

 WEST VIRGINIA Economic Development	<u>CSBG Policies & Procedures</u> Use of Funds for Construction and Waiver Request Procedures	Effective Date: 1/1/2025
--	--	------------------------------------

SUBJECT: Use of Funds for Construction and Waiver Request Procedures

PURPOSE:

The purpose of this policy is to describe the limitations of CSBG funding for the purchase, construction, or permanent improvement of any building or other facility, and the procedures for requesting a waiver to those limitations in extraordinary circumstances.

Section 678F of the CSBG Act states the following:

(a) CONSTRUCTION OF FACILITIES.--

(1) LIMITATIONS.-- Except as provided in paragraph (2), grants made under this subtitle (other than amounts reserved under section 674(b)(3)) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subtitle, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(2) WAIVER.--The Secretary may waive the limitation contained in paragraph (1) upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this subtitle.

The following defines the types of purchases associated with this limitation and establishes standardized procedures for requesting and approving waivers.

DEFINITIONS:

Construction includes the following:

1. New buildings and structures.
2. Additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements (such as the complete replacement of a roof or heating system).
3. Mechanical and electrical installations such as plumbing, heating, electrical work, elevators, escalators, central air-conditioning, and other similar building services.
4. Site preparation and outside construction of fixed structures or facilities such as sidewalks, highways and streets, parking lots, utility connections, outdoor lighting, railroad tracks, airfields, piers, wharves and docks, telephone lines, radio and television towers, water supply lines,

sewers, water and signal towers, electric light and power distribution and transmission lines, petroleum and gas pipelines, and similar facilities that are built into or fixed to the land.

5. Installation of the following types of equipment: boilers, overhead hoists and cranes, and blast furnaces.
6. Fixed, largely site-fabricated equipment not housed in a building, primarily for petroleum refineries and chemical plants, but also including storage tanks, refrigeration systems, etc.
7. Cost and installation of construction materials placed inside a building and used to support production machinery; for example, concrete platforms, overhead steel girders, and pipes to carry paint, etc. from storage tanks.

The following are excluded from construction:

1. Maintenance and repairs to existing structures or service facilities.
2. Cost and installation of office furniture and equipment items not specifically covered above, which are needed for the administration of the program.

Permanent Improvements: Permanent improvements are defined in 2 CFR 200 as Capital Expenditures:

Capital Expenditures: Expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to *capital assets* that materially increase their value or useful life.

Capital Assets:

1. Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - (i) Land, buildings (facilities), equipment, and intellectual property (including software), whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
 - (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
2. For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property or equipment for a period of time under a lease contract.

Secretary: The term 'Secretary' means the Secretary of the U.S. Department of Health and Human Services.

PROCEDURES:

While CSBG funds may not be used for the repair or permanent improvements to property, Section 678F(a)(2) of the CSBG Act allows the Secretary of the Department of Health and Human Services (HHS) to waive restrictions on the use of CSBG funds for purchase or improvement of land, or the purchase, construction, or permanent improvement of property in extraordinary circumstances if doing so will contribute to the ability of the state to carry out the purposes of the grant.

Based on CSBG IM #154, OCS will consider and expedite responses to waiver requests for emergency repairs for service facilities directly impacted by a disaster that are not covered by other federal disaster assistance or other sources such as property insurance. The responsible state CSBG official must submit a waiver request signed by the state CSBG Authorizing Official and addressed to the Secretary of HHS with attention to the Director of OCS describing the extraordinary circumstances that justify the waiver. The request must explain how the waiver will contribute to the state's ability to meet and carry out the purposes of the CSBG program in the disaster circumstances.

Prior to submission of a waiver request, state CSBG lead agencies should assist CSBG eligible entities in accessing all other available sources of support for these needs. For repair, renovation and/or rebuilding requests, states must also establish procedures for verifying that costs associated with these activities are not reimbursable through the Federal Emergency Management Agency (FEMA) disaster assistance, under a contract for insurance, or covered by self-insurance. Use of CSBG funds for repair, rebuilding, and/or reconstruction of facilities creates a reversionary federal interest in the property, and requirements for a notice of federal interest will be included in a waiver approval.

In the event an Eligible Entity believes there is just cause to submit a request to the Secretary for a waiver due to extraordinary circumstances such as a natural disaster, the following information must be submitted to the State for review. The State will consider the information and determine whether or not it merits a request to the Secretary for a waiver.

Procedures for requesting and approving waivers

A waiver request must be sent to the State on company letterhead including the following information:

- The official name and UEI of the organization.
- The specific expenditures for which the waiver is being requested.
- A detailed description of the purchase, the anticipated cost, and grant number.
- A description of the extraordinary circumstances which justify the need for a waiver request.

The State will review the request within 10 business days and will make a determination on whether or not there is justification for the waiver request. If the State agrees with the request, it will be sent to the State's point of contact at the Office of Community Services and request further instructions. If the State does not feel that the circumstances warrant a request for a waiver, a response will be sent to the agency outlining the reasons for the decision.

Supersedes: N/A	WVDED CSBG Policies and Procedures
The WV DED electronic version is the control version. All other printed or electronic versions are uncontrolled.	