanying documents required are described below.

6.6.1 Air Quality

Determine if the project conforms to the latest approved State Implementation Plan (SIP) regarding air quality, EPA.gov, Region 6:

<https://www.hudexchange.info/programs/environmental-review/air-quality/>

6.6.2 Airport Hazards and Runway Clear Zones

Use the worksheet to document compliance for a proposed activity:

<https://www.hudexchange.info/programs/environmental-review/airport-hazards/>

6.6.3 Coastal Barrier Resources

It does not apply to Oklahoma, but the worksheet must be completed.

<https://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources/>

6.6.4 Coastal Zone Management

It does not apply to Oklahoma, but the worksheet must be completed.

<https://www.hudexchange.info/programs/environmental-review/coastal-zone-management/>

6.6.5 Endangered Species

Determine if project activity will endanger species of wildlife or impact habitat areas. Project Reviews in Oklahoma are made through the IPaC Module on the Fish and Wildlife Service (FWS) Website: <https://www.hudexchange.info/programs/environmental-review/endangered-species/>; <https://ecos.fws.gov/ipac/>

6.6.6 Environmental Justice

Determine if the proposed activity impacts an area of minority and/or low-income populations. Refer to the following website:

<https://www.hudexchange.info/programs/environmental-review/environmental-justice/>

<https://ejscreen.epa.gov/mapper/>

The fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. This "fair treatment" aims not to shift risks among populations but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

Executive Order 12898 was passed to ensure that each Federal agency makes achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. For NEPA compliance, implement the following steps:

- Analyze environmental effects, including human health, economic, and social effects of federal actions, including the effects on minority communities; and
- Address significant and adverse environmental effects of proposed federal actions on minority communities and low-income communities with mitigation measures outlined or analyzed in the environmental assessment or in the environmental impact statement; and
- Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities. You should request concurrence from the Environmental Protection Agency (EPA) if a significant impact is anticipated.

6.6.7 Explosive and Flammable Facilities

Determine if the proposed properties are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that could affect the health and safety of the occupants.

The environmental review of multifamily housing with five or more dwelling units (including leasing) or non-residential property must evaluate previous site uses or other evidence of contamination. This evaluation must include any proposed site in or near areas such as dumps, landfills, industrial sites, or other locations that have or may have contained hazardous waste. Obtain the services of qualified professionals who use current techniques to undertake the investigations that are considered necessary. An Environmental Phase I Site Assessment or equivalent analysis, as appropriate, may comply with this part.

<https://www.hudexchange.info/programs/environmental-review/explosive-and-flammable-facilities/>

6.6.8 Farmlands Protection

Determine if a proposed activity converts farmland to non-agricultural uses:

<https://www.hudexchange.info/programs/environmental-review/farmlands-protection/>

Natural Resources Conservation Service (request concurrence):

<https://www.nrcs.usda.gov/wps/portal/nrcs/site/national/home/>

NRCS Web Soil Survey Instructions:

<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

6.6.9 Flood Insurance

When property in a Special Flood Hazard Area (SFHA) benefits from assistance funded by CDBG-DR, there is a federal statutory requirement to maintain flood insurance on the property in perpetuity. A Special Flood Hazard Area is a high-risk area defined as any land that would be inundated by a flood having a one percent chance of occurring in any given year, also referred to as the base flood or the 100-year floodplain.

The grantee must monitor compliance with this requirement per the requirements listed at 24 CFR 58.6. Flood insurance is provided through the National Flood Insurance Program (NFIP). For CDBG-DR properties outside the SFHA, HUD cannot mandate that flood insurance be

purchased and maintained, but a grantee could if they elected to be stricter than the Federal requirements. If a person receives Federal disaster assistance conditioned on obtaining and maintaining flood insurance and fails to do so, the National Flood Insurance Reform Act of 1994 prohibits that property from receiving further Federal disaster assistance.

<https://www.hudexchange.info/programs/environmental-review/flood-insurance/>

Please consult the flood insurance requirements for the applicable CDBG-DR program in the relevant Action Plan.

6.6.10 Floodplain Management

Document compliance with 24 CFR Part 55 by determining whether a project activity is affected by or may modify the base 100-year flood hazard area.

<https://www.hudexchange.info/programs/environmental-review/floodplain-management/>

Floodplain maps may be obtained at <https://msc.fema.gov/portal/home>.

If the structure is in an SFHA, flood insurance is required for any acquisition, rehabilitation, construction, or contents financed by HUD.

Flood insurance maps are usually on file in a community's town hall or county building, usually in the planning and zoning or engineering offices. From time to time, FEMA updates flood maps. The maps adopted during application processing should be used to determine if a property is in an SFHA.

If the project activity(s) are in a floodplain, Executive Order 11988, Eight-Step Decision-Making Process, must be followed. This process includes the publication of two public notices at least 16 days apart: an Early Public Notice identifying the activity and soliciting comments and a Notice of Explanation, including a judgment of whether the benefits of the activity outweigh the environmental considerations and a determination that there are no practical alternatives to the activity site. These notices become part of the Subrecipient's Environmental Review Record (ERR). They shall be submitted with the floodplain map number, panel number, and date recorded on the Worksheet.

The Corps of Engineers may charge a fee to review floodplain compliance requests. If the applicable Flood Hazard Boundary Map or Flood Insurance Rating Map shows that the project activity is not within the 100-year flood hazard area, the Corps of Engineers need not be contacted.

Please consult the floodplain requirements for the applicable CDBG-DR program in the relevant Action Plan. Certain programs or activities may have additional restrictions or requirements for activities in the floodplain.

With few exceptions, buildings or properties in the regulatory floodway may not be assisted with CDBG-DR funds.

6.6.11 Historic Preservation

Document historic properties or Archaeological concerns regarding the proposed activity. As noted for compliance and documentation on the Worksheet, a concurrence letter from the State Historic Preservation Office (SHPO) and, if applicable, the Tribal Historic Preservation Office

(THPO) for “no historic properties affected,” “no adverse effect” or “adverse effect,” must be provided. A concurrence letter from the Oklahoma Archaeological Survey is also required.

<https://www.hudexchange.info/programs/environmental-review/historic-preservation/>

6.6.12 Noise Abatement and Control

Noise analysis is recommended for noise-sensitive projects such as housing, libraries, etc.

<https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control/>

6.6.13 Site Contamination and Toxic Substances

Determine if a project activity is near a hazardous operation handling petroleum products or chemicals of an explosive or flammable nature or within an aircraft clear zone. Request concurrence from the Environmental Protection Agency (EPA) EPA Region 6 and the Department of Environmental Quality (DEQ) along with site evaluation. The project cannot increase density or subject citizens or buildings to above-ground storage tanks greater than 100 gallons. Acceptable Separation Distance (ASD) must be determined.

<https://www.hudexchange.info/programs/environmental-review/site-contamination/>

6.6.14 Sole Source Aquifer

Determine if the project activity will affect a recharge area that is a primary source of local drinking water or involving dredging, filling, or disposal of dredged materials upon water bodies. There is one aquifer located in Oklahoma, the Arbuckle/Simpson Aquifer; Source EPA.gov, Region 6.

<https://www.hudexchange.info/programs/environmental-review/sole-source-aquifers/>

6.6.15 Wetlands Protection

Determine, by site visit if necessary, if wetlands are affected by a project activity. Executive Orders 11990 and 11988 are effective in the same way as above for Floodplain. Subrecipients may request concurrence from U.S. Fish and Wildlife, the Conservation Commission, NRCS, and the U.S. Corps of Engineers.

<https://www.hudexchange.info/programs/environmental-review/wetlands-protection/>

6.6.16 Wild and Scenic Rivers

Determine if a project activity impacts a designated wild and scenic river in Oklahoma. Please refer to the “Scenic Rivers Act” at Title 82 O.S. 1452-1471. The following counties in Oklahoma are designated scenic river areas: Adair, Cherokee, Delaware, Sequoyah, Leflore, and McCurtain. Any construction or modification projects outside these counties are exempt from review by the Oklahoma Scenic Rivers Commission. Activities within these counties will need to consult with the Grand River Dam Authority to determine if the project has the potential to cause effect.

<https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers/>

When the environmental worksheets are completed, the appropriate forms must be executed as follows.

6.7 Environmental Review Findings

6.7.1 Finding of Categorical Exclusion/Exempt from Release of Funds Publication

Pursuant to 58.34(a), when it is determined, after completing all the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 do not apply to a categorically excluded activity, the activity will convert to exempt from public notification, and the determination should be marked on the form as such. The Subrecipient may submit for the release of funds.

6.7.2 Finding of Categorical Excluded (Subject to Section 58.5)

Pursuant to 24 CFR 58.35(a), when it is determined, after completing all the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 apply to a categorically excluded activity, a "Finding of Categorical Exclusion Subject To" must be made (the activity cannot convert to exempt from public notification). The Finding identifies the activity and states the statutory authority for the exclusion.

A Notification to the Public may either be published or posted as a Notice of Intent to Request Release of Funds ([Attachments and Resources](#)). The Notice should be mailed or emailed that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State, and Federal agencies (see Distribution List at the end of this requirement in [Attachments and Resources](#)).

- **When Publishing:** The Notice must be published in a newspaper of general circulation, which informs interested parties of the Subrecipient's intent to request a Release of Funds from ODOC. The publication must allow seven (7) calendar days for public comments to the Subrecipient.
- **When Posting:** The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for ten (10) calendar days for public comments to the Subrecipient.

When the comment period has elapsed, and all public comments have been addressed, the Subrecipient will submit the Request for Release of Funds (RROF) in the state's grant management system. Comments received and responded to due to the Public Notice should be uploaded with the RROF.

Upon receipt in the state's grant management system, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for Public Comment.

6.7.3 Activities Requiring an Environmental Assessment (EA)

Activities that are neither Exempt nor Categorically Excluded (i.e., new construction) will require an EA.

The assessment will determine if an activity significantly affects the quality of the human environment. A Finding of No Significant Impact must be signed by the Certifying Officer and made a part of the ERR. A copy of the finding must be submitted to ODOC by use of the state's grant management system .

After the review is completed and the Finding is made, the subrecipient's chief elected official will sign the completed Environmental Certification and publish or post a Combined Notice of FONSI and Intent to Request Release of Funds.

The Combined Notice is the Notice of Intent to Request Release of Funds and Finding of No Significant Impact combined into one public notice. The Notice should be mailed or emailed that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State and Federal agencies.

Notification to the Public may either be published or posted as:

- **When Publishing:** The Notice must be published in a newspaper of general circulation, which informs interested parties of the Subrecipient's intent to request a Release of Funds from ODOC. The publication must allow fifteen (15) calendar days for public comments to the Subrecipient.
- **When Posting:** The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office and other public buildings within the project area. It must be posted for eighteen (18) calendar days for public comments to the Subrecipient.

When the comment period has elapsed, and all public comments have been addressed, the subrecipient will submit the Request for Release of Funds (RROF) in the state's grant management system . Comments received and responded to due to the Public Notice should be uploaded with the RROF.

Upon receipt, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for public comment.

If the EA is completed and the activity will significantly affect the quality of the human environment (Finding of Significant Impact), contact ODOC before preparing an Environmental Impact Statement (EIS).

6.8 Attachments and Resources

#	Resource	Description	Link (if applicable)
6.1	HUD Exchange - Environmental Review Website	Resource for guides and training on Environmental Reviews.	https://www.hudexchange.info/programs/environmental-review/
6.2	HUD.gov Environmental Review Website	Source for official HUD guidance. Provides FAQs, laws, regulations, and worksheets.	https://www.hud.gov/program_offices/comm_planning/environment_energy/environmental_review
6.3	24 CFR Part 58 Subpart D	Applicable Part 58 environmental review regulations. Describes levels of environmental review, aggregation, and more. Applicable to Responsible Entities only.	https://www.ecfr.gov/current/title-24/part-58/subpart-D

6.4	Part 58 Flowchart	The Part 58 Flowchart walks through the main steps for each level of environmental review under Part 58.	https://www.hudexchange.info/resource/5164/part-58-flowchart/
6.5	HUD Exchange – Tiered Environmental Reviews	Guidance for REs on the appropriate use of tiering in Environmental Reviews	https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/
6.6	Release of Funds Checklist	Required with submission of ROF in the state's grant management system	Attachment
6.7	Exempt/Categorically Excluded Not Subject To (CENST) Activities Form	This form is a suggested environmental review format for a Part 58 project that is categorically excluded, not subject to the Federal laws and authorities referenced at 24 CFR 58.5 (CENST) or exempt from the National Environmental Policy Act (NEPA).	Attachment https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/
6.8	Categorically Excluded Subject To (CEST) Activities Form	This form is a suggested environmental review format for a Part 58 CEST project.	Attachment https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/
6.9	Tiered CEST Form	This form is a suggested environmental review format for a Part 58 CEST project (categorically excluded, subject to the Federal laws and authorities referenced at 24 CFR 58.5) that is using a tiered environmental review. The suggested format only covers the Tier 1 or broad-level review.	https://www.hudexchange.info/resource/3292/part-58-environmental-review--tiered-cest-format/
6.10	Environmental Assessment Form	This form is a suggested environmental review format for a project that requires a National Environmental Policy Act (NEPA) environmental assessment under Part 58.	Attachment https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/
6.11	Environmental Review Related Federal Laws	These worksheets contain the suggested format for documenting compliance with	https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal-

	and Authorities Worksheets	environmental requirements covered by related federal laws and authorities.	<u>laws-and-authorities-worksheets/</u>
6.12	Grantee 7015.15 Request for Release of Funds	This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds and requesting the authority to use such funds.	Attachment https://www.hud.gov/program_offices/administration/hudclips/forms/hud7
6.13	Sample Distribution List for Notices	Provides a list and contact information for agencies that must be provided a copy of environmental notices.	Attachment
6.14	Sample Concurrence Letters & Distribution List for Regulatory Agencies	Provides format letters to request agency comments.	Attachment
6.15	Sample Notice of Intent to Request Release of Funds – English and Spanish	The Sample Notice of Intent to Request Release of Funds document provides an example of HUD's recommended wording of the Notice of Intent to Request a Release of Funds (NOI/RROF).	https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/
6.16	Sample Combined Notice (Finding of No Significant Impact and RROF) – English and Spanish	This combined sample document may be used as a guide for creating and processing a Finding of No Significant Impact (FONSI) and Request Release of Funds (RROF). EA only.	https://www.hudexchange.info/resource/2755/sample-fonsi-and-rrof/
6.17	Sample Notice of Intent to Request Release of Funds for Tiered Reviews	This document provides a sample Notice of Intent to Request Release of Funds for tiered reviews.	https://www.hudexchange.info/resource/5160/sample-notice-of-intent-to-request-release-of-funds-for-tiered-reviews/
6.18	Sample Notices for Activities in 100-year Floodplain and Wetland - English and Spanish	These sample notices are used for compliance with 24 CFR Part 55 (Section 55.20), the decision-making process for projects located within floodplains or wetlands.	https://www.hudexchange.info/resource/3191/early-notice-and-public-review-of-a-proposed-activity-floodplain/
6.19	Leverage/Match Certification		Attachment
6.20	Engineer/Architect Acknowledgement		Attachment

6.21	Certification of Continued Environmental Compliance	Used to document continued environmental compliance if project scope changes.	Attachment
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7 Labor Standards and Construction Management

7.1 Introduction

This chapter offers a brief description of the State and federal laws and regulations associated with federal labor standards administration and enforcement, including CDBG-DR Subrecipient Agreement requirements for Davis-Bacon labor standards compliance and documentation. The Subrecipient is ultimately responsible for knowing all of the requirements and for ensuring compliance with them.

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

The Office of Davis-Bacon and Labor Standards (DBLS) is responsible for HUD's overall compliance with the federal prevailing wage requirements applicable to HUD funded CDBG programs. Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (which are determined by the U.S. Department of Labor) to all workers on CDBG funded construction projects in excess of \$2,000. (42 USC §5310; 40 USC 3142(d)). These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process.

Activities financed by CDBG that are not "construction work" do not trigger Davis-Bacon requirements, for example:

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

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

The construction phase of a project is divided into two major components:

- The pre-construction conference and start of construction; and
- Monitoring construction progress, including labor compliance.

Phases are subject to various State and Federal requirements, which will be discussed at greater length in this Requirement.

Davis Bacon requirements apply to the entire construction contract, even if only a portion of the contract is funded with CDBG funds.

HUD has published a Davis Bacon and Labor Standards Agency and Contract Guide which summarizes many of the requirements for CDBG programs. The Guide is a useful resource and can be found [here](#). It is also included at the end of this chapter.

7.2 Objectives of Davis Bacon Requirements

The following five (5) key labor standard objectives must be accomplished by the subrecipient and/or ODOC in order to administer and enforce Davis-Bacon requirements and protect workers' rights. 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 which 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.

Objectives for Davis-Bacon Labor Standards Compliance:

- Apply Davis-Bacon requirements properly;
- Support subrecipient compliance with labor standards through technical assistance and guidance;
- Monitor subrecipient performance;
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators, if necessary.

By executing the CDBG-DR Subrecipient Agreement, a subrecipient agrees to administer and enforce all Davis-Bacon labor standards requirements and accepts the responsibilities described in this chapter.

7.3 Labor Standards Compliance Steps

A construction project covered by federal labor standards, including infrastructure and housing, requires a series of specific actions by labor standards personnel. Eight (8) of these must occur prior to the actual start of construction.

The Pre-Construction Tasks Are:

1. Designate a Labor Standards Officer
2. Obtain an Applicable Wage Decision for the Project
3. Include the Wage Decision in the Bid Documents
4. Ensure the Wage Rate is Current Before Bid Opening
5. Confirm the Recommended Construction Contractor's Eligibility Status
6. Award the Construction Contract
7. Hold a Pre-Construction Conference to Explain Labor Standards
8. Submit the Notice of Award

The Post-Start of Construction Tasks Are:

9. Supervise Project Progress and Verify Accuracy of Invoices
10. Review Project Payrolls and Conduct Interviews During Construction

11. Submit Construction Completion Reports—Certificate of Construction Completion (COCC) & Final Wage Compliance Report (FWCR)

Further explanation of each of the ten mandatory steps is provided in the sections below.

1. Designate a Labor Standards Officer (LSO) for the Project (Pre-Construction)

The appointment and maintenance of a LSO is required for all Subrecipient Agreements with construction activities, including those utilizing Force Account Labor.

Force Account is a situation in which a governmental entity uses their own staff to administer and/or construct all or part of a project. If the project otherwise meets the requirement to adhere to federal labor standards, those portions of the project not completed "in house" must meet all fair labor standards requirements. For questions, please see Chapter 15 of the Department of Labor field operations handbook at [Field Operations Handbook - Chapter 15 | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/Field%20Operations%20Handbook%20-%20Chapter%2015%20%7C%20U.S.%20Department%20of%20Labor%20(dol.gov).).

The use of the ODOC Appointment of Labor Standards Officer Designation Form is a required form and must be submitted to ODOC with the Release of Funds in the state's grant management system. If the individual designated as the LSO changes, a new Appointment of LSO Designation Form must be submitted. The LSO may be an employee of the subrecipient or a private consulting firm. The primary qualification of an LSO is a good understanding of HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD-funded CDBG programs.

The LSO is responsible for the regulatory administration and enforcement of the federal labor standards provisions on all Subrecipient Agreements covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the subrecipient and other project principals (for example, the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a construction contractor that is ineligible (e.g., debarred) for federally assisted work;
- Providing the proper Davis-Bacon prevailing wage rate and ensuring that wage rate and applicable provisions are incorporated into all construction contracts and subcontracts;
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing weekly payroll reports ensuring that the applicable Davis-Bacon wage rate and the Department of Labor's "Notice to All Employees" federal posters are displayed at the job site; and
- Overseeing any enforcement actions that may be required.

2. Obtain an Applicable Wage Decision for the Project (Pre-Construction)

Wage decisions:

- Are established by the U.S. Department of Labor (DOL);
- List construction work classifications (such as: Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates, fringe benefits and geographic location of the prevailing wage rate;
- Are categorized into four groups (Heavy, Highway, Building, and Residential Construction);

- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified regularly to keep them current.

The LSO must obtain the applicable wage rate for each specific CDBG-DR construction contract where Davis-Bacon and Related Acts (DBRA) regulations apply. Wage Decisions can be pulled at SAM.gov and are required to be posted at the job site.

Wage Rate Classifications:

The following descriptions and illustrations are provided as guidelines. The advertised and contract specifications should identify the segments of work to which the schedules will apply as specifically as possible.

Highway Construction

Highway projects include 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.

Building Construction

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures, the installation of utilities, and the installation of equipment, both above and below grade level, as well as incidental grading, utilities, and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Residential Construction

Residential projects include the construction, alteration, or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

NOTE: HUD has determined new construction and rehabilitation of single-family residents/property is exempt from Davis-Bacon labor standards if such property contains less than eight (8) contiguous units. Property is defined as one or more buildings on an undivided lot or on contiguous lots/parcels which are commonly owned and operated as one rental or project.

Heavy Construction

Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

3. Include the Wage Decision in the Bid Documents (Pre-Construction)

If the construction work will be procured through sealed bid or small purchase procurement, the wage decision (and any modifications) must be included in the bid package. See [Chapter 5](#):

[Procurement](#) for more information on the bid process and documents. Review the various Wage Decisions for each county and choose the one that is most appropriate for the work to be done. The type of work and the locations where these decisions are applicable are listed in the first paragraph of the wage rate.

4. Ensure the Wage Rate is Current Before Bid Opening (Pre-Construction)

The LSO must confirm the wage decision in the bid specifications for construction contracts is still current for the bid opening date. The LSO must re-verify the wage rates and complete the ODOC Ten-Day Confirmation Form ten (10) calendar days or less before the bid opening.

A completed ODOC Ten-Day Confirmation Form, signed by the Labor Standards Officer, and a copy of the current wage decision must be retained in the local files with other labor standards documentation and must be provided to ODOC representatives upon request.

The date the wage rates were confirmed by the Labor Standards Officer must be recorded.

- For Competitive Sealed Bid: the “Bid Open Date” is the date sealed bids are opened.
- For Micro purchase, Small Purchase, Other Non-Sealed Bids: the “Bid Open Date” is the due date for Quotes. At a minimum the wages must be checked prior to the due date of when quotes were received.

ODOC considers 5 or more days prior to bid opening to be a “reasonable amount of time” to notify prospective bidders of any changes to the wage decision. See HUD handbook 1344.1 (3-10(A)). The LSO is to retain copies in the local file of addenda issued notifying bidders of the new wage rates if applicable.

Modifications to wage decisions published by DOL less than five days before bid opening may be disregarded if found, and there is insufficient time to notify bidders. If this occurs, the LSO must place a written explanation in the Subrecipient Agreement file.

The Ten-Day Confirmation form does NOT “lock in” wage rates.

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

5. Confirm the Recommended Construction Contractor’s Eligibility Status (Pre-Construction)

The LSO must verify prior to awarding and executing any construction contract that all prime contractors (and their subcontractors) are not listed as “debarred” in the System for Award Management (SAM). See [Attachments and Resources](#) at the end of this chapter. The LSO must keep records of these verifications from the SAM website, retain copies in the local files, and must provide such documents to ODOC representatives upon request.

The date the contractor is shown to be eligible to work on a federally funded project (the date the SAM check was conducted) must be recorded on the Labor Standards Record. All contractors must be verified to be eligible to work on a federally funded project. All contractors must be verified through the SAM website prior to any formal action authorizing the award of the

construction contract to the contractor. Contractors must be registered in SAM.gov, have a UEI, and must not be debarred. More information on debarment checks, registrations, and sam.gov and subcontractors can be found in [Attachments and Resources](#) at the end of this chapter.

6. Award the Construction Contract (Pre-Construction)

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

The labor standards compliance clauses:

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

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

Additional Classification and Wage Rate

The LSO may request an additional classification in writing through the GLO Request for Additional Classification and Rate form along with a copy of the applicable wage decision for that particular construction contract. The request will represent what the employer (prime contractor or subcontractor) wants to pay workers performing a particular set of duties and must meet the following U.S. Department of Labor (DOL) regulations:

- The work to be performed by the additional classification is not performed by a classification already on the applicable wage decision;
- The classification is used by the construction industry in the area of the project; and
- The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

NOTE: As a general guide, the wage rate proposed for a trade classification (such as an Electrician) must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. "Trade classifications" are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators.

Requests for Equipment Operators must specify the type(s) of equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the wage decision.

The Request for Additional Classification and Rate form must be submitted to the ODOC Program Manager or the ODOC system of record, if available. ODOC's Program Manager will

review the requested classification and proposed hourly rate and fringe rates to ensure that all required information is submitted.

ODOC will refer the request to the DOL for a final determination and will provide the response to the requestor upon receipt from the DOL. It can take 6-8 weeks to receive DOL's official response. ODOC will forward the DOL response to the LSO upon receiving DOL's response. The LSO is responsible for providing a copy to the construction contractor and asking the contractor to post a copy on-site. The request and DOL response must be kept in the local file.

If the DOL does not approve the request, the DOL's response letter will include the conformance or approved wage rate that must be used for the work classification requested. It will also contain instructions about how to ask for DOL reconsideration if the subrecipient would like to pursue the issue further.

If construction ends prior to receiving the DOL's formal response, it will not delay or prevent the LSO from submitting the Final Wage Compliance Report or Project Completion Report within the required timeframes. The ODOC contract does not need to be held open if DOL has not responded before the close of the contract.

7. Hold a Pre-Construction Conference to Explain Labor Standards (Pre-Construction)

After contract award, but before any work is performed, a pre-construction conference must be held with the subrecipient, developer/owner, engineer/architect, prime contractor, subcontractor(s), inspector(s), LSO, and all applicable utility companies prior to the start of construction. The pre-construction conference is a requirement for all CDBG-DR activities involving construction.

The construction contractor should be notified in writing of the time and place for the conference. The contractor must require the attendance of subcontractors expected to undertake major portions of the work. Documentation required from the construction contractor at the time of the meeting should be identified.

The subrecipient and LSO must document and retain pre-construction conference minutes in the local file, including a list of attendees and an outline of the required federal/state labor requirements utilizing the ODOC Pre-construction Checklist.

The pre-construction conference must include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project;
- Discussion of applicable federal, state, local, and program guidelines;
- Discussion of all construction details, time frame of project, payment requirements, and labor standards requirements and penalties for failure to comply with requirements;
- Delivery of all bonds and certificates of insurance to the subrecipient;
- Delivery of all necessary General Wage Decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project;

- Delivery of Davis Bacon and Labor related Project Signage (found here: <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>); and
- Discussion of applicable special conditions identified in the Subrecipient Agreement and construction contract.

In addition to any required temporary or permanent signage indicated in the construction contract, the prime contractor must post a copy of the wage decision and a copy of the DOL Davis-Bacon poster entitled “Employee Rights under the Davis-Bacon Act” (see [Attachments and Resources](#) at the end of this chapter) at the job site in a place that is easily accessible to all of the construction workers employed at the project. If the contractor requests additional classification(s) as described above, the contractor must also post a notice of the request and the associated wage decision on the job site.

8. Submit the Notice of Award Packet (Pre-Construction)

The LSO must submit the Notice of Contract Award (NOA) form to the ODOC Program Manager via the state’s grant management system. The NOA is required for each construction contract over \$2,000 and must be submitted prior to the first Request for Payment for construction work.

Several documents must be submitted with the Notice of Contract Award. These documents make up the Notice of Award Packet and include:

- Notice of Contract Award
- 10-Day Confirmation Form
- Pre-Construction Conference Report
- Payroll Certification
- Certificate Appointing Officer to Approve Payroll
- Fringe Benefit Determination
- Grantee Debarment Review Certification
- Contractor Debarment Review Certification
- Section 3 Contractor Plan
- Section 3 Business Self-Certification
- Section 3 Estimated Workforce Breakdown
- SAM.gov printout (insert as last page)

ODOC Program Managers may ask for additional procurement documentation with the NOA Packet, to verify that proper procurement was followed before approving the NOA.

The Notice of Award Packet must be submitted after the preconstruction conference is held and before the first Request for Payment for construction work. The Notice of Award Packet can be found as an attachment to this manual.

9. Supervise Project Progress and Verify Accuracy of Invoices

One of the provisions of most design contracts (engineering and architectural) is for on-site supervision of construction in progress.

All statements or invoices submitted to the subrecipient for work performed must contain a certification by the supervising architect or engineer (or other supervisory official if no supervisory architect or engineer is employed for the project) that work for which payment is claimed has been performed and that such work conforms to the plans and specifications for the project. No such statement or invoice shall be paid by the subrecipient without such certification. (61 O.S. 2014 §123). The LSO is responsible for verifying that the certification is present before the invoice is paid by the subrecipient.

Certification is not required if project progressive payments are based on the public agency's estimated quantities of materials provided and work performed. Payment of progressive estimates shall not constitute a defense or in any manner affect any cause or causes of action which the awarding public agency might have against the contractor for failure to properly perform in accordance with the project contract, plans, specifications, or special provisions. Final estimates shall contain a sworn certification signed by the contractor that the work performed, and the material provided conform to the requirements of the contract, plans, specifications, and special provisions.

The amount of funding requested by the Subrecipient from ODOC must be net after retainage. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage. [61 O.S. 2014 §113.1 A]

10. Review Project Payrolls and Conduct Interviews During Construction

The LSO or other designated inspector must conduct on-site visits to the project site and interview a proportion of the workers concerning their employment on the project. In addition, the LSO must review weekly payrolls and related submissions to ensure the labor standards requirements have been met. The LSO will notify the subrecipient if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

On Site Visits

The Subrecipient must determine that the labor standards information is properly posted at the job site. The wage rates and job classifications must be posted, and an Employee Federal Labor Law poster(s) must be prominently displayed.

<https://www.dol.gov/whd/regs/compliance/posters/davis.htm>

On-site Interviews

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the LSO, ODOC's representative, HUD's representative, or DOL's representative.

- [These interviews are strictly confidential. See Recordkeeping Requirements for instructions concerning the maintenance of confidential records.]** Interviews must be conducted at least once during the course of construction. Using the Record of Employee Interview form, documentation must demonstrate that:
 - The payroll information is consistent with the wage rate determination; and
 - Employees are working in proper job classifications;

- These interviews form the basis for determining whether any violations are occurring and facilitate subsequent follow-up by the Subrecipient.
- Note: Talk to the job-site foreman to let him/her know who you are and what you are doing. Try to conduct interviews on break time but observe the employees at work to verify job classifications.

On-site interviews must be conducted of enough employees (at least 10% coverage). Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates, the interviews are confidential, and the employee will be asked the type of work they perform and their rate of pay.

Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. Interview information must be recorded on the Record of Employee Interview. If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as sending questionnaires by mail.

Using the Record of Employee Interview form, documentation must demonstrate that:

- The payroll information is consistent with the wage rate determination; and
- Employees are working in proper job classifications;

These interviews form the basis for determining whether any violations are occurring and facilitate subsequent follow-up by the Subrecipient.

Project Payroll Reviews

A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local Subrecipient Agreement files, beginning with the first week in which construction begins on the project and for every week thereafter until the work is complete. The LSO must review the payroll submissions in a timely manner to ensure that:

- Workers are properly listed on the payroll for the days, work classification, and rate of pay (compare to interview forms);
- The payrolls are complete and signed;
- Employees are paid no less than the wage rate for the work classification shown;
- Apprentice and trainee certifications are submitted; and
- Employee payroll deduction authorizations for other deductions are submitted, if applicable.

The LSO must maintain evidence of payroll reviews by signing the employee interview forms as the payroll examiner. Employers may use any type of payroll report such as the DOL's Wage and Hour Division Payroll Form WH-347, or computerized formats, as long as all required information is provided.

11. Submit Construction Completion Reports – ODOC Certificate of Construction Completion (COCC) and Final Wage Compliance Report (FWCR)

Upon completion of the construction contract, after all the work has been completed including punch list items, a final inspection must be conducted, and all parties must agree the work is acceptable.

A final inspection is required for each prime construction contract, and documents to support acceptance of the project must be signed by the subrecipient, engineer, and contractor.

The Subrecipient must confirm that all:

- Weekly payrolls and Statements of Compliance have been received, checked and discrepancies resolved;
- Discrepancies identified during on-site interviews have been satisfactorily resolved;
- Other required equal opportunity and labor standards have been satisfied;
- Other contract requirements have been satisfied;
- Files are complete; and
- As-built plans have been filed.

When all contract requirements have been satisfied, the Subrecipient will issue an Acceptance of Work. The construction contractor must submit a Certification of Project Completion, along with the final request for payment.

The Subrecipient then submits a Request for Payment to ODOC. The amount requested at this time should not include the current retainage: a minimum of 2.5% and a maximum of 10% of the total contract. See 61 O.S. 2014 §113.1 for retainage limitations.

Forty-five (45) days after the Acceptance of Work and upon receipt of a Release of Claimants from the construction contractor, the Subrecipient may request the amount of retainage from ODOC and subsequently release this amount to the construction contractor.

A Final Wage Compliance Report signed by the LSO is required for each prime construction contract subject to Davis-Bacon and Related Acts.

The COPC and FWCR must be submitted to ODOC with the final draw for each prime construction contract and the final engineering draw. These documents are required to satisfy the construction contractor's obligations and must be completed prior to the contractor's final payment.

7.4 Special Cases

7.4.1 Apprentices and Trainees

Apprentices are those persons employed under a bona fide apprentice program and registered with a state apprenticeship agency which is recognized by the Department of Labor Employment and Training Administration. (DOL, ETA). Trainees are those persons receiving on the job training. Generally, Apprentices and Trainees are paid a lower salary than Journeyman and fall under special rules that are in the DOL Handbook, Chapter 15, e, 01 and 02 found here; [Field Operations Handbook - Chapter 15 | U.S. Department of Labor \(dol.gov\)](http://www.dol.gov).

Particular care must be taken in observing the maximum ratio of Journeymen to Apprentices and when Apprentices and Trainees are working outside of their training or apprenticeship, such

as serving as general laborers. Working outside their training or apprenticeship is a change to their job classification and is a common point of audit concern.

7.4.2 Subcontractors

To qualify as a subcontractor, the following criteria must be met:

- Current liability insurance must be maintained;
- Must have Federal Tax Identification number (EIN or SSN as appropriate);

If the subcontractor does not meet both of these criteria, they must be listed by the prime contractor as an employee of the contractor and must be paid the prevailing Davis-Bacon hourly rate for the work.

Subcontractors must be registered in SAM.gov and undergo a debarment check, but are not required to obtain a UEI. For more information see "Understanding SAM.gov Requirements" in the [Attachments and Resources](#) section of this chapter.

7.4.3 Owner Operators

Bona fide owner/operators of trucks who are independent contractors are excluded from DBRA/WCHSSA provisions concerning their own hours of work and rate(s) of pay. These truck "owner/operators" must be reported on weekly payrolls, but the payrolls do not need to show the hours worked or the rates; only the notation "owner/operator." This policy does not pertain to owner/operators of other equipment such as backhoes, bulldozers, scrapers, and cranes (power equipment).

Owner/operators of power equipment may not submit their own payrolls certifying to payment of their own wages but must be carried on the responsible contractor's or subcontractor's payroll and must be paid the prevailing Davis- Bacon hourly rate for the work.

7.4.4 Administrative and Clerical Provisions

People whose duties are primarily administrative, executive, or clerical (e.g., supervisors, office staff and timekeepers) are not laborers or mechanics and are excluded from Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act (DBRA/CWHSSA).

Foremen or supervisors who regularly spend more than 20% of their time performing construction work do not meet this exclusion and are covered as "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.

7.5 Restitution for Underpayment of Wages

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

Serious violations, i.e., those representing under-payment greater than \$1,000, are to be reported immediately to ODOC. Technical assistance will be provided to assure proper resolution.

[Notification to the prime contractor](#)

The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews. The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments and is responsible to the LSO for ensuring restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing wage restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Overtime and underpayment

Overtime hours are defined as all hours worked on the work site in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (CWHSSA) overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project;
- The employer will also be liable to the Department of Labor for liquidated damages (overtime violation dollar penalty) computed at \$31 per day per violation. Contact your ODOC Program Manager for further information;
- Once liquidated damages are computed, the subrecipient shall notify the prime contractor in writing of the fine and wage restitution owed. A check (payable to ODOC) in the amount of the liquidated damages must be forwarded to ODOC to be processed for HUD.

Correction payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A verified signed Payroll must be sent to the LSO.

The contractor must also submit a cancelled check or other proof of payment to the LSO.

Review of corrected payroll

The LSO will review the corrected payroll and cancelled checks to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be

required to make additional payments, if needed, and documented on a supplemental correction payroll, within 30 days.

Withholding payments due to the contractor

If wage violations are not corrected within 30 days after notification to the prime contractor, the LSO may cause the withholding of payments due to the contractor in the amount needed to ensure the full payment of restitution and, if applicable, liquidated damages computed for CWHSSA O/T violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities should be withheld. This amount is to be recorded and ODOC is to be notified immediately. All wage restitutions/liquidated damages should be aggregated on the Final Wage Compliance Report.

Inability to locate worker

Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The LSO will continue to attempt to locate workers entitled to restitution for 3 years after the completion of the project. After 3 years, any amount remaining in the account for workers restitution will be credited and/or forwarded by the LSO to GLO-CDR.

7.5.1 Debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the DBLS will be ineligible (debarred) to participate in any DBLS contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

7.6 Exemptions

With the exception of the situations listed in this section, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the CDBG-DR program shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The following contracts and activities are exempt from Davis-Bacon labor standards requirements except where indicated:

- Prime Construction contracts of \$2,000 or less;
- Single-Family, Owner-Occupied Residences;
- Rehabilitation of residential properties designed for fewer than eight (8) families;
- Volunteer labor as long as nominal benefits cannot be tied to productivity, hours worked, or in any way be construed as wages;
- Convict labor is subject to DBRA, there are no exemptions for convict/prison inmate labor on DBRA-covered contracts unless another exemption applies;

- Employees of the Local Subrecipient (Force Account labor);
- Only private or local funds used for rehab or construction unrelated to the CDBG-DR project;
- Holding/maintaining properties (land bank);
- Some Demolition Activities may be exempt. However, demolition, clearance, and debris removal are covered by DBRA when planned as part of the same construction contract or subsequent construction is contemplated as part of a future construction project under another DBRA eligible activity;
- Construction Contracts of \$100,000 or less are exempt from Contract Work Hours and Safety Standards Act (CWHSSA) only;
- Professional service activities such as acquisition, engineering, architectural, and administrative services are exempt;
- Labor/installation charges on equipment or materials purchases, if that portion of the contract is less than 13 percent of the total cost of the item(s) purchased;
- Construction work performed by a public utility extending its own utility system.*

*The subrecipient must notify its ODOC Program Manager in writing if pursuing this method prior to construction. ODOC-CD may request documentation prior to authorizing payment that the price charged by the public utility is less than the price that would be anticipated if the construction had been procured by sealed bids.

7.7 Change Orders

It is not uncommon for circumstances to require modifications to various construction contracts. Change orders are permitted, provided the cumulative impact of all such change orders does not increase the original contract amount by more than 15%. Change orders or cumulative change orders exceeding 15% shall require re-advertising bids on the incomplete portions of the contract. If the construction contract was bid on a unit price basis and the change order is based on the unit price basis, such change order will not be subject to this requirement. [For more detailed guidance, see 61 O.S. 1995 §121.]

The Subrecipient must formally approve any change order and maintain written documentation as to the reasons for the change. All change orders must contain a unit price and total for each of the following items:

- All materials with cost per item;
- Itemization of all labor with number of hours per operation and cost per hour;
- Itemization of insurance cost, bond cost, social security, taxes, Workers' Compensation, employee fringe benefits and overhead costs; and
- Profit for the construction contractor.

If the change order would cause any change in a budget line item, scope of project or change in beneficiaries, the Subrecipient must request a contract modification from ODOC. The Subrecipient may not approve such a change order until and unless ODOC approves a contract modification.

7.8 Recordkeeping Requirements

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract. See the [Attachments and Resources](#) section of this chapter for forms and links.

- Appointment of Labor Standards Officer
- Copy of Wage Rate Decision(s);
- Notice of Contract Award
- Ten-Day Confirmation Form(s);
- Additional Classification request(s) (if applicable)
- SAM.gov printouts (for each prime and/or subcontractor);
- Contractor Debarment Certification
- Subrecipient Debarment Certification
- Fringe Benefit Determination
- Pre-construction conference report minutes and sign-in sheet(s);
- Section 3 Monthly Utilization Reports for contracts over \$200,000;
- Payrolls, with evidence of compliance review;
- Employee interviews;
- Compliance with Section 3, Fair Housing construction, EEO, and HUB mandates;
- Change Orders and associated documents
- Interim inspection reports;
- Wage violations (amount of restitution, number of hours and days);
- Liquidated damages fees and documentation (if any);
- Certificate of Project Completion; and
- Final Wage Compliance Report(s)

7.9 Laws and Regulations

- DAVIS-BACON ACT (40 USC Chapter 31, Subchapter IV)
- CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)
- COPELAND (ANTI-KICKBACK) ACT (18 USC 874; 40 USC 3145)
- FAIR LABOR STANDARDS ACT

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). [29 CFR Parts 1, 3, 5, 6 and 7](#).

7.10 Attachments and Resources

#	Resource	Description	Link (if applicable)
7.1	Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum	HUD Guide to Davis Bacon and Labor Standards. Explains labor standards and requirements in accessible language.	https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/
7.2	SAM.gov	Official U.S. Government website for wage determinations and entity information.	https://sam.gov/content/home
7.3	Understanding SAM.gov Requirements	ODOC guide to frequently asked questions on contractors', subcontractors', and subrecipients' sam.gov requirements. Provides guidance on conducting a debarment check and whether your entity needs to be registered, obtain a UEI, or undergo a debarment check.	Attachment
7.4	Appointment of Labor Standards Officer Form	Required with submission of ROF.	Attachment
7.5	Ten-Day Confirmation Form	Required with submission of the NOA. Used to confirm the wage rates have not changed before bid opening.	Attachment
7.6	Davis Bacon Poster	Required poster for all DBRA-covered projects. Available in English and Spanish.	English - https://www.dol.gov/agencies/whd/posters/dbra Spanish - https://www.dol.gov/agencies/whd/posters/dbra/espanol
7.7	Pre-Construction Conference Checklist	Checklist to be used during the pre-construction conference. Provides information on topics to cover. It should be used as a record of the pre-con-con and attendees.	Attachment
7.8	Payroll Form (WHD Form 347)	Recommended payroll form for Davis Bacon-covered projects.	Attachment

			https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf
7.10	Fringe Benefit Determination	Describes Fringe Benefit Calculation and records contractors' method for fringe benefits.	Attachment
7.11	Certificate Appointing Officer to Approve Payroll	Used when a person other than the company owner will be signing payrolls.	Attachment
7.12	Record of Employee Interview Form	Used for interviewing employees on job site. Available in English and Spanish.	Attachment English Spanish
7.13	Payroll Deduction Authorization Form	Used when employees have "other" deductions on their payroll.	Attachment
7.14	Request for Authorization of Additional Classification Form		Attachment
7.15	Final Wage Compliance Report		Attachment
7.16	Certificate of Project Completion		Attachment

8 Civil Rights Requirements

8.1 Introduction

Subrecipients are required to comply with the civil rights requirements of Title I of the Housing and Community Development Act. This chapter presents summaries of the key regulations and requirements of civil rights, fair housing, Section 3, and equal opportunity laws applicable to the administration and implementation of CDBG-DR funds. Additionally, HUD's website includes a [CDBG-DR Toolkit Resources Summary](#) that provides a snapshot of applicable regulations by program.

CDBG-DR subrecipients must demonstrate no person is being denied benefit, excluded, or subjected to discrimination under any program funded in whole or in part by federal funds. Program participation must not be based on:

- Race;
- National Origin;
- Religion;
- Color;
- Sex;
- Age;
- Disability (mental and physical); or
- Family Status

Information pertaining to civil rights, equal opportunity, and fair housing may be uploaded into the state's grant management system in the RROF Section. Original documentation must be kept in the Subrecipient's location file. Subrecipients must comply with these laws, demonstrate efforts made to comply and document those efforts in various aspects of project activities.

Since this chapter only summarizes applicable laws and gives general guidance to aid in compliance with those laws, a Subrecipient and its legal counsel may want to refer to the actual statute if questions about a specific regulation arise.

8.2 Laws and Statutes

Civil Rights laws and Executive Orders applicable to CDBG-DR programs, which subrecipients must adhere to, are outlined below. While the goal is for the list to be comprehensive, subrecipients should ensure they follow all Civil Rights requirements, even if not listed below.

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	<p>No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of:</p> <ul style="list-style-type: none">• Race;• Color;• National Origin;

	<ul style="list-style-type: none"> • Religion; • Sex; • Age; • Familial status; • Disability (mental or physical)
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	<p>Prohibits discrimination in housing on the basis of:</p> <ul style="list-style-type: none"> • Race; • Color; • National Origin; • Religion; • Sex; • Age; • Familial status; • Disability (mental or physical)
Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended	Requires the subrecipient to certify that it will, among other things, affirmatively further fair housing.
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment, training, and other economic opportunities should be given preference to: <ul style="list-style-type: none"> • Low and very low-income persons; and, • Business concerns that provide economic opportunities to low and very low-income persons
Section 504 of the Rehabilitation Act of 1973, as amended and Section 508	No otherwise qualified individual shall, solely, by reason of his or her handicap, be: <ul style="list-style-type: none"> • Excluded from participation (including employment); • Denied program benefits; • Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	<p>Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of Subrecipient Agreement's dollar value), no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of:</p> <ul style="list-style-type: none"> • Race; • Color; • National Origin; or • Sex <p>Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing</p>
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in: <ul style="list-style-type: none"> • Housing (and related facilities) provided with federal assistance;

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

8.3 Strategies and Procedures

CDBG-DR subrecipients must ensure all CDBG-DR-funded activities are conducted in a manner that ensures equal opportunity and access to all persons in accordance with civil rights, equal opportunity, and affirmative action laws, regulations, and requirements.

Subrecipients must also have written policies in place to promote fair and equal access to housing and employment opportunities for Section 3 residents, minority, and women owned businesses (MBE/WBE). Documentation must be available to ensure Historically Underutilized Businesses (HUBs) are informed of contract opportunities whenever they are a potential resource. This section presents strategies and procedures for documenting and complying with these regulations.

8.3.1 Designate a Civil Rights Officer (CRO)

All subrecipients should designate a Civil Rights Officer (CRO) responsible for ensuring and documenting compliance with the requirements in this section, including Section 3, Section 504, and Fair Housing. The CRO serves as the subrecipient's Section 504 Coordinator, Equal Opportunity Officer, and Fair Housing Officer. The CRO should be a local staff member.

This person should be designated using the Appointment of Civil Rights Officer form. This form should be in the subrecipient's project file and submitted with the Release of Funds.

8.3.2 Preparation of Plans and Policies Regarding Civil Rights

A critical element of civil rights compliance is the preparation of plans and strategies for inclusion of all persons, followed by documentation that the subrecipient completed the actions

described in the plans. Considerations, plans, and/or policies, including the following, are required:

- Equal Opportunity (EO)/Non-discrimination: review existing policies and include the EO policy in subrecipient policy manuals/handbooks. Include statement that the subrecipient is an Equal Opportunity Employer in job postings and applications. Include an equal opportunity provision in all contracts greater than \$10,000.
- Section 3 Resolution and Plan: adopt a policy based on the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended and make available to the public. ODOC provides a sample Section 3 Resolution and Plan that subrecipients may adopt.
- Excessive Force: adopt a policy limiting the use of excessive force during nonviolent civil rights demonstration and pass a resolution prohibiting Excessive Force.
- Participation by Minority, Small Business, and Women-owned Businesses: take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.
- Section 504 of the Rehabilitation Act of 1974: if the subrecipient employs 15 or more people, adopt a policy against discrimination on the basis of disability, adopt written grievance procedures concerning Section 504, and pass a resolution (See 24 CFR 8.53). Establish procedures for providing auxiliary aids to allow individuals with disabilities to obtain information concerning the existence and location of CDBG accessible services, activities, and facilities.
- Affirmatively Furthering Fair Housing: subrecipient must conduct at least one Fair Housing activity each year of the grant period and maintain documentation of the activity.
- Limited English Proficiency (LEP) Standards: establish a plan for determining if there is a need for LEP services and, if applicable, how appropriate language assistance will be given. Use American FactFinder which is found at <http://factfinder.census.gov> to determine need for LEP services or use [ODOC's LEP map](#). For written translation guidance, determine whether the size of the language group requires the translation of key documents such as Citizen Participation notices and/or other notices.

The requirements for each of these policies are described in more detail in the following sections.

8.4 Equal Opportunity and Non-Discrimination

8.4.1 Employment Policies

The Subrecipient's employment policies should be examined (or re-examined) in light of the Civil Rights and non-discrimination statutes. Providing equal opportunity in the hiring process and in the evaluation of current employees is paramount. Subrecipients are also required to make affirmative action (redress for past discrimination) a part of local policies.

Evidence of efforts to provide equal opportunity and take affirmative action steps in the recruitment, selection and compensation of employees must be documented. Other actions that

can demonstrate non-discriminatory practices of the Subrecipient as an employer include but are not limited to the following:

- Upgrading, demotions or transfers;
- Recruitment and advertisements for employees;
- Layoffs or terminations;
- Changes in rates of pay or other forms of compensation;
- Selection for training, including apprenticeships; and
- Participation in recreational and educational activities.

Employment notices must be posted in conspicuous places available to both employees and applicants and must contain the following provisions of this discrimination clause:

"All qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, national origin, familial status, disability, or sexual orientation."

It is important to remember that another part of the Civil Rights laws prohibits sex discrimination in the payment of wages to women and men performing equal work in the same establishment (The Equal Pay Act of 1963).

One law prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans (Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974).

Special outreach should be made to notify minority or disadvantaged groups of employment opportunities. The Subrecipient should have written employment and personnel policies and practices available for review by ODOC representatives.

8.4.2 Equal Employment Opportunity - Contracts and Subcontracts

Subrecipients are required to include equal opportunity provisions and certifications in all federally assisted construction contracts over \$10,000 (Executive Order 11246).

Efforts to ensure non-discrimination in the soliciting and awarding of contracts generated through CDBG-DR funding is required. Advertisement and distribution of solicitation must not discriminate. Subrecipients must maintain records of all contacts with minority- or women-owned firms. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory.

8.4.3 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

2 CFR 200.321 requires the subrecipient to take all necessary steps to ensure that all recipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

Subrecipients must take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps.

For more information on Women-Owned Business Certifications, please visit

<https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/>.

For more information on Minority-Owned Business Certifications, please visit

<https://www.okcommerce.gov/doing-business/business-services/minority-owned-business-information/>.

8.5 Section 3

The Section 3 program requires recipients of HUD funding to direct employment, training, and contracting opportunities to low-income individuals and the businesses that employ these persons within their community. This section will walk subrecipients through the requirements of Section 3, which is a provision of the HUD Act of 1968 and is found at 12 U.S.C. 1701u. The regulations are found at [24 CFR Part 75](#).

The Section 3 Final Rule became effective on November 30, 2020 and is codified at 24 CFR part 75. The regulation simplifies and establishes Section 3 requirements. Section 3 requires that employment and other economic opportunities generated by federal funds for housing and community development programs be directed toward low—and very low-income persons.

These economic and employment opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns, particularly those who are recipients of government assistance for housing or residents of the community in which the federal funds are spent. Where feasible, a subrecipient should give priority for contracting opportunities and training to Section 3 workers residing within the service area or the neighborhood of the project, and participants in YouthBuild programs.

8.5.1 Applicability

Section 3 applies to public housing financial assistance and Section 3 projects.

Section 3 projects mean housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs.

Section 3 requirements apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

There are no minimum thresholds for public housing financial assistance. If a CDBG-DR subrecipient is working with public housing financial assistance, the requirements of Section 3 apply regardless of the amount of assistance received.

Section 3 requirements do not apply to projects that do not include housing rehabilitation, housing construction or other public construction. For example, if CDBG-DR funds are used for direct homebuyer assistance or tenant-based rental assistance, the Section 3 requirements do not apply. Section 3 requirements also do not apply to “materials-only” contracts or contracts that do not require any labor. An example of a materials-only contract is a contract for office or janitorial supplies only.

CDBG-DR subrecipients are encouraged to offer training to any contractors or subcontractors who may be new to Section 3 requirements.

8.5.1.1 Do the requirements of Section 3 apply to subrecipients on a per project basis?

Yes, for housing and community development financial assistance projects. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs.

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. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted by CDBG-DR.

Section 3 applies to all public housing financial assistance funds, regardless of the amount of assistance from HUD.

8.5.2 Contracting

To meet the requirements, subrecipients and contractors must include Section 3 language in any agreements, contracts, or subcontracts for qualifying projects. This language is as follows:

“Section 3 of the Housing and Urban Development Act of 1968 (12 USC § 1701u), which requires that, to the greatest extent feasible, opportunities for training and employment be provided to lower-income persons in the project area and that contracts for work in connection with the project be awarded to businesses in or owned in substantial part by residents of the project area. Regulations are at 24 CFR, Part 135.”

Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the Section 3 requirements, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, subrecipients shall ensure contracts for work on Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

Where feasible, priority for contracting opportunities should be given to:

- Section 3 business concerns (defined below) that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
- YouthBuild programs.

8.5.2.1 Section 3 Business Concern

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

- At least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Subrecipients should prioritize Section 3 Business Concerns in contracting on Section 3 projects to the greatest extent possible. Businesses may self-certify as a Section 3 Business Concern by completing the Section 3 Business Self-Certification. This form must be provided to ODOC with the contractor's Notice of Award, along with the Section 3 Contractor Affirmative Action Plan.

8.5.3 Section 3 Resolution and Plan

The Section 3 Resolution and Plan requirements are as follows:

- ODOC requires that an approved Section 3 Resolution and Plan be in place before ODOC will approve and award funding to UGLG subrecipients applying for more than \$200,000 in CDBG-DR assistance. This Resolution and Plan must be submitted with the CDBG-DR application.
- Non-UGLG subrecipients (non-profits, COGs, or other eligible non-governmental subrecipients) with awards over \$200,000 must have the Section 3 Plan signed and approved by the governing body of the organization (i.e., Board of Directors).
- Contractors must sign and approve and Section 3 Contractor Plan when awarded funds for a Section 3 project.

The Section 3 Resolution, Section 3 Plan, and Section 3 Contractor Affirmative Action Plan are included in the attachments.

8.5.4 Section 3 Benchmarks (Quantitative Goals)

Subrecipients must track and report labor hours for three categories of workers on Section 3 projects: all workers, Section 3 workers, and Targeted Section 3 workers. “Labor hours” means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

HUD and ODOC will consider subrecipients to have achieved compliance with Section 3 requirements if they meet both of the following minimum benchmarks:

- Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers (Section 3 Labor Hours/Total Labor Hours = 25%), and
- Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers (Targeted Section 3 Labor Hours/Total Labor Hours = 5%).

ODOC requires subrecipients to report Section 3 Labor Hours in the Section 3 Monthly Utilization Report. This report must be submitted with each pay request for a Section 3 project.

If a subrecipient does not meet the benchmark labor hour requirements, they must submit evidence of qualitative efforts to meet the benchmark requirements, as described in the following section.

8.5.5 Qualitative Efforts

If the subrecipient's reporting indicates that the subrecipient has not met the Section 3 benchmarks described above, the subrecipient must report the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

8.5.6 Section 3 Workers and Targeted Section 3 Workers

Section 3 Workers:

A Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

- An LMI worker that fell below HUD income limits for the previous or annualized calendar year.
- Employed by a Section 3 business concern.
- A YouthBuild participant.

Subrecipients must maintain documentation to ensure that workers meet the definition of a Section 3 worker at the time of hire or the first reporting period.

For a worker to qualify as a Section 3 worker, one of the following documents must be maintained:

- A worker's self-certification that their income is below the income limit from the prior calendar year. Contractors and subrecipients must submit the Section 3 Worker Status Certification for this purpose.
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
- Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- 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; or
- An employer's certification that the worker is employed by a Section 3 business concern.

Targeted Section 3 Workers:

A Targeted Section 3 Worker is a worker who meets the definition of a Section 3 worker, plus one of the following:

- A worker employed by a Section 3 business concern, or

- A worker who currently fits or when hired was living within the service area, neighborhood of the project, or is a YouthBuild participant. The grantee should document that the worker meets this definition within the past five years.

For a worker to qualify as a Targeted Section 3 worker, one of the following documents must be maintained:

- A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
- Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one 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;
- An employer's certification that the worker is employed by a Section 3 business concern; or
- A worker's certification that the worker is a YouthBuild participant.

ODOC provides Section 3 Worker Status Certifications to be used for documenting if a worker qualifies as a Section 3 Worker or Targeted Section 3 Worker. The subrecipient and contractor are responsible for collecting any additional documentation that may be required to support a worker's self-certification.

A subrecipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established. Subrecipients and contractors should note that workers hired within the last five years may qualify as a Section 3 worker, even if their current income exceeds the threshold. Please contact your ODOC Program Manager if you have any questions.

8.6 Excessive Force Policy

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

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

- 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; and
- 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.

8.7 Section 504

Subrecipients must operate their CDBG-DR programs in compliance with Section 504 requirements ([24 CFR Part 8](#)). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of disability and imposes requirements to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds. Subrecipients must adhere to the following requirements:

- Ensure those with visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials; and
- Maintain documentation for ODOC showing the extent to which individuals with disabilities are beneficiaries of all CDBG-DR programs and activities.

If the subrecipient employs fifteen or more persons, a responsible employee of the subrecipient must be designated to coordinate the subrecipient's efforts to comply with Section 504. This employee will be the designated Civil Rights Officer. Additionally, the subrecipient must:

- Adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited Section 504. Grievance procedures are not required for complaints from applicants for employment or from applicants for housing;
- Publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the subrecipient that it does not discriminate on the basis of handicap in violation of Section 504. The notice must state, where appropriate, the subrecipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notice shall also identify the designated Civil Rights Officer.

Many subrecipients completed these steps when Section 504 requirements were implemented and updated. Subrecipients should verify that the requirements have been met and are regularly updated.

8.7.1 Communication Requirements

Subrecipients must take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

The subrecipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

Where a subrecipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

The subrecipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

This section does not require a subrecipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

8.7.2 Program Accessibility

Where Section 504 outlines specific requirements for the accessibility of structures constructed or rehabbed with CDBG-DR funds, the appropriate program manual will outline the requirements. In general, newly constructed or rehabilitated facilities funded by CDBG-DR must be made accessible to the greatest extent feasible.

8.8 Affirmatively Furthering Fair Housing

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. It also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively furthers fair housing (AFFH).

Fair housing is generally defined as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, sex, religion, national origin, marital status, familial status, age, mental or physical disability, or sexual orientation. Local governments, because of their influence and power, are in the most effective position to promote fair housing.

ODOC requires all CDBG-DR Subrecipients to adopt a Fair Housing Ordinance or pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing.

In addition, ODOC requires the Subrecipient to undertake at least one (1) new activity per year to further fair housing. The Subrecipient is not required to undertake multiple fair housing activities if it has multiple CDBG contracts open in any one year.

8.8.1 Annual Fair Housing Activity Required

Subrecipients must develop and maintain records of the efforts taken to assure fair housing. In addition, each subrecipient must conduct at least one Fair Housing activity each year of the grant period and maintain documentation of the activity. The documentation must be available during ODOC monitoring visits and must identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided.

While the Subrecipient has already certified that it practices fair housing, it must demonstrate that it is affirmatively furthering fair housing on a continual basis, not merely as a requirement of spending CDBG-DR dollars. Efforts must be made to identify discriminatory housing patterns and alleviate them by working with developers, property owners, realtors, residents, and government agencies.

Suggested Ideas for Meeting the Fair Housing Activities Requirement:

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments;
- Pass a fair housing ordinance. If possible, include a penalty clause in the ordinance. Also, publicize the existence of such an ordinance (e.g., newspaper advertisement, or fliers enclosed in utility bills);
- Adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance and publicize the existence of the policies/procedures (e.g., newspaper advertisement);
- Sponsor or fund fair housing counseling/referral services for owners and renters;
- Have a written local complaint and monitoring process and notify the public of its existence through newspaper advertisements or through notices in utility statements;
- Promote housing opportunities outside historically minority and/or low and moderate-income neighborhoods;
- Designate April or any other month as "Fair Housing Month" by Proclamation or Resolution along with another sponsoring activity;
- Utilize local businesses and banking institutions to promote fair housing by displaying fair housing posters;
- Announce the subrecipient's support of fair housing by means of newspaper advertisements, marquis displays, or public service announcements;
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations;
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing;
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice; and/or
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.

8.8.2 Fair Housing Activities Resources

HUD's [Fair Housing Website](#) contains a wealth of information and tools for subrecipient to use in conducting fair housing activities. These resources include:

- A fair housing planning guide;
- Fair Housing brochures and logos;
- Fair Housing best practices;
- Contact information for fair housing advocacy organizations; and
- Accessibility guidelines for housing units

8.9 Limited English Proficiency (LEP) Requirements

Limited English Proficiency (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 verify if their program service area exceeds the safe harbor thresholds using American FactFinder which is found at <http://factfinder.census.gov> or use [ODOC's LEP map](#) to determine the need for LEP services. For written translation guidance, determine whether the size of the language group requires the translation of key documents such as Citizen Participation notices and/or other notices.

The relevant CDBG-DR Action Plan outlines areas and languages where translation will always be required. For more details about vital documents and the level of language assistance that ODOC and its subrecipients provide to beneficiaries, please refer to the Language Access Plan available as part of [ODOC's Consolidated Plan](#).

HUD and ODOC will consider the requirements for equal participation by LEP individuals met if subrecipients translate vital documents when the number or proportion of a language group exceeds a set threshold. These thresholds are referred to as "safe harbor thresholds." If the safe harbor thresholds are exceeded and translation is required, examples of program documents that should be made accessible to LEP persons include:

- Public notices and hearings regarding applications for grant funding, amendments to project activities, and completion of grant-funded projects;
- Publications regarding environmental reviews, civil rights, and other program requirements; and
- Other program documents as needed.

8.9.1 Determine the Need for LEP Services

To determine the local need for LEP services, subrecipients may use the American FactFinder (<https://data.census.gov/cedsci/>). Type in the federally funded project's location (e.g., city or county name) and select 'go'; then, on the left side of the screen, choose 'Origins and Language'; then 'Selected Social Characteristics' (DP02). Next, scroll to 'Language Spoken at Home' and review the number or percent of 'Speaks English less than very well' under the subcategories of Spanish, Other Indo-European, and Other languages.

Alternatively, the subrecipient may use the map provided by ODOC, which aggregates the language group data at the county level. This map can be found here:

<https://odoc.maps.arcgis.com/apps/mapviewer/index.html?webmap=a5fb5afb21774e61a56c37ba901eb7d2>

The table below sets forth safe harbors for written translations.

Size of Language Group	Requirement
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents

More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required

Subrecipients should contact their ODOC Program Manager if they have questions regarding LEP and the safe harbor thresholds.

8.10 Civil Rights Complaints

Since the Subrecipient may receive complaints related to the various aspects of civil rights, equal opportunity and fair housing, a file to document such complaints must be established. The appointed Civil Rights Officer is responsible for handling any complaints, doing necessary follow-up and maintaining documentation on complaints received and their resolutions. This file should contain any relevant paperwork as well as follow-up efforts within 15 working days and eventual resolution.

Complaints may not refer to a violation of a particular civil rights law or laws. A complaint will be viewed as a civil rights complaint when the complainant:

- Indicates the belief that they have been denied benefits or opportunities, have been treated differently, etc.; and
- Alleges their race, ethnicity, gender, status as a disabled person, or age was the basis for their belief of discrimination.

Any person or specific class of persons who believes that they have been subject to any discrimination prohibited by the laws referenced in this section may file a complaint. Advise your ODOC representative if you receive a civil rights complaint, as it will be referred to HUD's regional office, which deals directly with such complaints.

For additional guidance, refer to HUD's website:

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

8.11 Attachments and Resources

#	Resource	Description	Link (if applicable)
8.1	Appointment of Civil Rights Officer	Required to be submitted with ROF	Attachment
8.2	Section 3 Contractor Self-Certification	Must be submitted with the NOA	Attachment
8.3	Section 3 Business and Employment Notice Sample		Attachment
8.4	Section 3 Clause	For contracts	Attachment
8.5	Section 3 Monthly Utilization Report	Must be submitted with pay requests	Attachment

8.6	Section 3 Worker Status Certification	Must be submitted for each employee with the first pay request	Attachment
8.7	Section 3 Grantee Checklist		Attachment
8.8	Section 3 Grantee Sample Plan	Required to be submitted with ROF	Attachment
8.9	Section 3 Grantee Sample Resolution	Required to be submitted with ROF	Attachment
8.10	Section 3 Contractor Estimated Workforce Breakdown	Must be submitted with the NOA	Attachment
8.11	Section 3 Contractor Affirmative Action Plan	Must be submitted with the NOA	Attachment
8.12	Section 3 HUD Website		https://www.hud.gov/program_offices/field_policy_mgt/section3/publications_and_regulations

9 Acquisition & Relocation

9.1 Real Property Acquisition

9.1.1 Introduction and Purpose

Acquisition of real property may be necessary as an activity within an infrastructure program, or a subrecipient may create a housing Buyout Program, if authorized in the applicable CDBG-DR Action Plan.

- A Buyout Program (“Buyouts”) encompasses the purchase of eligible properties within a floodway, floodplain, or designated Disaster Risk Reduction Area (“DRRA”). Once a property is acquired, it is converted in perpetuity to green space, wetland management, or flood plain management.

CDBG-DR funded projects 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. § 4601 et seq. (the “URA”), and the federal regulations found in 49 C.F.R. 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.

Relocation requirements of the URA are discussed in the Relocation Guidelines available on the HUD website (see [Attachments and Resources](#)).

The purpose of the URA is:

- To ensure owners of real property acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally assisted land acquisition programs;
- To ensure persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently, and equitably and do not suffer disproportionate injuries as a result of projects that benefit the public; and
- To ensure acquiring/condemning authorities implement these regulations in an efficient and cost-effective manner.

The URA is triggered when real property acquisition is contemplated, or persons are displaced as a direct result of acquisition, demolition, and rehabilitation at any phase of a federally funded project. Specifically, 24 CFR 570.606(e) requires that acquisition of real property for a CDBG-funded activity or series of activities (including CDBG-funded acquisition itself) must comply with the URA real property acquisition requirements at 49 CFR Part 24, Subpart B. Additionally, persons displaced because of the acquisition may become eligible to receive relocation assistance.

[General Requirements HUD Handbook 1378](#) provides thorough guidance on real property acquisition under the URA. If there are questions whether any of the following apply to a specific situation, please consult your ODOC Programs Manager.

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; or
- Undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent CDBG-DR activity.

Property owners must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their property, even if they are a direct beneficiary of the project. Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the agreed purchase price to the owner.

If the acquisition is only a portion of a property but would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

This chapter summarizes the requirements of the URA and related relocation requirements when CDBG funds are used for acquisition. Subrecipients can use this section as a guide, but the ultimate acquisition guide should be HUD's Tenant Assistance, Relocation, and Real Property Acquisition Handbook (HUD Handbook 1378). The Handbook can be found [here](#).

Additional training from HUD can be found in the "URA the HUD Way" training modules, found [here](#) and [here](#).

URA procedures may apply even if the property was acquired prior to submission of the grant application and even if CDBG funds are not involved in the actual acquisition costs. If the property was or is acquired with the express intent of using it for the activities for which CDBG funds are requested, that acquisition must have been and/or be conducted in conformance with the requirements in HUD Handbook 1378.

Subrecipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation if property acquisition and displacement are anticipated. Subrecipients are also strongly encouraged to thoroughly read the more detailed guidance referenced in this chapter if they are undertaking any property acquisition or will displace any persons or households. Finally, the subrecipient must take great care to avoid the existence or appearance of coercion.

9.1.2 Environmental and Acquisition

Executing a contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a commitment of funds and a choice limiting action (24 CFR

58.22(a)) and must be avoided until after the environmental review process is completed and ODOC or HUD has issued a release of funds. Any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. There is one action that may be taken before the environmental release of funds that might conclude the acquisition once the environmental review process is completed: an option contract. This type of contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

HUD's regulations at 24 CFR 58.22(d) allow for an option contract agreement for any proposed project site prior to the completion of the environmental review when the following requirements are met:

- Option agreement specifically states it is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option is a nominal portion of the purchase price.

9.1.3 Voluntary vs. Involuntary Acquisition

Under the URA, an acquisition is considered to be involuntary when an agency acquires property under threat or use of eminent domain. Eminent domain is the power of the government to take private property for public purposes with payment of just compensation.

The URA requirements for voluntary acquisitions and involuntary acquisitions differ significantly. While there are protections for property owners in both circumstances, only involuntary acquisitions trigger the full acquisition requirements of the URA found in 49 CFR Part 24 Subpart B.

Subrecipients must understand the critical differences between voluntary acquisitions and involuntary acquisitions under the URA before acquiring property for a HUD funded project.

9.1.3.1 What makes a transaction "voluntary"?

A transaction is considered voluntary for agencies with eminent domain authority, if all of the following conditions apply:

- No specific site is needed and any of several properties could be acquired for project purposes; and
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits; and
- The agency informs the owner in writing of the property's market value; and
- The agency also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement
- Tenants are displaced, the tenants are provided relocation assistance

A transaction is considered voluntary for agencies for agencies without eminent domain authority, if:

- The agency notifies the owner in writing of the property's market value; and

- The agency notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached
- Tenants are displaced, the tenants are provided relocation assistance

Subrecipients may consult 49 CFR 24.101(b)(1)-(5) and Chapter 5 of HUD Handbook 1378 for more guidance. If the subrecipient cannot ensure the applicable requirements of 24.101(b)(1)-(5) will be satisfied, then such acquisitions must not be pursued as a “voluntary acquisition” and must instead be pursued as an involuntary acquisition under the full requirements of 49 CFR 24 Subpart B.

At no time is it permissible for a subrecipient to undertake the acquisition under threat or use its eminent domain authority if initial negotiations for a voluntary acquisition fail. If the subrecipient cannot ensure the applicable requirements of 49 CFR 24.101(b)(1)(i)-(iv) are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 C.F.R. Part 24 Subpart B.

9.1.4 Voluntary Acquisition

In a voluntary acquisition, the subrecipient notifies the property owner of an interest in acquiring the property, with a clear statement that it cannot or will not condemn the property to obtain it for the project. The purpose of notification is to determine if the property owner is interested in negotiating the sale of the property. If the owner is not interested, the subrecipient must determine if the project can proceed at any alternative location. If it cannot, the project may not proceed further, and the grant will be de-obligated.

If the subrecipient opts to go the voluntary route in a site-specific project and fails to find a willing seller, it may not start over with the non-voluntary approach. This would amount to after-the-fact coercion against a property owner. If the property is required for the project, the subrecipient must use the non-voluntary acquisition process.

Step 1: Determine Property to be Acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired.

If the project does not require a very specific parcel, i.e., it can be undertaken on any site within a given geographic area, the subrecipient sends a notice to a limited number of property owners in the area. The purpose of this notice is to determine if there are any owners who are actively interested in selling their property. If the subrecipient receives an expression of willingness from one or more owners, it should develop a priority list of such properties based on the characteristics (location, likely cost, etc.) which are most advantageous to it.

Step 2: Determine Fair Market Value of the Property

The subrecipient may use an appraisal or fair market estimate such as a tax valuation to determine value.

Step 3: Notify Owner of Property Rights

Voluntary acquisitions can occur only when the subrecipient lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain by giving specific written notice to the property owner.

The subrecipient must notify the owner in writing prior to making a purchase offer, of the property's fair market value. The subrecipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached. Subrecipients should use the [Guideform Voluntary Acquisition Information Notice \(Agencies with E.D.\)](#), (CPD Handbook 1378, Appendix 32) to communicate all the required information to the property owner.

All notices must be personally served to owners and occupants or sent by registered first-class or certified mail, return receipt requested.

Optional: In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land. For Housing Buyouts or Acquisitions, the subrecipient may consider incentives as part of the negotiations. Incentives must be outlined in the subrecipient approved Buyouts or Acquisitions Guidelines.

Step 4: Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by ODOC or HUD. If a significant environmental impact will occur, look at alternative sites.

Step 5: Determine Price or Donation

The owner may choose to donate the property or accept the fair market value of the property and has been notified in Steps 2 and 3. If the donation and the fair market value are rejected by the owner, then the subrecipient may then negotiate with the property owner to reach an agreement. A best practice is to create a calculation that is applied to all properties to ensure that all are treated uniformly by the subrecipient.

Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for the subrecipient to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.

Step 7: Execute Agreement

The subrecipient and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations. Title clearance activities may also be required prior to deed transfer. If applicable, the property owner and/or tenant is provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.

Step 8: Submit Documentation of Process to ODOC

The subrecipient must submit a copy of the appraisal, review appraisal (if appropriate) and any other documentation for the established FMV to ODOC for review and approval, regardless of whether CDBG funds will be used to pay for the acquisition. If CDBG funds are to be used, this documentation must be submitted with the request for payment. Unjustified payments in excess of the appraised value may be disallowed at ODOC's discretion.

Subrecipients are strongly encouraged not to execute any binding documents for purchase of property prior to ODOC approval. If ODOC determines that the process fails to comply with any requirements, the subrecipient will not be allowed to use any CDBG funds for acquisition, leaving the subrecipient financially liable. If some form of offer and acceptance is crucial prior to ODOC approval, it should be contingent upon formal ODOC approval.

9.1.5 Non-Voluntary Acquisition

The following steps represent the general process an agency must follow under the URA when acquiring property under threat of eminent domain:

Step 1: Determine Property to be Acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired.

Step 2: Notify Owner of Intentions and Rights

As soon as feasible, the subrecipient must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA and HUD regulations.

The subrecipient must provide the owner with the following, prior to making a purchase offer:

- Notice to Owner for Involuntary Acquisition (Also known as the Notice of Intent. [Guideform Link](#). CPD Handbook 1378, Appendix 30. See also [49 CFR Part 24.102\(b\)\(4\)](#));
- General Information Notice (GIN) (Requirements at [49 CFR 24.203\(a\)](#)). Suggested Guideforms can be found as [Appendices 2 – 3B in HUD Handbook 1378](#); and
- “When a Public Agency Acquires Your Property”
 - This HUD booklet describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (see [Attachments and Resources](#)).

Optional: the owner can also be invited to donate the property. The acquiring entity may include the following documents:

- Form for the owner to complete accepting or declining the request to donate the land and/or
- Form on which the owner may waive the right to an appraisal of the land.

Step 3: Determine the Appraised Value of the Property.

An appraisal of fair market value is required for property acquired under involuntary procedures unless the following (see 49 CFR 24.102(c)(2)):

- The property valuation is simple, and the anticipated value of the proposed acquisition is \$10,000 or less, a formal appraisal is not required;
- The owner donates the property and releases the acquiring/condemning authority from its obligation to appraise the property.

The process of estimating value when an appraisal is determined to be unnecessary is considered a “waiver valuation.” If the value of the proposed acquisition is \$10,000 or less, the subrecipient may prepare a waiver valuation and present a reasonable basis for the waiver

valuation. If the value of the property exceeds \$10,000, but is less than \$25,000, ODOC may consider written requests for waiver of appraisal.

Criteria for appraisals are addressed in 49 CFR 24.103. The property owner, or the owner's designated representative, must be invited to accompany the appraiser 49 CFR 24.102(c)(1). The subrecipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

Qualifications of Appraiser and Review Appraiser

The appraisal procedures require a qualified appraiser and a qualified review appraiser be procured (49 CFR 24.103 -104) in compliance with applicable federal procurement standards and applicable state procurement law. A contract appraiser hired to perform an appraisal or a review appraisal must be a state-licensed or certified real estate appraiser.

- Appraiser—The appraiser must provide an independently and impartially prepared opinion of the value of the defined property as of a specific date, supported by the presentation and analysis of relevant fair market information;
- Review Appraiser—Per 49 CFR 24.104, the review appraiser must examine the analysis of fair market information in appraisals to ensure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103, and all other applicable requirements. The review appraiser may be a staff member but must demonstrate adequate experience, education, training, and certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present fair market information to support a recommended value. ODOC may request documentation to support the review appraiser's qualifications.

Step 4: Establish Just Compensation for The Property

Before initiating negotiations, the subrecipient must establish an amount believed to be just compensation to offer the property owner. The amount shall not be less than the approved appraisal of the property's fair market value, taking into account duplication of benefits and the value of allowable damages or benefits to any remaining property.

Step 5: Provide Owner with Written Offer and Summary Statement for Property

Promptly after establishing just compensation, the subrecipient shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which must include, at a minimum, the following:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;
- A description and location identification of the property and the interest in the property to be acquired; and
- An identification of any buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are included as part of the offer of just compensation. (See generally 49 CFR 24.102(e)(1)-(3)).

The just compensation determination statement and notification to the owner must be signed by the subrecipient's local designated official.

Step 6: Complete Environmental Review

Per U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and the release of funds authorized by ODOC or HUD.

Step 7: Negotiate and Determine Price

The owner may choose to donate the property or accept the just compensation amount, in which case the parties may proceed with executing appropriate donation or sales documents in Step 8.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given a reasonable opportunity to present material and information believed to be relevant to the property's value and to suggest modifications in the proposed terms and conditions of the purchase.

In an administrative settlement, the purchase price may differ or exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement have failed and the subrecipient local official approves such settlement as reasonable, prudent, and in the public interest. Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement (see 49 C.F.R. 24.102(i)).

If negotiations are unsuccessful and the subrecipient has the authority to use eminent domain, the subrecipient may determine this is the next course of action. Please confer with legal counsel and local officials for specific guidance.

If negotiations are unsuccessful, the subrecipient may decide not to acquire the property. If this decision is made, the subrecipient must notify the property owner in writing.

Step 8: Execute Agreement

The subrecipient and the property owner must execute a sales or donation agreement. The deed or easement must be recorded as required by State regulations. Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant are provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.

Step 9: Submit Documentation of Process to ODOC

A complete acquisition packet, including a copy of the appraisal, review appraisal, basis of cost, offer of just compensation, and summary of settlement costs, must be submitted to ODOC. If CDBG funds are to be used, this documentation must be submitted with the payment request.

9.1.6 Condemnations

Exercising the power of eminent domain by condemning private property for a public purpose is absolutely the final step in the acquisition process. It is a step that should be taken only after all

other alternatives have been exhausted and the subrecipient determines that the property in question is so crucial to an important public purpose that no other alternative is possible.

While ODOC recognizes that this action is sometimes inevitable, it is not bound by either the delays that might occur or the compensation the court determines. Subrecipients should be mindful when proceeding with a condemnation that a prolonged legal fight may jeopardize the ability of the subrecipient to implement the project within the contract period. Further, ODOC will not increase the grant award if the court decision exceeds the amount budgeted in the grant for acquisition and no other savings can be realized in other grant line items.

Points to Keep in Mind:

- If the acquisition of only a portion of a property would leave the owner with a remnant that was not economic (not large enough for any reasonable use), the Subrecipient must offer to purchase this remnant along with the portion needed for the project (49 CFR 24.102(k))
- If the owner, in response to the offer, provides additional information that indicates the need for a new appraisal or if there has been a significant delay since the appraisal was conducted, an updated or new appraisal must be conducted, and the acquiring Subrecipient must re-establish its offer (49 CFR 24.102(g)).

The subrecipient (whichever is acquiring the property) must guard against both the existence and appearance of a conflict of interest in using CDBG funds to acquire property. Special measures must be taken if an officer or employee of the acquiring Subrecipient sells property to the Subrecipient.

9.2 Relocation

ODOC's goal is to minimize the displacement of persons and/or entities involved in or affected by disaster-recovery-related activities. To do so, ODOC will follow its Residential Anti-displacement and Relocation Assistance Plan ("RARAP"). Subrecipients should consider procuring a Uniform Relocation and Real Property Acquisition specialist to help navigate the relocation of displaced persons.

To minimize displacement, ODOC will adhere to the following steps. The items on this checklist's applicability is dependent upon the project objectives and the related feasibility of each action.

- Coordinate code enforcement with rehabilitation and housing assistance programs.
- Evaluate housing codes and rehabilitation standards in reinvestment areas to prevent undue financial burden on established owners and tenants.
- Consider effect of tax policies which impact property tax assessments for lower income owner occupants or tenants affected by the disaster.
- Adopt policies which provide reasonable protections for tenants residing in affected properties.
- Stage rehabilitation of apartment units to allow tenants to remain in the building/complex as long as possible during and after rehabilitation, working with empty units first.

- Arrange for facilities to house persons who must be relocated temporarily during rehabilitation.
- Adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods.
- Establish or utilize approved local counseling centers to provide homeowners and tenants with assistance to understand their options and implement their choices in the face of displacement.
- If feasible, demolish or convert only dwelling units that are not occupied or vacant occupiable “dwelling units” (as defined in 24 CFR 42.305).
- Target only those properties deemed essential to the need or success of the project to avoid displacement that is unnecessary.

The relocation assistance requirements at section 104(d)(2)(A) of the Housing and Community Development Act (HCDA) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the notice for activities related to disaster recovery. All waivers are described in detail in ODOC’s applicable RARAP.

Under the voluntary acquisition process, owners and owner-occupants are not eligible for relocation assistance. However, tenants may be eligible (see 49 CFR 24.2(a)(9)(ii)). Under the involuntary process, displaced persons are eligible for relocation assistance (see 49 CFR 24.2(a)(9)(i)).

9.2.1 Who is Displaced?

Generally, a displaced person under the URA is an individual, family, partnership, association, corporation, or organization, which moves from their home, business, or farm, or moves their personal property, as a direct result of acquisition, demolition or rehabilitation for a federally funded project. Displaced persons are eligible for relocation assistance under the URA.

9.2.2 Who is Not Displaced?

Generally, persons not displaced are not eligible for relocation assistance under the URA. Examples of persons not displaced include, but are not limited to, the following:

- Persons temporarily relocated from their dwellings for less than 12 months during rehabilitation or demolition
- Illegal aliens: the URA prohibits relocation assistance to persons not lawfully present in the U.S.

The URA contains specific definitions of a "displaced person" and "persons not displaced." These definitions and the HUD handbook should be used when making any determinations of relocation eligibility. When in doubt, subrecipients should contact their ODOC Program Manager for assistance.

9.2.3 Relocation Process

The Subrecipient must determine who might be displaced, make reasonable efforts to provide the required assistance and document that the process has been followed. This process is summarized below, but it is not comprehensive to all situations. More detail and information can be found at 49 CFR Part 24 Subpart C, and in HUD Handbook 1378.

While the specific procedural and record-keeping requirements are detailed, the basic outline of the process is as follows:

- Determine which persons or households may have to be displaced and whether the displacement is permanent or temporary;
- Make certain that affected persons or households receive notice not to relocate (move) before they are eligible to receive assistance and that they understand their rights for assistance;
- Provide the assistance to which displaced persons or households are entitled, not more or less [Under 49 CFR 24 (URA) and 24 CFR 570.104];
- Keep outstanding, detailed records on every aspect of the process.
- Note: These requirements apply only to non-voluntary property acquisition.

The single most common mistake made by Subrecipients in the acquisition or relocation process is failure to provide required notices in a timely fashion, especially to tenants. Provide proper notices at the right times. Failure to do so exposes the Subrecipient to legal challenges and additional expenses.

Step 1: Send General Information Notice and HUD Brochure

At the time of the acquisition Notice of Intent (NOI/Notice to Owner) discussed earlier in this chapter, tenants should be mailed a General Information Notice (GIN) (see 49 CFR 24.203(a)) and the HUD “When a Public Agency Acquires Your Property” brochure (see [Attachments and Resources](#)). This brochure describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

HUD provides multiple Guideform versions of the GIN for different scenarios. All can be found with HUD Handbook 1378, Appendices 2-3B.

Step 2: Schedule Intake and Confirm Eligibility

An intake meeting or event should be scheduled with all affected owner-occupants or tenants. A notification of relocation benefits eligibility is provided at this meeting. This is an opportunity for the owner-occupant or tenant to learn about the process, ask questions and to submit necessary income verification information. Owner-occupants or tenants should receive a written notification of their eligibility for benefits after it is confirmed they will be displaced and after other eligibility items have been confirmed (living in property before NOI, citizenship/legal residency, etc.) The subrecipient should determine current occupancy and conduct owner-occupant or tenant interviews (Guideforms: Site Occupant Record, CPD Handbook 1378, Appendices 8-9).

Low-income households permanently displaced as a result of CDBG-DR activities will be provided with relocation assistance under the HCDA and URA. Those households that are displaced but not low-income may be provided relocation assistance as needed, within the limitations of the allocation and to the extent that it is allowed as per the URA and implementing regulations at 49 CFR Part 24.

This meeting should be consistent with the requirements of 49 CFR 24.205(c)(2).

Step 3: Initiate Negotiations

Once eligibility is determined, and the appropriate notices have been sent out, the owner-occupant or tenant file remains “on hold” pending the initiation of negotiations (ION). In a buyout/acquisition program, this is generally used as the Contract of Sale date (when the buyer and seller have entered into an agreement for the property to be purchased).

Step 4: Identify Comparable Dwellings

At this time, in an involuntary program, comparable replacement dwellings that are available for rent or purchase are selected by a real estate professional or URA specialist. Comparable dwellings should meet Decent Safe and Sanitary (DSS) and Housing Quality Standards (HQS) so that displaced persons are relocated to safe and sanitary housing. Comparable replacement dwellings cannot be in a Special Flood Hazard Area (SFHA). The comparable dwellings are presented on HUD Form 40061, and a “most comparable dwelling” is chosen based on objective criteria (See CPD Handbook 1378, Appendix 12). Benefits are calculated based on the rent of the “most comparable dwelling” and estimated utilities of the displacement dwelling and “most comparable dwelling.” Subrecipients must develop a methodology for determining estimated monthly utilities at the displacement dwelling and at the replacement dwelling. The simplest way of doing this is by looking at the utility allowance worksheets for local housing authorities or Section 8 agencies.

Step 5: Send Notice of Eligibility and 90-day Notice

Upon subrecipient approval of the HUD Form 40061, the tenant or owner-occupant is mailed a Notice of Eligibility (NOE) which includes a 90-day Notice. The Notice of Eligibility informs the owner-occupant or tenant that they are eligible for relocation benefits, provides the maximum amount of assistance the tenant is eligible for, and indicates that the tenant has 90 days to relocate. The NOE also explains that the tenant has the right to appeal the determination of the most comparable dwelling. Tenants must be informed in writing that they may appeal the determination of their relocation benefits based on the comparable dwelling selected in the 40061.

For Guideforms, see Notice of Eligibility, CPD Handbook 1378, Appendices 5-7.

Step 6: Determine Displacee Eligibility for and Amount of Assistance

If the displacee is found to be eligible for benefits, HUD Forms 40054 and 40058 are completed. These forms calculate the amount of assistance the tenant will receive. HUD Form 40054 pays the tenant’s moving expenses. HUD Form 40058 pays relocation expenses equivalent to 42 months of the tenant’s rent increase or 42 months of any monthly rent amount over 30 percent of the tenant’s monthly income. The tenant signs the HUD Forms 40054 and 40058 along with an authorized party from the subrecipient.

For Guideforms, see CPD Handbook 1378, Appendices 11-17.

Step 7: Relocate Tenant or Owner Occupant

The tenant or owner-occupant has 90 days to relocate to a new dwelling. The tenant or owner-occupant 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.

Step 8: Inspect New Tenant Unit or Residential Owner-Occupant

In cases of residential relocation, when the displaced selects a new unit, the unit is inspected to ensure it meets DSS/HQS standards. The subrecipient must also verify that the unit is not located in an SFHA. The unit must not be in an SFHA and must meet DSS/HQS standards for the tenant or owner occupant to receive benefits.

Step 9: Disburse Assistance Payment

Once an amount is determined, the moving expense payment to the tenant is disbursed. The rental assistance payment is made in at least three parts over a 42-month period.

9.3 Section 104(d)

Section 104(d) of the Housing and Community Development Act (the "Barney Frank Amendment") imposes specific obligations on Subrecipients with respect to the replacement of low- and moderate-income housing units and for the provision of relocation assistance to displaced low- and moderate-income families or persons. See 24 CFR 570.606 and HUD Handbook 1378, Chapter 7.

Requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 regarding one-for-one replacement are waived in connection with funds allocated under the Consolidated Notice (88 FR 32079) for owner-occupied, lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. This waiver exempts disaster-damaged units that are "not suitable for rehabilitation," defined by ODOC as units in which any of these conditions apply:

- The property is declared a total loss, or
- Repairs would exceed 50% of the cost of reconstruction.

Tenant-occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG-DR assisted activity are generally subject to one-for-one replacement requirements at 24 CFR 42.375 and these provisions are not waived.

The Section 104(d) one-for-one replacement requirements apply when any CDBG-funded activity causes the conversion of low- to moderate-income housing (including vacant occupiable units) into the following, (24 CFR 570.606):

- Non-housing, i.e., demolition of housing units to make room available for some other purpose such as a shopping center or community center; or
- A smaller number of units, i.e., conversion of a multi-family unit to fewer units and/or to fewer net bedrooms; or
- Non-low- to moderate-income housing, i.e., upgrading a low-rent apartment building into an upscale condominium.

Any CDBG-funded activity, which causes a reduction in the number of residential units/bedrooms available to and occupied by low- and moderate-income persons in the Subrecipient's jurisdiction must be offset by an equal replacement of the lost units. In addition, displaced low- and moderate-income families are eligible to receive either the normal URA relocation assistance or, potentially, more generous benefits available under HUD regulation. The choice of benefits is the displaced persons.

Replacement housing must meet the following criteria (some exemptions from these criteria are possible):

- It must be located within the Subrecipient's jurisdiction and, preferably, within the same neighborhood as the units replaced;
- The number of replacement bedrooms must at least equal the number removed [Because the obligations under this provision of the law can be extremely technical, the Subrecipient should contact ODOC for detailed guidance];
- The replacement units must be Decent, Safe, and Sanitary [See 24 CFR § 5.703]
- Replacement units must be made available for occupancy within an approximate four-year time period; and
- Replacement units must remain affordable for 10 years from date of initial occupancy.

9.4 Residential Anti-Displacement and Relocation Assistance Plan (RARAP)

UGLG subrecipients must prepare and adopt a Residential Anti-Displacement and Relocation Assistance Plan (RARAP), regardless of whether displacement or relocation is or is not anticipated. Submission of the RARAP is one of the contract conditions that must be cleared prior to release of funds by ODOC. Non-UGLG subrecipients are subject to ODOC's DR RARAP.

The two major components of the RARAP are requirements to

- Replace all occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a result of the CDBG- funded activity [HUD Handbook 1378, 701]; and
- Provide certain relocation assistance to any low- or moderate-income person displaced as a direct result of demolition or conversion to other use as a result of the CDBG- funded activity.

The nature and extent of a given RARAP are dependent on whether the Subrecipient anticipates any kind of displacement. If the nature of the project is such that no demolition or conversion is expected, the RARAP is essentially a certification that required procedures for replacement and relocation assistance will be followed in the unlikely event that demolition or conversion occurs.

If the Subrecipient knows from the beginning that displacement will occur as a result of project activities, the Plan must be very specific in terms of:

- The nature of project activities (a description of the project);
- The location of units to be displaced (by size and number);
- The location of comparable replacement units (by size and number);
- The source(s) of funding and time schedule for providing the replacement units;
- The basis for concluding that replacement units qualify; and
- Other requirements of the regulations.

If developments during project implementation cause unforeseen displacement, the RARAP must be amended. A Guideform RARAP is provided (See [Attachments and Resources](#))

9.5 Use of Real Property

Real property within the subrecipients control which was acquired or improved in whole or in part using more than \$25,000 in CDBG funds must adhere to the following standards.

- Meet one of the CDBG program's National Objectives for at least 5 years after the expiration of the Subrecipient Agreement (or longer time as specified by the grantee in your Agreement) (24 CFR 570.503(b)(7)(i)).
- If a National Objective is not met during this period, the subrecipient must reimburse the ODOC for the CDBG share of the current fair market value (24 CFR 570.503(b)(7)(ii)).

A subrecipient may not change the use or planned use of any such property (including the beneficiaries of such use) without first providing its citizens notice and opportunity to comment (as governed by 24 CFR 570.505) and determining that either:

- The contemplated new use of such property meets a national objective (24 CFR § 570.208 and is not a building for the general conduct of government; or
- The subrecipient determines that the contemplated new use is appropriate (after consultation with its citizens) but will not meet a National Objective. In this latter case, the grantee must reimburse the CDBG program in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion of the acquisition or improvements.

Rental costs of real property are allowable provided the rates are reasonable in comparison to rental costs of comparable property; the market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased (2 CFR 200.465 (a-c)).

[CPD Notice CPD 17-09](#), "Managing of Community Development Block Grant Assisted Real Property" provides additional guidance to grantees and subrecipients in meeting program requirements relating to real property acquisition, management, and disposition. The Notice includes common scenarios for acquisition, demolition, and disposition in the CDBG program, including special sections on change of use.

9.6 Equipment/Personal Property

The purchase of equipment (tangible personal property) with CDBG funds is generally ineligible.⁸⁷ In certain cases, CDBG funds may be used for equipment:

- To purchase, lease, or to pay depreciation in accordance with 2 CFR part 200, subpart E, for such items when necessary for your organization to administer activities assisted with CDBG funds.
- Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

⁸⁷ 24 CFR 570.207(b)(1)

- When such items constitute all or part of a public service pursuant to 24 CFR 570.201(e), such as a Meals on Wheels vehicle; however, leasing vehicles is normally the preferred option (2 CFR 200.465(e)).

Subrecipients must ensure that the equipment continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to protect and maintain it, and that if it is sold, proper disposition of the equipment is conducted as stated in 2 CFR 200.313.

All entities receiving funding for equipment must submit:

- CDBG-DR Equipment Inventory Form and Certification (use for equipment purchases of \$5000 or more)

Subrecipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation when preparing for and acquiring equipment.

Subrecipients must take great care to follow all requirements for purchasing, acquiring, and disposing of equipment. Subrecipients must also avoid the existence or appearance of coercion in any purchasing or selling of equipment. For more detailed information, please see HUD.gov. Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)

For organizations using CDBG funds for equipment, the following principles apply:

9.6.1 Acquisition

Title to equipment acquired with CDBG funds is vested in your organization, subject to the conditions described in the following section (2 CFR 200.313(a)). See the CDBG-DR Procurement Manual for procurement procedures. All purchases must meet the Cost Principles outlined in 2 CFR 200 Subpart E.

9.6.2 Use

Subrecipients must use equipment purchased with CDBG funds for the CDBG program or project as long as needed, whether or not the program or project continues to be supported by Federal funds (2 CFR 200.313(c)).

- During the time that the subrecipient is using equipment for the CDBG-funded program, you must also make the equipment available for use on other Federally funded projects or programs, provided that such use does not interfere with work on the CDBG-funded program (2 CFR 200.313(c)(2)).
- When no longer needed for the CDBG-funded program, other Federally- supported agencies may use the equipment, in the following order of priority: (i) Activities under a Federal award from HUD, then (ii) Activities under Federal awards from other Federal agencies. This includes consolidated equipment for information technology systems (2 CFR 200.313(c)(i)(ii)).
- HUD prohibits your organization from using CDBG-acquired equipment to provide services for a fee that competes unfairly with private companies that provide equivalent services unless specifically authorized by Federal statute (2 CFR 200.313(c)(3)).
- With the approval of ODOC, you may trade in equipment acquired with CDBG funds for updated equipment (2 CFR 200.313(c)(4)).

9.6.3 Management Requirements

For equipment (including replacement equipment) you have acquired in whole or in part with CDBG funds, you must have procedures and control systems in place to (2 CFR 200.313(d)):

- Keep adequate equipment records (2 CFR 200.313(d)(1)), including:
 - Description of the property.
 - Identification (such as an ID or serial number).
 - Funding source.
 - Titleholder.
 - Acquisition date and cost.
 - Federal share of the cost.
 - Location, use, and condition.
 - Unit acquisition or rental cost.
 - When appropriate, disposition data (date of disposition and sale price).
- Conduct a physical inventory of the property no less often than every two years, with a reconciliation of the inventory with the equipment records (2 CFR 200.313(d)(2)).
- Ensure adequate safeguards for preventing loss, damage, or theft of property (2 CFR 200.313(d)(3)).
- Maintain the equipment in good condition (2 CFR 200.313(d)(4)).

9.6.4 Disposition

When original or replacement equipment acquired under a Federal Award is no longer needed for the original project, program, or other activities currently or previously supported by ODOC, except as otherwise provided in Federal statutes or regulations, the Subrecipient must request the disposition of equipment from ODOC. Guidelines for the disposition of equipment will include but is not limited to the following:

- Subrecipients may retain, sell or otherwise dispose of equipment with a current per-unit fair market value of less than \$5,000 with no further responsibility to ODOC.
- Subrecipients may retain or sell equipment with a current per-unit fair market value of \$5,000 or more after notice to ODOC.
 - ODOC retains the right to compensation in an amount equal to multiplying the current market value or proceeds from the sale by the CDBG percentage of participation in the cost of the original purchase (2 CFR 200.313(e)(2)).
 - Contact ODOC staff to discuss proper procedures for the disposition of equipment costing \$5,000 or more.
- ODOC may reserve the right to transfer the title of the equipment to the Federal Government or a third party (2 CFR 200.313(e)(3)).
- Governmental subrecipients may have their own disposition procedures. In those cases, the more restrictive requirements would apply.

In addition, per 24 CFR 570.502(a)(8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income.

Subrecipients will be required to take appropriate disposition actions as instructed by ODOC and as outlined in 2 CFR 200.313.

9.7 Attachments and Resources

#	Resource	Description	Link (if applicable)
9.1	HUD Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)	HUD guide to relocation and property acquisition.	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780
9.2	URA the HUD Way	HUD Exchange URA training module.	https://www.hudexchange.info/trainings/ura-the-hud-way/
9.3	Real Estate Acquisition and Relocation Overview in HUD Programs	HUD Exchange URA training module.	https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura
9.4	Voluntary Acquisition Informational Notice (Agencies with E.D.)	Communicates required information to the property owner during voluntary acquisition.	CPD Handbook 1378, Appendix 32 Attachment
9.5	Notice to Owner for Involuntary Acquisition	Also referred to as the “Notice of Intent.” Communicates required information to the property owner during involuntary acquisition.	CPD Handbook 1378, Appendix 30 Attachment
9.6	General Information Notice	Required notice to tenants during involuntary acquisition. Guideforms are available for multiple circumstances.	Suggested Guideforms can be found as Appendices 2 – 3B in HUD Handbook 1378 <ul style="list-style-type: none">• Residential Tenant Not Displaced• Nonresidential Tenant Not Displaced• Residential Tenant to Be Displaced (includes Section 104(d) language)• Nonresidential Tenant to Be Displaced
9.7	When a Public Agency Acquires Your Property Brochure	Describes property owner rights in plain language. Required material in non-voluntary acquisition	https://www.hud.gov/sites/documents/1041cpd.doc Attachment

9.8	Notice of Eligibility for Relocation Assistance	Required notice for displaced occupants describing relocation benefits and giving the occupant 90 days to vacate the premises. Guideforms are available for multiple circumstances.	Suggested Guideforms can be found as Appendices 5 – 7 in HUD Handbook 1378 <ul style="list-style-type: none"> • 180 Day Homeowner Occupant • Residential Tenant • Nonresidential Tenant
9.9	Residential Anti-Displacement and Relocation Assistance Plan (RARAP) Guideform		https://www.hud.gov/sites/documents/1378X34CPDH.PDF Attachment
9.10	Notice CPD-17-09: Management of Community Development Block Grant Assisted Real Property	The purpose of this Notice is to assist Community Development Block Grant (CDBG) grantees and subrecipients in meeting CDBG program requirements governing the acquisition, management and disposition of real property.	https://www.hudexchange.info/resource/5632/notice-cpd1709-management-of-community-development-block-grant-assisted-real-property/
9.11	CDBG-DR Equipment Inventory Form and Certification	Required form for Equipment purchases	Attachment

10 Duplication of Benefits

10.1 Definition and Legal Framework

The Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act provides the framework for Federal disaster assistance. Although the Stafford Act primarily addresses assistance provided by FEMA, certain sections also apply to ODOC and the funds ODOC has received from HUD for CDBG-DR. Specifically,

Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance for any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source.

This provision requires that ODOC implement adequate policies and procedures for the review and analysis of CDBG-DR assistance and benefits from all sources to ensure no person receives assistance for disaster recovery that exceeds the amount of unmet need, or duplicates assistance received previously. The review for the Duplication of Benefits (DOB) will apply to all CDBG-DR disaster recovery programs and activities. To comply with Section 312 of the Stafford Act, ODOC will adopt policies to require that each disaster activity provides disaster recovery assistance to a person, a business concern, or another entity only to the extent that the person, a business concern, or other entity has a disaster recovery need that has not been fully met.⁸⁸

In addition to this section of the Stafford Act, which is typically referenced within HUD CDBG-DR appropriations statutes, DOB reviews are also required to comply with the cost principles found in 24 CFR 570.489(d), 24 CFR 570.489(d) and 2 CFR Part 200, subpart E. These sections state that costs must be “necessary and reasonable.” It would not be necessary nor reasonable to use CDBG-DR funds to pay for the costs of restoration, repair, or mitigation in communities if an applicant had already been paid for the activity from another source.⁸⁹

Duplication of benefits occurs when Federal financial assistance is provided to a person, household, business, government, or entity through a program to address losses resulting from a Federally declared emergency or disaster, and the person or entity has received financial assistance for the same costs from any other source, and the total amount received exceeds the total need for those costs.

In general, an applicant must have spent, or have available to spend all funds received from government sources, private insurance, Federal or Commonwealth government assistance including other HUD programs, the National Flood Insurance Program (NFIP), and any other sources for the intended purpose(s) and must still have an unmet need before the person, business concern, or other entity qualifies for CDBG-DR funds.

ODOC and its subrecipients are prohibited from making a blanket determination that CDBG-DR assistance under one of its programs or activities does not duplicate another category or source of assistance. ODOC and subrecipients must conduct an individualized review of each applicant

⁸⁸ 88 FR 32050

⁸⁹ 88 FR 32050

to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.⁹⁰

Each program policy will have specific procedures to evidence DOB compliance and DOB compliance will be included in ongoing monitoring of all subrecipients.

10.2 General DOB Procedure

Subrecipients who apply to ODOC to administer housing programs will have a different role in the DOB process than those subrecipients who apply to ODOC for funding infrastructure projects, business entities, and planning grants. For housing programs, at the time of application to ODOC, the subrecipient will not have identified potential beneficiaries. For infrastructure, economic development, and planning grants, the subrecipient will be applying for themselves and will have all the information on sources of potentially duplicative assistance available at the time of application to ODOC.

The general procedures are described below.

For housing:

- The Duplication of Benefit (DOB) analysis begins with the subrecipient creating an application for beneficiaries to fill out.
- The subrecipient will collect information on duplicative sources of assistance and perform the initial DOB calculation for a preliminary award amount. The subrecipient will assist the beneficiary in gathering evidence for their application.
- The subrecipient will submit the calculations and preliminary award amount for each beneficiary, and ODOC will verify the calculations and preliminary award amounts and if required, re-calculate award amounts.
- The subrecipient will share the award amount with the beneficiary. The beneficiary will have a thirty (30) day appeal window to dispute duplicative amounts.

For infrastructure, economic development, and planning grants:

- The subrecipient will utilize ODOC's DOB form and will provide information on potentially duplicative assistance at the time of application to ODOC. Relevant supporting documentation is required.
- ODOC will verify the information and perform a DOB calculation. The award amount will be shared with the subrecipient or business beneficiary.
- The subrecipient or business beneficiary will have a thirty (30) day appeals window to dispute duplicative amounts.

All sources of disaster assistance received by a subrecipient or beneficiary will be verified to the greatest extent possible before any CDBG-DR funds are provided.

Disputes are brought to the entity performing the DOB analysis. For housing programs, the subrecipient is responsible for resolving disputes to the DOB calculation using the best available

⁹⁰ 88 FR 32050

data. For infrastructure, economic development, and planning programs, ODOC will attempt to resolve disputes using the best available data. Any disputes should be resolved within 15 days of the dispute being brought forward. A longer amount of time may be required on a case-by-case basis. If the resolution of a dispute requires more than 15 days, the justification for the delay must be documented and retained in the subrecipient or beneficiary files.

Please note that the mention of programs, grants, or activities in this DOB policy does not represent an eligible activity for CDBG-DR funds. Information on eligible activities and programs can be found in Oklahoma's Applicable CDBG-DR Action Plan.

10.3 Subrecipient Requirements for DOB Policies and Procedures

A subrecipient is required to perform its own DOB analysis, either at the time of application to ODOC (infrastructure, economic development, or planning grants) or at the time a beneficiary applies to the subrecipient (housing grants). The subrecipient must develop and maintain adequate written procedures that address (individually or collectively) each activity or program to prevent a duplication of benefits. A subrecipient's policies and procedures will:

1. Require individual DOB analyses for each applicant using the framework described in the section [Required DOB Analysis Framework](#).
2. Verify all sources of assistance received by the subrecipient or applicant, as applicable, before the award of CDBG-DR funds.
3. Determine a subrecipient's or an applicant's remaining funding need(s) for CDBG-DR assistance before committing funds or awarding assistance.
4. Require beneficiaries 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.
5. Use the best, most recent available data from FEMA, the SBA, insurers, and any other sources of local, State, and Federal sources of funding to prevent DOB before an award of CDBG-DR assistance.
6. Reflect treatment of loans that is consistent with the requirements of declined subsidized loans in [the applicable allocation announcement notice and Consolidated Notice](#).⁹¹
7. Describe the subrecipient's procedure for recapturing duplicative assistance.

Generally, a subrecipient must exclude amounts of assistance in a DOB calculation after the subrecipient verifies the assistance was provided and used for:

1. A different purpose than the CDBG-DR eligible activity (a general, non-specific purpose is considered a different purpose (e.g., "disaster relief/recovery") if the general assistance is not used for the same costs as the CDBG-DR funds). OR
2. The same purpose, but a different allowable use than the CDBG-DR eligible activity.⁹²

The subrecipient's DOB Policies and Procedures must be submitted at the time of application to ODOC. ODOC will review and verify all DOB calculations before any funds are provided for a subrecipient or its beneficiary.

⁹¹ 88 FR 32077

⁹² 88 FR 32052

10.4 DOB Review and Analysis Framework

The duplication of benefits review will be completed by the subrecipient and verified by ODOC. To prevent DOB, subrecipients will be required to implement adequate and necessary program policies and procedures that include sufficient controls. ODOC's minimum expectation is that subrecipients will follow the DOB policies and procedures outlined in this section and the applicable program guidelines. Subrecipients will be required to submit a subrecipient DOB policy to ODOC with their evidentiary materials. A model DOB policy can be found as an attachment (attachment under development)

The following framework for DOB analysis was laid out in the 2022 CDBG-DR Allocation Announcement Notice.⁹³ The subrecipient and ODOC staff can tailor the analysis to programs as needed, but all must use this framework in the DOB analysis⁹⁴:

1. Assess the applicant's disaster recovery need.
2. Identify the total assistance available to the applicant.
3. Exclude any non-duplicative amounts from the DOB analysis.
4. Identify the DOB amount and calculate a total award. (A subrecipient can subtract the DOB amount from the applicant's total need to calculate the maximum CDBG-DR award. The maximum CDBG-DR award is the amount of the "unmet" disaster recovery need. The subrecipient can apply program caps, as necessary, to finalize the CDBG-DR award.)
5. Reassess unmet need when necessary.⁹⁵

Each of these steps is described in more detail below.

10.4.1 Assess Applicant Need

The total need of an applicant is calculated based on need estimates at a set point in time. Thus, the total need is most often the current need. Please note, in some programs, ODOC's CDBG-DR Action Plan may allow for the reimbursement of CDBG-DR-eligible activities undertaken by the applicant before applying. These pre-award or pre-application costs must be included in the total need.

For rehabilitation, reconstruction, or new construction activities, the need can be reasonably documented using construction cost estimates.

For recovery programs of the subrecipient that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity.

The subrecipient's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it calculates need and makes the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not

⁹³ 88 FR 32050-32055

⁹⁴ 88 FR 32050

⁹⁵ 88 FR 32050

“financial assistance”, that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG-DR unmet needs because the donated goods or services reduce the activity costs.

Total need is initially calculated without regard to the program-specific caps on the amount of assistance.⁹⁶

10.4.2 Identify Total Assistance Available

Total assistance includes all reasonably identifiable financial assistance available to an applicant.

10.4.2.1 Types of Resources Included in Total Assistance

The total assistance for an applicant includes resources such as cash awards, funds gained from insurance, grants, and loans received by or available to each CDBG-DR applicant, including awards from local, State, or Federal programs, and from private or nonprofit charity organizations. At a minimum, the subrecipient’s efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., state disaster assistance programs) generally available to applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance funds or disaster assistance deposited into the applicant’s account); retirement accounts; credit cards or lines of credit; in-kind donations; and private loans.

For this notice, a private loan is a loan that is not provided by or guaranteed by a governmental entity, 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. That is, 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.

By contrast, subsidized loans for the same purpose are to be included in the DOB calculation unless an exception applies (see Subsidized Loans for more information).⁹⁷

10.4.2.2 Availability of Resources Included in Total Assistance

Total assistance includes available assistance. Assistance is available if an applicant:

1. Would have received it by acting in a reasonable manner, or in other words, 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
2. Has received the assistance and has legal authority over it.

Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. For example, if a local government seeks CDBG-DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones are met.

⁹⁶ 88 FR 32051

⁹⁷ 88 FR 32051

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. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on the estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the final CDBG-DR award calculation. For example, insurance or rehabilitation assistance received by a previous owner of a disaster-damaged housing unit is not available to a current owner who acquired the unit by sale or transfer (including a current owner who inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/ mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires the use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are treated as a DOB and reduce the amount of CDBG-DR funds the grantee may provide for rehabilitation.⁹⁸

Funds that are not available to an applicant must be excluded from the final CDBG-DR award calculation.

10.4.2.3 Exclude Non-Duplicative Assistance

Once the total need and the total assistance have been determined, the sources to be excluded as non-duplicative for the DOB calculation should be identified. Subrecipients must exclude amounts that are:

1. Provided for a different purpose; or,
2. Provided for the same purpose, but a different, allowable use (cost).

Each of these categories is explained in greater detail in the following sections.⁹⁹

⁹⁸ 88 FR 32051-32052

⁹⁹ 88 FR 32052

10.4.2.4 Funds for a Different Purpose

Any assistance provided for a different purpose than the CDBG-DR eligible activity, or a general, nonspecific purpose (e.g., “disaster relief/ recovery”) and not used for the same purpose must be excluded from total assistance when calculating the DOB amount.

For example, insurance proceeds for damage or destruction of a building are for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance provided for a different purpose. For example, insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the subrecipient has determined will not assist with CDBG-DR funds. However, a subrecipient may treat all insurance proceeds as duplicative if it is impractical to identify the portion of insurance proceeds that are non-duplicative.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive to induce the homeowner to sell the home to the subrecipient (e.g., in conjunction with a buyout) is for a different purpose than funds provided for temporary housing assistance for rental housing during a time when a household is unable to reside in its home. In this case, temporary housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.¹⁰⁰

10.4.2.5 Funds for Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose (the CDBG-DR eligible activity) must be excluded when calculating the amount of the DOB if the applicant can document that the specific use of the assistance was an allowable use and was different than the use (cost) of the CDBG-DR assistance.

For example, the purpose of the CDBG-DR program is housing rehabilitation. Another organization assisted in the form of a roof replacement and the use of the CDBG-DR rehabilitation assistance is for the interior of the house. This would not be considered a duplication of benefits.

There should be adequate documentation of the type of assistance received to ensure that CDBG-DR funds are not duplicating other forms of assistance. Further, whether the use of the non-CDBG-DR assistance is allowable depends on the rules imposed by the source that assisted.

As an example, assume that a subrecipient is administering a homeowner rehabilitation program and an applicant to the program can document that the household previously received and used FEMA funds for interim housing costs (i.e., rent). If FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If

¹⁰⁰ 88 FR 32052

interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If the grantee thinks the actual use of the FEMA assistance may be allowable, the CDBG-DR grantee should contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation, including assistance provided for temporary or minor rehabilitation, is for the same purpose as CDBG-DR rehabilitation assistance. However, the subrecipient can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR). For example, if the other assistance is used for minor or temporary rehabilitation which enables the applicant's family to live in their home instead of moving to temporary housing until rehabilitation can be completed, the subrecipient can undertake the remaining work necessary to complete rehabilitation. The subrecipient's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

Subrecipients are encouraged to contact ODOC for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.¹⁰¹

10.4.3 Identify the DOB Amount and Calculate the Total CDBG-DR Award

The total DOB is calculated by subtracting all non-duplicative amounts from the total assistance.

To calculate the maximum possible amount of CDBG-DR funding assistance an applicant could receive, the subrecipient must:

1. Identify the total need.
2. Identify total assistance.
3. Subtract exclusions from total assistance to determine the amount of the DOB; and
4. Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

Three considerations may change the maximum amount of the CDBG-DR award.

First, ODOC or a subrecipient may impose a program cap that limits the amount of assistance an applicant is eligible to receive, which may reduce the potential CDBG-DR assistance available to the applicant.

Second, ODOC or the subrecipient may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance, as in the requirement to use FEMA or USACE assistance before CDBG-DR assistance discussed in sections II. and IV.A.1. (f)). Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if:

¹⁰¹ 88 FR 32052

1. The applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and
2. The applicant agrees to repay ODOC or the subrecipient for any duplicative assistance once it is received.
 - a. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (e.g., due to insurance litigation).
 - b. HUD requires ODOC and its subrecipients to enter into agreements with applicants before the applicant receives CDBG-DR assistance.

Third, the applicant's CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need.¹⁰²

10.4.4 Reassess Unmet Needs 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;
- theft of materials.

The unmet need may also change if other resources become available to pay for the costs of the activity (such as FEMA or USACE) and reduce the need for CDBG-DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the applicant, the subrecipient may provide additional CDBG-DR funds to meet the increased unmet need.

Subrecipients must be able to identify and document additional unmet needs. For example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct the damaged property.¹⁰³

10.5 Identifying Assistance from Other Sources

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. §§ 5121 - 5207), applicants must disclose all financial assistance awarded and/or received in response to their storm-related damage, including the following sources:

- Federal Emergency Management Agency (FEMA)

¹⁰² 88 FR 32052

¹⁰³ 88 FR 32053

- National Flood Insurance Program (NFIP) and Increased Cost of Compliance (ICC)
- Small Business Administration (SBA)
- Private Insurance
- Private or nonprofit organizations or donations (including religious institutions)
- Disaster Recovery Act (DRA) funding
- Other state, local, or federal programs

Before the award of assistance, ODOC or its subrecipient will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of funding to prevent the duplication of benefits. ODOC will engage in a data-sharing agreement with FEMA, SBA, and as applicable, other Federal agencies to ensure the best available data.

More specifically, the following are sources of funding assistance provided for structural damage and loss that are considered a duplication of benefits and, under federal law, must be deducted from any grant assistance amount.

10.5.1 FEMA Individual Assistance (IA)

The subrecipient will work with the program applicant to confirm receipt of FEMA IA benefits, using receipts, letters, and other documentation the applicant may have. That information will be forwarded to ODOC to calculate the maximum CDBG-DR award. ODOC will verify the accuracy of the duplicate award amounts using data feeds provided by FEMA and other sources.

When an applicant appeals and claims that their actual FEMA payout is lower than the amount reflected in the data provided by ODOC, the beneficiary will work with the subrecipient to provide valid documentation demonstrating that the FEMA IA amount stated in the FEMA data is incorrect. In such cases, ODOC will be required to verify the information provided by the applicant with FEMA and may adjust the award amount if FEMA confirms that the information in its data set is incorrect.

FEMA IA repair, replacement, and permanent housing construction payments related to structural loss to the property are considered potentially duplicative benefits. Payments for other losses or expenses are not considered duplicative. The following special considerations shall apply to show funds are not duplicative:

- Proof that construction payments were utilized for valid temporary housing expenses more than any FEMA temporary housing benefits.
- Proof that any amounts received from insurance companies for Additional Living Expenses (ALE) are deducted from the applicant's verified claim before calculating the offset.
- In cases where FEMA determines that an applicant was ineligible to receive FEMA IA assistance or determines that a duplication of benefits occurred after a FEMA IA payment has been made to an applicant, FEMA may attempt to recapture funds from the applicant. If there is proof in the form of a letter from FEMA or other documentation (including a canceled check showing a repayment to FEMA) that funds were repaid to FEMA, the repaid amount is no longer duplicative.

- The data provided by FEMA to ODOC does not distinguish between payments made for structural repair and payments made for other potentially duplicative or non-duplicative purposes. Accordingly, the entire amount that may be duplicative will be included in each applicant's calculation out of an abundance of caution.
- Any fees associated with legal costs, adjuster's fees, and settlement costs are reimbursable expenses if supporting documentation is provided and clearly labeled as such.

10.5.2 FEMA's Public Assistance (PA)

FEMA's Public Assistance (PA) program provides grants to the State, local governments, federally recognized tribal governments, and certain non-profit entities to assist them with the response to and recovery from disasters. Specifically, the program provides disaster assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure.

10.5.3 FEMA's Hazard Mitigation Grant Program (HMGP)

FEMA's Hazard Mitigation Grant Program (HMGP) provides grants to state and local governments and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster.

10.5.4 FEMA National Flood Insurance Program (NFIP)

NFIP payments for structural loss (building coverage) to the property listed on the application are considered potentially duplicative benefits. Payments for other losses or expenses, including contents coverage, are not considered duplicative.

10.5.5 FEMA Increased Cost of Compliance (ICC) Benefits

Increased Cost of Compliance ("ICC") payments are intended to be used for activities such as demolition, floodproofing, and elevation. ICC payments received for the property listed on the application are considered potentially duplicative benefits.

10.5.6 U.S. Army Corps of Engineers (USACE)

USACE assists FEMA by coordinating federal public works and engineering-related support, as well as providing technical assistance, engineering expertise, and construction management to prevent, prepare for, respond to, and/or recover from domestic incidents. USACE often has lump-sum requirements (\$250,000) for the nonfederal match and a subrecipient must demonstrate a need for additional funds and submit that information to ODOC. CDBG-DR cannot pay for projects (or portions of projects) for which USACE has appropriated funds and/or is required to pay.

10.5.7 Commercial Insurance

If an applicant has insurance but at the time of application to the CDBG-DR program has not filed a claim with their insurance company, ODOC or the subrecipient should advise the applicant to file a claim immediately. Subrecipients must not use CDBG-DR funds to duplicate other sources of assistance, including insurance, that are available for the same purpose. A benefit is available if a person or entity receives it by acting in a "commercially reasonable

manner" or has received it and has legal control over it. Commercially reasonable efforts refer to efforts that use a standard of reasonableness defined by what a similar person would do as judged by the standards of the applicable community. Commercially reasonable efforts should be consistent with good-faith business judgments. If the subrecipient finds the applicant did not act in a commercially reasonable manner, the subrecipient must count the full amount of insurance coverage as duplicative when determining whether the applicant may receive CDBG-DR assistance.

10.5.8 Insurance and Personal Property Replacement

Insurance proceeds issued for personal property replacement are generally not included in a DOB analysis for home repair or voluntary acquisition programs. However, subrecipients must still ensure that all CDBG-DR awards meet the identified need in a necessary and reasonable manner. For example, if an applicant has used personal property funds to repair his/her roof, and then applies for a CDBG-DR rehabilitation grant, the CDBG-DR award should be based on the need at the time of the application.

10.5.9 Forced Mortgage Payoffs and DOB

As a condition of granting a mortgage, banks, and lenders usually require that they be named as an "additional insured" on the homeowner's insurance policy. In some cases, since the lender is a party to any insurance payments related to the structure, the lender may require a borrower to use some or all the insurance proceeds to reduce or pay off the mortgage balance before releasing funds for rebuilding. Insurance payouts used for forced mortgage payoffs are not a DOB in rehabilitation or reconstruction scenarios because they are not available to the homeowner.

The applicant will need to provide supporting documentation demonstrating that the mortgage payment was involuntary, and ODOC will attempt to verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a duplication of benefits that will be counted against an applicant's award.

10.5.10 Private Flood Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a policy of private flood insurance. Applicants must declare all amounts paid under the policy that were received for structural loss and additional living expenses related to the severe storms, tornados, and flooding from disasters (DR-4657 or DR-4670) that occurred in May 2022. The subrecipient will verify that the declared amounts are correct by contacting individual private flood insurance companies.

If an applicant can provide documentation demonstrating that the private flood insurance proceeds amount provided by the insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), ODOC will use the applicant's documentation to properly classify the private insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional

living expense payments are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts for the subrecipient to consider them non-duplicative.

10.5.11 Windstorm Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a windstorm insurance policy issued by an Oklahoma-licensed insurance company. Applicants must declare all amounts paid under the policy that were received for structural loss and additional living expenses related to the severe storms, tornados, and flooding from disasters (DR-4657 or DR-4670) that occurred in May 2022. The subrecipient will verify that the declared amounts are correct by contacting individual private insurance companies or an alternative data source. If the subrecipient is unable to verify the private insurance proceeds paid for structural loss within thirty (30) days of making the request, the subrecipient uses the payment amount provided by the applicant at the time of application for the DOB calculation.

If an applicant can provide documentation demonstrating that the insurance proceeds amount provided by an Oklahoma-licensed insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), the subrecipient will use the applicant's documentation to properly classify the insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional living expense payments are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

When an applicant claims an allowable activity offset for temporary housing expenses, the amount received from the private insurance company for temporary housing or Additional Living Expenses ("ALE") is deducted from the applicant's verified claim before calculating the offset.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts for the Program to consider them non-duplicative.

10.5.12 Homeowners/Hazard Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a policy of homeowners/hazard insurance. Applicants must declare all amounts paid under the policy that were received for structural loss and additional living expenses related to the severe storms, tornados, and flooding from disasters (DR-4657 or DR-4670) that occurred in May 2022. The subrecipient will verify that the declared amounts are correct by contacting private insurance companies.

If an applicant can provide documentation demonstrating that the insurance proceeds amount provided by an Oklahoma-licensed insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), the subrecipient will use the applicant's documentation to properly classify the insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional living expense payments are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts for the Program to consider them non-duplicative.

In the case that an applicant has an open insurance claim and still has the potential to get additional proceeds upon completion of the reconstruction, rehabilitation, elevation, or construction work, the applicant must include those funds in the DOB calculation. The subrecipient or ODOC will include all funds that are available to the applicant in the DOB calculation.

Once the project is complete on the property, the applicant can claim the funds, but shall be subject to a Subrogation Agreement (see details below) and may need to return the funds to the subrecipient or ODOC if a DOB is determined.

10.5.13 Philanthropic Cash Assistance

Funds received by the applicant from philanthropic organizations are based upon the payment amount provided by the applicant on the application.

Payments received from non-profits, religious institutions, charitable organizations, or other philanthropic organizations that are specifically intended for repair, reconstruction, or mitigation are considered potentially duplicative. Payments for other losses or expenses are not considered when calculating the applicant's eligible reimbursement amount. Payments for temporary housing are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

The following special considerations shall apply:

- When an applicant claims an allowable activity offset for temporary housing expenses, the amount received from philanthropic organizations for temporary housing is deducted from the applicant's verified claim before calculating the offset.
- Demolition work, repairs, and/or other work performed on behalf of an applicant by a philanthropic or charitable organization are excluded from the site assessment's inspection report [Estimated Cost of Repair (ECR)] of previous repairs and applicants will not receive credit for such work [Work in Place (WIP)] when calculating the applicant's eligible reimbursement amount.

These payments will be verified using documentation from the applicant and organization as available.

10.5.14 In-kind Donations

In-kind donations of materials or services that are known to the subrecipient at the time it calculates need and makes the award must be included in the DOB Analysis.

In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not “financial assistance”, that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG-DR unmet needs because the donated goods or services reduce the activity costs.

These donations will be verified using available documentation from the applicant and organization as available.

10.5.15 Subsidized Loans

According to [88 FR 32046](#), subsidized loans (including forgivable loans) are loans other than private loans. Subsidized loans are assistance that must be included in the DOB analysis.

ODOC and subrecipients will obtain data to verify all approved amounts for SBA or FEMA loans and check for any outstanding loans that may still be processed. ODOC will collect specific information from the loan provider that breaks out the approved loan amounts into the different categories of assistance (e.g., real property, personal property, vehicles, etc.).

The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions applies. A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Both SBA and FEMA provide subsidized loans for disaster recovery. Note that the statutory order of assistance provision pertaining to assistance from FEMA and USACE applies to grants and subsidized loans made by these agencies. Subsidized loans may also be available from other sources.

Federal regulations deem subsidized loans for repair to be a duplication of benefit for federally funded repair programs unless one of the following exceptions as described in [88 FR 32046](#) and below applies.¹⁰⁴

10.5.15.1 Exceptions for Subsidized Loans

Duplication of benefit analysis for subsidized loans shall follow the guidance for exceptions when subsidized loans are not a duplication, as found in [88 FR 32046 and described below](#).

When an exception described in the following sections applies, documentation required by those paragraphs must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee’s calculation of the total assistance amount unless another exception applies. For canceled SBA

¹⁰⁴ 88 FR 32053

loans, the grantee must notify the SBA that the applicant has agreed to not take any actions to reinstate the canceled loan or draw any additional undisbursed loan amounts.¹⁰⁵

- Short-term subsidized loans for costs later reimbursed with CDBG-DR. CDBG-DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster.
 - If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication¹⁰⁶.
- Declined 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. To exclude declined loan amounts from the DOB calculation, the subrecipient must document that all or a portion of the subsidized loan is declined.
 - ODOC and its subrecipients 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).
 - Subrecipients are only required to document declined loans if information available to the grantee (e.g., the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the subrecipient is unable to determine from that available information that the applicant declined the loan.
 - If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the subrecipient must 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.¹⁰⁷
- Cancelled 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. To exclude canceled loan amounts from the DOB calculation, the subrecipient must document that all or a portion of the subsidized loan is canceled.
 - 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 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 cancelled and undisbursed amounts are no longer available to the applicant; or

¹⁰⁵ 88 FR 32077

¹⁰⁶ 88 FR 32077

¹⁰⁷ 88 FR 32077

- a legally binding agreement between ODOC (or local government, Indian tribe, or subrecipient administering the CDBG-DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.¹⁰⁸

Note that CDBG-DR funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers. This prohibition (or similar prohibitions) in CDBG-DR appropriations acts applies to loans even if the loans would not be treated as a DOB under the above exceptions

10.5.16 Private Loans

Private loans are not assistance and therefore are not a duplication of benefits.

10.6 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 USACE.

This means that ODOC and its subrecipients must verify whether FEMA or USACE funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or USACE (i.e., the grantee will receive FEMA or USACE assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity.

If FEMA or USACE 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 will be reimbursed by FEMA or USACE, ODOC cannot provide the CDBG-DR assistance for those costs.

In the event that FEMA or USACE assistance is awarded after CDBG-DR to pay the same costs, it is ODOC's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or USACE. ODOC will recapture duplicative assistance from subrecipients as needed.

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, ODOC is required to collect duplicative assistance it provides. If ODOC does not collect duplicative CDBG-DR assistance that it provides, it may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions. ODOC is also requiring its subrecipients to adhere to these recapture requirements.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG-DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG-DR assistance duplicates other sources received before CDBG-DR assistance for the same purpose and portion of need. Any amount

¹⁰⁸ 88 FR 32077

received from other sources before the CDBG-DR assistance that is determined to be duplicative must be collected by the ODOC or its subrecipients.

The mandatory agreement to repay (discussed in Section 1.9.1 Agreement To Repay) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG-DR, subrecipients must collect the DOB or contact ODOC if it has questions about whether another Federal agency is responsible for collecting the duplication.¹⁰⁹

10.7 Programmatic Considerations

The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR-funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities.¹¹⁰

10.7.1 Economic Development Programs (Assistance to Businesses)

In the case of economic revitalization programs that provide working capital assistance to businesses, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due.

For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance "working capital" assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG-DR funds is a DOB.

Therefore, the basis for calculating CDBG-DR economic development assistance and the purposes for which the assistance is used should be identified so that DOB can be prevented. Assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.¹¹¹

10.7.2 Infrastructure Programs

CDBG-DR funds can also be used to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR funds used directly by state and local governments for public facilities and improvements, or other purposes are also subject to the DOB requirements outlined in the Stafford Act.

For example, if a city needed to rehabilitate its wastewater treatment plant. Federal assistance available to rehabilitate the facility must be included in the total assistance available. Local assistance available for this activity must be included as well. If local funds were previously reserved for this project but are no longer available, this needs to be documented that the city does not have any reserved funds set aside in any capital improvement plan (or similar document showing planned use of funds).¹¹²

¹⁰⁹ 88 FR 32053 - 32054

¹¹⁰ 88 FR 32053

¹¹¹ 88 FR 32053

¹¹² 88 FR 32053

10.7.3 Provision of Rental Assistance (Payments Made Under the URA)

ODOC may provide a displaced person with rental assistance payments (defined under 24 CFR 570.606) made under the Uniform Relocation Assistance and Real Property Acquisition Act (URA) or provide temporary relocation assistance (as described in 49 CFR part 24, Appendix A, 49 CFR 24.2(a)(9)(ii)(D)) to persons temporary relocated as a result of a project.

Relocation payments made under the URA, as well as under CDBG's optional relocation assistance provisions of 24 CFR 570.606(d), are subject to DOB requirements in the Allocation Announcement Notice and the Consolidated Notice¹¹³, as well as DOB requirements under the URA that prohibit payments for the same "purpose and effect" as another payment to a displaced person (49 CFR 24.3). To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis.

For example, a CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the URA or as part of a FEMA Individual Assistance Award). Please note that while you cannot duplicate assistance for the same purpose, advisory services and the provision of notices required under the URA are not subject to this analysis because they are not financial assistance to the person, and therefore must be provided in accordance with the URA.¹¹⁴

10.8 Required Documentation

The following documentation is required to be submitted by subrecipients, as applicable. All documents except those required for individual beneficiaries must be completed and submitted to ODOC at the time of funding application. The person or entity receiving assistance must show that they are not receiving more assistance than is necessary and reasonable and must provide supporting documentation for all sources of assistance.

10.8.1 Subrogation Agreement

The subrogation agreement is a requirement for CDBG-DR funding to ensure that any duplicative funds will be paid back to ODOC. Should any analysis arise that shows subrecipients or beneficiaries received a greater amount of funds than were necessary, the subrecipient is required through the subrogation agreement to pay back any funds deemed duplicative. The subrogation agreement is between ODOC and the subrecipient.

10.8.2 Duplication of Benefits (DOB) Policies and Procedures

Subrecipient DOB Policies and Procedures are required for CDBG-DR funding. Proof of such policies and procedures must be shown to receive Federal funds. At a minimum, these policies must include everything described in *Section 1.2 Subrecipient Requirements for DOB Policies and Procedures*, and the framework for DOB Analysis described in *Section 1.3 Required DOB Analysis Framework*.

¹¹³ 88 FR 32046

¹¹⁴ 88 FR 32053

10.8.3 A Duplication of Benefits (DOB) Worksheet

The DOB Worksheet is a required form for CDBG-DR funding. The DOB Worksheet must be filled out as completely as possible to the knowledge of the subrecipient. The DOB Worksheet should include all other funds provided to the subrecipient for each specific activity to be paid for by CDBG-DR funding.

In the case of infrastructure, economic development, and planning activities, the DOB worksheet must be completed and submitted to ODOC at the time of application for CDBG-DR funding. ODOC will verify the amount of assistance and will determine the total award amount.

In the case of a program with individual beneficiaries, such as housing activities, the DOB worksheet must be completed and submitted to ODOC before any assistance is provided to that individual.

Subrecipients and ODOC will use the DOB framework in this policy and in [88 FR 32046](#) to complete the worksheet and DOB analysis.

10.8.4 Required Documentation for Programs with Individual Beneficiaries

Subrecipients shall submit the following attachments and supporting documentation through the state's grant management system if they have individual beneficiaries. Subrecipients shall submit additional documentation to the state's grant management system if it is requested by ODOC staff to perform an accurate DOB analysis. Subrecipients shall have clear labels on all subrecipient information so that ODOC and HUD can easily retrieve and analyze files uploaded. Subrecipients shall recapture funds used in any activity shown to be duplicative and return those funds to ODOC.

If subrecipients have individual beneficiaries, they will be required to submit the following documentation to the state's grant management system for each beneficiary receiving benefits from a CDBG-DR funded program such as a buyout, reconstruction, rehabilitation, or reimbursement of funds with CDBG-DR funds:

10.8.4.1 DOB Worksheet

In the case of a program with individual beneficiaries, such as housing activities, the DOB worksheet must be completed and submitted to ODOC, along with supporting documentation, before any assistance is provided to that individual.

Subrecipients and ODOC will use the DOB framework in this policy and in [88 FR 32046](#) to complete the worksheet and DOB analysis.

Supporting documentation for assistance can include canceled checks, receipts, bank statements, and letters. Beneficiaries are encouraged to submit all documentation that shows where assistance was obtained and how the funds were spent.

10.8.4.2 Applicant Subrogation Agreement

Signed subrogation agreement between the subrecipient and the beneficiary (one per household) agreeing to repay any duplicative assistance. The form is attached to this manual.

10.8.4.3 Applicant DOB Assistance Affidavit

A signed Householder DOB Assistance Affidavit for the beneficiary (one per household). The form is attached to this manual.

10.8.4.4 Duplication of Benefits Checklist (not required)

The DOB Checklist is used when confidential information cannot be shared about the beneficiary such as patient information due to HIPAA laws. This form would be ideal for those communities involved in medical or mental health assistance activities and need to report client data to prove eligibility. ODOC/CD will not ask for a client's personal information to ensure HIPAA guidelines are maintained but will request to verify the following checklist is signed and accurate. This document will serve as verification that the CDBG DR grant subrecipient is following ODOC/CD policies and procedures concerning DOB.

This checklist cannot be used in place of a full DOB analysis. It should only be used to report a DOB calculation to ODOC if the information being disclosed by a client cannot be shared with ODOC. In all other circumstances, the entire DOB analysis and documentation must be shared with ODOC.

10.9 Multiple Disasters

When multiple disasters occur in the same location, and the applicant has not recovered from the first disaster at the time of a second disaster, the assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster. ODOC recognizes that in this scenario, DOB calculations can be complicated. Damage from a second disaster, for example, may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how applicants expended assistance provided after the first disaster.

Therefore, ODOC is adopting the following policy that is applicable to circumstances when two disasters occur in the same area, and the applicant has not fully recovered from the first disaster before the second disaster occurs: Applicants are not required to maintain documentation related to the use of public disaster assistance (Federal, state, and local) beyond the period required by the agency that provided the assistance.

If documentation cannot be provided, subrecipients may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of the criminal and civil penalties that apply in cases of false claims and fraud, and the subrecipient determines that the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters (e.g., flood inundation levels).

For example, if a second disaster strikes three years after an agency provided assistance in response to the first disaster, and that agency required applicants to maintain documentation for two years, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance.¹¹⁵

¹¹⁵ 88 FR 32054

10.10 Subrogation/Recapture

10.10.1 Agreement To Repay

The Stafford Act requires subrecipients to ensure that beneficiaries agree to repay all duplicative assistance to the agency providing that Federal assistance. To address any potential DOB, each applicant must also enter into an agreement with the CDBG-DR subrecipient or ODOC to repay any assistance later received for the same purpose for which the CDBG-DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before a subrecipient or ODOC disburses any CDBG-DR assistance to the applicant.¹¹⁶

ODOC must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (i.e., a period commensurate with risk). ODOC will require monitoring, which includes DOB monitoring when subrecipients have expended 50% of funds and at closeout. More monitoring information can be found in the Monitoring and Closeout Manual.

If subrecipients have programs with individual beneficiaries (e.g., housing programs), the subrecipient must establish in its DOB Policies and Procedures a method for ensuring beneficiary compliance with the subrogation agreement for a reasonable period of time after project completion, which is commensurate with risk.

Additionally, the Subrogation Agreement must also include the following language:

"Warning: Any person who knowingly makes a false claim or Statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729."¹¹⁷

10.10.2 Recapturing a Duplicative Benefit

If a potential DOB is discovered after CDBG-DR assistance has been provided, a subrecipient or ODOC must reassess the applicant's need at that time. If an additional need is not demonstrated, CDBG-DR funds shall be returned or re-captured to the extent they are more than the remaining need and duplicate other assistance received by the applicant for the same purpose. This determination, however, may depend on what sources of assistance were last received by the applicant for the same purpose.

If a subrecipient fails to recapture funds from an applicant, ODOC may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and Federal Register notices, as applicable. Subrecipients must note that the Stafford Act states that.

"A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefit(s) available to the person for the same purpose from another source."

If a subrecipient is unable to recapture DOB, that individual applicant will still be liable to the State of Oklahoma and the United States government.¹¹⁸ A subrecipient must collect the DOB or contact ODOC if it has questions about whether another Federal agency is responsible for

¹¹⁶ 88 FR 32054

¹¹⁷ 88 FR 32054

¹¹⁸ 88 FR 32054

collecting the duplication.¹¹⁹ Subrecipients must outline in their DOB Policies and Procedures what steps will be taken to recapture a duplicative benefit.

ODOC is available to guide the subrecipient to establish or revise the subrecipient's DOB policies and procedures.

10.10.3 ODOC's Recapture Procedures

ODOC has established \$750 as the threshold at which it will pursue repayment of duplicative assistance from individual beneficiaries through legal action. Amounts lower than this will be pursued using the method described below. This threshold can be changed by ODOC at any time. This threshold does not absolve ODOC of its responsibilities for pursuing repayment of duplicative assistance as described in the Stafford Act. Subrecipients must outline in their DOB Policies and Procedures what steps will be taken to recapture a duplicative benefit.

Where duplicative amounts are below \$750, after ODOC's subrecipient has tried and failed to recapture a duplicative benefit following their policies and procedures, the State will pursue repayment through contact with the individual beneficiary. The ODOC program manager will be responsible for mailing a letter to the individual. The beneficiary will be informed via certified mail that a duplicative payment has been discovered and that they are liable to the State of Oklahoma and the United States government for repayment. ODOC will set a due date for repayment no sooner than 3 months from the date of the letter. Beneficiaries may contact ODOC or its subrecipient to set up a repayment plan if necessary.

Where duplicative amounts are higher than \$750, after the ODOC's subrecipient has tried and failed to recapture a duplicative benefit following their policies and procedures, the State will pursue repayment through contact with the individual beneficiary. The ODOC program manager will be responsible for mailing a letter to the individual. The beneficiary will be informed via certified mail that a duplicative payment has been discovered and that they are liable to the State of Oklahoma and the United States government for repayment. ODOC will set a due date for repayment no sooner than 3 months from the date of the letter. Beneficiaries may contact ODOC or its subrecipient to set up a repayment plan if necessary. If this method fails, the ODOC Program Manager will initiate the steps required for legal action, by contacting ODOC's legal counsel.

For CDBG-DR grants, ODOC is required to collect duplicative assistance it provides. If ODOC is unable to collect duplicative CDBG-DR assistance that it provides, it may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

Subrecipients must repay all duplicative benefits issued to them for direct activities immediately upon discovering the duplication. The ODOC Program Manager will inform the subrecipient of the duplication and will provide the organization information on the steps required for repayment.

If recapture of assistance is required, a subrecipient will be required to create a request in the state's grant management system to show a negative dollar amount for what is being returned. The subrecipient will then mail a check payable to the Oklahoma Department of Commerce, Attention: Financial Services (FS). After the check has been received by Financial Services, Financial Services will send the ODOC Program Manager or Representative a Deposit

¹¹⁹ 88 FR 32053 - 32054

Authorization Form that will need to be completed and hand delivered back to Financial Services.

The subrecipient will be required to document the expenditure in the state's grant management system using a negative dollar amount after the check has been processed.

10.11 Data Sharing Requirements

10.11.1 Data Sharing Agreement

To conduct a DOB analysis and verify whether a DOB exists, data on FEMA benefits is required. ODOC has entered into a Data Sharing Agreement (DSA) with HUD for the CDBG-DR programs. The DSA enables HUD to share with ODOC the necessary data from FEMA, including personally identifiable information (PII) that is protected by the Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a. The FEMA data covered under the DSA can be used for assessing unmet needs resulting from a Presidentially declared major disaster and to plan for the use of CDBG-DR grants, including funds for electric power systems, mitigation, or resilience purposes. Additionally, ODOC may use the data to assist with outreach and marketing activities to potential applicants who may be eligible for CDBG-DR assistance. The DSA prohibits any other uses of the data.

Only ODOC will have authorized access to the FEMA data and will not provide access to its subrecipients. ODOC will use the data feed as a verification tool when reviewing submissions by applicants. The DSA prohibits data use and access by any individual that is not identified by ODOC as an Authorized User. Authorized Users can be employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) who have entered into an agreement with ODOC to comply with all requirements on the use of data contained in the Data Sharing Agreement and who have been trained and certified by ODOC that they will comply with all requirements on the use of data contained in the DSA and acknowledged that under the Privacy Act, unlawful disclosure of PII data is a misdemeanor and subject to a fine of up to \$5,000.

If ODOC decides in the future to allow authorized subrecipients or contractors to have access to the FEMA data, ODOC will require an Authorized User to be identified and who has authorized access to HUD data. The entity must maintain a list of Authorized Users in its files identifying who has been authorized access to HUD data, and the periodic review of continued authorization. The subrecipient will take the required reasonable steps to prevent data access by any individual that is not identified by the subrecipient as an Authorized User. Entities must revoke access to the HUD data for any individual no longer an Authorized User.

ODOC reserves the right to make unannounced and unscheduled inspections of any location in which the subrecipient or its Authorized Users use HUD data, including any associated computer center, to evaluate compliance with the terms of the CDBG-DR Grant Agreement and the requirements of the Privacy Act of 1974.

The authorized entity shall destroy the HUD data provided by ODOC at the time of the CDBG-DR grant closeout for which the HUD data was provided. The authorized entity shall notify ODOC in writing when the HUD data provided for the program or activity is destroyed. Where recordkeeping periods extend beyond CDBG-DR grant closeout, the authorized entity shall retain records for the period, if any required by ODOC.

10.11.2 Computer Matching Agreement

The Computer Matching Agreement (CMA) is an agreement between HUD and ODOC to support DOB reviews conducted by the subrecipients for CDBG-DR grant-funded programs. The CMA governs ODOC's use of the shared data to prevent DOB in the administration of CDBG-DR activities, including assistance for housing, infrastructure, and business development.

It is important to note the data shared under the CMA is limited to the FEMA IHP data and does not include other common sources of assistance that may be relevant to a subrecipient's DOB review. For each program applicant, the subrecipient will use the amount of FEMA IHP assistance received to calculate the applicant's unmet need and calculate a maximum award amount that will prevent DOB.

NOTE: ODOC will access NFIP information and SBA loan data through a separate process. ODOC will work with HUD to get the NFIP data from FEMA. ODOC will obtain a separate agreement for the SBA loan information.

10.11.3 Appeal to DOB Findings

The CMA requires ODOC to independently verify the information produced by a matching program and to provide the applicant (person, business concern, or other entity) an opportunity to contest ODOC or the subrecipient's findings. ODOC and the subrecipient may not deny, terminate, or make a final decision of any CDBG-DR assistance to an applicant, or take other adverse action against an applicant as the result of the information provided by the CMA, until an officer or employee of ODOC has independently verified such information and the applicant has had an opportunity of no less than thirty (30) days from the date of the notice, per 5 U.S.C. § 552a(p)(1)(C)(ii), to contest the findings.

When required by the Privacy Act, an independent verification requires investigation and confirmation of specific information relating to an applicant that is used as a basis for an adverse action against the applicant, including where applicable investigation and confirmation of:

- The amount of any asset or income involved
- The applicant has or had access to assets or income for the applicant's use, and
- The period or periods when the applicant had such asset or income.

Disputes are brought to the entity performing the DOB analysis. For housing programs, the subrecipient is responsible for resolving disputes to the DOB calculation using the best available data. For infrastructure, economic development, and planning programs, ODOC will attempt to resolve disputes using the best available data. Any disputes should be resolved by the investigating body within 15 days of the dispute being brought forward. A longer amount of time may be required on a case-by-case basis. If the resolution of a dispute requires more than 15 days, the justification for the delay must be documented by the investigating body and retained in the subrecipient or beneficiary files.

10.11.4 Personal Identifiable Information (PII)

Authorized Users are employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) who have entered an agreement with ODOC to comply with all requirements on the use of data contained in the CMA and acknowledged that under the Privacy Act, unlawful disclosure of PII data is a misdemeanor

and subject to a fine of up to \$5,000, and who have signed an enforceable agreement with ODOC that when given access to the subject HUD database or file, the Authorized User will not:

- Use or reveal any individually identifiable information furnished, acquired, retrieved, or assembled by the Authorized User or others for any purpose other than those in the CDBG-DR Grant Agreement;
- Make any disclosure or publication whereby an individual or household could be identified, or the data furnished by or related to any applicant person could be identified; or
- Permit anyone other than ODOC's Authorized Users to access the data.

An authorized entity will not authorize more than the number of Authorized Users determined to be necessary. ODOC shall periodically request that the authorized entity update its list of Authorized Users and revoke access to individuals who are not identified as Authorized Users. ODOC will prohibit access to data by any individual that is not identified by the authorized entities as an Authorized User.

As part of the CDBG-DR monitoring process, ODOC will review compliance with the terms of the CMA including transactions conducted according to the CMA, the use of the information obtained under the CMA, and policies, practices, and procedures related to the CMA. HUD also has the right to conduct onsite inspections to audit compliance with the CMA for the duration of the agreement or any extension of the agreement.

10.12 Recordkeeping

Subrecipients will be required to appropriately document compliance with DOB requirements and include in their written policies and procedures for DOB, which is specific for each program funded with CDBG-DR assistance provided by ODOC. Subrecipient policies specific to each program must be commensurate with risk. Subrecipients should be especially careful to sufficiently document the DOB analysis for activities they are carrying out directly (for example, infrastructure activities). Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.¹²⁰ For housing programs, subrecipients will be conducting the duplication of benefits review and it will be verified by ODOC.

When documenting its DOB analysis, subrecipients cannot rely on certification alone for proof of other sources of funds for the same purpose (unless authorized by this policy, see Section 1.9 Multiple Disasters). Any certification by an applicant must be based on supporting evidence that will be kept available for inspection by ODOC.

For example, if an applicant certifies that other sources of funds were received and expended for a different purpose than the CDBG-DR funds, subrecipients must substantiate this assertion with an additional source of information (e.g., physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, ODOC recommends that as soon as possible after a disaster, subrecipients advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. ODOC

¹²⁰ 88 FR 32054

will also advise the public and potential applicants to retain all receipts that document expenditures for recovery needs, via its website.¹²¹

¹²¹ 88 FR 32054, see also ODOC's Comprehensive Website Policy

10.13 Attachments and Resources

#	Resource	Description	Link (if applicable)
10.1	DOB Subrogation Agreement	Must be submitted with funding application.	Attachment
10.2	Sample Subrecipient DOB Policy	Must be submitted with funding application.	Attachment
10.3	DOB Worksheet (Infrastructure, Economic Development, or Planning)	Documents applicant unmet need. Must be submitted with funding application.	Attachment
10.4	DOB Worksheet (Individual Beneficiaries/Housing Programs)	Worksheet that walks subrecipients through completing a DOB analysis for an individual applicant. This must be completed before any assistance is provided to an individual. HUD.gov offers PDF and Word versions. ODOC has created an Excel version, which is attached to this manual.	PDF: https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-DR/Optional_DOB_Analysis_Worksheet_PDF.pdf Word: https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-DR/Optional_DOB_Analysis_Worksheet_DOC.docx Excel (attached)
10.5	Applicant Subrogation Agreement	Used to document subrogation for programs with individual beneficiaries (e.g., housing programs).	Attachment
10.6	Applicant Duplication of Benefits Assistance Affidavit	Used to document that individual beneficiaries have remaining assistance.	Attachment
10.7	DOB Checklist	Used when confidential information cannot be shared about the beneficiary such as patient information due to HIPAA laws.	Attachment

11 Monitoring and Closeout

11.1 Evaluating Subrecipient Performance (Monitoring & Oversight)

The State, upon agreeing to assume administrative responsibilities for the CDBG Program, certified that activities would be conducted in a manner consistent with all applicable Federal laws. The primary tool for confirming this requirement is for the State to monitor the activities of its subrecipients, just as HUD monitors the state.

ODOC staff will desk monitor all CDBG-DR subrecipients regularly through the State's web-based grant management system. ODOC CDBG-DR Staff will review materials submitted in the state's grant management system, such as procurement documentation, environmental review forms, purchase orders, invoices, fair housing forms, ledgers, equal opportunity forms, payrolls, and Section 3 documents. The regular review of documentation before approving Pay Requests, Release of Funds, Notices of Award, and Monthly and Quarterly Reports provides significant oversight before official onsite and desk monitoring occurs.

ODOC will require monitoring when subrecipients have expended 50% of funds and at closeout. ODOC will ensure that subrecipients are on track to achieve milestones and adhere to all Federal guidelines. ODOC CDBG-DR Staff will fill out a monitoring checklist to check that subrecipients are following all Federal Guidelines for CDBG-DR funds.

Monitoring is accomplished in three ways, on-site monitoring, desk monitoring, and pre-monitoring. These are described in greater detail below.

11.1.1 Risk Assessment

ODOC conducts a Risk Assessment for every funded subrecipient, which determines the monitoring frequency. Each subrecipient will be monitored at least once upon reaching the 50% expenditure threshold. The Risk Assessment is an evaluation of the subrecipient's financial and staffing capacity to manage CDBG funds effectively and successfully following all Federal and State Requirements at the time of application. The Risk Assessment will in turn direct the ODOC CDBG-DR staff in developing a technical assistance and monitoring plan.

While all subrecipients will be monitored at least once at the 50% expended threshold, priority for in-depth evaluation and review is given to projects that are:

- Multi-jurisdictional, i.e., involving more than one unit of local government.
- Involve some level of risk, as evidenced by:
 - Lack of recent history in administering a CDBG-DR project;
 - Evidence of numerous accounting or financial tracking errors on current or previous projects;
 - A record of serious findings or sanctions in previous monitoring sessions;
 - High turnover of administrative staff;
 - Delays in submitting required reports;
 - Prior violations;
 - Failure to attend and participate in implementation workshops;

- Excessive tardiness in responding to prior monitoring findings.

Throughout the life of the grant with the subrecipient, ODOC retains the ability to conduct onsite or desk monitoring at any time, regardless of the results of the risk assessment.

11.1.2 On-Site Monitoring

Certain activities can only be evaluated on-site. The frequency and depth of such on-site monitoring are dependent on the risk factors cited above. On-site monitoring review visits will utilize a monitoring tool outlining federal and state requirements.

11.1.2.1 On-Site Monitoring Process

An on-site monitoring visit will be scheduled in advance. The chief executive officer of the subrecipient and the project administrator will be notified of the date, time, location, and purpose of the visit. Upon arrival, ODOC Staff will conduct an entrance interview, reiterating the purpose of the visit and outlining the files and documentation needed. Utilizing appropriate checklists, ODOC staff reviews the subrecipient's files to determine if all requirements have been met. The key areas under examination are consistency with the specific terms of the contract agreement and compliance with State and Federal requirements.

After the visit, ODOC staff will conduct an exit interview, providing a tentative summary of the results of the visit. If there appear to be problems, the subrecipient has an opportunity to provide more information or clarification.

Within twenty-one (21) days of the monitoring visit, the subrecipient will receive a formal monitoring results letter through the state's grant management system. This letter will summarize the areas reviewed, performance expectations, an analysis of what was discovered on-site, a conclusion or finding and, if necessary, required subrecipient responses or actions.

If there were problems discovered during the monitoring, the subrecipient might receive a finding of non-compliance. A finding of non-compliance is a violation of law or regulation that must be remedied. A finding can result in an immediate sanction or threat of sanction if corrective action (if appropriate and required) is not taken in a specified manner and/or timeframe. For each finding, ODOC will determine if a corrective action, either to correct a past problem or to avoid future problems, must be taken by the subrecipient.

If the required corrective action is not addressed in an appropriate or timely manner, ODOC may impose a progressive level of sanctions, ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the contract, or even legal action.

The monitoring letter may also include one or more concerns. These are matters that, if not properly addressed, can become findings, and can ultimately result in sanctions. Concerns are often used to point out operational or management problems or patterns of performance that could lead to larger problems later. Concerns may require some form of response on the part of the subrecipient.

11.1.3 Desk Monitoring

ODOC places priority on this form of monitoring as a means of staying in touch with project progress and preventing problems early, thereby avoiding costly problems left unattended too long. This method of monitoring is the most efficient and cost-effective way ODOC can employ

to meet a portion of its oversight responsibilities. The CDBG-DR program will require increased desk monitoring which may include submitting additional backup documentation for pay requests and expenditure reports.

11.1.3.1 Desk Monitoring Process (with or without site visit)

A site visit, if necessary, as determined by the Risk Assessment and Program Manager, will be scheduled in advance. The chief executive officer of the subrecipient and the project administrator will be notified of the date, time, location, and purpose of the visit.

To initiate the desk monitoring, ODOC Staff will notify the community of the monitoring via letter, reiterating the purpose of the monitoring and outlining the files and documentation needed. The subrecipient will be provided 2-3 weeks to assemble and upload the required documentation.

Utilizing appropriate checklists, ODOC staff reviews the subrecipient's files to determine if all requirements have been met. The key areas under examination are consistency with the specific terms of the contract agreement and compliance with State and Federal requirements. If there appear to be problems, the subrecipient has an opportunity to provide more information or clarification.

Within twenty-one (21) days of the monitoring, the subrecipient will receive a formal monitoring results letter through the state's grant management system. This letter will summarize the areas reviewed, performance expectations, an analysis of what was discovered on-site (if applicable), a conclusion or finding and, if necessary, required subrecipient responses or actions.

If there were problems discovered during the monitoring, the subrecipient might receive a finding of non-compliance. A finding of non-compliance is a violation of law or regulation that must be remedied. A finding can result in an immediate sanction or threat of sanction if corrective action (if appropriate and required) is not taken in a specified manner and/or timeframe. For each finding, ODOC will determine if a corrective action, either to correct a past problem or to avoid future problems, must be taken by the subrecipient.

If the required corrective action is not addressed in an appropriate or timely manner, ODOC may impose a progressive level of sanctions, ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the contract, or even legal action.

The monitoring letter may also include one or more concerns. These are matters that, if not properly addressed, can become findings, and can ultimately result in sanctions. Concerns are often used to point out operational or management problems or patterns of performance that could lead to larger problems later. Concerns may require some form of response on the part of the subrecipient.

11.1.4 Pre-Monitoring

Due to increased oversight, ODOC may conduct pre-monitoring after the first reimbursement claim. This monitoring may include reviewing the application intake processes and reviewing backup files to ensure all proper documentation has been obtained to determine eligibility.

11.2 Closeout

Closing out of an individual contract confirms that the intended benefits of providing the funding have been accomplished and that all the legal requirements imposed on the use of the funds have been examined. All subrecipients are expected and required to conduct an orderly and timely closeout of their contract with ODOC.

11.2.1 Procedures

Closeout documents are to be uploaded into the state's grant management system within sixty (60) days after the contract expiration date or completion of the project. If the subrecipient cannot meet this requirement, a written request for an extension of time may be submitted to ODOC through the state's grant management system. Permission to extend the due date for submission of closeout documents will be granted for good and valid reasons.

ODOC will have no objections to a subrecipient initiating close-out procedures before the current contract end date, provided the following conditions can be met:

- All final costs to be covered by the contract have been incurred or obligated, including payment of any unsettled third-party claims or contract commitments. This means no additional funds can or will be requested from ODOC.
 - Costs are considered incurred when goods and services have been received and contract work is performed [2 CFR 200.16].
 - If you have funds that have not been drawn as of the completion of the project, a request for payment of these contract funds must be submitted before initiation of the closeout process or submission of the closeout documents. Additional funds can only be requested for expenses incurred before the expiration date of the CDBG-DR contract. However, they can be requested up to sixty (60) days after your CDBG-DR contract expires.
- All project activities have been completed. This means that depending on the project:
 - All infrastructure construction is complete, final inspection has been made, the project is operational, and all beneficiaries are being served;
 - All persons being relocated have been relocated or provided cash assistance to relocate;
 - Planned job creation has occurred.
 - All data plan contracts have expired.
 - All issues from ODOC monitoring have been resolved.

11.2.2 Required Closeout Documents

The subrecipients will close out their program activities in the state's grant management system. The Authorized Official will prepare and submit the closeout. The Authorized Official must initiate and submit required closeout documents to ODOC; however, utilizing the assistance of the grant writer is beneficial and encouraged.

All original signed documents must be submitted within sixty (60) days after the contract ending date or upon completion of the project activity - whichever comes first.

For all activities funded under each program category, the subrecipient must provide the documentation requested on the Closeout Checklist. The following must be documented before the project can be officially closed: final inspections and completion approvals describing the improvements made for each activity, final performance measures, and beneficiaries served by each activity.

The Contract Period listed on each closeout document must correspond to the dates listed on the subrecipient contract part I and subsequent modifications. If the ending date was changed, the latest modification date must be used.

Note: Once the contract closeout is submitted to ODOC, no further requests for funds or expenditure reports can be submitted. The Final Expenditure Report is required for contract closeout. If additional funds are due to the subrecipient, the proper Request for Funds and Final Expenditure Report must be submitted before submission of the closeout documents.

The following forms are required for closeout:

11.2.2.1 Closeout Checklist Form

Must be completed and uploaded into the state's grant management system.

11.2.2.2 Final Expenditure Report

Must be submitted through the state's grant management system with the closeout. This form is completed through the same process as the Monthly Expenditure Report, but the "Final" radio button is marked to indicate that no further reports should be expected. Enter the correct total expenditures by line item in the appropriate column. All matching/leverage final expenditures must be reported and broken down in dollar amounts by category (i.e., federal, state, etc.) "Remaining Balance" is the budget less expenditures year-to-date. The interest reconciliation is for interest earned on deposits of CDBG-DR funds only. Any unexpended interest must be returned to ODOC with the check made payable to HUD. NOTE: Matching expenditures must be reported by type, i.e., federal, local, etc.

11.2.2.3 Contract Closeout Certification

Must be submitted in the state's grant management system once the Authorized Official has changed the status of the grant to "Closeout in Process". The total Cash Received/Requested must be for the total contract period. Total Accrued Expenditures must be the total amount expended as shown on the Final Expenditure Report. The form must be completed and saved by the local Authorized Official.

11.2.2.4 Final LMI Beneficiary QPR Report

Must be submitted through the state's grant management system to report all final accomplishments, however, may also be required for any post-closeout reporting.

11.2.2.5 Proof of Publication of Notice of Second Public Hearing

The subrecipient must upload documentation that a public notice was posted/advertised informing citizens of the second public hearing to be held. A copy of the hearing minutes must also be included. The Public Hearing and minutes must provide detailed activity accomplishments and beneficiary data.

Non-UGLG subrecipients must follow the State's Citizen Participation Plan.

11.2.2.6 Final Wage Compliance Report (if applicable)

Enter information on liquidated damages or wage restitution paid by the construction contractor(s) & sub-contractor(s).

11.2.2.7 Proof of Insurance

The subrecipient must attach proof of property coverage insurance for any above-ground facility built or renovated and/or for equipment purchased with CDBG-DR funds.

11.2.2.8 Inventory (Real Property)

In case real property is acquired, the required form must be uploaded as a final five-year reporting requirement but may also include post-closeout reporting if five years have not been met at the time of project completion.

11.2.2.9 Board Minutes Accepting Completed Project

The subrecipient must provide ODOC with Board Minutes acknowledging project activities are complete, listing out each activity, and authorizing final payment to contractor(s).

11.2.2.10 Certificate of Completion (if applicable)

The subrecipient must attach a certified copy of the final inspection report(s) provided by the Engineer/Architect, indicating the project activities are complete and accepted as evidenced in Board minutes. (NOTE): If no engineer/architect services are utilized, then Board Minutes will suffice, however, as noted above, both or either documents must provide a detail of program activities completed and beneficiaries served.

11.2.2.11 Section 3 Total Worker Hours Report (if applicable)

The subrecipient must collect the information on the form from all construction contractors as soon as the project is complete.

11.2.2.12 Project Photos (if applicable)

The subrecipient must submit applicable photos of the project. This may include photos before, during, and after completion.

ODOC will not accept hard copies of any closeout documents. All program documentation shall be uploaded into the state's grant management system, and it is the responsibility of the subrecipient to file and store all hard copies (refer to the Records Maintenance Section of this guide).

11.3 Post-Closeout Responsibilities

It is entirely possible that the submission and acceptance of the closeout documents do not signal the end of the subrecipient-ODOC relationship. There are several circumstances under which the subrecipient will have continuing responsibilities resulting from the closed project.

11.3.1 Loans

Responsibility for loan administration and program income, as stipulated in the original contract, continues for as long as any funds are flowing that can be attributable to the original disbursement of CDBG-DR funds. Responsibilities include loan portfolio management, accounting, and reporting.

11.3.2 Audits

In some instances, the project may be conditionally closed out pending submission and acceptance of a final audit. The project is not technically closed until the final audit has been received and accepted.

11.3.3 Other Contract Requirements

Some contracts will have special conditions requiring post-closeout responsibilities. The most common of these involve quarterly reporting for job creation (resulting from public improvement projects), housing tenants, data plans, and program income, and reporting real property inventory & insurance on an annual basis.

11.3.4 Maintenance of Records

All program records must be maintained for three (3) years after the Dept. of Commerce closes the CDBG-DR Program with HUD. ODOC will issue a notice to all subrecipients of the official closeout date with HUD.

11.4 Contractor (Vendor) Monitoring

Contractors, as defined in 2 CFR 200.331, hired by ODOC, are subject to the requirements and conditions of the contract for goods and services. Contractors will be monitored before any contract renewal and at 50% expended. Monitoring will be conducted via email.

The contractor will be monitored for adherence to the contract and its terms, including, but not limited to:

- Performance objectives
- Accountability
- Specific deliverables
- Payment requirements
- Reporting requirements

Contractors are subject to the contract requirements set forth in ODOC's Procurement Manual. All contracts with contractors used to provide goods and services for CDBG-DR, either procured by ODOC, a partner, a subrecipient, or any other procuring entity must include:

- A clearly stated period of performance or date of completion
- Performance requirements; and
- Liquidated damages. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages.¹²²

CDBG-DR subrecipients working with contractors must establish policies for ensuring effective performance by contractors.

¹²² 88 FR 32078

11.5 Attachments and Resources

#	Resource	Description	Link (if applicable)
11.1	CDBG-DR Closeout Checklist		Attachment
11.2	Certificate of Project Completion		Attachment
11.3	Section 3 Grantee Total Worker Hours Closeout		Attachment

12DR22 Housing Rehabilitation and Program (HRRP) Guidelines

12.1 Introduction

The Housing Rehabilitation Program Guidelines detail the requirements for subrecipients administering the program on behalf of the Oklahoma Department of Commerce. All other requirements in the 2022 CDBG-DR Policies and Procedures Manual apply to subrecipients administering the Housing Rehabilitation Program.

The Housing and Rehabilitation Program provides resources to households with damages or total loss of their home from the 2022 Severe Storms, Tornadoes, and Flooding events (DR-4657 and DR-4670). It is intended to help fill the gap between rebuilding costs and insurance (and other potential duplicative sources) and assist households in accessing additional program resources for energy efficiency and flooding or tornado mitigation measures. This program will leverage Federal, State, and local resources to reduce the gap between the cost of rebuilding or repair and the available resources through insurance and other financial assistance. The program is intended to provide for standard reconstruction costs; it will not fund premium construction and will likely not make everyone, or most, whole. Rather, it provides resources so those who want to return have the financial means necessary.

Additional funds may be provided to address site-specific accessibility needs (e.g., ramps and lifts, or roll-in showers), environmental issues, on-site residential infrastructure repairs or replacement (e.g., septic tanks and wells), resilience and mitigation measures, elevation requirements, installation and transportation costs, relocation costs, and requirements of municipal ordinances, as needed.

The Housing and Rehabilitation Program will aid in the form of grants up to \$100,000 to eligible homeowners who experienced damage to their homes from DR-4657 and DR-4670 events and have remaining recovery needs after accounting for other duplicative benefits received. Program guidelines for the program can be found on ODOC's CDBG-DR 2022 website.

Under Substantial Amendment #1 to the 2022 CDBG-DR Action Plan, the rehabilitation of housing units located within designated floodplains is no longer eligible for program funding. This change reflects a shift in policy aimed at promoting sustainable recovery efforts by reducing future disaster risks and discouraging the rebuilding of residential structures in vulnerable areas prone to flooding.

To align with this new direction, the Voluntary Buyout Program has been expanded to assist eligible homeowners in flood-prone areas. The buyout program provides financial incentives for property owners to voluntarily sell their flood-damaged homes, allowing these properties to be converted to open space or repurposed in a way that reduces exposure to future flooding. Participants are offered fair market value for their properties based on pre-disaster conditions, along with additional relocation assistance in accordance with the Uniform Relocation Act (URA).

This strategic shift from rehabilitation to buyouts reflects a long-term vision for safer, more resilient communities. The policy also aligns with federal requirements to avoid repetitive loss

and mitigate risks in the floodplain. It ensures that public funds are used efficiently by prioritizing recovery efforts that prevent future damage, reduce insurance claims, and enhance the safety of residents.

12.2 Method of Distribution

The State aims to find one subrecipient to implement the housing rehabilitation program across the impacted areas. If necessary and using the appropriate procurement process, the state may hire or ask a subrecipient to hire a firm to assist a subrecipient in administering the housing funds. If applicable, the hired administrator will have experience with CDBG-DR funds. The State intends to award the funding directly to a nonprofit, UGLG, agency, COG, or tribal nation with experience in construction and housing rehabilitation and reconstruction.

This method of distribution (MOD) was informed by the housing unmet needs analysis, as single-family, owner-occupied housing suffered most of the damage from the disaster. The proposed subrecipient model would maximize the funds going to the HUD-identified MID, as the ideal subrecipient would serve the entire impacted area, spanning seven counties and one tribal nation. Distributing the program to UGLG subrecipients would limit the program scope to the UGLG jurisdiction, leaving some survivors unable to access the assistance.

The threshold criteria, scoring criteria, and relative importance of each scoring criteria used to select the subrecipient are described in the applicable Action Plan.

12.3 Objectives

The primary objective of Oklahoma's Housing Rehabilitation Program is to provide relief for households impacted by the DR-4657 and DR-4670 FEMA-declared disasters while affirmatively furthering fair housing as required under the Fair Housing Act. Assistance will be provided through housing activities, including rehabilitation, reconstruction, and hazard mitigation of homeowner housing units.

The CDBG-DR Housing Rehabilitation Program will provide decent, safe, and sanitary housing in the disaster-impacted areas through activities designed to repair damage caused by the 2022 disaster and mitigate the effects of any future disaster.

The CDBG-DR Housing Rehabilitation Program will focus on the unmet needs of low- to moderate-income households and households with vulnerable populations.

Thresholds: To meet the State's program objectives, the Housing Rehabilitation Program must meet the following thresholds:

- At least 70% of program funds must benefit low- to moderate-income households (80% AMI or below).
- 80% of program funds must benefit households within the HUD-identified MIDs: Okmulgee County and the Muscogee Creek Nation.

12.4 Subrecipient Requirements

12.4.1 National Objective

Assistance provided under this program will meet the national objectives of benefiting LMI persons or households or addressing an urgent need. The program may use the Urgent Need national objective to assist eligible disaster-impacted applicants with incomes greater than 80% AMI under very limited circumstances at ODOC's discretion. The national objective will be met based on the applicant's household income, which is verified at the time of award by the subrecipient to the beneficiary.

The urgent need national objective will be a lower priority than the LMI national objective. A minimum of 70% of program funds must be spent on LMI households. Households that qualify as LMI will be prioritized for funding and resources. The use of the Urgent Need national objective is justified by the scale of the disaster, which impacted some households that are not LMI but do not have additional resources (e.g., insurance) to repair their homes.

All housing activities must meet a HUD National Objective¹²³. Housing activities that do not meet a HUD National Objective are not compliant with CDBG-DR requirements and will not be funded or carried out.

- The primary national objective is to benefit low to moderate income (LMI) persons and households.
- The secondary National Objective is Urgent Need. In limited cases, ODOC will approve Urgent Need beneficiaries.

12.4.2 Eligible Activities

Rehabilitation, reconstructionHCDA Section 105(a)1, 4, 5, 11, and 14; applicable waivers identified in the Allocation Announcement Notice and Consolidated Notice (88 FR 32061). Administrative costs and activities associated with the implementation of the grant are eligible.

12.4.3 Subrecipient Eligibility

Program applicants (potential subrecipients) must be in or serve a HUD or State-identified MID area. Oklahoma has decided to expand the HUD-identified MID area in ZIP code 74447 to include the entirety of Okmulgee County. Nonprofits, state agencies, UGLGs (cities, towns, and counties), and tribal governments can apply to ODOC to operate a homeowner rehabilitation and reconstruction program. ODOC is prioritizing finding one subrecipient to serve the entire impacted area.

12.4.3.1 Responsible Entity

Nonprofits, state agencies, UGLGs (cities, towns, and counties), and tribal governments can apply to ODOC to operate a homeowner rehabilitation and reconstruction program. Only UGLGs, state agencies, and tribal governments can assume the role of responsible entity. If nonprofits apply and are selected as subrecipients, ODOC will retain the role of responsible entity. Eligible applicants may work with qualified organizations or partners to help implement

¹²³ See [Chapter 3: Meeting a National Objective](#)

the projects. Beneficiaries will then apply to the entity or their implementation partner for participation in the program.

The subrecipient and ODOC will meet the applicable environmental requirements listed under 24 CFR Part 58 before the use or commitment of funds for each activity. After the Responsible Entity (RE) 1) completes environmental review(s) pursuant to 24 CFR Part 58 and receives from HUD (or ODOC) an approved Request for Release of Funds (RROF) and certification (as applicable), or 2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the state) an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity.

12.4.4 Vulnerable Populations

The State of Oklahoma aims to lead an equitable recovery from the 2022 storm events, which will require an examination of systemic policies and practices that may marginalize some populations and perpetuate disparities.

ODOC's Homeowner Rehabilitation and Reconstruction Program will help impacted residents, vulnerable populations, and members of underserved communities expedite their recovery by:

- Performing outreach and engagement to understand the needs of impacted participants and facilitating connections with vulnerable populations.
- Coordinating with local organizations to ensure that refugee and immigrant populations are aware of and can access assistance.
- Coordinating with local nonprofit organizations that provide services to people with disabilities and historically underserved populations to ensure the promotion of the program and help remove barriers to assistance.
- During the application process, ensure that eligible applicants to ODOC have the tools to market the program to potential beneficiaries.

The selected subrecipient will be encouraged to provide information and conduct outreach to impacted communities and individuals to inform them of HUD-Approved Housing Counseling services. HUD-Approved Housing Counseling Agencies can provide services to homeowners, renters, and homeless persons during recovery, including foreclosure mitigation, eviction prevention, informing consumers of scams, and preparing for future disasters. HUD-approved agencies can educate consumers about potential property risks and protections, the need for insurance, financial management, and other related topics.

In addition, the selected subrecipient will be required to conduct outreach to minority communities to ensure equal access and participation in the program. The requirements of both Citizen Participation and the Marketing and Outreach Plan are described in Section Citizen Participation, Marketing, and Outreach. The Marketing and Outreach Plan requirements are described below.

12.4.4.1 Marketing and Outreach Plan

All subrecipients shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from participating in and accessing disaster recovery resources. If the subrecipient identifies barriers

that may limit or prohibit equitable participation, the subrecipient must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.

To this effect, for housing programs, ODOC requires subrecipients to submit a marketing and outreach plan. The plan should outline:

1. Potential barriers that may limit or prohibit equitable participation
 - Note: information about disaster-impacted communities and potential barriers can be found in the applicable Action Plan.
2. Steps that the subrecipient will take to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP. Examples of such steps include:
 - Outreach in languages other than English
 - Outreach to community organizations, centers, and gathering places
 - Public hearings or meetings outside of traditional venues
 - Social media, newspaper postings, or other forms of marketing to underserved or vulnerable communities.
 - Collaboration with disaster case management organizations
3. Explain how the use of funds will promote equity for protected class groups.

12.4.5 Resilience Performance Metrics

This program will emphasize high-quality design, durability, energy efficiency, sustainability, and mold resistance in the repair of the impacted homes. It will also establish and support recovery efforts by funding feasible, cost-effective measures to make communities and homes more resilient against a future disaster. These measures will be determined by the funded activity's resilience performance metrics.

Resilience Performance Metrics for the Housing Rehabilitation Program consist of:

1. The projected risk to the repaired home from natural hazards
2. Identification of the mitigation measures to address the risks
3. An assessment of the benefit of the mitigation measures

The projected risks to homes impacted by the 2022 disaster are described in the state's DR22 Action Plan. These risks include high winds, flooding, tornadoes, and hail. Because of these risks, the state has developed the following mitigation measures to address risks:

Risk	Mitigation Measure	Benefit
Hail	Housing units repaired with impact-resistant shingles.	Homes better protected from hail up to 2" in diameter
High Wind, Tornadoes	Housing units with roofs installed using ring-shank nails.	Roof doubles resistance to high wind

High Wind, Tornadoes	Housing units with FORTIFIED-standard edges, including a wider drip edge and fully adhered starter strip.	Roof is less likely to be peeled off by high winds.
Flooding	Participate in the Voluntary Buyout Program.	Eliminates future risk to life and property.
Hail, High Winds, Tornados, and Flooding	Housing units with certified FORTIFIED roofs installed.	Roof is less likely to suffer severe damage in subsequent storms.

Not every home will receive all or any of the above mitigation measures. The resilience performance metrics will be applied when feasible and reasonable based on the risks to the specific home and the damage being repaired.

12.4.6 Reporting

Reporting is required as described in the DR Policies and Procedures Manual . This includes all information and reports as required under ODOC's contract with the subrecipient.

In addition, subrecipients administering the Housing Rehabilitation Program must collect and report demographic and income data on both successful and rejected applicants for housing assistance. This data is required to verify the program's equitability and non-discrimination.

12.4.7 Recordkeeping

Recordkeeping requirements described in the CDBG-DR Policies and Procedures Manual Section 2.9 Recordkeeping Requirements must be followed. All records shall be accurate, complete, and orderly.

12.4.8 Procurement

Procurement is the acquisition of goods and services to be used internally by the subrecipient to carry out the program. The procurement process includes the decision to purchase as well as the process to complete the purchase. Procurement rules at 2 CFR 200.318-327 apply to all CDBG-DR funded projects.

Procurement requirements for ODOC's subrecipients are described in Section 5 Procurement Manual of the CDBG-DR Policies and Procedures Manual .

Subrecipients must document and follow proper procurement procedures. Failure to do so could result in the disallowance of otherwise eligible costs. Contact your ODOC Program Manager for guidance if needed.

12.4.9 Changes, Waivers, and/or Conflicts

The subrecipient has the right to change, modify, waive, or revoke all or any part of these guidelines, with the prior written approval of ODOC.

Waivers to the requirements in these Guidelines can only be approved by ODOC and must be provided in writing. ODOC will provide the option for a waiver, but the waiver request must demonstrate why the housing guidelines are not practicable for the subrecipient.

In the event that these Guidelines conflict with local, state, or federal law, the more stringent requirement will prevail, provided that the requirement does not violate local, state, or federal law.

12.5 Homeowner Requirements and Guidelines

12.5.1 Pre-Award Costs

Reimbursement of some pre-award costs of homeowners is allowed. Pre-award costs must meet the criteria outlined in the subrecipient procurement manual to be eligible expenses, including, but not limited to:

- The cost was incurred on or after May 2, 2022,
- The cost was for expenses related to the disaster; and,
- The person incurred the expenses within one year after the applicability date of the ODOC's Allocation Announcement Notice (May 18, 2023);
- The person pays for the cost before the date on which the person applies for CDBG-DR assistance (88 FR 32075); and,
- The cost can meet all procurement, environmental, and cross-cutting requirements.

12.5.2 Program Maximum Assistance

Each rehabilitated or reconstructed home is eligible for a maximum award of \$100,000 per property. Exceptions to the award cap may be necessary in certain cases (e.g., accessibility improvements) and will be determined on a case-by-case basis. Exceptions will be determined by following the process described in the Housing Rehabilitation Program Policies and Procedures.

12.5.3 Homeowner Eligibility

The following are threshold requirements, which must be met for an applicant to be eligible for assistance. Meeting the eligibility requirements does not guarantee a homeowner will receive funding. The program may prioritize certain income groups, if there are more eligible applicants than can be served with available funds, or there may be environmental factors that make a property ineligible.

12.5.3.1 Income Eligibility

Beneficiaries must be able to meet the Low-to-moderate income or Urgent Need National Objective. Low-to-moderate Income beneficiaries must be prioritized until at least 70% of funds have been expended on LMI beneficiaries.

The income limits to be utilized are the current income limits established yearly by HUD for the CDBG Program. Income limits can be easily calculated per area using the CPD Income Eligibility Calculator: <https://www.hudexchange.info/incomecalculator/>. The Low to Moderate Income (LMI) National Objective is defined as providing a benefit to households at incomes of up to 80% of the locality's median income as computed on the most current HUD CDBG Income

Limits. Subrecipients must always use the most recent income limits and will be monitored for compliance.

All beneficiaries of the HRRP must meet a National Objective. Any activity carried out with CDBG-DR funds that involves acquisition, rehabilitation, or reconstruction of property to provide housing is considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons.

Subrecipients must track the income of each applicant and beneficiary and report on the number of applicants and beneficiaries who are Extremely Low-Income (at or below FPL or 30% AMI), Low-Income (between 30-60% AMI), Moderate-Income (60-80% AMI), and non-LMI (above 80% AMI).

12.5.3.2 Property Eligibility

The home to be repaired must:

- Have documented damage from the eligible disaster (DR-4657 or DR-4670). Damage may be documented using:
 - FEMA, SBA, or Insurance award letters.
 - FEMA, SBA, or insurance documentation is not available, an inspection report (complete with photos of the damage and a written assessment of the damage) from a damage assessment conducted by a qualified inspector, likely supplied by the subrecipient, that certifies that the damage occurred because of the disaster will be acceptable.
 - If FEMA, SBA, or Insurance documentation is not available, and an inspection report is inconclusive as to the cause of the damage, the subrecipient may provide alternative evidence, such as neighborhood-level media reports or documentation of damage by disaster response/relief organizations on a case-by-case basis to the subrecipient. ODOC must review and approve if this is the documentation method utilized.
 - If a beneficiary was denied assistance by FEMA, assistance through the CDBG Disaster Recovery Program may still be available. Subrecipients are prohibited from refusing housing assistance to beneficiaries solely on the basis that the applicants were denied assistance by FEMA.
- Be located in an eligible county or tribal nation: Adair, Cherokee, Muskogee, Okmulgee, Pottawatomie, Seminole, or Tulsa Counties; or the Muscogee (Creek) Nation
- Not be located in a floodplain. Under Substantial Amendment #1 to the 2022 CDBG-DR Action Plan, the rehabilitation of housing units located within designated floodplains is no longer eligible for program funding. This change reflects a shift in policy aimed at promoting sustainable recovery efforts by reducing future disaster risks and discouraging the rebuilding of residential structures in vulnerable areas prone to flooding.
- Meet the definition of a single-family home:
 - A stick-built single-family home or duplex (a home constructed on-site).
 - A condominium.
 - A manufactured housing unit (MHU) or mobile home (RVs are not eligible).

- Be the homeowner's primary residence at the time of the disaster
 - Second homes are not eligible for assistance.
 - Documentation required to show ownership and residency documentation is described in the following sections.

All sites must undergo a complete environmental review prior to any commitment of funds. An environmental review consists of a statutory checklist of required review items. Properties with environmental conditions will not be permitted to proceed under housing activities unless the condition is corrected. No work can start on a site until the environmental review is complete.

12.5.3.3 Proof of Ownership

The applicant must be an individual who owns the property to be repaired, rebuilt or replaced due to disaster damage. Ownership can be documented as follows:

- Provide a copy of a valid deed of trust or warranty deed that is recorded in the county records which cites the applicant's name.
- For MHUs, a Statement of Ownership and Location (SOL) may be provided.
- The following alternative documentation can be used show proof of ownership. The documentation must show that the applicant was the person responsible for paying for these items at the time of the disaster.
 - tax receipts.
 - home insurance.
 - copy of home loan on applicable bank's letterhead.
 - utility bills; or
 - other documentation deemed to be acceptable by ODOC.

If applicants prove ownership by providing the alternative documentation above, they must complete a notarized affidavit that certifies that one of the following circumstances applies:

- There is nobody else who has the right to claim ownership.
- Anyone who has a right to claim ownership has agreed to participate in the program; or
- Anyone who has a right to claim ownership could not be located (after reasonable attempts to contact).

12.5.3.4 Proof of Principal Residency

The unit to be rehabilitated, reconstructed, or replaced must have been occupied by the applicant as the applicant's principal residence at the time of the disaster.

Vacation homes (or second home) properties are not eligible for assistance under this program. A "second home" is defined as a home that was not the primary residence of the owner at the time of the disaster or at the time of application for CDBG-DR assistance.

Principal residency for applicants can be demonstrated through property tax homestead exemptions.

If a homestead exemption was not in place at the time of the disaster, an Affidavit of Principal Residency may be utilized as an alternative method of verification of principal residency. The

affidavit must be supported by documentation such as asset verification (income tax returns, credit check, etc.), voter registration cards, tax returns, homestead exemptions, and driver's licenses, or utility bills specific to the property address and name of the applicant which were active as of the applicable, above-referenced dates.

12.5.3.5 Property Taxes

Applicant must furnish evidence that property taxes are current, have an approved payment plan or qualify for an exemption under current laws. Applicant must prove that property taxes have been paid or that one of the following alternatives have been met:

- The property owner qualified for and received a tax deferral as allowed under local tax code.
- The property owner qualified for and received a tax exemption pursuant to the local tax Code; or
- The applicant entered into a payment plan with the applicable taxing authority.

Supporting documentation verifying the tax deferral or tax exemption must be provided by the applicant. Any applicant who plans to enter into a payment plan must supply a signed copy of the payment plan from the applicable taxing entity, along with documentation that they are current on their payment plan.

12.5.4 Ineligibility

If a property is located in a floodplain, has a lien, back taxes, or a code violation, these properties will be ineligible for funding through the CDBG-DR program.

12.5.5 Duplication of Benefits

All housing activities must conduct a Duplication of Benefits analysis for each beneficiary of the program, prior to the determination of an award amount. This analysis must utilize HUD's Duplication of Benefits worksheet or ODOC's excel version of the same worksheet. The Duplication of Benefits steps are described in detail in Section 10: Duplication of Benefits of the Policies and Procedures Manual .

12.5.6 Prohibition on Forced Mortgage Payoffs

There is a prohibition of forced mortgage payoffs (88 FR 32077). A forced mortgage payoff occurs when homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan before using assistance to rehabilitate or reconstruct their homes. CDBG-DR funds shall not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG-DR funds does not affect HUD's longstanding guidance that when other non- CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits for the purpose of housing rehabilitation or reconstruction.

12.6 Property Requirements and Standards

12.6.1 Construction Standards

The State of Oklahoma will require quality inspections and code compliance inspections on all projects and emphasizes high-quality, durable, sustainable, and energy-efficient construction methods and materials. Site inspections will be required on all projects to ensure quality and compliance with building codes. ODOC will work with localities to expedite the inspection and permitting processes.

All new construction, reconstruction, or rehabilitation of substantially damaged homes must meet the Green and Resilient Building Standard. The Green and Resilient Building Standard requires that all residential rehabilitation of substantial damage, reconstruction, or new construction assisted with CDBG-DR funds meet an industry-recognized standard that has achieved certification under at least one of the following programs:

- Enterprise Green Communities
- LEED (New Construction, Homes, Midrise, Existing Building Operations and Maintenance or Neighborhood Development)
- ICC- 700 National Green Building Standards or NGBS Green + Resilience
- Living Building Challenge
- EPA Indoor AirPlus
- Any other equivalent comprehensive green building standard program acceptable to HUD

Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as:

- Energy STAR (Certified Homes or Multifamily High Risk)
- DOE Zero Energy Ready Home
- EarthCraft House, EarthCraft Multifamily
- Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), 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 State of Oklahoma will specify the standards that will be used for the proposed programs or activities within each set of program guidelines.

For rehabilitation of non-substantially damaged residential buildings, the State of Oklahoma will follow the guidelines to the extent applicable as specified in the [HUD CPD Green Building Retrofit Checklist](#). When older or obsolete products are replaced as part of rehabilitation work, the rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designed products and appliances.

The term “substantial damage” applies to a structure in an SFHA or floodplain for which the total cost of repairs is 50% or more of the structure’s market value before the disaster occurred, regardless of the cause of damage.

All projects will be subject to cost reasonableness standards as outlined in the policies and procedures of the applicable program specific to the applicable activity.

All CDBG-assisted housing that is constructed or rehabilitated must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. The International Residential Code (IRC) (with windstorm provisions) and International Building Code (IBC) must be used as required where appropriate. All rehabilitation projects must comply with Housing Quality Standards (HQS) and all applicable local codes and ordinances. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a CDBG-assisted property, the subrecipient may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person.

A pre-construction conference between the assisted homeowner, contractor, and the subrecipient will be conducted to ensure that all parties agree about the work to be completed. The pre-construction conference will consist of two parts: The first part deals with basic contract and procedural issues: beginning and end dates of the contract; terms of the contract; payment schedules and procedures; inspection procedures and requirements; responsibilities of the contractor and the assisted homeowner; change order procedures; payment requests and procedures (escrow account); lead-based paint requirements; role of the subrecipient; complaint and conflict resolution procedures; and other programmatic procedures. The second part will consist of a walk-through of the house for rehabilitation assistance. All parties should understand how the work will proceed. Instructions will be given regarding cleaning up by the homeowner prior to the work, and the contractor after the work.

Housing that is constructed or rehabilitated with CDBG funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. The International Residential Code (IRC) (with windstorm provisions) and International Building Code (IBC) will be used as required and as appropriate. All rehabilitation projects must comply with Housing Quality Standards (HQS) and all applicable local codes and ordinances.

12.6.2 Floodplain Properties

Under Substantial Amendment #1 to the 2022 CDBG-DR Action Plan, the rehabilitation of housing units located within designated floodplains is no longer eligible for program funding. This change reflects a shift in policy aimed at promoting sustainable recovery efforts by reducing future disaster risks and discouraging the rebuilding of residential structures in vulnerable areas prone to flooding.

To align with this new direction, the Voluntary Buyout Program has been expanded to assist eligible homeowners in flood-prone areas. The buyout program provides financial incentives for property owners to voluntarily sell their flood-damaged homes, allowing these properties to be converted to open space or repurposed in a way that reduces exposure to future flooding. Participants are offered fair market value for their properties based on pre-disaster conditions, along with additional relocation assistance in accordance with the Uniform Relocation Act (URA).

This strategic shift from rehabilitation to buyouts reflects a long-term vision for safer, more resilient communities. The policy also aligns with federal requirements to avoid repetitive loss and mitigate risks in the floodplain. It ensures that public funds are used efficiently by prioritizing recovery efforts that prevent future damage, reduce insurance claims, and enhance the safety of residents.

12.6.3 Lead Based Paint

If the unit to be assisted was built prior to 1978 the assisted unit will be subject to lead-based paint requirements. If present or presumed present, the removal of lead-based paint will be considered in the costs of rehabilitation.

If the removal of lead-based paint in a unit exceeds the rehabilitation cap, this activity may still occur and exceed the cap due to the safety and health of the resident. This cost is considered a reasonable exception to the program cap.

All CDBG-DR Housing Rehabilitation work occurring on homes built before 1978 is subject to the requirements of HUD's¹²⁴ and EPA's Lead Disclosure Rule¹²⁵, HUD's Lead Safe Housing Rule¹²⁶, and the EPA's Renovation, Repair, and Painting (RRP) Rule.

Detailed information, forms, and steps can be found in the applicable cited regulations, and in HUD's [Lead Safe Housing Rule \(LSHR\) Toolkit](#).

12.6.3.1 Lead Disclosure Rule

If property owners assisted with CDBG-DR funds sell or lease their pre-1978 homes, they must disclose any known lead-based paint and/or lead-based paint hazards. In addition, they must:

- provide available records and reports,
- provide the purchaser or lessee with a lead hazard information pamphlet,
- give purchasers a 10-day opportunity to conduct a risk assessment or inspection;
- and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease the pre-1978 housing.¹²⁷

The subrecipient should ensure that the beneficiary of CDBG-DR funds is provided the above documentation and records of any lead-based paint hazards, assessments, or abatement.

12.6.3.2 Lead Safe Housing Rule

Subpart B of HUD's Lead Safe Housing Rule outlines definitions, exemptions, and notification requirements. Subpart J applies specifically to rehabilitation activities funded in whole or in part with HUD CDBG-DR funds. These requirements are summarized in the following table:

	$\leq \$5,000$	$\$5,001 - \$25,000$	$> \$25,000$
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¹²⁴ 24 CFR Part 35, Subpart A

¹²⁵ 40 CFR Part 745, Subpart F

¹²⁶ 24 CFR Part 35, Subparts J and R

¹²⁷ 24 CFR 35.80

Approach to Lead Hazard Evaluation and Reduction	Do no harm (1)	Identify and control lead hazards (3)	Identify and abate lead hazards (4)
Notification	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing (of surfaces to be disturbed)	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment
Lead Hazard Reduction	<ul style="list-style-type: none"> Repair surfaces disturbed during rehabilitation Lead safe work practices Clearance 	<ul style="list-style-type: none"> Interim Controls Lead safe work practices Clearance 	<ul style="list-style-type: none"> Abatement (interim controls on exterior surfaces not disturbed by rehabilitation) Lead safe work practices Clearance
Ongoing Maintenance	For HOME Rental Only	For HOME Rental Only	For HOME Rental Only
EBLL Requirements	No	No	No
Options	Presume lead-based paint; Use safe work practices on all surfaces	Presume lead-based paint and/or hazards; Use standard treatments	Presume lead-based paint and/or hazards; Abate all applicable surfaces

Owners and administrators must create and maintain records to document compliance. Use the forms here as a guide through the process.

Although there are some differences for the actions to be taken for the different levels of assistance, the general process is the same. The following sections describe the major steps in the rehabilitation process regarding Lead-based paint. Many of the steps require specific forms and documents be completed and stored in the property's file.

1. Check for exemptions for the property

Some properties and situations create exemptions to various parts of the rules for the property or a repair project. Subrecipients should use the [LSHR Screening on Exemption or Limited Exemption Form](#) to determine if a property is exempt or has limited exemptions.

Examples of potential exemptions includes properties:

- Built after January 1, 1978
- Where all rehabilitation work will exclude disturbing painted surfaces
- Where all the amount of painted surface to be disturbed is below de minimus levels.

2. Unless the property is exempt, residents must receive pamphlets and information discussing LBP and its potential hazards

There are three documents that must be provided to residents to meet this requirement:

- [Protect Your Family from Lead in Your Home](#) Pamphlet - Ensures tenants are aware of lead safety. The tenant who signs the lease/rental agreement should receive this pamphlet and be retained with a signed copy of the disclosure form with the tenant file (property owner keeps original).
- [Renovate Right: Important Lead Hazard Information](#) Pamphlet - Provides information about legal requirements for safe lead practices for homeowners, tenants, childcare providers, and parents during renovation activities.
- [LSHR – Renovation, Repair, and Painting Rule](#) Handout - Compares HUD's LSHR and EPA's RRP rules.

3. Determine the scope of the rehabilitation project without Lead Hazard Control

For each rehab project, program staff must determine the type of hazard evaluation and hazard reduction work that must be carried out, based on a regulatory formula that determines the per unit amount of federal assistance.

Given the level of damage identified in most homes with remaining unmet needs from the May 2022 disaster, it is likely that most beneficiaries will require more than \$25,000 in CDBG-DR assistance to repair their homes.

Subrecipients can use the [LSHR Calculating Level of Rehabilitation Assistance: Worksheet #1 \(Single-Family Unit\)](#) to determine the LSHR assistance threshold. If the subrecipient has other itemized documentation that serves this purpose, that is also acceptable.

4. Determine the level of evaluation and control required

Once the level of federal assistance has been determined, the subrecipient must inform the homeowner of the required level of lead paint hazard control required. The "[Certification of Required Level of Lead Paint Hazard Control](#)" worksheet should be completed and placed in the project file. The project file should also contain sufficient itemization of the project costs to confirm the reported funding totals.

5. Carry out the required level of evaluation

For projects receiving more than \$5,000 (including those receiving more than \$25,000) in Federal Rehabilitation Assistance, subrecipients have two options regarding the lead-based paint evaluation method: presumption or Risk Assessment. If any amount of paint will be disturbed, this level of federal assistance requires that LBP hazards be rigorously evaluated and addressed. Grantees must either:

- Presume all painted surfaces constitute lead hazards, provide Notice of Presumption and treat all areas with Standard Treatments, or
- Conduct a Risk Assessment (and testing of surfaces to be disturbed) and treat hazards with Interim Controls or Hazard Abatement

HUD provides two videos on the basics of how to complete a [lead-based paint inspection](#) and [risk assessment](#).

The following forms and worksheets may be required in the project file, or may provide additional guidance at this step:

Form Name	Description
Guidance on Presuming or Evaluating	Provides guidance on whether to test for lead or to presume it.
Lead Hazard Reduction Methods	Provides explanations of the different methods of lead hazard reduction.
Lead Hazard Presumption Notice – Sample Form	Provides a notice template for when lead-based paint is presumed rather than evaluated. If lead-based paint is presumed, this form must be provided to the homeowner, and stored in the project file.
Guidelines on Risk Assessments	Provides information on how to conduct and document a risk assessment.
Lead Hazard Evaluation Notice - Sample Form	Records the Lead Hazard Evaluation Results and issue to the occupants meeting the disclosure requirements. If a risk assessment is conducted, this form must be used to inform the property owner of the results. A copy must be stored in the project file.
LSHR Screening on Exemption or Limited Exemption	Part three certifies a project-specific exemption regarding historic preservation or relocation of elderly.

6. Reassess the scope

Owners and construction managers must also plan for the possibility that the scope of repair work must change, may increase substantially in cost, and may require that occupants be relocated during work.

- If LBP is identified or presumed then all other safe work practices, clearances, and notices must be completed.
- If testing is performed, but no lead hazards are identified and no lead paint will be disturbed, the occupant must receive the Renovate Right pamphlet and the Notice for Lead Hazard Evaluation, but no further steps are required for this particular work. This does not exempt the unit from LSHR unless the full exemption conditions are met for the relevant activity.

If any paint will be disturbed as part of the rehabilitation, projects receiving more than \$25,000 in federal assistance are required to abate lead-based paint hazards. Hazard abatement must be carried out on the interior of the home; interim controls are acceptable on the exterior if rehabilitation will not disturb exterior painted surfaces or if the property is determined eligible or listed on the National Register of Historic Places.

If the removal of lead-based paint in a unit exceeds the rehabilitation cap, this activity may still occur and exceed the cap due to the safety and health of the resident. This cost is considered a

reasonable exception to the program cap. Any exception to the program cap must be submitted to and approved by ODOC staff

7. Complete rehab and hazard control

For all work that disturbs paint above the HUD LSHR de minimis level, the work must meet certain HUD and Environmental Protection Agency (EPA) requirements, including paint testing or the presumption of lead.

If lead is present or presumed, then lead safe work practices and worker/occupant protection procedures must be implemented and documented.

Regardless of whether the work will simply be repairing interior or exterior building components as the result of normal wear and tear at unit sale or lease, or conducting substantial rehabilitation, any worker or contractor carrying out lead-based paint hazard reduction activities must be trained and qualified. These requirements apply not only to the standards for routine maintenance and painting, but also for full lead abatement, which will permanently eliminate the identified hazards.

The following table describes required practices and lead hazard reduction methods that may be required. The full requirements are too extensive to describe in this document, and the applicable regulations should be thoroughly read and understood before undertaking lead hazard reduction activities. This table is a summary for reference only.

Practice or Control	When is it required?	Brief Description	Regulation describing practice
Lead Safe Work Practices	Required for any property without an exemption	<ul style="list-style-type: none">• Prohibits certain methods of paint removal• Requires the appropriate level of certification for workers, depending on the hazard reduction methods used.• Requires occupant protection and worksite prep.• Requires specialized cleaning.	24 CFR 35.1350 and 24 CFR 35.1330(a)(4)
Standard Treatments	Project assistance is between \$5,000-\$25,000, AND Presumption that all painted surfaces contain lead hazards	<ul style="list-style-type: none">• Temporarily reduce exposure to LBP hazards that may be present• Workers must be certified renovators• Paint Stabilization• Smooth and Cleanable Horizontal Surfaces	24 CFR 35.1335

		<ul style="list-style-type: none"> • Friction and Impact Surfaces • Soil Treatment 	
Interim Controls	<p>Project assistance is between \$5,000-\$25,000,</p> <p>AND</p> <p>Risk Assessment identified surfaces to be disturbed with LBP</p>	<ul style="list-style-type: none"> • Temporarily reduce exposure to LBP hazards. • Workers must be certified renovators • Paint Stabilization • Friction and Impact Surfaces • Chewable Surfaces • Dust-Lead Hazard Control • Soil-Lead Hazards 	24 CFR 35.1330
Abatement	<p>Project assistance is above \$25,000.</p> <p>If presumption of hazards - must abate all applicable surfaces.</p> <p>If Risk Assessment - must abate all hazards identified in risk assessment.</p>	<ul style="list-style-type: none"> • Permanently removes or controls LPB hazards • Workers must be certified Abatement workers • Abatement supervisor must be present at certain phases • Firm must be certified • ODEQ/EPA must be notified of abatement work 	24 CFR 35.1325 and 40 CFR 745.227(e)

The following forms and checklists provide guidance or should be used to document required steps at this point:

Form Name	Description
Pre-Construction Conference Checklist	Reviews steps for conducting a pre-construction conference for rehabilitation work.
Post-Work Checklist for Lead Hazard Reduction Activities	Reviews steps to complete work for lead hazard reduction activities.
Guidance on Relocation	Includes guidance to evaluate when tenant relocation is needed during lead hazard reduction activities.

8. Clearance and occupant/owner notification

When lead hazard reduction activities are complete, clearance must be completed.

Clearance following abatement: Clearance examinations following lead abatement must be performed in accordance with 40 CFR 745.227(e) and paragraphs 24 CFR 35.1340(c)-(f). Such clearances must be performed by a person certified to perform risk assessments or lead-based paint inspections. A clearance abatement report must be prepared in accordance with 40 CFR 745.227(e)(10). A sample is provided below.

Clearance following activities other than abatement: Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements 24 CFR 35.1340(b)-(g). Clearance is not required if the work being cleared does not disturb painted surfaces above de minimis levels. Clearance examinations may only be performed by qualified certified personnel, as described in 24 CFR 35.1340(b)(1). A clearance report must be prepared in accordance with the standards at 24 CFR 35.1340(c). A sample report is provided below.

Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.¹²⁸

Clearance reports and the Notice of Lead Hazard Reduction must be provided to the property owner. Copies must also be stored in the project file.

Form Name	Description
<u>Abatement Report Review Worksheet</u>	Documents that clearance was achieved, and the abatement report is complete following an abatement job.
<u>Clearance Report Review Worksheet</u>	Documents that clearance was achieved, and the clearance report is complete following interim controls or standard treatments.
<u>Sample Clearance Report</u>	Provides a sample clearance report from a small rehabilitation job.
<u>Sample Notice of Lead Hazard Reduction</u>	Notifies residents when lead hazard reduction is complete.

9. Update Disclosure

Disclosure forms pertaining the lead history of a property will need to be provided to any subsequent tenants or owners if lead hazard activities were undertaken. While this information is required, it is important to note that if any changes in property condition, maintenance or new lead hazard reduction activities have taken place, lead disclosures will need to be updated.

- [Sample Disclosure Form for Rental](#) - Provides disclosure form to tenants to show lead hazard activities undertaken. This is given by the owners/landlords. Owners use the form to disclose all known information, including no knowledge, of the presence of lead-based paint and hazard reduction work and tenants must acknowledge receipt of the owner's information.

¹²⁸ 24 CFR 35.1340(f)

- [Sample Disclosure Form for Sales](#) - Provides disclosure for buyers to show lead hazard activities undertaken.

12.6.3.3 Lead Safe Work Practices

Lead Safe Work Practices are required for any property without an exemption from lead hazard reduction (e.g., paint will be disturbed above de minimus levels, home is pre-1978). The requirements of lead safe work practices are described in 24 CFR 35.1350 and 24 CFR 35.1330(a)(4) and are summarized below.

- Specific methods of paint removal listed in § 35.140 shall not be used.
- Occupants and their belongings shall be protected, and the worksite prepared, in accordance with § 35.1345.
- A person performing this work shall be trained on hazards and either be supervised or have completed successfully one of the specified courses, in accordance with § 35.1330(a)(4) (summarized below)
- Specialized cleaning. After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

A person performing interim controls must be:

- Trained in accordance with the hazard communication standard for the construction industry issued by the Occupational Safety and Health Administration of the U.S. Department of Labor at 29 CFR 1926.59, and
- Either be supervised by an individual certified as a lead-based paint abatement supervisor OR
- Have completed successfully one of the following lead-safe work practices courses:
 - A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;
 - A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225; or
 - A renovator course accredited in accordance with 40 CFR 745.225.
 - “The Remodeler’s and Renovator’s Lead-Based Paint Training Program,” prepared by HUD and the National Association of the Remodeling Industry; or
 - Another course approved by HUD for this purpose after consultation with EPA.

A person performing lead abatement must be an individual certified by the EPA or ODEQ. In addition, a certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours. The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of all Federal, State and local requirements.

The Oklahoma Department of Environmental Quality currently offers LBP certification courses and exams that would qualify a worker and/or a firm to work in lead hazard reduction in accordance with the above requirements. ODEQ offers two LBP Certifications: one for renovators performing interim controls, and one for LBP Supervisors, Abatement Workers, and abatement firms performing lead abatement. More information can be found on the [ODEQ LBP website](#).

12.6.4 Asbestos

Asbestos fibers may be released into the air by the disturbance of asbestos-containing material during product use, demolition work, building or home maintenance, repair, and remodeling. In general, exposure may occur only when the asbestos-containing material is disturbed or damaged in some way to release particles and fibers into the air.

There is no requirement that subrecipients survey, test, or assess for asbestos-containing materials. However, there are federal requirements that regulate:

- Worker exposure to asbestos
 - 29 CFR 1926.1101 describes OSHA's requirements for workers dealing with asbestos-containing materials.

The Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) requires that renovation and/or demolition notices be submitted to the ODEQ's Air Quality Division (AQD) when certain project conditions exist. The NESHAP does not apply to single-family homes.

If asbestos-containing material is more than slightly damaged or if it will be disturbed as part of the required rehabilitation activities, repair or removal by a professional is recommended. ODEQ and the Oklahoma Department of Labor have rules for asbestos removal. A licensed asbestos contractor will know these rules and should take care of any paperwork required by these state agencies. While these rules do not apply to residential properties consisting of four or fewer units, they do contain work practices that can help reduce exposure during removal. The Oklahoma Department of Labor maintains a list of licensed asbestos contractors. The Department of Labor can be contacted at (405) 521-6464, or visit their website at <http://www.ok.gov/odol>. For additional information, contact DEQ's Air Quality Division at (405) 702-4100 or visit the DEQ Asbestos website at <https://www.deq.ok.gov/divisions/aqd>.

If the removal of asbestos in a unit exceeds the rehabilitation cap, this activity may still occur and exceed the cap due to the safety and health of the resident. This cost is considered a reasonable exception to the program cap.

12.6.5 Construction Agreement

The construction agreement for all rehabilitation and reconstruction activities will be a tri-party agreement between the HRRP Contractor (if applicable), the assisted homeowner, and the subrecipient.

12.6.5.1 Types of Improvements

1. Improvements needed to meet HUD Section 8 Existing Housing Quality Standards and Cost-Effective Energy Measures are eligible improvements.
2. Improvements must be physically attached to the house and be permanent in nature (e.g., sheds or garages located separately from the house are ineligible). Eligibility of

attached structures such as carports or utility rooms is based upon available funds and agreement by ODOC in cases where safety or the structural integrity of the house is involved.

3. Improvements will include, as necessary, lead-based paint and asbestos abatement, handicapped accessibility for special needs, and energy-efficient or ventilation items such as ceiling fans, window screens, screen doors, and window blinds.
4. Individual Mitigation Measures (IMM) that mitigate and/or reduce risk for future disasters where the measures are above and beyond federal, state, or local construction or code requirements, and additionally the improvements exceed those that existed prior to the disaster. Examples include elevation above the base flood elevation level, the addition of storm shutters, FORTIFIED roof standards, roof straps, etc. as long as those improvements are not required to comply with local code or wind zone requirements.
5. Energy-efficient cook stoves, refrigerators, and other necessary appliances are eligible items but will only be considered when they are not present or the repair would not be cost-effective. They will be dealt with on a case-by-case basis.
6. The contractor will obtain any required permits at his/her expense and include them in the bid costs.
7. Assistance will not be used for luxury items, including but not limited to garage door openers, security systems, swimming pools, fences, and television satellite dishes.

12.6.5.2 Supplemental Improvements

1. All debris, abandoned vehicles, and buildings that pose a safety and/or health threat as determined by the local jurisdiction or person qualified to make such a determination, must be removed from the property prior to the start of construction. The assisted homeowners will remove derelict personal property.
2. All electrical components must be inspected including service, meter, wiring, and fixtures even if no electrical work is being specified. Unsafe components must be replaced. All exposed wiring, switches, and light bulbs in living areas must be encased.
3. All homes must be equipped with a smoke detector installed in conformance with the one and two-family dwelling code.
4. Rehabilitated homes inhabited by handicapped or elderly persons must be analyzed as to the special physical needs of such persons. Improvements such as widened doorways, ramps, level entry and doorways, and grab bars in bath areas must be installed, if appropriate.

12.6.6 Contractors Standards

Contractors selected under the State of Oklahoma will make every effort to provide opportunities to low and very low-income persons by providing resources and information to notify Section 3 individuals and businesses of opportunities in the community. ODOC will undertake the following efforts to help meet its Section 3 goals:

- For those entities that receive more than \$200,000 in HUD CDBG assistance and contractors that are awarded covered contracts that exceed \$200,000, ODOC requires that an approved Section 3 plan be in place before the project is awarded and approved.
- Contractors must include specific Section 3 language in all solicitations (RFPs and bid documents).

The State of Oklahoma will report Section 3 accomplishments in the Disaster Recovery Grant Reporting (DRGR) system.

Recovery programs implemented by ODOC and its subrecipients will incorporate uniform best practices of construction standards for all construction contractors performing work in all relevant jurisdictions. Construction contractors will be required to carry the required licenses and insurance coverage(s) for all work performed, and State-contracted contractors will be required to provide a warranty period for all work performed.

12.6.7 Cost Controls

Cost verification controls must be in place to ensure that construction costs are reasonable and consistent with market costs at the time and place of construction. Subrecipients may use an independent, qualified third-party architect, construction manager, or other professional (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract (e.g., change orders) during implementation are reasonable.

12.6.8 Warranty on Work Performed

ODOC will require a warranty period post-construction for housing: all work performed by the subrecipient, or contractor will be guaranteed for a period of one year. The homeowner will be provided with all applicable warranty information. Subrecipients or the state must inform the applicants at project completion what the home warranty terms are and when they expire. At a minimum, beneficiaries should be notified one month before the expiration date of the warranty.

Contractor standards and warranty periods will be further detailed in the respective policies and procedures documents and will pertain to the scale and type of work being performed, including the controls for ensuring that construction costs are reasonable and consistent with market costs at the time and place of construction. Rehabilitation contract work provided through this program may be appealed by homeowners and small businesses (if applicable) whose property was repaired by contractors under the State's control.

12.6.8.1 Warranties and Retainage

When final inspection determines that the work is completed in accordance with the contract, the subrecipient will submit the contractor's request for payment and upon receipt of the funds, disburse the funds to the contractor.

If any problems are identified in this supplemental inspection, the subrecipient will then notify the contractor to come back and correct the issue within a reasonable amount of time, not to exceed two weeks. Should the contractor fail to do so, the subrecipient will not disburse the retainage, the assisted homeowner may take any necessary legal recourse, and the contractor will be barred from performing any more rehabilitation/reconstruction work in the subrecipient. In addition, should the contractor be doing other work under this program and fail to correct any warranty problems, no other payments will be made to him/her until such problems are corrected.

All work performed by the contractor will be guaranteed for a period of one (1) year. Such a warranty will be stipulated in the construction contract between the contractor and the homeowner. For a period of one (1) year, the assisted homeowner may require the contractor to correct defects or problems arising from his or her work under this contract. Should the contractor fail to do so, the assisted homeowner may take any necessary legal recourse as

prescribed in the rehabilitation contract. A reasonable amount of time will be given to correct the problem; however, in no case will such time exceed two weeks to respond.

12.6.9 Property Inspections and Final Payment

A preliminary inspection will be conducted by the subrecipient to determine the condition of the unit for each application and to verify damage if FEMA, Small Business Administration (SBA), or Insurance award letters are not available. The initial inspection will be conducted by the subrecipient's inspector or another qualified inspector, and a list of the deficiencies will be prepared. The inspection will provide an estimate of repair costs to determine whether rehabilitation or reconstruction will be offered and must be in sufficient detail to be utilized in the creation of work write-ups.

12.6.9.1 Progress Inspections

Progress inspections serve three primary purposes: 1) to evaluate the contractor's progress; 2) to confirm that local building codes or standards have been satisfactorily met; and 3) to confirm that all requirements of the contract have been met to all parties' satisfaction.

At key stages in the project, the subrecipient will schedule inspections. Key stages are times when work such as wiring and plumbing are completed and still exposed prior to the wall or flooring being replaced; or when work being performed by a specialty subcontractor, who will be present for only a short time, is nearing completion.

Inspections to approve progress payments will be made at a time requested by the contractor. These inspections will be made promptly upon request so as not to delay the processing of the contractor's payments. If at all possible, the same person will conduct inspections each time.

Building permits are required for all applicable construction work.

The assisted homeowner and the subrecipient will sign the inspection forms as acknowledgement that the work was completed and meets their approval. If the assisted homeowner is not satisfied with any aspect of the work, the inspection forms should not be signed until the contractor has corrected the faulty work.

12.6.9.2 Final Inspections

When work is nearing completion, the contractor will notify the subrecipient of a specific date when the job will be ready for a final inspection. The purpose of the final inspection is to guarantee that all work called for in the contract has been completed according to specification. If progress inspections were conducted often enough to make mid-course corrections, the final inspection would only need to catch those items which have been done since the last inspection. The final inspection will be as thorough and deliberate as the initial inspection. Finished carpentry, painting, backfilling, electrical fixtures, all single-family homeowner activities, and clean-up should be closely checked for completion.

The subrecipient will make sure that the assisted homeowner has received all warranties and instruction booklets for installed equipment.

As in all construction projects, a punch list will be developed toward the end of the job. A punch list is a listing of items written as specifications, which constitute the work necessary to complete the contract. The contractor and the subrecipient as a result of the final inspection will develop the punch list, although the contractor and the assisted homeowner prior to the final inspection

can develop it. The punch list will represent work yet to be done, not additional work over and above the original or amended contract. Once the punch list has been prepared, no other work items are expected of the contractor. If the punch list contains more than ten (10) items, the contractor is not ready for a final inspection.

12.6.9.3 Certificate of Completion and Owner Acceptance

After all items on the punch list have been satisfactorily completed, and all warranties issued, the project can be brought to a final resolution. For purposes of accountability, ODOC must have written documentation that the assisted homeowner and subrecipient have accepted the work. This should be provided to ODOC before construction begins.

13DR22 Public Infrastructure and Stormwater Management Program Guidelines

This program provides funding for infrastructure projects that will help impacted communities recover from the May 2022 storm events and become more resilient to current and future natural hazards. Under this program, ODOC will seek to fund recovery activities, including improvements to community water and sewer systems, and mitigation activities, such as stormwater management systems, both engineered and nature-based. ODOC developed this program to not only support communities in replacing and rebuilding what was damaged or lost in the disaster events but also to implement mitigation measures.

The goal of the Public Infrastructure and Stormwater Management program is to provide a resilient recovery by:

- Reducing or eliminating the long-term risk of loss of life, injury, and damage from future disaster events
- Recovering from the disaster impacts
- Protecting publicly funded recovery investments in impacted communities

ODOC will prioritize projects that provide essential public infrastructure in LMI and socially vulnerable communities, protect life and property, and address the needs of members of protected classes, HUD-identified vulnerable populations, and historically underserved communities. Public infrastructure projects will be selected through ODOC's competitive application process.

This program will emphasize high-quality design, durability, energy efficiency, sustainability, and mold resistance in the repair of the impacted infrastructure, wherever applicable. It will also establish and support recovery efforts by funding feasible, cost-effective measures that will make infrastructure more resilient against a future disaster. These measures will be determined by the funded activity's resilience performance metrics.

13.1.1 How Program will Advance Long-Term Resilience

This program is designed to promote sound, sustainable long-term recovery, and projects that account for the unique hazards, opportunities, land use restrictions, underserved communities, and disaster impacts within Oklahoma's impacted communities. Applicants will be asked to describe the data and/or planning analysis they will use in their evaluation of hazard risk, including climate-related natural hazards. Applicants will also be asked to demonstrate how the projects will be operated and maintained beyond the life of the CDBG-DR grant, including incorporating technologies to prevent early failures of the project.

All newly constructed infrastructure that is assisted with CDBG-DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. ODOC will develop and implement resilience performance metrics for each funded activity.

Eligible projects may consider how to mitigate, eliminate, or reduce loss of life or property concerning the natural hazards identified in the Mitigation Needs Assessment. Applicants seeking to incorporate mitigation should evaluate whether their project:

- Mitigates the risk to public infrastructure
- Mitigates the risk to one or more of FEMA's community lifelines, including safety and security; food, water, and shelter; health and medical; energy; communications; transportation; and hazardous materials
- Incorporates nature-based solutions
- Protects and benefits disadvantaged communities
- Promotes resiliency through ancillary or triple-bottom-line benefits (social, environmental, and economic benefits)
- Considers climate change and future conditions
- Leverages federal, State, and local partnerships

13.1.2 How Program will Address Disaster-Related Storm Water Mgmt./Other Systems

Under this program, ODOC will seek to fund recovery activities including improvements to community water and sewer systems and mitigation activities such as stormwater management systems, both engineered and nature based. ODOC developed this program to not only support communities in replacing and rebuilding what was damaged or lost in the disaster events but also to implement mitigation measures.

13.2 Project Eligibility

Eligible activities include acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements; HCDA Section 105(a)1, 2, 4, 9, and 14; applicable waivers identified in the Allocation Announcement Notice and Consolidated Notice (88 FR 32064); other applicable waivers or alternative requirements.

Activities may include acquisition, planning, engineering, and construction. Infrastructure improvements can also include improvements intended for flood protection, drainage improvement, and hazard mitigation. Types of eligible projects include:

- Improvement or rehabilitation of existing infrastructure such as community water and sewer systems
- New or enhanced stormwater management practices

Funds cannot be used to cover the costs for maintenance and operation, purchase of construction equipment, or buildings used for general use by government entities. Private utilities can now be funded with CDBG-DR funds.

Program applicants must be in or serve a HUD or State-identified MID area. Oklahoma has decided to expand the HUD-identified MID area in ZIP code 74447 to include the entirety of Okmulgee County.

Pre-award expenses are not eligible for reimbursement for this program.

13.3 Benefit to Low- and Moderate-Income Persons

The program will accept only applicants that meet the low- to moderate-income area (LMA) benefit national objective. All projects must benefit at least 51% low- to moderate-income persons.

As per 24 CFR Part 570.483, subrecipients that receive an award from the state may use either HUD-provided data comparing census data with appropriate LMI levels or survey data that is methodologically sound. **An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.**

The Census divisions that best fall within the service area should be used for defining the service area for purposes of reporting on the activity and for calculating the percentage of LMI income persons residing in that area. Subrecipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct a current survey of the residents of the area to determine the percent of such persons that are LMI. Subrecipients should consider the nature of the activity, location, and capacity to serve areas, and limitations to public access when surveying residents. The process to conduct an income survey is further outlined in the CDBG-DR Application Guide.

13.4 Disaster Tieback

All CDBG-DR disaster recovery activities, including Infrastructure activities, must clearly address the impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must address a direct or indirect impact from the May 2022 disaster in a presidentially declared county.

13.5 Eligible Entities

UGLGs (cities, towns, and counties), tribal governments, non-profits, and state agencies can apply to ODOC to implement public infrastructure projects. Only UGLGs, state agencies, and tribal governments can assume the role of responsible entity. If nonprofits apply and are selected as a subrecipient, ODOC will retain the role of the responsible entity. Eligible applicants may work with qualified organizations or partners to help implement the projects.

The use of certified CDBG grant administrators is encouraged.

The subrecipient and ODOC will meet the applicable environmental requirements listed under 24 CFR Part 58 before the use or commitment of funds for each activity. After the Responsible Entity (RE) 1) completes environmental review(s) pursuant to 24 CFR Part 58 and receives from HUD (or ODOC) an approved Request for Release of Funds (RROF) and certification (as applicable), or 2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the state) an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity.

13.6 Program Maximum Assistance

There is no maximum amount of assistance for infrastructure projects. Funding is allocated for each project based on the eligibility criteria. Each project will be evaluated related to the costs and benefits of the infrastructure project. The cost-benefit analysis must be submitted with the application. These benefits will not only include recovery but also consider the long-term benefits of protection against future risks.

13.7 Recordkeeping Requirements

Recordkeeping requirements described in the CDBG-DR Policies and Procedures Manual Section 2.9 Recordkeeping Requirements must be followed. All records shall be accurate, complete, and orderly.

13.8 Performance Resilience Metrics

The State will establish performance resilience metrics specific to each funded activity that constructs, reconstructs, or rehabilitates infrastructure. The metrics will include:

1. An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (e.g., flooding destroying newly repaired roads),
2. Identification of the mitigation measures that will address the projected risks (e.g., elevating the road), and
3. An assessment of the benefit of the grantee's measures through verifiable data (e.g., 10 miles of road will withstand floodwaters up to 10 feet).

ODOC will require its subrecipients to provide estimates of risk for each funded activity and may request additional information to develop the performance resilience metrics.

13.9 Acquisition and Relocation

Upon receiving permission from ODOC, the subrecipient may proceed with efforts to acquire any real property, including easements and rights-of-way, required for the project.

CDBG-DR funds spent on acquisition are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) and Section 104(d) of the Housing and Community Development Act of 1974. The applicable federal regulations are located at 49 CFR Part 24 (URA), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378).

All property acquisition, whether voluntary or involuntary, must follow the program policies outlined in ODOC's Policies and Procedures Manual Section 9 Acquisition & Relocation. These policies are designed to help subrecipients adhere to the requirements of the URA and Section 104(d) of the Housing and Community Development Act of 1974. Subrecipients pursuing acquisition should consult with ODOC on the requirements as needed.

Should any proposed projects or activities cause the displacement of people, the Disaster Recovery Residential Anti-Displacement and Relocation Plan (RARAP) has been adopted to

ensure the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), as amended are met.

13.9.1 Environmental and Acquisition

Executing a contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a commitment of funds and a choice limiting action (24 CFR 58.22(a)) and must be avoided until after the environmental review process is completed and ODOC or HUD has issued a release of funds.

Any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. There is one action that may be taken before the environmental release of funds that might conclude the acquisition once the environmental review process is completed: an option contract. This type of contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

HUD's regulations at 24 CFR 58.22(d) allow for an option contract agreement for any proposed project site prior to the completion of the environmental review when the following requirements are met:

- Option agreement specifically states it is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option is a nominal portion of the purchase price.

13.10 Dams and Levees

Subrecipients that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam.

Subrecipients that use CDBG-DR funds for levees and dams are required to:

- Register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams;
- Ensure that the structure is admitted in the USACE PL 84-99 Program (Levee Rehabilitation and Inspection Program);
- Ensure the structure is accredited under the FEMA National Flood Insurance Program;
- Enter the exact location of the structure and the area served and protected by the structure into the DRGR system; and
- Maintain file documentation demonstrating that the subrecipient has conducted a risk assessment before funding the flood control structure and documentation that the investment includes risk reduction measures.

13.11 Floodplain Requirements

Out of all the possible natural disaster scenarios, flood events are the costliest in terms of lives and property loss. In the State of Oklahoma's CDBG-DR programs, more funds are allocated to flood damage than any other category. The U.S. Federal Emergency Management Agency ("FEMA"), recognizing the frequent occurrence of flooding and associated costs, created a set of rules¹²⁹ to reduce the future loss of life and property due to the increasing number of floods events and recognizing the limitations of the current floodplain extent. The new set of rules are known as the Federal Flood Risk Management Standard ("FFRMS"). These standards were created to ensure that projects are resilient not just to present-day flood conditions but also to future risks due to climate change, rising sea levels, and other evolving environmental factors. All Public Infrastructure projects under the CDBG-DR program are required to comply with FFRMS requirements.

13.11.1 Federal Flood Risk Management Standard

In April 2024, [HUD published a final rule in the Federal Register](#) amending floodplain regulations at 24 CFR 55 to incorporate the Federal Flood Risk Management Standard (FFRMS). This rule strengthens resilience to both current and future flood risks by setting stricter standards for the use of federal funds in new construction or substantial improvements within the expanded FFRMS-defined floodplain.

¹²⁹ See 89 FR 56929 July 11, 2024.

13.11.1.1 New Floodplain Definition

The Federal Flood Risk Management Standard (FFRMS), established in 2016 under Executive Order 13690, builds on the 1977 Executive Order 11988. HUD's updated regulations in 24 CFR Part 55 now govern the FFRMS floodplain, which considers future flood risks. This floodplain extends vertically and horizontally, accounting for projected flood height increases and expanded water impact areas. Section 55.7 outlines the process for subrecipients to determine if a project falls within the FFRMS floodplain for both critical and non-critical actions.

Critical action means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that: (A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials; (B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., community stormwater management infrastructure, water treatment plants, data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or (C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

13.11.1.2 How to Identify the FFRMS Floodplain

With some exceptions, projects under § 55.12 are exempt from full compliance with HUD's floodplain management regulations, Part 55. If not exempt, applicants must determine the extent of the FFRMS floodplain and provide mapping. The floodplain is defined using one of three methods: the Climate Informed Science Approach (CISA), the 0.2 Percent-Annual-Chance Flood Approach (0.2PFA), or the Freeboard Value Approach (FVA). CISA, HUD's preferred method, uses forward-looking flood risk data. If CISA data isn't available, the 0.2PFA or FVA approaches apply, depending on FEMA's floodplain mapping.

13.11.1.3 Elevation, Floodproofing, Minimization, and Restoration

Section 55.20(e) of the final rule requires that all new construction and substantial improvements in the FFRMS floodplain, subject to the 8-step decision-making process, must be elevated or, in some cases, floodproofed above the FFRMS floodplain. The elevation must be documented with an Elevation Certificate or a Floodproofing Certificate and included in the Environmental Review Record (ERR) before construction begins. This ensures compliance with enhanced mitigation and risk reduction standards.

14DR22 Resilience and Mitigation Planning Grant Program Guidelines

This program provides grants to local governments, nonprofits, or their administrators to assist in meeting the community's mitigation and resilient rebuilding goals. This program is considered a mitigation-only activity. The goal of the program is to reduce long-term risk and increase local resilience through community education, capacity-building, and planning efforts.

Mitigation activities are defined 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. Resilience is defined as a community's ability to minimize damage and recover quickly from extreme events and changing conditions, including natural hazard risks. This program will fund activities that mitigate the impacts of future disasters and increase resilience.

Depending on funding availability, types of activities could include but are not limited to:

- Updating or creating watershed and stormwater management plans in partnership with the appropriate agencies
- Developing local plans that focus on mitigation and resiliency
 - CDBG-DR funds may also be used to create or update local comprehensive plans that emphasize resiliency and mitigation activities as they relate to housing development, public land use, and infrastructure.
 - Plans can involve the development of updated local codes and standards to improve resilience, including using FEMA's Building Codes Toolkit or current IBC codes. Funding may also be used to develop floodplain ordinances with higher regulatory standards or other planning efforts designed for mitigation and resiliency.
- Capacity-building activities to enhance the capabilities of local governments, Indian tribes, housing development organizations, Community Development Corporations (CDCs), and Community Housing Development Organizations (CHDOs), to carry out community development and affordable housing activities that benefit low- and moderate-income families and persons with an emphasis on mitigation and resiliency after a disaster.

These mitigation and planning activities must address a risk identified in the mitigation needs assessment of this Action Plan and/or the state or locality's hazard mitigation plan. There must be a clear connection between the funded activity and the mitigation needs assessment.

Applicants must describe in their application the steps they will take to increase awareness of the hazards in their communities (including for members of protected classes, vulnerable populations, and underserved communities) through outreach.

The goal of this program is to support activities that will:

- Support adoption and enforcement of modern and/or resilient building codes that mitigate against natural hazard risks, including climate-related risks (e.g., high winds, flooding, and wildfire risk, as may be identified in the jurisdiction's rating and identified weaknesses in building code adoption using FEMA's Nationwide Building Code Adoption Tracking (BCAT) portal), and provide for accessible building codes and standards, as applicable;
- Make land-use decisions that reflect responsible and safe standards to reduce future natural hazard risks, (e.g., by adopting or amending an open space management plan that reflects responsible floodplain and wetland management), and;
- Increase awareness of the hazards in their communities (including for members of protected classes, vulnerable populations, and underserved communities) through outreach.

14.1 Mitigation Activities Only

The planning activities will be required to meet the definition of a mitigation activity and describe how the definition is met in the application. Mitigation activities are defined 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.

The activities will address current and future risks by addressing risks identified in the mitigation needs assessment in the DR22 Action Plan, and risks identified in the state or locality's hazard mitigation plan. Priority should be placed on mitigating risk from flooding, high winds, tornados, and severe storms. Other risks can be mitigated if the need and hazard is documented.

Planning and capacity-building activities generally mitigate risk from disaster by providing plans and resources that communities can utilize to prepare for, prevent, and respond to disasters.

14.2 Eligible Activities

These funds can support plan development and capacity building consistent with the HCDA Section 105(a)(12); applicable waivers identified in the Allocation Announcement Notice and Consolidated Notice (88 FR 32046); and other applicable waivers or alternative requirements.

Program applicants must be in or serve a HUD or State-identified MID area. Oklahoma has decided to expand the HUD-identified MID area in ZIP code 74447 to include the entirety of Okmulgee County. Expenditures for planning activities may be counted towards the HUD-identified MID area requirement, if the subrecipient describes in its proposal how those planning activities benefit those areas.

Pre-award expenses are not eligible for reimbursement for this program.

14.3 National Objective

Planning activities are presumed to meet a national objective under the requirements of 24 CFR 570.208(d)(4). CDBG funds expended for planning and administrative costs under [§ 570.205](#) and [§ 570.206](#) will be considered to address the national objectives.

14.4 Eligible Entities

UGLGs (cities, towns, and counties), tribal governments, non-profits, COGs, and state agencies can apply to ODOC to implement resilience and mitigation planning projects. Only UGLGs, state agencies, and tribal governments can assume the role of responsible entity. If nonprofits or COGs apply and are selected as a subrecipient, ODOC will retain the role of responsible entity.

Eligible applicants can work with nonprofit planning organizations. The use of CDBG certified grant administrators is encouraged.

The subrecipient and ODOC will meet the applicable environmental requirements, listed under 24 CFR Part 58, before the use or commitment of funds for each activity. After the Responsible Entity (RE) 1) completes environmental review(s) pursuant to 24 CFR Part 58 and receives from HUD (or ODOC) an approved Request for Release of Funds (RROF) and certification (as

applicable), or 2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the state) an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity.

14.5 Program Maximum Assistance

There is no maximum amount of assistance for planning grants. Funding is allocated for each project based on the eligibility criteria described in the DR22 Action Plan. Each project will be evaluated related to the costs and benefits of the planning project. These benefits will consider the long-term benefits of protection against future risks.

14.6 Recordkeeping Requirements

Recordkeeping requirements described in the CDBG-DR Policies and Procedures Manual Section 2.9 Recordkeeping Requirements must be followed. All records shall be accurate, complete, and orderly.

14.7 Additional Requirements

Subrecipients are required to review and adhere to all requirements as described in the CDBG-DR Policies and Procedures Manual .