



July 1, 2024

Considerations for Implementing Congressionally Directed Spending: How Federal Agencies Administer Earmarks

The Consolidated Appropriations Act, 2023 (P.L. 117-328), and the community projects detailed in the joint explanatory statement, provided approximately \$15.3 billion for community project funding (also known as congressionally directed spending). This funding was designated for 7,234 community projects and will be administered by 19 federal agencies. Approximately \$12 billion of the community project funding provided by Congress for FY2023 was specified for tribal, state, local, and territorial governments, nonprofit organizations, and higher education institutions.

According to the U.S. Government Accountability Office (GAO), once Congress appropriates community project funding, the Office of Management and Budget (OMB) apportions funds to specific program offices, and the program offices begin the process of obligating funds. Federal funding to recipients is generally provided through grant agreements or cooperative agreements. The terms and conditions included in these agreements, and the process by which community project funding recipients receive funding, is based on the statutory and regulatory provisions of the grant program used to administer the funding. The community project funding recipients will also have to comply with the provisions in the grant guidance for the grant program used to award the funds. Even though a project may have been designated for community project funding, it is still subject to agency review in order to determine whether the project meets all required eligibility criteria. The process for reviewing community project funding is often similar to the process the federal agency uses to award grant funding for non-community project funding grant projects. Community projects will generally have to meet the same statutory and regulatory eligibility requirements as other grant program applications, and the community project recipients will need to comply with the same terms and conditions of non-community projects (including cost-share requirements, reporting requirements, and performance measurements) set forth in the specific grant program.

Community Project Funding Pre-Award Requirements

The main distinction between a grant for a project that has been approved for community project funding and one that is awarded through a program's regular competitive process is that the designated recipient will be awarded the funding under the community project process as long as the recipient is deemed eligible and the project meets all of the grant program requirements. Recipients of community project funding are still required to develop a grant application that includes all of the traditional components (such as a benefit-cost analysis and any required engineering studies or environmental impact reviews) and

submit the application by the applicable deadline to the federal agency for review and approval. If the recipient is deemed ineligible, or if the project does not comply with the requirements, then funding will likely not be awarded despite the community project funding designation. Essentially, the community project funding designation prioritizes the project in that specific grant program, but it does not relieve compliance with other requirements or guarantee that approval by the federal agency without review.

Oftentimes, community project funding requirements closely align with the requirements for projects submitted for competitive grant awards. For example, in FY2023, the FEMA Pre-Disaster Mitigation (PDM) program implemented \$233 million in congressionally directed spending projects for 32 states and two tribes. According to the FEMA PDM grant guidance issued for these projects, the community project recipients must complete several tasks to receive funding under the PDM grant program:

- apply for a Unique Entity Identifier (UEI) number from the System for Award Management (SAM.gov);
- apply for an Employer Identification Number (EIN) from the Internal Revenue Service;
- establish an account with SAM.gov, login.gov, and Grants.gov;
- establish an authorized organizational representative in Grants.gov;
- register in MT eGrants;
- submit the project application in Grants.gov by the FEMA designated deadline; and
- submit the project application in MT eGrants by the FEMA designated deadline.

These tasks can take several weeks, and FEMA recommends the community project recipient begin the pre-award and application process at least four weeks prior to the application deadline.

Other federal agencies, including the Department of Housing and Urban Development (HUD), also generally align the community project funding requirements with regular grant program requirements. Notably, federal agencies have indicated that they do not have the authority

to approve changes in the scope of the project that departs from the purpose set forth in the approved community project funding description, and the grant application must include a project narrative and budget that aligns with the project submitted for funding. Additionally, as aforementioned, the recipients and subrecipients of community project funding must be deemed eligible by the federal agency. Eligibility determinations may include ensuring that the recipient/subrecipient is not debarred, suspended, or otherwise ineligible for participation in federal programs. As noted by GAO, this agency review can be complex:

If the laws or conditions of general applicability cast doubt on whether a particular entity is eligible to receive funds, an agency would need to consider whether the entity should nevertheless receive the amount designated. Although an agency would strive to give force to all applicable laws and conditions to the extent possible, it might give considerable weight to the fact that an entity is specifically designated to receive Community Project Funding or Congressionally Directed Spending. An agency might conclude that this specific designation is sufficient to overcome other laws or conditions of general applicability that might otherwise render a particular entity ineligible to receive funding (p. 5).

Consequently, the eligibility determination for both the recipient and the project remains an important phase in a grant's life cycle and requires review by the federal agency administering the funding.

Community Project Funding Post-Award Requirements

Once the community project funding recipient has an approved grant application, the federal agency will obligate funds through a grant agreement that sets forth the terms and conditions of the grant award. Regardless of whether the funding was provided through congressionally directed spending or regular program appropriations, the grant award will require that the recipient comply with all of the terms and conditions of the award, including cost-share provisions, performance measurements, reporting requirements, and monitoring and auditing requirements. Constituents seeking community project funding should be prepared to dedicate the same financial and administrative resources to the project that would be needed if they applied for funding under traditional competitive process.

Community Project Funding Obligation and Disbursement Timeline

As explained by GAO, once Congress appropriates community project funding, the Office of Management and Budget (OMB) apportions funds to specific program offices to allow them to begin the process of obligating funds. Congressionally directed spending provisions generally include a specific period of time in which federal administering agencies must obligate said funding. Funds are considered obligated when a contract or a grant agreement is executed. This obligation deadline is specific to each individual community project. According to GAO, for FY2023 community project funding, 71% of the funds had obligation deadlines between one and five years. The remaining community projects did not have an obligation deadline, leaving this to the discretion of the administering federal agency. GAO noted that federal agencies obligated 99% of FY2022 community project funding by the specified obligation deadline. The remaining funds were unobligated because the recipient organization closed, or the recipients withdrew their application for funding or otherwise declined funding.

The timing of the disbursement of funds to the recipient, and the amount of time the recipient has to expend the funding (known as the period of performance), vary depending on the terms and conditions of individual grant award agreements. Disbursement of payments for community projects will align with the procedures of the specific grant program. The majority of grant programs use a reimbursement process, wherein the grant recipient must expend their own funds for initial project costs and then request reimbursement from the federal administering agency. Recipients must expend funds within the period of performance set forth in the grant agreement. For example, the average period of performance for the community projects under the Pre-Disaster Mitigation grant program is 36 months. By contrast, the average period of performance for the HUD Economic Development Initiative community project funding is seven years. Similar to non-community projects, all expenditures for the community projects must be made before the end of the period of performance. Any unexpended funds will revert to the Treasury pursuant to the specific grant program authorities and policies.

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IFI12703

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