

19 ANTI-FRAUD, WASTE, AND ABUSE POLICY

19.1 PURPOSE

DED, as Grantee of the CDBG-DR funds, is responsible for preventing, detecting, reporting and rectifying incidents of fraud, waste, and abuse (FWA) among other irregularities related to the program. DED has zero tolerance for the commission and/or concealment of acts of FWA. The purpose of this chapter is to encourage any individual to raise any concern, known or suspected, of acts of FWA by anyone involved with the CDBG-DR Program.

As described in this chapter, DED will leverage existing investigative resources and corrective actions available to the State of Nebraska to meet HUD requirements. If FWA are identified, DED shall pursue investigation, including taking legal action where warranted. Reported cases under review shall be considered potential FWA until claims are substantiated.

DED encourages any individual who is aware of or suspects any conduct or activity that may be considered an act of FWA of the CDBG-DR Program to report such acts to DED's Internal Auditor, the Nebraska Auditor of Public Accounts (APA), directly to the Office of Inspector General (OIG) at HUD, or any local or federal law enforcement agency. As applicable to Certified Administrators for projects, and at the discretion of DED, engaging in FWA, whether or not such activity is a crime, may result in the implementation of the de-certification process without an initial or additional probationary status. Generally, de-certification occurs where an individual fails to properly administer CDBG-DR projects.

19.2 FEDERAL AND STATE REGULATIONS

The following federal and state rules and regulations are in place to prevent, detect, report, and rectify FWA. These rules and regulations exist to encourage any individual to raise any concern, known or suspected, of acts of FWA by anyone involved with the CDBG-DR Program:

19.2.1 FEDERAL

- 2 CFR § 200.303 requires that non-Federal entities must “establish and maintain effective internal control over the Federal award” and further requires that such entities “take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.”¹

¹ 2 CFR § 200.303.

- Related to the allocation for Winter Storm Ulmer (DR-4420), the Federal Register Notice from February 9, 2018² outlines adequate procedures to detect and prevent fraud, waste, and abuse, including the Grantee (i.e., DED) verifying “the accuracy of information provided by applicants”, providing “a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored”,³ and demonstrating “it has an internal auditor that provides both programmatic and financial oversight of Grantee activities; and includes a document⁴ signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.”⁵

19.2.2 STATE

- The State Government Effectiveness Act (the Act),⁶ sometimes referred to as the Whistleblower Act, prohibits agencies of State government from retaliating against State employees who report wrongdoing in State government to proper authorities and provides certain protections for employees who are “whistleblowers” covered by the Act.

19.3 ROLES AND RESPONSIBILITIES

DED and its Subrecipients and Successful Applicants have a shared responsibility to prevent and detect FWA. Subrecipients and Successful Applicants are responsible for the day-to-day monitoring of project activities and ethical management practices to ensure there is no FWA within the program, and to report FWA if it is identified. DED staff are responsible for the overall detection and prevention of FWA, including regular monitoring to maintain accountability of Subrecipients and Successful Applicants, as well as coordinating investigations if any FWA is reported and/or to determine if CDBG-DR funds are being spent within the confines and parameters of relevant HUD and other Federal requirements. For further details regarding monitoring of Subrecipients and Successful Applicants, see **Chapter 16: Monitoring and Compliance Plan**.

19.4 PREVENTION

The structure of CDBG-DR makes the program vulnerable to fraud as CDBG-DR funds may flow through numerous entities before being spent on eligible activities or reaching their intended beneficiaries. To proactively address potential cases of FWA, DED will maintain monitoring processes (see **Chapter 16: Monitoring and Compliance Plan**) to track Subrecipients and Successful Applicants throughout program implementation.

² 83 FR 5844 at 5848.

³ See **Chapter 16: Monitoring and Compliance Plan**.

⁴ An earlier version of this document was submitted to HUD as a part of the CDBG-DR Financial Management and Grant Compliance Certification process prior to the State receiving CDBG-DR funds.

⁵ 83 FR 5844 at 5848.

⁶ Neb. Rev. Stat. §§ 81-2701–81-2711.

To prevent FWA, DED staff will:

- Develop a Code of Conduct Subrecipients and Successful Applicants adopt and use as a framework for ethical decision making within an organization. The Code of Conduct shall include a written collection of the rules, principles, values, and employee expectations to be reviewed at least annually;
- Ensure ongoing compliance with Federal, State, and local requirements through analysis of policies and procedures, evaluation of Subrecipient and Successful Applicant eligibility and award determinations, and review of program activity files;
- Identify and assist with investigations of potential fraud as described herein; referring cases to DED's Internal Auditor and Nebraska's APA, as appropriate;
- Oversee and coordinate all reporting for DED's CDBG-DR funds, including Federal reporting requirements and data analysis, and provide data dashboards for agency leadership and the public; and
- Provide technical assistance to partners, Subrecipients, and Successful Applicants across the CDBG-DR Program regarding compliance issues and questions, as well as assisting in resolution of monitoring concerns and findings.
- DED reserves the right to create additional tools and checklists in connection with this chapter for review of FWA.

If any case of potential fraud is identified among Subrecipients and Successful Applicants, DED's Internal Auditor shall follow their existing, applicable process to investigate allegations. When appropriate, cases are referred to the Nebraska APA, State Attorney General's Office, or the Office of the United States Attorney for Nebraska.

19.5 REPORT AND INVESTIGATION

Any allegations of FWA related to CDBG-DR funds or resources must be reported to DED's Internal Auditor, the Nebraska APA, directly to the OIG at HUD, or any local or Federal law enforcement agency. When appropriate, the DED Internal Auditor will also report the allegation to the Nebraska APA, State Attorney General's Office, or the Office of the United States Attorney for Nebraska.

19.5.1 HOW TO REPORT FRAUD, WASTE OR ABUSE

Any person, including any state employee, who suspects, witnesses, or discovers any FWA related to the CDBG-DR Program should report it immediately by any of the means listed below. It is possible that a citizen may disclose acts of FWA of CDBG-DR funds to any CDBG-DR program staff (e.g., at Field/Regional offices, events, etc.). Therefore, any information received must be treated with extreme confidentiality and shared with the DED Internal Auditor or the Nebraska APA by following established procedures.

To the Nebraska Department of Economic Development Internal Auditor	
Online or Anonymous Email	Fill out the Contact Form, available here: https://opportunity.nebraska.gov/cdbg-dr-afwa-form/ .
Phone	800-426-6505
Postal Mail	Nebraska Department of Economic Development PO Box 94666 245 Fallbrook Blvd, Suite 002 Lincoln, NE 68521
In Person	Nebraska Department of Economic Development 245 Fallbrook Blvd, Suite 002 Lincoln, NE 68521

To the Nebraska APA	
Online or Anonymous Email	Fill out the FWA Submission Form, available at the Nebraska APA's website https://auditors.nebraska.gov/About Us/SAE E-Mail.html .
Phone	Nebraska APA Confidential Hotline at 1-800-842-8348.
Postal Mail	Nebraska Auditor of Public Accounts State Capitol, Suite 2303 P.O. Box 98917 Lincoln, NE 68509-8917
In Person	Nebraska Auditor of Public Accounts State Capitol, Suite 2303 Lincoln, NE 68508

Contact HUD's OIG Fraud Hotline via phone 1-800-347-3735 or via email at hotline@hudoig.gov.

19.5.2 INVESTIGATION

Upon receiving allegations by any of the reporting means stated previously with regards to anyone involved with the CDBG-DR Program, including Subrecipients and Successful Applicants, DED's Internal Auditor has the primary duty of analyzing the complaint. DED's Internal Auditor reports to the Deputy Director of Operations/Chief Legal Counsel and notifies those supervisors of any active investigations. If the allegations have no grounds or are not supported by any documentation, the file must be closed. Such determination must be made in writing and included in the file, with the consent of the Nebraska APA.

If warranted, DED's Internal Auditor shall conduct an investigation into the allegations and may seek advice from Human Resources or the Legal Division, if necessary. To the extent that any substantiated actions violate Federal, State, or local laws, Nebraska officials shall evaluate pursuing appropriate criminal or civil penalties. The DED Internal Auditor should communicate any inquiries received to DED's Deputy Director of Operations/Chief Legal Counsel. The issue should be investigated immediately to avoid further damage. Nebraska's APA has the authority to investigate any complaints or suspicions of fraud directly if that office determines such an investigation to be necessary.

All substantiated cases of FWA of government funds shall be forwarded to the HUD OIG Fraud Hotline via phone 1-800-347-3735 or email hotline@hudoig.gov and DED's HUD Community Planning and Development (CPD) Representative.

19.6 CONFIDENTIALITY

All allegations or complaints received by DED's Internal Auditor, the Nebraska APA, State Attorney General's Office, and the Office of the United States Attorney for Nebraska shall be treated with absolute confidentiality. The complainant may choose to remain anonymous and therefore does not have to provide their contact information (i.e., name, address, telephone, or email) to report the alleged or suspected act of FWA. The complainant's contact information must be kept confidential unless the complainant authorizes in writing otherwise.

19.7 TRAINING

Related to the allocation for Winter Storm Ulmer (DR-4420), the Federal Register Notice from February 9, 2018 imposes a training requirement on Grantees (i.e., DED) "to attend and require Subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG-DR grant funds."⁷ DED will alert CDBG-DR Program's staff, partners, and Subrecipients and Successful Applicants of fraud related training offered by the OIG at HUD.

In addition to HUD OIG trainings, DED will conduct an annual training on FWA with internal CDBG-DR program staff, Subrecipients and Successful Applicants. The training will cover how to manage and disclose any allegation of known or suspected acts of FWA using CDBG-DR funds. Training on FWA, what to look for, and how to report it also serves as a tool for Subrecipients and Successful Applicants to speak up when they see wrongdoing. Training is updated based on emerging types of FWA to improve monitoring and compliance among Subrecipients and Successful Applicants. To supplement training, DED will provide Subrecipients with informational materials, including, but not limited to brochures; flyers; posters; or electronic content to help identify fraudulent activities and explain how to report them.

19.8 COMMON TYPES OF FRAUD

⁷ 83 FR 5844 at 5856.

Potential fraud types that can be found across all CDBG-DR Programs include:

- Embezzlement and theft;
- Contracting and procurement frauds;
- Bribery;
- Kickbacks;
- Bid rigging;
- Conflicts of interest; and
- Identity theft.

Table 1 is a non-exhaustive list of fraud types that may occur across all programs and in general program management. CDBG-DR falls under HUD programs below, as listed. As described in **Section 19.3: Roles and Responsibilities**, DED and its Subrecipients and Successful Applicants have a shared responsibility to prevent and detect FWA.

Table 1: Potential CDBG-DR Program Fraud Types

Name	Description	Red Flags
Embezzlement and Theft	In several HUD programs, administrators and participants may be entrusted with cash or assets and take them for their personal use. There are many ways they may embezzle, from simple to more elaborate methods to conceal the theft.	<ul style="list-style-type: none"> Participants taking money from the cash drawer or writing checks to cash. Participants falsifying invoices. Participants misusing credit cards of the HUD-funded organization. Participants stealing rental or laundry receipts. Participants falsifying deposits, checks, or other accounts. Participants hiring “ghost” employees and converting the payroll checks for their own use. Participants writing bonuses to themselves. Participants using staff, materials, or equipment for personal use.

<p>Contracting and Procurement Frauds</p>	<p>There are many variations of embezzlement and theft, contracting and procurement, bribery, kickbacks, bid ridding, conflicts of interest, and identity theft which can involve procurement officials and bidders working alone or in collusion to commit fraud.</p>	<p>A false certification of regulatory and statutory compliance or qualifications necessary to obtain a contract.</p> <p>Colluding with others to win a contract using bid rigging, phantom or altered bids, or split bids.</p> <p>Falsifying information on contract proposals.</p> <p>Using Federal funds to purchase items that are not for government use.</p> <p>Billing more than one (1) contract for the same work.</p> <p>Billing for expenses not incurred as part of the contract.</p> <p>Billing for work that was never performed.</p> <p>Falsifying data such as employee credentials, experience, and rates; bonds; and test or inspection results.</p> <p>Abusing change orders.</p> <p>Underbidding to win a contract and colluding with the procurement officer to make up profits through unnecessary change orders.</p> <p>Substituting approved materials with unauthorized products.</p> <p>Misrepresenting a project's status to continue receiving government funds.</p> <p>Charging higher rates than those stated or negotiated for in the bid or contract.</p>
<p>Bribery</p>	<p>Bribery is the offering, giving, receiving, or soliciting of anything of value to influence an official act. Bribery is an unethical business transaction where one (1) person, usually the person benefiting from the</p>	<p>Most bribery schemes begin with gifts and favors. Be cautious of free entertainment, vacations, travel, conference perks, sports events, parties, home or business repairs, and use of resort facilities.</p> <p>Companies submit bids with identical individual line items or lump sums.</p> <p>Bids greatly exceed the agency's estimate of contract value or exceed comparable</p>

	<p>transaction, is paying for the influence of another.</p>	<p>bids by the same companies in other areas similar in demographics.</p> <p>Winning bidder awards subcontracts to one or more of the losing bidders.</p> <p>Last minute alteration of bids after submission.</p>
<p>Kickbacks</p>	<p>A kickback is a type of bribe. A kickback is a collusive agreement where a “cut” of the profit is given to the bribe taker for services rendered. Kickbacks can be in the form of money, credits, gifts, gratuity, services, or anything of value.</p>	<p>Paying a kickback is a two-sided financial transaction. The vendor making the illicit payment must divert funds to pay for the bribe.</p> <p>Payments coded as “fees” for consulting or other services should be scrutinized.</p>
<p>Bid Rigging</p>	<p>Bid rigging is a fraud that involves impeding competitive bidding. Generally, bid rigging involves an agreement to limit competition. These schemes usually occur in the pre-solicitation, solicitation, or evaluation phase of the bidding process.</p>	<p>Pre-Solicitation Red Flags include the following:</p> <ul style="list-style-type: none"> • Specifications and statement of work are tailored to a specific product or vendor. • Prequalification procedures restrict competition. • Unnecessary sole source or non-competitive justifications. • New vendors added to the qualified list without justification. • Projects split into smaller awards to avoid review. • Costs of materials are out of line. • Established bidding policies and procedures are not being followed. • Materials not being ordered at optimal reorder point. <p>Solicitation Phase Red Flags include the following:</p> <ul style="list-style-type: none"> • Improper communications between purchasers and contractors at trade or professional meetings. • Improper social contacts between purchasing agents and contractors.

		<ul style="list-style-type: none"> • Purchasing officials with business or financial interest in the contractor. • Falsification of documents or receipts so that late bids are accepted. • Indications of collusion between bidders. • Falsification of contractor qualifications, work history, or personnel. • An indication of last-minute alteration of bids. • A large gap between the winner’s proposed pricing and losing bidders’ pricing. <p>Bid Submission or Contract Acceptance Red Flags include the following:</p> <ul style="list-style-type: none"> • Winning bidder awards subcontracts to one or more of the losing bidders. • Procurement that has been restricted to exclude or hamper any qualified contractor. • Improperly accepting late bids. • A bidder who always bids last on contracts and consistently wins. • Falsification of contractor information, like financial capability, personnel qualifications, and previous performance. • Bids tend to be awarded in a geographic pattern or in a noticeable rotation, such as a particular type of work always being awarded to a particular company.
<p>Conflicts of Interest</p>	<p>A conflict of interest occurs when an employee, manager, or executive has an undisclosed economic or personal interest in a transaction that adversely</p>	<p>Overly friendly relationship between government employees and contractors such as frequent socialization outside of the work environment.</p> <p>Unexplained increases of business with one (1) contractor or subcontractor.</p>

	<p>affects that person's employer. A criminal conflict occurs when an employee participates substantially in a particular matter where they have a financial interest, if the particular matter will have a direct and predictable effect on that interest.</p>	<p>Change orders with a high percentage of original costs.</p> <p>Defining statements of work and specifications to fit the products or capabilities of a single contractor.</p> <p>Government personnel or their families acquiring stock or a financial interest in a contractor or subcontractor.</p> <p>Government personnel discussing possible employment with a contractor or subcontractor for themselves or a family member.</p> <p>Employment of family members by a contractor.</p>
<p>Identity Theft</p>	<p>Program administrators and others who steal identities or create false identities to apply for and illegally receive various HUD funded benefits such as rental assistance, mortgages, or block grant program funds.</p>	<p>Contractors certified as small or disability-, minority-, woman-, or service-disabled veteran-owned businesses are often given preferential treatment related to contract awards. For this reason, some contractors have been inclined to falsely certify themselves, or obtain legitimate certifications, through invalid means.</p> <p>Programs have seen various scams in which websites and other social media sites are used to induce the public to send money in order to receive various HUD benefits, grants, or contracts. They sometimes falsely advertise as being government representatives or agents of HUD to promote their scheme further.</p>
<p>Whistleblower Protection</p>	<p>Protects Federal employees and Applicants for employment who lawfully disclose information they reasonably believe evidence violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health evidences.</p>	<p>If an employee is discharged, demoted, or otherwise retaliated against for making a protected whistleblower disclosure.</p>

TOOLKIT LIST

The following documents for **Chapter 19: Anti-Fraud, Waste and Abuse** are available on the [Toolkit section of DED's website](#):

- Code of Conduct