

## XII. Other Federal Requirements

This section outlines other federal requirements HCD and its subgrantees are required to adhere to under the CDBG NDR grant. HCD includes these requirements in its Agreements with subgrantees and partners.

### A. Pre agreement allowances

HCD may have incurred costs for CDBG NDR activities before a formal grant agreement was made between the State of California and HUD. These pre agreement costs can be charged to the grant provided that the activities are eligible and in accordance with 24 CFR part 58. HCD is also allowing subgrantees to incur pre-agreement costs relating to HCD Agreements.

### B. Americans with Disabilities Act (ADA)

HCD takes affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities, and all disaster recovery programs or services are readily accessible to, and usable by, individuals with disabilities. HCD also ensures that handicapped persons are provided with benefits and services as those provided to nonhandicapped individuals, and that all programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons. The types of reasonable accommodations that can be provided include accommodations or adjustments to a rule, policy, practice, or service. HCD and all its subgrantees are required to follow the ADA.

HCD also ensures CDBG NDR programs and services do not discriminate based on disability and all buildings and facilities comply with Title II accessibility requirements, such as curb ramps at intersections and no barriers to entry from street level.

### C. Insurance and property management

Subgrantees receiving CDBG NDR awards are required to provide insurance coverage for any real property and equipment acquired or improved with grant funds as provided to property owned by the nonfederal entity. Federally owned property need not be insured unless required by the terms and conditions of the CDBG NDR awards.

### D. Drug free workplace

HCD makes a good faith effort, on a continuing basis, to maintain a drug free workplace. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance. HCD has published a drug free workplace statement that:

- 1) Specifies actions HCD takes against employees for violating its drug free workplace policy
- 2) Ensures each employee abides by the terms, as a condition of employment

- 3) Requires the employee to notify HCD in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction

Each employee is required to sign a copy of this policy, acknowledging it has been received and reviewed.

#### 1. Drug Free Awareness Program

HCD has established an ongoing drug free awareness program that informs employees about:

- 1) The dangers of drug abuse in the workplace
- 2) HCD's policy of maintaining a drug free workplace
- 3) Any available drug counseling, rehabilitation, and employee assistance programs
- 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace

#### 2. Employee Drug Violation

If an employee is convicted of a drug violation in the workplace, or if HCD learns of the conviction, HCD must notify HUD within ten calendar days after learning of the conviction. The notification must:

- 1) Be in writing
- 2) Include the employee's position title
- 3) Include the identification number(s) of each affected award
- 4) Be sent to every federal agency on whose award the convicted employee was working and every awarding official or the employee's official designee

Within 30 calendar days of receiving notice or knowledge of a conviction, HCD takes appropriate personnel action against the employee, up to and including termination, consistent with the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended. HCD also require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program by an appropriate agency.

#### 3. Known Workplaces

In accordance with HUD's drug free workplace requirements, HCD identifies to HUD all known workplaces under CDBG NDR including the actual address of buildings (or parts of buildings) or other sites where work under CDBG NDR takes place. Workplace information will be kept on file in HCD's offices and are made available to HUD for inspection upon request.

#### 4. Violations

HCD is in violation of 24 CFR §182 and §2429 requirements if:

- 1) HUD determines in writing that HCD has violated the requirements of Subpart B.
- 2) The number of convictions of HCD's employees for violating criminal drug statutes in the workplace is large enough to indicate that HCD failed to make a good faith effort to provide a drug free workplace.

If HUD determines that HCD has violated 24 CFR §182 and §2429, HUD may take one or more of the following actions:

- 1) Suspension of payments under CDBG NDR funding.
- 2) Suspension or termination of CDBG NDR funding.
- 3) Suspension or debarment of HCD under HUD's regulation implementing the OMB guidance on non-procurement debarment and suspension (2 CFR §180), for a period not to exceed five years.

HUD may waive, in writing, payment suspensions or debarment if HUD determines the waiver would be in the public interest.

## E. Davis Bacon and Labor Standards

The Davis Bacon Act<sup>2</sup> and Related Acts (DBRA) apply to contractors and subcontractors performing on federally funded or assisted construction contracts in excess of \$2,000 for the fringe benefits for corresponding work on similar projects in the area. Additionally, HCD must follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This semi-annual reporting requirement also extends to subgrantees and contractors.

USFS, as a federal agency, also follows the requirements of the Service Contract Act and the required prevailing wage rates that apply for non-construction contracts above \$2,500.

Federally Financed / Funded Activity	DBRA Applies to Subgrantees?	DBRA Applies to Vendors/ Related Private Construction Covered?
Land Acquisition	No	No
Debris removal (no construction on site contemplated)	No	No
Demolition (no construction onsite contemplated)	No	No

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<sup>2</sup> 40 U.S.C. 3141 *et seq.*

Demolition (to be followed by onsite construction)	Yes	<u>No</u> , if demolition done by subgrantee or its contractor before transfer of land to developer.  <u>Yes</u> , if demolition contracted for by same entity doing private construction and will be carried out
Offsite improvements (street work, storm sewers, utility construction, etc.)	Yes	No
Onsite improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/stripping, site lighting, landscaping, etc.)	Yes	<u>No</u> , if done by subgrantee or its contractor before transfer of land to developer.  <u>Yes</u> , if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; and will be carried out while contracting entity controls the site.
Cleaning during construction	Yes	Yes, as provided under the <a href="#">Service Contract Act</a> and 29 CFR part 4
Cleaning after construction to prepare for occupancy (separate from construction contract)	No	No, does not apply for projects under a Standard Agreement  Yes, for USFS as provided under the <a href="#">Service Contract Act</a> and 29 CFR part 4.
Materials purchase	No	No
Equipment, machinery, and fixtures purchase (as opposed to installation)	No	No
Equipment, machinery, and fixtures installation (as opposed to, or in addition to, purchase)	Yes, if more than incidental (14 percent or over) amount of construction work	Yes, if more than an incidental amount of construction work involved in the installation.
Legal fees/accounting fees	No	No

Architectural and engineering Fees	No	No
Construction management	No	No
Tenant allowances for non-construction expenses (furniture, business licenses, etc.)	No	No
Rehabilitation of residential property designed for fewer than eight units	No	No
Contracts for public utility services including electric light and power, water, steam, and gas		

Davis Bacon Related Acts include:

- The Copeland Anti-Kickback Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 §Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326-332; and 29 CFR §4, 5, 6 and 8; 29 CFR §70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one half pay) for hours they have worked in excess of 40 hours in one week. Violations under this act carry a liquidated damages penalty (\$10 per day per violation).
- Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD financed projects to lower income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low and very low-income persons residing in the area. Please see the Section 3 topic of this manual (Section XII, part I) for more information.

HCD ensures that all applicable construction projects are in compliance with DBRA, and state prevailing wages as published by the CA Department of Industrial Relations (DIR), through its monitoring of certified payroll records and through onsite interviews of prime and subcontractor laborers. HCD may procure an independent contractor to assist with monitoring. HCD has appointed the GMR as the Labor Standard Compliance Officer. HCD requires all subgrantees and partners to directly manage DBRA compliance if they are implementing a pillar of the CDBG NDR activities on behalf of HCD. For the BUF, HCD serves as the implementing agency and is responsible for DBRA activities.

## 1. Bidding and Contracting Requirements

HCD ensures that DBRA clauses and the appropriate wage determination are included in all construction contracts and all applicable programs and services are in compliance with DBRA and state prevailing wages. HCD does not approve any payment, advance, grant, loan, or guarantee of funds after the beginning of construction unless there is on file, a certification by the contractor and subcontractors they have complied with DBRA and DIR.

## 2. Wage Rate Decisions

The Davis Bacon wage decision contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Wage determinations can be retrieved from [www.wdol.gov](http://www.wdol.gov). The state prevailing wages published by DIR should be compared to the DBRA minimum rates. If the state prevailing wage of per diem wages for a particular craft, classification, or type of worker is greater than the rates provided by DBRA, then the state wages should be used as the minimum rate.

If wage determination and/or modifications questions arise, the subgrantee should contact HCD. In addition, if a work classification does not appear on the wage determination, the subgrantee must request an additional classification and wage rate from HCD. Requests must be made in writing and must meet certain HUD criteria to be approved. These criteria include:

- 1) The requested work classification is used in the area of the project by the construction industry
- 2) The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision
- 3) The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision

HCD consults with HUD, and requests which fail to meet HUD approval are forwarded to DOL for final determination.

Apprentices and trainees may be paid less than the journeyman's rate for their craft only if registered in a program approved by the DOL (California apprenticeships are not recognized by DOL).

## 3. Enforcement of Requirements during Construction

HCD, is responsible for ensuring labor standards requirements are adhered to during construction. This includes adherence to best practices in construction management (e.g. preconstruction conferences, issuance of notices to proceed and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

### *a. Preconstruction Conference*

HCD encourages its subgrantees and partners to hold preconstruction conferences prior to the start of work to set performance expectations. During

this conference, the subgrantee, partner or contractor reviews contractual requirements including labor and performance schedules. While preconstruction conferences are no longer required in order to comply with federal labor standards, HCD continues to encourage conferences with contractors.

Items that should be covered at the preconstruction conference include, but are not limited to:

- Provide a copy of the “Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects.” This guide can be downloaded at <http://www.hud.gov/offices/olr/library.cfm>
- Review prime contractor responsibility to:
  - Obtain and review payrolls and Statements of Compliance from all subcontractors.
  - Submit weekly payrolls and Statements of Compliance signed by an officer of the company.
- Confirm that paid wages conform to wage rate decisions included in the contract. HCD confirms the job classifications and discuss if additional classifications are needed. Discuss the classifications to be used. If additional classifications are needed, contact HCD immediately:
- Confirm that employee interviews will be conducted periodically during the project.
- Confirm that a copy of the wage rate decision must be posted at the job site.
- Confirm that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by DOL.
- If apprentices or trainees are to be used, the contractor must provide HCD with a copy of the certification of his/her program.
- If the contract is \$100,000 or greater, workers must be paid overtime if they work more than 40 hours in one week, and failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
- Any payroll deductions that are not specifically listed in the Copeland Anti-kickback Act provisions require the contractor to obtain written permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.

- Posters are required to be posted at the job site, such as the “Notice to All Employees Working on Federal or Federally Financed Construction Projects.” These posters and others that are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
- Confirm with the contractor that HCD and its subgrantee will conduct compliance monitoring throughout the duration of the project and that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Provide an overview of labor standards provisions and confirm that labor standards and technical specifications are legally binding. Failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

#### *b. Notice to Proceed*

Upon contract execution and completion of the preconstruction conference, HCD issues a Notice to Proceed to the prime/general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

#### *c. Payroll Review*

Once construction is underway, the prime/general contractor must complete weekly payroll reports for his employees and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.

The prime/general contractor must submit certified payroll reports to HCD within a reasonable timeframe to ensure compliance, which is typically no more than ten working days, following the end of the payroll period.

The HUD payroll form (WH-347) does not have to be used but alternative payroll documentation must include the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).

The prime contractor is responsible for the full compliance of all subcontractors on the project and is held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and liquidated damages that may be assessed for overtime violations. The general contractor must review payroll documentation to ensure there are no discrepancies or underpayments.



HCD its contractor, or subgrantee reviews payroll reports to ensure workers are being paid no less than the prevailing Davis Bacon wages, that there are no unallowed withholdings, and that there are no other falsifications. Items to be spot checked include:

- The correct classification of workers.
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination.
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for, at rates not less than one and one-half times the basic rate of pay.
- Review of deductions for any non-permissible deductions.
- The Statement of Compliance has been signed by the owner or an officer of the firm.

Discrepancies and/or falsification indicators must be reported to HUD, along with the steps being taken by HCD to resolve the discrepancies. Where underpayments of wages have occurred, HCD is responsible to make sure the correct wages are paid, and that the employer is required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. HCD should contact HUD immediately for assistance if a violation occurs.

#### *d. On site Interviews*

The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform, and the wage they receive.

HCD staff or its contractors conduct interviews throughout the course of construction and include a sufficient sample of job classifications represented on the job, as well as workers from various companies to allow for a reasonable judgment as to compliance.

HCD uses HUD's Record of Employee Interview form (HUD-11) for onsite interviews. The form can be found at:

<https://www.hudexchange.info/resources/documents/HUD-Form-11-Record-of-Employee-Interview.pdf>.

A Spanish language version of the form can also be found at:

<https://www.hudexchange.info/resources/documents/HUD-Form-11-Sp-Spanish-Version-Record-of-Employee-Interview.pdf>.

Interviews follow the below guidelines:

- Interviews are conducted on the job site and privately (this is a one

on one process).

- The interviewer observes the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors are interviewed.
- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself.
  - Clearly state the purpose of interview.
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer pays particular attention to:
  - The employee's full name.
  - The employee's permanent mailing address.
  - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and no other work.
- The employee's hourly rate of pay, to determine if the worker is being paid at least the minimum required by the wage decision. The interviewer ensures the worker is not quoting their net hourly rate or "take home" pay
  - If it appears the individual may be underpaid, the interviewer closely questions the worker by asking for any records and arranging to re-interview the employee.
- Enter the worker's statement of his/her classification
- Observe duties and tools used:
  - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
  - If there are discrepancies, detailed statements are necessary.
- Enter any necessary comments.
- Enter interview date.

The HUD-11 form must be compared to the corresponding contractor and subcontractor payroll information.

- If no discrepancies appear, "None" should be written in the

comment space of the Record of Employee Interview form and it should be signed by the appropriate person.

- If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731) at: <https://www.hudexchange.info/resources/documents/HUD-Form-4731-Complaint-Intake-Form.pdf> , investigate the complaint and resolve as able. If there are outstanding issues, consult the Department of Labor for clarification.

#### *e. Progress Payments*

HCD reviews labor standards upon receipt of requests for payment during construction and ensures compliance by confirming:

- All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved.
- Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

Although retainage is not a requirement, it is common practice to maintain 10 percent retainage from partial payments until after final inspection, in case of unresolved problems.

#### *f. Final Payment*

When construction work has been completed, the contractor submits a final request for payment. Before making final payment, HCD must ensure that:

- All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved.
- All discrepancies identified through job site interviews have been resolved.
- All files are complete.

### *4. Restitution for Underpayment of Wages*

Where underpayments of wages have occurred, the employer is required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

HCD or its subgrantee must notify the prime contractor in writing, of any underpayments that are found during payroll or other reviews. The notification should 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.

The employer is required to report the restitution paid on a corrected certified payroll. The correction payroll reflects the period for which restitution is due (e.g. payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

- Each employee to whom restitution is due and their work classification.
- The total number of work hours.
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid).
- The gross amount of restitution due.
- Deductions.
- The net amount to be paid.

A signed Statement of Compliance must be attached to the corrected payroll form. Each employee who has received restitution should sign the corrected payroll, as evidence of their receipt of the payments.

HCD reviews the corrected payroll 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. Additional payments must be documented on a supplemental correction payroll within 30 days.

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 is 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. HCD may continue to attempt to locate the unfound workers for three years after the completion of the project if feasible. After three years, or at grant closeout any amount remaining in the account for unfound workers is forwarded to HUD.

Additional information is available from HUD on disputes, withholding, deposits and escrow accounts in the publication "Making Davis Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects."

## 5. Documentation & Reporting Requirements

### *a. Documentation*

HCD maintains documentation to demonstrate compliance with labor standard requirements including, but not limited to:

- Bid and contract documents with the labor standards clause and wage decision.
- Payroll forms from the contractor and subcontractors, including signed statements of compliance.

- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies.
- Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime).
- Enforcement reports.

Labor standards compliance documents contain highly sensitive and confidential information; therefore, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected is not unduly exposed to financial or personal risk.

HCD preserves and retains standard compliance documents for a period of five years following the completion of work. HCD follows the guidelines outlined in Labor Relations Letter 2006-02, to minimize risk of improper and/or unnecessary disclosure. Guidelines include:

- Always keep sensitive materials secret (in locked file cabinet, not left in areas accessible to the public).
- Do not include Social Security Numbers on documents and records unless it is absolutely necessary.
- Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant.
- Dispose of documents and records containing sensitive information responsibly.

## 6. Reporting

HCD reports to the DOL on all covered contracts awarded and on all enforcement actions taken every six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all the Davis Bacon construction activity.

Semiannual labor reports are due to HUD in April and October. HCD coordinates with subgrantees to collect these reports in a reasonable time frame for compiling and submission to HUD. Labor Standards Report forms are located on HCD's CDBG website at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/formsreports.html>

## F. Force account labor

Force account labor occurs when subgrantees use their own workforce to complete construction of a CDBG NDR project funded through HCD. Subgrantees must justify the use of force account labor by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work. If force account work is proposed, then partner or subgrantees must submit a force account checklist to the GMR for review and written approval prior to starting any work. Reimbursement of force account work is done on staff time and supplies only. No equipment purchase

is allowed under force account. Subgrantees or partners that proceed without prior approval risk disallowance of all incurred costs.

## G. Equal Employment Opportunity

DOL Executive Order 11246, Equal Employment Opportunity, as amended, prohibits federal contractors and federally assisted construction contractors and subcontractors who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.<sup>3</sup> This regulation is adhered to within HCD programs.

HCD, its subgrantees, and vendors must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the NDR activity. As the project progresses, HCD:

- Monitors the extent to which protected groups are participating in and receiving benefits from the NDR activity.
- Takes necessary actions to ensure that members of the protected groups have equal access to any information, related services, job opportunities and training associated with the project.
- Maintains records of final project beneficiaries by race, ethnicity, and sex and include this information in the Project Completion Report.
- Exercises nondiscrimination in the decision-making process for all elements of an NDR project.
- Includes Equal Employment Opportunity (“EEO”) Provisions in Construction Contracts.

Vendors and subgrantees are required to include applicable equal opportunity provisions and certifications in the bid packages and contracts. These are included in the Sample Bid Package. A list of guidelines for construction contractors regarding equal opportunity is included as Equal Opportunity Guidelines for Construction Contractors. These guidelines should be discussed with the construction contractor during the preconstruction conference.

Every contract over ten thousand dollars (\$10,000) shall include or incorporate by reference the following provisions:

- The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees

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<sup>3</sup> 41 CFR §60

and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

*Note: Noncompliance with HUD's regulations in 24 CFR §135 may result in actions to correct deficiencies identified, sanctions, debarment and/or suspension and limited denial of participation.*

## H. Minority and Women Business Enterprise

Minority Business Enterprises (MBEs) are entities that are at least 51 percent owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

Women's Business Enterprises (WBEs) are entities that are at least 51 percent owned and/or controlled by women (under the ten percent and eight percent statutes).

2 CFR part 200.321 requires all nonfederal entities such as HCD and its subgrantees to take all necessary affirmative steps to ensure that all subgrantees, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG NDR funds ensure that contracts and other economic opportunities are directed to small and minority firms, women's business enterprise, and labor surplus area firms when possible. Affirmative steps include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- 3) 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.
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

- 5) 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.
- 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

Each subgrantee must have sufficient documentation to show a good faith, comprehensive and continuing M/WBE outreach process, which includes:

- Supported statement of public policy and commitment, published in the print media of the widest local circulation.
- Support from an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official.
- Utilization of all available and appropriate public and private sector local resources.

To ensure inclusion of entities owned by minorities and women, to the maximum extent possible, HCD:

- Develops a systematic method for identifying and maintaining an inventory of certified M/WBEs, their capabilities, services, supplies and/or products.
- Utilizes the local media, electronic and print, to market and promote contract and business opportunities for DBEs, MBEs and WBEs.
- Develops informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for DBEs, MBEs and WBEs.
- Develops procurement procedures that facilitate opportunities for DBEs, MBEs and WBEs to participate as vendors and suppliers of goods and services.
- Sponsors business opportunity related meetings, conferences, seminars, etc., with DBEs, MBEs and WBEs organizations.
- Maintains centralized records with statistical data on the utilization and participation of DBEs, MBEs and WBEs contractors/subcontractors in all HUD assisted program contracting activities.

## I. Section 3

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended, requires that economic opportunities generated by CDBG NDR funds be targeted toward Section 3 residents. Section 3 eligible residents are low and very low-income persons, particularly those who live or reside in public or government assisted housing.



In accordance with Section 3, recipients using CDBG funding for housing or other public construction are required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the project area.

Although HCD complies with state procurement laws, it also follows Section 3 and requires Section 3 compliance from all its subgrantees. HCD and subgrantee actions include:

- Prepare and utilize a Section 3 Plan for HCD and any subgrantees.
- Designate a Section 3 Coordinator.
- Take affirmative steps to follow the Section 3 Plan and document those efforts.
- Include the Section 3 Clause and the Contractor Certification of Efforts to Fully Comply with Employment and Training Provision of Section 3 in any bid packets for contracts on NDR projects. Notify all bidders that adherence to the Recipient's Section 3 Plan will be required for contracts and subcontracts in excess of \$100,000.

*Note: Noncompliance with HUD's regulations in 24 CFR §135 may result in actions to correct deficiencies identified, sanctions, debarment and/or suspension and limited denial of participation.*

## J. Fair Housing

The Fair Housing Act requires HCD, subgrantees, and/or developers funded in whole or in part with HUD financial assistance to certify that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status.

HCD enforces the Fair Housing Act by ensuring that all subgrantees meet the applicable Fair Housing and Affirmative Marketing requirements and provide a marketing plan and report on compliance in accordance with the Fair Housing Act where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the subgrantee will affirmatively further fair housing throughout applicable HCD disaster recovery programs.

### 1. Affirmative Marketing

HCD adopts affirmative marketing procedures and requirements for all CDBG assisted housing with five or more units. Requirements and procedures include:

- Methods for informing the public, owners and potential tenants about fair housing laws and the jurisdiction's policies (for example, use of the Fair Housing logo or equal opportunity language).
- A description of what owners and/or the jurisdiction will do to affirmatively market housing assisted with CDBG NDR funds.
- A description of what owners and/or HCD will do to inform persons not likely to apply for housing without special outreach.

- Maintenance of records to document actions taken to affirmatively market CDBG assisted units and to assess marketing effectiveness.
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

HCD conducts activities that increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local nonprofits working in housing.

The Fair Housing Act provides that, in connection with the design and construction of multifamily housing, the public use and common areas must be accessible and usable by persons with handicaps, all doors must be designed to be wide enough for wheelchair access, and all premises should be of adaptive design (e.g., reinforcements within a bathroom to allow installation of grab bars).

For housing projects and activities, HCD ensures fair housing rules are followed in the provision of housing services and assistance. A Fair Housing Poster is displayed in a prominent place at any office where applications for assistance are being taken, and opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services do not discriminate based on age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status.

Actions to ensure fair housing include:

- Developing and implementing a fair housing resolution.
- Disseminating marketing information concerning housing services and activities through agencies and organizations that routinely provide services to protected groups.
- Evaluating criteria for selecting recipients of housing services or assistance for any discriminatory effect.
- Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect.
- Reviewing and revising legal documents used HCD and lending institutions to eliminate any discriminatory intent or practice.

## K. Civil Rights

HCD is required to comply with the Civil Rights requirements of Title I of the Housing and Community Development Act and the Fair Housing Law. Subgrantees must also demonstrate compliance with the following requirements contained in the Housing and Community Development Act. HCD, its subgrantees, and partners must comply with the following areas of the Civil Rights Act:

- Affirmative steps to promote fair and equal access to housing must be taken, regardless of the type of grant.
- Equal opportunities must be afforded to all persons.
- No person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age or disability.
- Minority and female owned businesses must be informed of grant funded contracts. Affirmative steps must be taken to assure this occurs.
- To the greatest extent feasible, Section 3 residents and business concerns should be given preference in employment, training, and contracting.

## L. Section 504 requirements

In accordance with Section 504 of the Housing and Rehabilitation Act of 1973 and 24 CFR §8, HCD and its subgrantees ensure that all programs are accessible to and usable by persons with disabilities. In addition, HCD does not discriminate based upon disability in employment. HCD has established policies and procedures within appropriate program manuals that it uses to monitor compliance of all covered programs, activities, or work performed by its partners, subgrantees, or contractors.

All new facilities constructed by partners or subgrantees are to be designed and constructed to be readily accessible to and usable by persons with disabilities.

## M. Conflict of Interest

Conflict of interest requirements are dictated by HUD as well as California State and local law. California's conflict of interest standards of conduct applies to all procurement activities, while all non-procurement activities (acquisition and disposition of property, direct assistance to individuals, businesses) are subject to HUD requirements described in 570.489(h).

The general rule is that persons acting on behalf of state or local government in a State CDBG decision making role or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from State CDBG funded activities. Prohibition ends one year after the decision-making person has left their position.

If HCD requests an exception for state employees or agents, HUD would evaluate and decide the outcome. Factors to be included in exception requests and considered when evaluating them include:

- Whether the exception would provide a significant cost benefit or essential degree of expertise that would otherwise be missing.
- Whether an opportunity was provided for open competitive bidding.
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries, and the exception will allow the person to receive the same benefits as other members of the class.

- Whether the person has withdrawn from the role of decision maker.
- Whether the interest or benefit was present before the affected person became an employee, agent, contractor, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subgrantees which are receiving CDBG funds.
- Whether undue hardship will result to the State, HCD or affected person when weighed against the public interest.
- Any other relevant considerations.
- Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law.

## N. Anti-lobbying

In accordance with 24 CFR §87, and as a recipient of CDBG NDR funding, HCD submits documentation to HUD that certifies:

- No CDBG NDR funds have been paid or will be paid, by or on behalf of HCD, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than CDBG NDR funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, HCD will complete and submit Standard Form-LLL, "[Disclosure Form to Report Lobbying](#)," in accordance with its instructions.
- HCD requires that the language of paragraph 1 and 2 of this anti lobbying section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subgrantees shall certify and disclose accordingly.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## O. Citizen Participation Requirements

CDBG NDR funds utilize a streamlined process for citizen participation to ensure a timely disbursement for disaster recovery grant funds. The citizen participation

requirements found in of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR §570.486, §91.105(b) and (c), and §91.115(b) and (c), are waived for CDBG NDR funds only and replaced by the requirements below:

HCD maintains a public website at all times, including:

- The grant application executive summary
- The grant scoring factor narratives
- The grant eligibility requirements
- The grant's national objective
- The grant's overall benefit
- The current Action Plan
- The DRGR Action Plan submitted to HUD for the NDR Competition

The CDBG NDR grant information is easily navigable from HCD's website homepage. Additional details related to maintaining a comprehensive public website are included below in Section XII, Part Q – Website Management.

HCD must conduct at least one public hearing for each substantial amendment to its Action Plan and provide at least 15 days for citizen comment and citizen access regarding the use of grant funds. Public comments are acceptable by electronic submission, email, fax, and standard mail. HCD provides a written response to every comment within 30 days, when practicable. A summary of public comments shall be attached to the substantial amendment.

Public hearings are held in facilities that are physically accessible to persons with disabilities, or, where physical accessibility is not achievable, HCD gives priority to alternative methods of product or information delivery regarding programs and activities to qualified individuals with disabilities in the most integrated setting appropriate, in accordance with HUD's implementing regulations for section 109 of the HCD Act and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) at 24 CFR §8 and all applicable laws and regulations. In addition, all notices of and communications during training sessions and public meetings are provided in a manner that is effective for persons with hearing, visual, and other communication related disabilities, or by providing other means of accommodation for persons with disabilities, consistent with Section 504 of the Rehabilitation Act of 1973 and HUD's Section 504 regulations.

For non-substantial amendments, no public hearing or public comment period will be conducted.

## P. Language Access Plan

HCD follows the Safe Harbor rule, contained in HUD's final guidance<sup>4</sup>, to determine when to provide translation of vital documents. The Safe Harbor rule for written translation of vital documents is based on the number and percentages of the market

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<sup>4</sup> <https://portal.hud.gov/hudportal/documents/huddoc?id=finallep2007.pdf>

area eligible population or current beneficiaries and applicants that are Limited English Proficiency (LEP).

Per the Safe Harbor Rule, HUD would expect translation of vital documents to be provided when the eligible LEP population in the market area or current beneficiaries exceeds 1,000 persons, or if it exceeds five percent of the eligible population, or beneficiaries along with more than 50 people. In cases where more than five percent of the eligible population speaks a specific language but fewer than 50 persons are affected, there should be a translated written notice of the person's right to an oral interpretation.

There are four factors that affect the implementation of a Language Access Plan on a program by program basis:

1. The number or proportion of LEP persons served or encountered in the eligible service population.
2. The frequency with which LEP persons come into contact with the program.
3. The nature and importance of the program, activity, or service provided by the program.
4. The resources available and costs to the recipient.

While the Safe Harbor Plan does not mandate specific actions for oral communications, the following oral communication measures are in place:

- Free language assistance to LEP individuals for important critical junctures, such as assistance with the application, the application interview, recertification, health and safety related issues, fair housing related matters (including any discussions regarding the need for reasonable accommodation), conflict resolution between residents, lease violation notification and related meetings, and relocation and displacement issues.
- Official meetings will automatically provide an interpreter for any LEP population that requires a translation of vital documents, in accordance with the Safe Harbor Rule for written documents.
- Announcement of major languages in any public notice of meeting that anyone in need of language interpretation may contact HCD before the meeting to request an interpreter. Interpretation services shall be provided free of charge.

HCD allows subgrantees to adopt HCD's Language Access Plan or certify that they have a Language Access Plan which meets HUD's requirements.

## Q. Website Management

Below is an outline for the maintenance of HCD's webpage, including CDBG NDR. The website is located at:

<http://www.hcd.ca.gov/community-development/disaster-recovery-programs/ndrc.shtml>

## 1. HCD Website

HCD's website is designed to have a clean and uniform appearance while maintaining efficient navigation and maintenance. A uniform look from page to page enhances the overall understanding for the user. The website must conform to style and navigation standards set forth by the Governor's Office of E-Government.

## 2. Roles and Responsibilities

### *a. Website Steering Committee*

The Website Steering Committee is responsible for ensuring that HCD's website is compliant with all guidelines and standards set forth by the Governor's Office, developing and monitoring procedures for placing content and applications on the site website security and privacy policies.

### *b. Content Provider*

The Content Provider is a staff person who has been trained by the Information Technology (IT) staff in the technical aspects and procedures of how to prepare and transmit content to IT staff for posting to the website. The Content Provider is responsible for:

- Providing content to IT staff that is in a technically accurate format.
- Providing content in a timely manner (48 hours before content needs to be posted).
- Providing content that has been reviewed and approved by the GMM.
- Reviewing the website to ensure that content is up to date.

For the NDR program, the Content Provider is the NDR Project Manager assigned to the NDR grant. Necessary content includes, but is not limited to, items including the Action Plan and all amendments, Quarterly Reports, forms, narratives, links to project and/or HUD documents relating to the NDR program, and all contracts related to CDBG NDR funding.

CDBG NDR documents are posted to the website located at: <http://www.hcd.ca.gov/community-development/disaster-recovery-programs/ndrc.shtml#docs>. Documentation and content pertaining to CDBG NDR will be provided by the GMR and NDR Project Manager.

### *c. Approving Content*

The NDR Project Manager role is responsible for approving content to be placed on the site. Content must be appropriate for public distribution, not violate copyright or trademark laws, or contain sensitive or personal information. Information on HCD's Privacy and Security Policy may be found at: <http://www.hcd.ca.gov/privacy.shtml>; or contact staff in the Legal Division.



#### *d. Information Technology Staff*

HCD's IT staff are responsible for ensuring that the format and design of pages added to the site follow the best practices of page design, are consistent with the standard site design, and are placed on the site by the date requested by the Content Provider. They are also responsible for ensuring that content is deleted by the date indicated by the content provider.

#### *e. Procedure for Placing Content on The Website*

All requests to have content placed on the web must be provided to IT by the NDR Project Manager. The NDR Project Manager prepares the package, which must include the information, data, pictures, and/or graphics being requested to be posted, along with the routing document, and manage the packet through the approval process and subsequently to IT for posting to the site. The minimum time required by IT to post content to the site is 48 hours.

NDR Project Manager must know if the data in the request is new content (both a hard copy and electronic version of the data must be submitted), the request is to replace/add data to existing pages (copies of existing pages should be provided and noted to illustrate in detail the requested modifications), what other pages on the site need to link to the content being provided, the deadline for posting the data/information, and the date that the content will be either reviewed or deleted from the site.

Under certain circumstances, IT may need to place content on the site after business hours. In this case, NDR Project Manager requests an after-hours phone number for the staff person providing the content. This allows IT staff the ability to resolve any questions/issues that may arise during the posting process and be able to post the content by the required time.