

## Chapter 8 – Economic Development Projects

### Words to Know

**Assisted entity** – business or non-profit organization that has received financial assistance from the CDBG-Economic Development program.

**CDBG-ED** – a federally-funded program designed to stimulate economic development activity by assisting Montana’s private sector to create or retain jobs for LMI Montanans, specifically, including individuals earning less than 80% of the area median income.

**Non-Disclosure Agreement** – a contract between the Grantee, subgrantee, subrecipient, etc., and Commerce that outlines confidential information each party wishes to share, and restricts them from disclosing that information to unauthorized individuals, to protect sensitive business details or trade secrets.

**Revolving Loan Fund** – a separate fund, independent of other accounts, set up for the purpose of carrying out specific activities. These activities generate payments to the account for use in carrying out the same types of activities.

### Overview

To a private business, the regulations associated with the CDBG Program may seem more applicable to traditional public sector projects. Both public and private entities must comply with applicable federal and state laws, executive orders, and regulations affecting their CDBG project. Applicable CDBG requirements will become specific conditions of the contract between Commerce and the local government, and the subrecipient agreement between the local government and the public or private entity that will receive CDBG-ED assistance. The local government and the public or private entity should carefully review these CDBG requirements and consider the potential impacts such as the effect on the cost, timeline, and complexity of the project. CDBG-ED Grantees should familiarize themselves with all the other chapters in the CDBG Grant Administration Manual.

## **Additional Economic Development Requirements**

### **Project Start-Up and Audits**

Chapter 1 can provide guidance regarding the CDBG audit requirements for local governments. Audits regarding loans or grants to private sector entities are limited to CDBG regulatory compliance and not business operations. The local government must require financial documentation and reports from the business, including documentation of the appropriate use of CDBG-ED funds by the assisted entities and periodic financial statements.

The local government should keep proprietary information secured and maintain the confidentiality of business financial statements received from the business. The CDBG-ED application includes an NDA template. Local governments should adhere to executed NDAs when referring to the CDBG-ED-assisted business in public settings or on public record.

CDBG-ED Grantees are also required to provide a Hiring and Training Plan in addition to the Start-Up Conditions set forth in Chapter 1 and the “Getting Started” toolkit. CDBG-ED Grantees may be required to provide a Revolving Loan Fund plan and/or a Program Income Plan, depending on the project type.

### **Hiring and Training Plan**

Commerce must review and provide written approval of the business’s Hiring and Training Plan. A draft Hiring and Training Plan must be submitted with the application for funding and then resubmitted to Commerce in a finalized version with signatures from all responsible parties as part of the Start-up Conditions.

The assisted entity must show substantial compliance with the Hiring and Training Plan and a good faith effort toward accomplishing the hiring goals set out in the assistance agreement before the project can be closed out. To comply with federal requirements, Commerce must ensure that performance goals are achieved; therefore, the grant assistance agreement will contain a penalty clause for noncompliance with the Hiring and Training Plan that could result in the recovery of grant funds from the assisted entity or the local government recipient.

Local governments and assisted entities must consider equal opportunity and nondiscrimination laws to ensure that women and minorities are not excluded from participation in, denied the benefit of, or subjected to discrimination under any program or activity funded in whole or in part with CDBG-ED funds.

At a minimum, an acceptable Hiring and Training Plan should contain the following:

- A breakdown of jobs to be created or retained, indicating the percentage which are full-time, part-time, skilled, semiskilled, or unskilled
- A discussion of the actions to be taken to ensure that the positions created will be made available to LMI persons
- A breakdown of jobs to be created, indicating the job titles and descriptions and the rates of compensation. For applications proposing positions involving less than full-time employment, an estimate must be included of the number of hours to be worked each week or the number of months to be worked each year for each position
- A timetable for creating the jobs, the total number of persons to be hired, and number of LMI persons to be hired. Commerce will generally use the number of jobs to be created or retained within a period of two years from the date of grant award
- An assurance that the assisted entity will comply with equal opportunity and nondiscrimination laws
- Procedures for the outreach, recruitment, screening, selection, training, and placement of workers that will ensure maximum access for local residents, particularly LMI persons
- A description of the training curriculum and resources, if applicable
- Written commitments from any outside agencies or organizations (other than the local government) participating in the implementation of the plan

Minimum job requirements should not exceed the equivalent of a high school education to count as a job opening available to LMI persons. If job qualification requirements exceed the equivalent of a high school education, training can be provided to enable otherwise

unqualified persons to qualify for the position. For more information see the “Economic Development” toolkit.

### **Hiring and Training Plan for Customized Training of Employees**

In addition to the information above, the Hiring and Training Plan for an assisted entity receiving CDBG-ED must contain a signed assurance from the company that in the event the company does not meet its hiring and training goals within the contract period, the company will reimburse the local government for the full amount of the CDBG-ED grant/loan.

### **Financial Management**

Local governments must comply with all the applicable financial management requirements contained in Chapter 5. Any agreements between the local government and Commerce, and between the local government and the assisted entity should be retained for documentation of federal compliance. There are specific requirements related to the drawdown of funds by the local government for economic development projects, program income, and revolving loan funds, and other financial requirements that will apply to the local government and the assisted entity.

### **Submit Requests for Drawdown of CDBG-ED Funds**

Chapter 5 explains the procedures to draw down funds for all CDBG projects, which includes CDBG-ED projects. In addition to the procedures and requirements contained in Chapter 5 and the “Request for Reimbursement” toolkit, the local government must submit the following additional information for CDBG-ED projects:

- If the request for CDBG-ED funds is used for working capital, the assisted entity must submit copies of eligible bills, vouchers/invoices, payment requests, orders, payrolls, which equal the funds requested. Projected working capital needs may be used provided the Grantee later reconciles the projected needs with actual working capital expenditures. Back up documentation must be maintained for all projected and actual expenditures.
- If the request for CDBG-ED funds is used for machinery or equipment, the assisted entity must submit documentation describing the machinery or equipment being purchased and the bill, invoice, or order form verifying the costs incurred.

## Civil Rights

All civil rights requirements apply to the local government even if the requirements are not directly related to economic development, such as adopting and publicizing a fair housing resolution by the local government. The assistance agreement between the local government and the assisted entity will contain sections requiring the assisted entity to comply with federal nondiscrimination laws. The Hiring and Training Plan also must contain a provision that the assisted entity will comply with equal opportunity and nondiscrimination laws. For detailed information regarding the civil rights requirements see Chapter 2 and the “Getting Started” toolkit.

## Labor Standards

Chapter 6 explains the labor standards that are applicable to all CDBG-ED projects. All construction contracts funded in whole or in part with CDBG-ED funds must include federal labor standards provisions. This includes contracts funded either with CDBG-ED funds directly by the local government or with CDBG-ED funds provided to the assisted entity.

Federal DBA wage and labor requirements should be given careful consideration when planning CDBG-ED projects. Projects that include construction, remodeling, site development, equipment installation or other similar activities involving the use of CDBG-ED funds for contracted labor and services will have to comply with DBA requirements. The additional costs associated with DBA wage rates should be considered when calculating project costs and obtaining estimates from potential contractors.

DBA wage rates would not apply in cases where:

- Equipment installation is limited to the equivalent of plugging it into the electrical system or placing it on the floor with only minor attachment work required
- Equipment installation by the company selling the equipment is a condition of the equipment’s guarantee

DBA wage rates do not apply to the assisted entity’s existing workforce. For more information see the “Labor Standards Officer” toolkit.

## **Grant Assistance Agreement and/or Loan Agreement**

A grant assistance agreement or loan agreement must be executed for all CDBG-ED projects. All agreements commit the assisted entity to a scope of activities, compliance with the Hiring and Training Plan, and compliance with other applicable requirements.

No agreement can be executed until the draft is sent to Commerce and the contract's CDBG-ED Project Specialist has reviewed and provided written approval. Agreements are not considered executed until the assisted entity and the local government have signed.

Assistance agreements for infrastructure improvements must contain a signed assurance from the company that in the event the company does not meet its hiring and training goals within the contract period, the company will reimburse the local government for the full amount of the CDBG-ED infrastructure grant.

The “Economic Development” toolkit contains sample assistance agreements. Assistance agreements must be used between the local government or local development organization and the assisted entity. It is very important that the local government’s legal counsel review and approve all assistance agreements.

Loans typically include the following documents:

- Loan application
- Insurance policy
- Loan agreement
- Promissory note
- Security agreement
- Deed of Trust or Mortgage (as applicable)
- Agreement of prior lien holder (as applicable)
- Personal guarantee
- UCC filings or security lien filings

## **Revolving Loan Fund Plan**

CDBG-ED projects that involve the loan of CDBG-ED funds to an assisted entity must plan for the use of program income. Program income is any income earned by a local government from CDBG-ED-supported activities such as repayments of principal and interest to a local RLF. A revolving loan fund is set up to administer income generated from low-interest community loans and is managed according to guidelines developed by the community, referred to as a “Program Income Plan”.

RLFs must be its own account, not shared with other funding sources. In the case of a CDBG-ED project, the RLF is established to carry out eligible economic development activities that in turn generate program income through loan repayments and interest earned. RLFs are allowed to earn interest and grow. The funds do not have to be drawn down while the project is open. Theoretically, the RLF becomes a fund from which monies are continuously expended, replenished, and again expended.

There are a large number and variety of eligible uses for CDBG-ED funds. The local government has flexibility in planning for the use of program income. Generally, local governments choose to use program income from economic development projects to capitalize an economic development RLF. Program income from economic development projects can be blended with program income from other CDBG projects and used for eligible community development projects.

Commerce allows program income to be retained by the local government if the local government has developed an adequate plan for the expenditure of these funds. The local government must submit for Commerce’s approval a plan for ongoing use and financial administration of any program income. The plan must be submitted before Commerce can release funds and before the assisted entity begins making loan repayments. It is important that the local government demonstrate that it has, or will quickly develop, the capacity to set up and manage an RLF for future eligible community development projects. The “Project Monitoring and Closeout” toolkit contain sample guidelines for an economic development

RLF that Commerce adapted from an actual CDBG-ED-funded project for a small town. The local government may follow this sample and design its guidelines with its own needs in mind.

Any community that has been receiving program income from a previous CDBG project funded after 1992 must have submitted a summary of past program income earnings, activities funded, and other information along with the CDBG grant application. Under HUD regulations, communities are also required to submit annual program income reports to Commerce if they have received program income from CDBG-supported activities.

Please contact your CDBG-ED Project Specialist for more examples of RLF plans from across the state. More information can be found in Chapter 5.

## **Documenting LMI Benefit in Economic Development**

It is the responsibility of the local government to document that one of the three National Objectives has been met. The local government must monitor this for the duration of the contract and document the actual benefit at project closeout.

Local governments must ensure that they, or the subrecipient, describe methods in the application to be used for preferential recruitment, hiring, and training of local workers, particularly those of LMI. When a grant is awarded, the applicant's commitment to the hiring plan is considered binding and will be incorporated in the grant agreement between the local government and Commerce. A project will not be closed out prior to all proposed positions being filled. A 2% retainage will be withheld from the grant award until project closeout.

For economic development activities to meet this National Objective the local government must demonstrate a benefit to LMI in one or more areas listed below. The activity must:

- Be carried out in a neighborhood or community where 51% or greater number of LMI persons reside
- Create jobs of which 51% will be held by, or made available to, LMI persons



- Retain jobs of which 51% is held by an LMI person or the job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, an LMI person
- There must be sufficient documentation that the jobs would have been lost without CDBG assistance

The local government must determine the best method by which to substantiate the benefit to LMI and provide appropriate documentation. Possible methods include:

- Identifying the specific neighborhood or community boundary and conducting an income survey of the project's intended beneficiaries
- Obtaining income certifications from individuals hired
- Documenting the type of training to be provided
- Documenting efforts to advertise and recruit LMI

## Full-Time Equivalent Positions

All jobs must be converted into full-time equivalent positions. An FTE employee is an individual who is employed for an average of 40 hours a week or a combination of individuals whose combined hours of employment equal 40 hours per week. Using the income certification forms, the local government must verify the number of positions currently held by LMI persons for an existing assisted entity, and project those FTE LMI jobs to be created based on the assisted entity's Hiring and Training Plan. The Grantee must provide a base level of employment (a list of all current employees and job titles) with an application for CDBG-ED funding to determine the actual number of new hires. For existing firms, applicants must provide employment levels for the past year. The date for determining the base level of employees will be the application submission date. Only jobs that the assisted entity creates directly within a 24-month period following grant award will usually be counted toward this requirement. Commerce cannot consider jobs created indirectly by an assisted activity (i.e., "trickle-down" jobs). Please note that jobs created is based on FTE positions not individuals. New hires and employee turnover should be tracked based on positions detailed in the Hiring and Training Plan.

Permanent, year-round jobs are the priority of the CDBG-ED program; only permanent jobs may be counted during project closeout. Temporary construction jobs, other temporary jobs, and some seasonal jobs may not be counted.

## New Hires and Retained Job Documentation

Fifty-one percent (51%) of all jobs created by the assisted entity during the term of the project must be filled by or made available to LMI persons. This applies even if more jobs are created than were originally projected. For job retention projects, the employee income must be documented for the prior year and be completed no more than 30 days before the application is signed. The application must provide evidence that jobs would be lost without CDBG-ED assistance. The assisted entity must commit to filling as many new job openings with LMI persons as is reasonably possible, whether job openings occur from turnover or job creation. The full application must include a complete listing of all existing jobs by title, race, ethnicity, gender, and disability status. The application must indicate which positions are currently held by LMI persons. The assisted entity should provide an estimate of its expected job turnover will be counted toward the LMI benefit percentage (at least 51% of total jobs). Assisted entities claiming job retention must submit documentation of existing employees eligible to be considered LMI by using the income verification form and job tracking form in the application.

## Tracking Jobs for Customized Training Grants

Assisted entities must track training expenses for each position assisted with CDBG-ED funds. The “Economic Development” toolkit contains a form that can be used to track individual training expenses for each employee. Businesses must document matching training funds 1:1 for each CDBG-ED dollar expended. For example, if a company sends an employee to a local college to take a course for related training, CDBG-ED would pay half of the training costs and the assisted entity would pay half. A completed training form or its equivalent must be submitted with each request for reimbursement. Assisted entities can request reimbursement for training expenses at the end of each employee’s training or probationary period. At the end of the training period, employees must be paid a compensation package in salary and benefits that meets at least the lower of either the

county's average hourly wage, or the state's average hourly wage. Average wage rates are determined by the [Montana Department of Labor and Industry](#). Contact the Project Specialist for the current wage table.

Local governments must ensure that they maintain complete hiring records associated with the CDBG-ED project. Local governments must also ensure that the assisting agency and the assisted entities maintain complete records. Federal regulations and reporting requirements require that racial, ethnic, and gender characteristics information be maintained for all job applicants as well as new hires.

### **Making Jobs Available to LMI**

Commerce recommends assisted entities establish a hiring process that ensures all positions designated as available to LMI persons are actually filled by LMI persons. Commerce recommends that the assisted entity establish a hiring process that prioritizes the hiring of LMI persons. When this is not possible, the assisted entity must document that it gave first consideration to LMI persons during the hiring process by interviewing a sufficient number of LMI persons to provide the maximum opportunity for filling the position with LMI persons.

HUD developed the first consideration approach with the expectation that, in most instances where it is applied, the outcome will be that more than 51% of the persons hired will be LMI. The assisted entity will be required to consider a sufficient number of LMI job applicants to meet the intent of this requirement. The local government must ensure that there is adequate documentation available to show what jobs were created, what process was used for first consideration, which LMI persons were considered for such jobs, and which of those persons were hired. If the assisted entity is unable to determine whether a newly created job should be categorized as available to LMI persons, consult with Commerce. HUD has accepted retained jobs actually held by LMI persons, considering their family income and size, as jobs made available to LMI persons.

## Documenting Slums and Blight

Grantees must document the actual number of buildings improved as a result of the project qualifying under the Slum/Blight National Objective. Documentation may include the number of structures improved, a description of improvements, photos, census tract information, and official designation.

## Submit Applicable Economic Development Reports

Commerce may request that the local government, or its project administrator, submit the following reports to Commerce during the implementation of the project until it is closed out:

- Financial status reports that include the balance sheet and a profit and loss statement of the business for the period, at least twice a year
- Business plan reports that discuss the business's progress toward achieving the goals and objectives contained in the original application, at least once a year
- Hiring and Training Plan progress reports, quarterly – if not submitted with requests for funds
- Loan Portfolio Data sheet that tracks the business's loan activities

Depending on the type of project and the number and complexity of any problems that may arise during the term of the project, the CDBG-ED Project Specialist may require the local government to submit reports more frequently or provide additional reports, especially the Hiring and Training Plan reports and the financial statements. Based on the information contained in the reports, the local government and the CDBG-ED Project Specialist can determine how often and how closely the assisted entity should be monitored. The local government should monitor the assisted entity and local development organization periodically during the project as the local government has the ultimate responsibility for proper management of CDBG-ED funds.

The assistance agreement and the CDBG-ED grant contract contain a penalty clause that applies to the hiring goal. If the hiring goals and timetable committed to by the assisted entity in the final Hiring and Training Plan are not met during the term of the project, Commerce may recover CDBG-ED funds in proportion to the shortfall in hiring. If at least 51% of the total

jobs created or retained are not held by, filled by, or made available to LMI persons, the local government may be required to repay the total grant amount back to Commerce. The local government must take steps to monitor the progress of the assisted entity's hiring and training goals and ensure that reporting requirements are met.

## Review Quarterly Financial Statements

The local government should have someone who is trained and experienced in analyzing financial statements review the periodic financial reports. The local government must identify early any financial problems the assisted entity may experience during the term of the CDBG-ED project or loan term.

If problems are detected, the local government can discuss possible solutions with the assisted entity and help resolve them, if possible. For example, a business cannot hire employees or retain existing employees if it cannot afford to pay them. In addition, a business cannot repay a loan if it does not have sufficient cash flow available to cover the debt service. It is essential that the local government communicate frequently and openly with the assisted entity to assure management that the local government is willing to help work out problems.

Listed below are indicators of financial troubles:

- Actual sales (or other revenues) do not meet projections
- The hiring goals and schedule are not met
- Profits are continually low or negative
- The business plan is not being followed by the business or goals are not being met
- Operating cycle trends show significant changes from what were projected
- Net equity and retained earnings decline
- Liquidity ratios (assets in proportion to liabilities) indicate that the firm may be becoming insolvent (assets are becoming lower in proportion to liabilities and working capital declines)
- The matching funds are not being used reasonably in proportion to the CDBG-ED funds

- Significant changes in management or in ownership occur
- Changes in banks generally used by the entity
- Management behavior changes drastically
- Payments on the loan are often late or missed
- Large turnover in employees or labor relations problems occur
- Changes occur in accounting methods or in accountants
- Aging of accounts receivable and accounts payable indicate a trend toward later receipts of revenues and payments of bills by the entity
- Large loans made from the entity to officers or large loans made from officers to the entity
- Large items purchased with CDBG-ED funds or with other funds are not available for inspection

Financial analysis is an art, not a science, and requires that the local government pay close attention to trends and discuss them with the assisted entity as early as possible. The local government may have a lower security position than other lenders or providers of funds, a circumstance that increases the local government's oversight responsibility.

The Project Specialist should be contacted whenever the local government believes that a financial problem may be evident. The Project Specialist may review the financial statements if conditions warrant or if the local government requests assistance with a problem. The local government should also work closely with persons or entities providing financing for the project such as banks, investors, venture capital companies, and public agencies.