



State of California
Department of Housing and Community Development
**2018 Community Development Block Grant - Disaster Recovery Infrastructure
Program**

Policies and Procedures Manual

Version 3.0
July 2023

Version Policy

Version history is tracked in the table below with notes regarding version changes. The dates of each publication are also tracked in the table.

Substantive changes within this document that reflect a policy change results in the issuance of a new version. For example, the change to a rolling application process is a substantial change to the procedures provided in Version 1.0. Future policy changes will result in additional revisions and the issuance of a new primary number version.

Non-substantial changes, such as minor wording and editing or clarification of existing policy that do not affect the interpretation or applicability of the policy, are included in minor version updates denoted by a sequential number increase behind the primary version number. Such changes would result in a version number such as 2.1, 2.2, etc.

Version History

Version Number	Date Revised	Description of Revisions
v1.0	June 2021	Initial Draft: Policies and Procedures are <u>subject to change</u> at the sole discretion of the DR-Infrastructure Program
v2.0	December 2021	Section 2.2.1 Tie-Back to the Disaster: Addition of requirements for use of population shift as a result of the disaster as an indirect disaster tie-back. 2.2.3 Eligible Applicants: Update of requirements for Eligible Applicants working on behalf of another jurisdiction or special district. 2.2.4 Disaster Recovery Infrastructure and Disaster Recovery Multifamily Housing Program Coordination: Clarify coordination of DR-Infrastructure and DR-Multifamily Housing Program for infrastructure projects and establish how project responsibility determines potential program eligibility. 2.3.10 Section 3 of the HUD Act of 1968: Update regarding the Section 3 Final Rule. 2.6.1 Eligible Uses of Funds: Clarification of the non-federal share of U.S. Army Corps of Engineers projects maximum limit. 3.1.1 NOI Process: Clarification of NOI Rounds and timing.

		<p>3.1.5 Allocations from NOI: Update Allocation methodology for Priority Level percentages.</p> <p>3.1.6 Application Process: Update of the Application Process including timing, Due Diligence, and Authorizing Resolution requirements.</p> <p>3.1.7: Application Requirements: Updates on requirements for the Application including the Due Diligence and Authorizing Resolution.</p> <p>3.1.8 Application Review: Update of approval entity for potential projects submitted under the Application.</p> <p>3.1.9 Application Award Methodology: Update of Award Methodology to clarify Application to Agreement timing.</p> <p>3.1.11 Notice to Proceed: Clarification of Notice to Proceed procedure with update of Application to Agreement timing.</p> <p>Appendix 1: Addition of the 2018 Mitigation Resilient Infrastructure Program (MIT-RIP) Policies and Procedures. Unless otherwise noted in the MIT-RIP Addendum MIT-RIP follows the 2018 DR-Infrastructure Policies and Procedures.</p>
v3.0	January 2023	<p>Full Document: General updates related to grammar, capitalization, punctuation, and overall formatting.</p> <p>Full Document: General updates related to grammar, capitalization, punctuation, and overall formatting. Clarification of uses of Standard Agreements (SAs) and Master Standard Agreements (MSAs) throughout grant life cycle.</p> <p>1.2 Terms and Definitions: Clarification of definition and allowable uses for Activity Delivery Costs.</p> <p>1.2 Terms and Definitions: Additional clarification of process triggered by issuance of a Notice to Proceed.</p> <p>2.2.1 Tie-back to Disasters: Additional clarification regarding documentation required for FEMA PA Match projects.</p> <p>2.2.1 Tie-back to Disasters: Clarification of tie-back documentation requirements for road repair projects.</p>

	<p>2.2.1 Tie-back to Disasters: Clarification of location documentation requirements for tie-back documents and images.</p> <p>2.2.3. Meeting a National Objective: Clarification of Urgent Need national objective.</p> <p>2.2.4 Eligible Applicants: Update of requirements for Eligible Applicants and secondary subrecipients.</p> <p>2.2.5 Infrastructure and Multifamily Housing Program Coordination: Clarification of allowable use of DR-MHP and DR-Infrastructure funds for infrastructure activities on approved DR-MHP projects by qualified developers / contractors. DR-MHP funds can be used but DR-Infrastructure may not be used for activities that are the responsibility of the developer/contractor.</p> <p>2.3.17 Procurement Policy: Clarification regarding HCD review of subrecipient's procured contracts. HCD will not review each contract but will confirm compliance through monitoring.</p> <p>2.3.20 Environmental Review Procedures: Clarification of requirements for subrecipients to use activity delivery funds for the environmental review process.</p> <p>2.7 Determining the Non-Federal Share Amount: Section was moved from original location in 2.3 CDBG-DR and Cross-Cutting Federal Requirements to Section 2.7.</p> <p>2.8.2 Ineligible Uses of Funds: Added private infrastructure as an ineligible use of program funds.</p> <p>3.1.1 NOI Process: Clarification of purpose of NOI and NOI Review.</p> <p>3.1.1 NOI Process: Update to NOI process and policy regarding consideration of eligible projects. Only eligible Projects submitted during the NOI process will be considered for an award during the application phase. Projects <i>not</i> submitted as part of the NOI/unmet need assessment and determined to be eligible by HCD during the application phase <i>will not</i> be considered for an award.</p> <p>3.1.2 NOI Requirements: Clarification of tieback documentation required for NOI applications.</p>
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		<p>3.1.3 NOI Review: Clarification of NOI review criteria. Priority Level 1 is LMI; Priority Level 2 is Urgent Need.</p> <p>3.1.4 NOI Approval: Clarification of HCD staff roles and order of review for NOI approval.</p> <p>3.1.7 Project Application Process: Clarification of the timing of the Application deadline based on the execution of an MSA. The application due date for Subrecipients is now 90 days from execution from the MSA.</p> <p>3.1.7 Project Application Process: Clarification of authorizing resolution, MSA, and application processes and requirements. An MSA must be executed by a Subrecipient prior to submitting an application to HCD.</p> <p>3.1.9 Application Review: Clarification on criteria and process for application denial, and clarification of HCD's application review and NTP issuance process.</p> <p>3.1.11 Notice to Proceed: Clarification of steps, submissions, and approvals required before HCD may issue an NTP. Clarification that NTP enables subrecipient to formally proceed with projects and expect to be reimbursed for eligible activity costs incurred after NTP execution date. Clarification that FEMA match projects that commenced construction prior to the NOI are excluded from restrictions on incurring pre-NTP activity costs.</p> <p>3.4 Activity Delivery Costs: Clarification of when ADCs can be incurred by a Subrecipient prior to an MSA.</p> <p>4. Program Operations: Changed section title from Program Operations and Implementation.</p> <p>Appendix 1: Removed the 2018 Mitigation Resilient Infrastructure Program (MIT-RIP) Policies and Procedures section. The 2018 MIT-RIP Policies and Procedures will be produced as its own stand-alone document.</p>
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Community Development Block Grant - Disaster Recovery 2018 Infrastructure Program Policies and Procedures Manual

General

1.1. Purpose and Scope

This document is designed to address program policies and provide general guidance for the use of Community Development Block Grant – Disaster Recovery (CDBG-DR) supplemental funds appropriated under Public Laws 115-254 and 116-20, Catalog of Federal Domestic Assistance Numbers 14.228 for State CDBG grantees and 14.218 for Entitlement CDBG Grantees.

On January 27, 2020, United States Department of Housing and Urban Development (HUD) published Federal Register Notice 85 FR 4681 allocating \$1,017,399,000 in CDBG-DR funding, related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4382 from July to September 2018 and DR-4407 in November 2018. The California Department of Housing and Community Development (HCD) is the grantee responsible for administering the CDBG-DR funds allocated to the State of California. CDBG-DR supports the State of California's unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4382 from July to September 2018 and DR-4407 in November 2018.

Recognizing unmet infrastructure recovery needs, related to DR-4382 from July to September 2018 and DR-4407 in November 2018, HCD allocated \$317,428,488 of the CDBG-DR funding to the Disaster Recovery Infrastructure Program (DR-Infrastructure). DR-Infrastructure projects are funded to assist with meeting the unmet infrastructure needs of local communities. This program provides funding for FEMA Public Assistance (PA) match projects, FEMA Hazard Mitigation Grant Program (HMGP) match projects, other non-FEMA match projects, and stand-alone projects identified by local communities impacted by DR-4382 or DR-4407. HUD requires that 70% of the total grant-wide funds are spent on activities that meet the low- and moderate-income (LMI) national objective and 80% of grant funds are expended in the HUD-identified most impacted and distressed (MID) areas. The MID areas for the 2018 DR-Infrastructure Program include the entire counties of Butte, Shasta, Los Angeles and Lake.

Additionally, for CDBG-DR funds to be used as the non-federal cost share local match, the project must be a HUD eligible activity and must meet a HUD national objective, per CDBG-DR rules and regulations. Similarly, the project must fully comply with all applicable federal rules and regulations, to include Davis Bacon and related acts, Section 3, Section 504, procurement, environmental review and all other CDBG-DR, cross-cutting, state and local applicable statutes, rules and regulations.

This document describes program policy and provides guidance for the DR-Infrastructure Program. Subrecipients should review all applicable Federal regulations, disaster specific

Federal Register Notices and HCD's CDBG-DR Action Plan and Grant Administration Manual for detailed discussions of CDBG-DR procedures and requirements.

1.2. Terms and Definitions

Agreement: HCD utilizes multiple agreement templates as contracts with Subrecipients, including, but not limited to, Standard Agreements and Master Standard Agreements. The type of Subrecipient agreement used depends on the type and number of projects, among other factors. HCD determines the type(s) of Agreement used on a case-by-case basis in the reasonable exercise of HCD's discretion. "Agreement" is used throughout this manual as a general term when either a Standard Agreement or Master Standard Agreement, or any other agreement template, may be appropriate given the context of the section.

Activity Delivery Costs (ADC): ADCs are allowable costs incurred for implementing and carrying out eligible CDBG activities. ADCs cover the costs of staff directly carrying out the activity in addition to engineering, design, architecture, and environmental services that are necessary for successful completion of the activity. ADCs must be allocable to a CDBG-assisted activity, meet a national objective, and meet all other CDBG program requirements.

Application: A formal document used to assess viability of an individual project and includes final construction design plans, identify and document all funding sources, and provide additional documentation to show compliance with state and federal regulations.

Area Median Income (AMI): means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD for the CDBG program at <https://www.hcd.ca.gov/grants-and-funding/income-limits>

Authorization to Use Grant Funds (AUGF): is the written notification from HCD to the subrecipient, indicating that a specific project has met HCD's prerequisites and authorizing the subrecipient to expend CDBG-DR funds on that specific project.

Authorizing Resolution: is a formal resolution of the subrecipient's highest authority, usually the city council or county board of supervisors, authorizing the subrecipient to accept CDBG-DR funding and the responsibilities that attach, thereto, in general and authorizing people performing specific roles to act on its behalf, including, but not limited to, signing the Agreement with HCD.

CALGreen: is California's first green building code and first in the nation state mandated green building code. It is formally known as the California Green Building Standards Code, Title 24, Part 11, of the California Code of Regulations. For more information, visit <https://www.dgs.ca.gov/BSC/Codes>

California Environmental Quality Act (CEQA): is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

Code of Federal Regulations (CFR): is the acronym used for the Code of Federal Regulations.

Contractor: a properly licensed person or company that Subrecipients or developers hire to undertake a contract to provide materials or labor to perform a service or do a job.

Community Development Block Grant Program - Disaster Recovery (CDBG-DR): Assistance from the U.S. Department of Housing and Urban Development (HUD) to help the state recover from presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations.

Cross-Cutting Requirements: Regulations outside of CDBG-DR that apply to CDBG-DR programs. These requirements pertain to financial management, procurement, environmental, labor, acquisition, relocation, fair housing, and non-discrimination.

Davis-Bacon Wage Requirements: The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia contracts or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. Contractors and subcontractors on Davis-Bacon Act prime contracts in excess of \$150,000, or related Act contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek.

Eligible Applicant: means any city or county governments that applies for funds pursuant to applicant eligibility section. (See Also: Subrecipient)

Duplication of Benefits (DOB): Financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds. The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern or other entity from receiving financial assistance from CDBG Disaster Recovery funding with respect to any part of the loss resulting from a major disaster as to which he/she has already received financial assistance under any other program or from insurance or any other sources. It is an amount determined by the program that may result in the reduction of an award value.

Environmental Review Record (ERR): A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents as required by CEQA and NEPA regulations. (See California Environmental Quality Act and National Environmental Policy Act).

Federal Emergency Management Agency (FEMA): An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the

response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

FEMA Hazard Mitigation Grant Program (HMGP): FEMA HMGP projects are those that result in protection to public or private property, have a beneficial impact upon the designated disaster area, whether or not located in the designated area, and meet the minimum project criteria in [44 CFR Section 206.434\(b\)](#).

FEMA Public Assistance (FEMA PA): Provides grants to state, tribal, territorial, and local governments, and certain types of private non-profit organizations so that communities can quickly respond to and recover from major disasters or emergencies. Through the program, FEMA provides supplemental federal disaster grant assistance for debris removal, life-saving emergency protective measures, and the repair, replacement, or restoration of disaster-damaged publicly owned facilities, and the facilities of certain private non-profit organizations.

Grantee: The term “grantee” refers to HCD.

Grants Network: The Department’s electronic grant management system and application portal.

HUD Public Facilities Activity and Match Activity:

- **HCD Section 105(a)(2) – Public Facilities and Improvements:** the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.
- **HCD Section 105(a)(9) – Payment of Non-Federal Share:** payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title.

Low- and Moderate-Income (LMI): Low- and moderate-income people are those having incomes not more than the “moderate-income” level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.

Master Standard Agreement (MSA): The contractual arrangement between HCD and the Subrecipient which sets forth the terms and conditions by which CDBG-DR funds are utilized. The MSA allows for multiple projects to be completed under one agreement.

Minority- and/or Women-Owned Business Enterprise (M/WBE): A business that is owned and controlled (minimum of 51% ownership) by a member of a minority group, or women.

Most Impacted and Distressed (MID): An area that meets the definition of Most Impacted and Distressed set by HUD in the Federal Register Notice. For purposes of the unmet needs allocation, HUD has defined Most Impacted and Distressed as an area (county or zip code) that meets the following criteria:

Individual Assistance/Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.

Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and zip codes with high levels of damage, collectively referred to as “most impacted areas”. For this allocation, HUD is defining most impacted areas as either most impacted counties—counties exceeding \$10 million in serious unmet housing needs—and most impacted zip codes—zip codes with \$2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.

Disasters meeting the most impacted threshold. Only 2018 disasters within the threshold are funded: a. One or more most impacted county, and/or b. An aggregate of most impacted zip codes of \$10 million or greater than was declared by the President to be a major disaster area under the Stafford Act for a disaster event occurring in 2018.

National Environmental Policy Act (NEPA): Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that could significantly affect the environment.

National Flood Insurance Program (NFIP): Created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. FEMA manages the NFIP.

Notice of Intent (NOI): Process by which Eligible Applicants submit their eligible DR-Infrastructure Program projects and project Priority Level through Grants Network for Program eligibility and funding allocation.

Notice to Proceed (NTP): The NTP is a binding document, approved as to form a component of the Agreement between the Subrecipient and HCD by committing funds to a specific project and gives official notice to the subrecipient that they can begin work on the project.

Permanent work: FEMA's Public Assistance program designation for “recovery work” which restores or rebuilds a damaged asset and is comprised of five categories: roads and bridges (Category C), water control facilities (Category D), buildings and equipment (Category E), utilities (Category F), and parks, recreation facilities, and other facilities (Category G).

Program Portal: A web-based portal via Grants Network to the DR-Infrastructure overview and program-specific documents, NOI, and Project Application.

Project: Per 49 CFR 24.2 a (22), project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

Project Worksheet (PW): FEMA form used to document the scope of work and cost estimate for a FEMA Public Assistance project. This form supplies FEMA with the information necessary to approve the scope of work and itemized cost estimate prior to funding. The PW may include mitigation measures up to 100% of the eligible PW value.

Request for Proposal (RFP): A procurement document designed to solicit proposals for services where cost is considered as a factor.

Request for Release of Funds (RROF): An environmental review term for a process used by Responsible Entities (the state) when requesting the release of funds and the authority to use such funds for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of local government and states. The approval of the RROF is required before environmental clearance may be provided to a recipient of CDBG-DR funds.

Responsible Entity (RE): Under the ERR requirements at 24 CFR Part 58, the term “responsible entity” (RE) means the agency receiving CDBG assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

Section 3: is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

Stand-Alone Project: Non-match, stand-alone projects are those eligible infrastructure projects critical to address identified unmet disaster recovery needs and increase the resilience of cities and counties and are not funded by other federal recovery programs.

Standard Agreement: The contractual arrangement between HCD and the Subrecipient which sets forth the terms and conditions by which CDBG-DR funds are utilized. The Standard Agreement allows for one project to be completed under the agreement.

Subrecipient: The term “Subrecipient” refers to a unit of local government receiving a direct award from HCD and providing grant awards to developers. Public or private

nonprofit agency, authority or organization, or community-based development organization receiving CDBG-DR funds from the recipient or another subrecipient to undertake CDBG-DR eligible activities (see 24 CFR 570.500(c)).

A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program (see 2 CFR 200.93). A subrecipient is a grantee's partner in disaster recovery.

Uniform Relocation Act (URA): A federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.

Urgent Need Resolution: A formal resolution of the subrecipient's highest authority, usually the city council or county board of supervisors, establishing and asserting as true and sufficient justification the reasons stated in the resolution for undertaking one or more of subrecipient's projects under the Urgent Need National Objective.

U.S. Department of Housing and Urban Development (HUD): Federal department through which the CDBG-DR funds are provided to HCD.

Program Requirements

1.3. Infrastructure Program Activities

The DR-Infrastructure Program utilizes CDBG-DR funds to address two needs of Eligible Applicants: 1.) providing support to disaster-impacted units of local government and other eligible entities with payment of their non-federal local cost share (FEMA PA Match, FEMA HMGP Match, and other federal grants) requirement so that they can access other disaster recovery resources without incurring an unexpected financial burden to address recovery needs; and 2.) providing funds to units of local government to develop "Stand-Alone" infrastructure projects, which can be funded with up to 100% CDBG-DR funding, that are necessary to address unmet disaster recovery needs from impacts tied to DR-4382 or DR-4407. To address the needs of Eligible Applicants described in this paragraph, the DR-Infrastructure Program funds are used for the following project types:

- The non-federal local cost share match on disaster-related federal grants (FEMA and other federal grants); and
- Non-match, Stand-Alone Infrastructure projects that address identified unmet 2018 disaster recovery needs and increase the resilience of cities and counties.

2.1.1 FEMA PA Match

The FEMA Public Assistance (PA) Grant Program supports communities' recovery from major disasters by providing them with grant assistance for debris removal, life-saving emergency protective measures, and restoring public infrastructure. FEMA provides grants to the State and its sub-applicants (cities, counties, school districts, etc.) to address the long-term rebuilding, recovery, and resilience needs of the communities. Projects that are approved for FEMA PA Match in FEMA Categories C through G are eligible for non-

federal share, local match funding under the DR-Infrastructure Program. See Section 2.4 for a full description of eligible FEMA PA Match projects, activities, and compliance.

2.1.2 FEMA HMGP Match

FEMA Hazard Mitigation Grant Program (HMGP) activities are designed to help communities implement hazard mitigation measures following a Presidential Major Disaster Declaration in the areas of the state, tribe, or territory requested by the Governor or Tribal Executive. The key purpose of HMGP is to enact mitigation measures that reduce the risk of loss of life and property from future disasters. Projects that are approved for FEMA HMGP Match are eligible for non-federal, local match funding under DR-Infrastructure. See Section 2.5 for a full description of eligible FEMA HMGP Match projects, activities, and compliance.

2.1.3 Other Non-Federal Match

HCD may fund the local portion of the non-federal share for other federally grant-funded infrastructure projects with a tie-back to the DR-4382 or DR-4407 disaster events. Grants include, but are not limited to, projects funded by the Federal Highway Administration (FHWA) and the United States Department of Agriculture (USDA).

2.1.4 Stand-Alone Infrastructure

Non-match, Stand-Alone CDBG-DR eligible infrastructure projects with a tie-back to the 2018 disasters that can be funded with up to 100 percent of CDBG-DR funding are eligible for the DR-Infrastructure Program. These non-match, Stand-Alone Infrastructure projects are critical to address identified unmet disaster recovery needs and increase the resilience of cities and counties that are not funded by other federal recovery programs. Stand-Alone Infrastructure projects can include FEMA PA or FEMA HMGP projects that were determined ineligible by FEMA, but all projects are subject to review for a tie-back to the 2018 disasters to confirm that they support or expand community resilience and that they are consistent with CDBG-DR requirements and HCD's policies and procedures. All Stand-Alone Infrastructure projects require an environmental review be completed by the Subrecipient. See Section 2.6 for a full description of eligible Stand-Alone Infrastructure projects, activities, and compliance.

2.2 Infrastructure Program Requirements

2.2.1 Tie-back to the Disasters

All projects funded through the DR Infrastructure Program must in some way respond to a direct impact from the following federally declared disasters:

- DR-4382 California Wildfires and High Winds (July 23, 2018 – September 19, 2018)
- DR-4407 California Wildfires (November 08, 2018 – November 25, 2018)

The FEMA PA program requires clear documentation showing a direct disaster-related impact as a prerequisite for entry into the program. Only after an impact threshold has been met does FEMA consider making disaster funds available to applicants. It is

assumed that if the potential applicant received funding through the FEMA PA program for the same project for which a DR-application is submitted, that same project has a tie to one of the declared disasters. For FEMA PA Match projects, the tie to the 2018 disasters is documented by FEMA's approval of the Project Worksheet and need not be separately established for purposes of establishing eligibility for CDBG-DR funding.

For Stand-Alone projects, HMGP Match projects, and other Federal match projects, the tie-back to the 2018 disasters is documented as part of the NOI and application processes and stored in the program file of Grants Network. Documentation that shows a tie to the disaster can include, but is not limited to, a damage estimate prepared by city/county staff or contractor, reconstruction estimates for physical losses by engineers or other similar professionals, insurance claims, or photographic evidence of the physical impact of the disaster, or disaster-related activities, on the project with clear dates and timeline.

Tie-Back - Road Repair Project

For DR-Infrastructure to fund road repair projects, showing a tie-back to the disasters justified by the damage or a decreased lifespan of a road, is required. For example, if road repair is due to damage from disaster related debris removal, the applicant must demonstrate a tie-back to the disaster(s) by submitting both of the following:

1. Documentation of location: Shows that the debris removal occurred on the roads being submitted for funding to repair/rehabilitate/replace, such as:
 - A debris removal plan showing the respective road as the primary debris removal route and/or,
 - Confirmation from city or county officials, independent inspectors, U.S. Army Corps, Cal OES, FEMA, CalRecycle, or other governmental entity that the respective road was used as a debris removal route.
2. Documentation of damage: Shows the impact of the damage on the road lifespan. At least one of the following shall be provided to document damage:
 - Before and after photos of the impacted roads, including a date stamp on each photo,
 - A dated inspection report following the disaster/debris removal identifying damage to the roads,
 - A dated inspection report providing evidence that the lifespan of the road has been decreased due to debris removal operations and the replacement or repair of the road is now necessary for the safety and security of drivers of the road,
 - Dated inspection reports that describes the damage from during or after the disaster event,
 - History of Pavement Condition Index (PCI), or other road condition index, for the roads being submitted, and/or
 - Other documentation supporting the project's tie-back to the disasters as permitted by the Department.

Indirect Tie-Back – Population Shifts

Eligible Applicants may submit indirect tie backs to the disaster that are a result of population shifts due to DR-4382 and DR-4407. For such indirect tie backs, Eligible Applicants are required to use one of two options as outlined below:

1. Option one: Use publicly available data from a government entity or research center acceptable to HCD to determine whether the jurisdiction experienced a sustained population increase, of at least 24 months, reasonably attributable to an influx of 2018 disaster survivors.
2. Option two: Eligible Applicants provide alternative data documenting a sustained population increase, of at least 24 months, reasonably attributable to an influx of 2018 disaster survivors, using a survey methodology acceptable to HCD (i.e., reasonably designed to produce an accurate estimate).

2.2.2 Overall Housing Recovery

For all projects, HCD reviews how each project supports the overall housing recovery from DR-4382 or DR-4407. Projects that support overall housing recovery are infrastructure projects that enable the recovery of residential areas by meeting transportation needs, restoring essential utilities, and addressing other public infrastructure and facility needs. Examples of infrastructure projects that support overall housing recovery include, but are not limited to public roads, school facilities, stormwater drainage improvements, potable water, sanitary sewer, electric and gas utilities, wastewater treatment facilities, parks, and other public facilities that are important publicly owned assets.

2.2.3 Meeting a National Objective

In accordance with 24 CFR 570.208, all CDBG-DR funded activities must meet a national objective as required under 24 CFR 570.200(a)(2). Under section 101(c) of the authorizing Act (42 U.S.C. 5301) the CDBG program must ensure that the funded activity meets one of the named national objectives. The two qualifying national objectives are:

- Benefiting low- and moderate-income persons; and
- Meeting a need having a particular urgency (referred to as Urgent Need).

National Objective Category	Subcategory	Required Documentation
LMI Benefit	LMI Area Benefit	1) Boundaries of service area of activity/project 2) Census data including the persons and percentage LMI 3) Evidence area is primarily residential 4) Survey documentation (if applicable)
LMI Benefit	LMI Limited Clientele	Documentation that the beneficiaries are or are presumed to be LMI by category (e.g. senior housing, homeless shelters, etc.).

LMI Benefit	LMI Housing	If applicable, income documented for all household members 18 years of age and older.
Urgent Need	Urgent Need	Resolution from Subrecipient's city council, county board, or similar governing body stating that no other funds are available for the proposed project.

The DR-Infrastructure Program must demonstrate that funded activities meet one of the two National Objectives. The types of records to be maintained for each CDBG-DR funded project depends on the National Objective category for which it qualifies. For all DR-Infrastructure Program projects, the final determination of the National Objective is completed during the application process based on HUD guidance. Eligible Applicants also need to provide preliminary National Objective documentation as part of the NOI process to support the Priority Level of the project.

Determining the service area of an activity involves consideration of the nature, location, and accessibility of each activity, and the information contained within the project's description and scope of work (contained in the Project Worksheet for FEMA PA projects). Service areas are based on the beneficiaries of recovery activities and/or types of facilities (e.g., work on roads and bridges, repair/replacement of public utilities, etc.); geographic features (e.g., locations of highway, rivers, hillsides, etc.); and local population characteristics (e.g., population size and density). Wherever possible, HCD leverages pre-defined service areas mapped by a government agency or utility service providers.

HCD anticipates that projects that qualify under the Low- and Moderate-Income (LMI) National Objective are primarily using the Low- and Moderate-Income Area Benefit (LMA) category. Once a project's service area is identified, HUD Low- and Moderate-Income Summary Data is used to determine if at least 51 percent of the residents are low- and moderate-income persons.

The Urgent Need National Objective requires that the project is designed to meet community development needs having a particular urgency. In the absence of substantial evidence to the contrary, a project is considered to address this National Objective if the design of the project is certified to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the Subrecipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition is generally considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the Subrecipient.

2.2.4 Eligible Applicants

The eligible applicants for 2018 Infrastructure Recovery Program funds are municipal and county governments that received FEMA Public Assistance funds for permanent infrastructure projects (Categories C through G) related to the DR-4382 or DR-4407 disaster events and/or are listed below and as a subrecipient

jurisdiction under the 2018 CDBG Disaster Recovery Multifamily Housing Program.¹

Eligible Applicants

1. Butte County
2. Lake County
3. Los Angeles County
4. Shasta County
5. Ventura County
6. City of Agoura Hills
7. City of Anderson
8. City of Calabasas
9. City of Chico
10. City of Gridley
11. City of Lakeport
12. City of Los Angeles
13. City of Malibu
14. City of Oroville
15. City of Redding
16. City of Shasta Lake
17. City of Thousand Oaks
18. City of Westlake Village
19. Town of Paradise

Following the NOI process and allocations being announced, Eligible Applicants that receive an allocation sign an Agreement with HCD to become Subrecipients. HCD will solicit project applications from Subrecipients in accordance with the application requirements outlined in Section 3.1.8. Only Subrecipients are eligible to submit project applications to HCD.

Subrecipients of HCD may submit applications with a local government, special district, or other similar entity as a secondary subrecipient for a project that meets the eligibility criteria outlined for FEMA PA Match projects (see Section 2.4), FEMA HMGP Match projects (see Section 2.5), Other Federal Non-Federal Share Match projects (See Section 2.6), and Stand-Alone Infrastructure projects (see Section 2.8). HCD in its full discretion will determine whether a proposed entity is an eligible secondary subrecipient. If the application is approved by HCD, the Subrecipient may enter into an agreement with the secondary subrecipient for implementing the project.

Subrecipients of HCD cannot receive an NTP for a project with a secondary subrecipient unless the Subrecipient meets the following two (2) conditions:

1. The Subrecipient provides a written monitoring plan of the secondary subrecipient for the proposed project(s). The monitoring plan must demonstrate

¹ Multifamily Housing Program subrecipient list can be found on pages 133 and 134 of the State of California 2018 CDBG-DR Action Plan: https://hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2018/docs/hcd-cdbg-dr-2018_ap-final-ada-english.pdf

that the Subrecipient has sufficient understanding of the program requirements, the applicable federal and state regulations, and the capacity to monitor the work of its subrecipients.

2. Subrecipient provides the written agreement between the Subrecipient and the secondary subrecipient. If a Subrecipient is a CDBG entitlement community and has a subrecipient agreement in place, they may use the agreement as a template or amend an existing agreement to include CDBG-DR funds.

If the preceding two (2) conditions are met, the Subrecipient can make the units of local government, special districts, or other similar entities a secondary subrecipient and can use funds from the Subrecipient's DR-Infrastructure allocation for individual projects approved by HCD during the project application process and for which HCD issues a Notice to Proceed. For all cases in accordance with 83 FR 5844 Section 51(k), HCD must also assess the Subrecipient's capacity to execute and monitor the proposed project(s) as a factor in the project review.

2.2.5 Infrastructure and Multifamily Housing Program Coordination

DR-Infrastructure funds are provided to units of local government for:

- 1) The non-federal local cost share match on disaster-related federal grants (FEMA and other federal grants); and
- 2) Non-match, Stand-Alone infrastructure projects that address identified unmet 2018 disaster recovery needs and increase the resilience of cities and counties.

DR-MHP funds are provided to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.

For infrastructure activities on approved DR-MHP projects, the subrecipient (i.e., the unit of local government that is the eligible applicant allocated and/or awarded funds) determines the responsibility of the infrastructure activity implementation as part of the DR-MHP project's scope of work. For infrastructure activities that are the responsibility of the unit of local government, DR-Infrastructure funds can be used if the project meets the DR-Infrastructure program eligibility requirements and criteria. For infrastructure activities that are the responsibility of the qualified developer and contractor as part of the approved DR-MHP project scope of work, DR-MHP funds can be used but DR-Infrastructure may not be used for activities that are the responsibility of the developer/contractor.

2.2.6 Duplication of Benefits

In accordance with the Stafford Act requirements, all activities funded with CDBG-DR must undergo a Duplication of Benefits (DOB) review and a calculation must be completed prior to funding awards and again prior to close out. DOB occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. This includes all benefits available to a person or entity, including cash and other resources such as insurance proceeds, grants, FEMA, other local, state, or Federal programs, and private or nonprofit charity organizations (see Federal Register notice published November 16, 2011 (76 FR

71066) and Federal Register notice published June 20, 2019 (84 FR 28848)) to be identified and considered to prevent a duplication of benefit. The amount of the duplication is the amount of assistance provided in excess of the need. It is HCD's responsibility to ensure that the DR-Infrastructure Program provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The application must document all funds obtained for the same purpose as the DR-Infrastructure Program project from the date of the disaster until the date of the application. Additionally, HCD, in coordination with the Eligible Applicant, performs a DOB review prior to issuing funding and again prior to project closeout to ensure that duplicative assistance is not provided for the DR-Infrastructure project in subsequent phases. HCD also reserves the right to require that the Subrecipient perform additional DOB checks throughout the course of the project's period/performance to ensure there is no duplicative assistance during the course of the project. To address any potential duplication, the agreement includes provisions requiring repayment equal to any assistance later received for the same purpose as the CDBG-DR funds.

2.2.7 Recapture of Funds

A Subrecipient may be required to repay all or a portion of the funds received. The reasons for recapture include, but are not limited to, the following:

- Subrecipient does not comply with the terms of the Agreement;
- A Subrecipient withdraws from the Program prior to completion of the project and/or fails to meet a National Objective;
- A project does not meet the requirements specified in this section, Section 2 Program Requirements;
- A Subrecipient is found to have used program funds for an ineligible activity or cost;
- A Subrecipient receives assistance for the same purpose as the funded DR-Infrastructure Program project including but not limited to insurance settlement funds, FEMA assistance, nonprofit assistance (a DOB); and
- Funds are remaining after the project is completed, the expenditure deadline has passed, or the agreement has expired.

The method of recapturing funds and the timeframe for doing so are determined on an individual project basis. However, the recapture method and timeframe are consistent with 2 CFR part 200 and other applicable cost principles. Complete recapture provisions are included in the Agreement with the Subrecipient and must also be included in any agreements between the Subrecipient and other parties.

2.3 CDBG-DR and Cross-Cutting Federal Requirements

HCD and its Subrecipients must comply with all applicable federal regulations and laws, including but not limited to the identified cross-cutting federal requirements below. Further, all DR-Infrastructure Program projects must comply with any and all applicable State of California, and locally adopted codes, regulations, and ordinances. This section provides

a summary of the significant and applicable cross-cutting federal requirements for all DR-Infrastructure Program activities.

2.3.1 Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a Disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. HCD ensures that reasonable modifications or changes to policies and procedures are made in order to guarantee people with disabilities equal access to services and programs. Additionally, all activities are accessible, both structurally and administratively, to persons with disabilities. The requirement of ADA applies to all HCD, the Subrecipients, and vendors.

2.3.2 Copeland Act's Anti-Kickback Provision

The "Anti-Kickback" provision of the Copeland Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.

The U.S. Department of Labor describes the Copeland Act's Anti-Kickback as prohibiting contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which he or she is entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period. Additionally, the Act's regulations at 29 CFR §§ 3.5 and 3.6 list payroll deductions that are permissible without the approval of DOL and those deductions that require consent of DOL and prohibit all other payroll deductions.²

2.3.3 Contract Work Hours and Safety Standards Act

The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 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).

2.3.4 Force Account Labor

Force account labor occurs when a unit of local government is a CDBG-DR subrecipient or PA Match applicant uses their own workforce to complete construction of an infrastructure project. For DR-Infrastructure Program projects, the use of force account labor requires advance review and approval by HCD. This may be documented by

² <https://webapps.dol.gov/elaws/elg/kickback.htm>

approval of a project budget that includes force account labor as a line item. Subrecipients that proceed without prior approval risk disallowance of all incurred costs. The force account labor approval process is used for all DR-Infrastructure Program activities.

2.3.5 Equal Employment Opportunity Act

Executive Order 11246, Equal Employment Opportunity, as amended, prohibits federal contractors and federally assisted 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.³

2.3.6 Minority- and/or Women-Owned Business Enterprises

Minority owned businesses (Section 8(a)) must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States (CFR Title 13 Part 124). Women-owned businesses must be at least 51 percent owned and controlled by women who are U.S. citizens (CFR Title 13 Part 127 Subpart B).

The Minimum Acceptable Outreach Standards Section 281 of the National Affordable Housing Act requires each participating jurisdiction (i.e., Subrecipient) to prescribe procedures acceptable to the HUD Secretary to establish and oversee a minority outreach program. The program shall include minority and woman-owned businesses in all contracting activities entered into by the Subrecipient. Therefore, minimum HUD standards require that each Subrecipient's outreach effort to minority and women-owned businesses be:

- A good faith, comprehensive and continuing endeavor;
- Supported by a statement of public policy and commitment published in the print media of widest local circulation;
- Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector local resources.

Under the minimum HUD standards cited above, the following guidelines are provided for use by Subrecipients implementing outreach programs to ensure the inclusion, to the maximum extent possible, of entities owned by minorities and women. Each Subrecipients should:

- Develop a systematic method for identifying and maintaining an inventory of certified minority and women's business enterprises (MBEs and WBEs), their capabilities, services, supplies and/or products;

³ 41 CFR Part 60

- Utilize the local media, electronic and print, to market and promote contract and business opportunities for MBEs and WBEs;
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for MBEs and WBEs;
- Develop procurement procedures that facilitate opportunities for MBEs and WBEs to participate as vendors and supplies of goods and services;
- Sponsor business opportunity-related meetings, conferences, seminars, etc., with minority and women business organizations; and
- Maintain centralized records with statistical data on the utilization and participation of MBEs and WBEs as contractors/subcontractors in all HUD-assisted program contracting activities.

Each Subrecipient, utilizing the standards and guidelines listed above, shall prescribe procedures and actions it undertakes in implementing a minority and women's business enterprise outreach program. The above items represent basic outreach-related activities and are not all-inclusive actions a Subrecipient may undertake.

2.3.7 Fair Labor Standards Act of 1938, As Amended

The Fair Labor Standards Act of 1938, as amended (FLSA), establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under HCD's DR-Infrastructure Program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

In some cases, the State of California prevailing wage rate and the Davis-Bacon prevailing wage rates both apply. In such instances, the higher of the two wage rates prevails. Exceptions to the FLSA include:

- Construction contracts of \$2,000;
- Real property acquisition;
- Architectural and engineering fees;
- Other services (such a legal, accounting, construction management);
- Other non-construction items (such a furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and
- Debris removal demolition, and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

2.3.8 Davis-Bacon Labor Standards

The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal contracts or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. Prime contractors and subcontractors on Davis-Bacon Act contracts in excess of \$150,000, or related Act contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek.

Subrecipients are responsible for ensuring that applicable projects and services are in compliance with DBRA through the submission of certified payroll records and interviews of prime and subcontractor laborers. Supporting compliance documentation shall be uploaded to Grants Network. HCD ensures compliance through the review of DBRA documentation uploaded to Grants Network by the Subrecipients.

On September 15, 2015, HUD's Office of Community Planning and Development (CPD) issued Notice CPD-15-07⁴ on September 15, 2015 that provides guidance on pre-application costs and clarifies how cross-cutting requirements apply to CDBG-DR activities. Notice CPD-15-07 includes clarification on the applicability of DBRA and states: *"the Davis-Bacon wage rates will not apply when:*

- *The grantee was not a party to the construction contract; and*
- *The construction work is fully complete before the owner applies for CDBG-DR assistance.*

If construction work is ongoing when an application for reimbursement or financing of construction costs is submitted, then Davis-Bacon prevailing wage rates are applicable. Under regulations of the Department of Labor (DOL) at 29 CFR 1.6(g), where Federal assistance is not approved prior to contract award (or the beginning of construction if there is no contractor award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications (pg. 7)."

Subrecipients shall follow HUD's guidance for all FEMA PA Match and HMGP Match projects. For construction projects that were completed prior to December 1, 2020, the date HCD and HUD executed its grant agreement, Davis-Bacon prevailing wage rates are not applicable. For all projects with construction that is on-going or completed after December 1, 2020, Davis-Bacon prevailing wage rates apply retroactively to the beginning of construction and the Subrecipient must collect documentation to ensure that the prevailing wage rate has been provided to laborers since the beginning of the project.

⁴ <https://www.hud.gov/sites/documents/15-07CPDN.PDF>

2.3.9 Limited English Proficiency

HCD follows the Safe Harbor rule, contained in HUD's final guidance⁵, 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 area-eligible population or current beneficiaries and applicants that are Limited English Proficiency (LEP). HCD ensures that all citizens have equal access to information about the programs, including persons with disabilities (vision and hearing impairments) and Limited English Proficiency persons.

2.3.10 Section 3 of the HUD Act of 1968

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended, requires that economic opportunities generated by CDBG-DR 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-DR 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.

Projects assisted with DR-Infrastructure funds in excess of \$200,000 trigger Section 3 requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents and business concerns to meet these minimum numeric goals: (1) Twenty-five percent (25%) of the total hours worked on a Section 3 project must be worked by Section 3 workers; and (2) Five percent (5%) of the total hours worked on a Section 3 project must be worked by Targeted Section 3 workers.

The Subrecipient and Subrecipient's Contractors shall comply with Section 3 and implementing regulation at 24 CFR Part 75. The responsibilities outlined in 24 CFR Part 75.19 include:

Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

Notifying potential Contractors for Section 3 covered projects of the requirement of Part 75, Subpart C and incorporating the Section 3 Clause set forth below in all solicitations and contracts.

Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment

⁵ <https://portal.hud.gov/hudportal/documents/huddoc?id=finallep2007.pdf>

and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers,

and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

The Project Completion Report shall also include a Section 3 Summary Report of the total number of labor hours worked by all contractors and subcontractors, the total number of labor hours worked by Section 3 workers, and the total number of labor hours worked by Targeted Section 3 workers, as required pursuant to 24 CFR 75.25(a). In the event that the number of Section 3 worker labor hours divided by the total labor hours worked by all workers on a Section 3 project does not meet or exceed HUD's Twenty-five percent (25%) standard, and/or that the number of Section 3 targeted worker labor hours divided by the total labor hours worked by all workers on a Section 3 project does not meet or exceed HUD's Five percent (5%) standard, Subrecipient shall provide additional reporting on the qualitative nature of its activities and those its contractors and subcontractors pursued, as defined at 24 CFR 75.25(b). The standards for hours worked by Section 3 Workers and Targeted Section 3 Workers are subject to change by HUD as published in the Federal Register.

DR-Infrastructure Program projects are required to meet Section 3 requirements as shown above. Section 3 goals and objectives are set depending on the date of completion of each project and project bid dates. HCD staff ensures that Section 3 objectives are addressed through direct technical assistance with subrecipients and file reviews of projects.

HCD requires the following actions of all Subrecipients to ensure compliance with Section 3:

- Prepare and utilize a Section 3 Plan;
- Designate a Section 3 Coordinator;
- Take affirmative steps to follow the Section 3 Plan and document those efforts; and
- 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 DR projects. Notify all bidders that adherence to the Recipient's Section 3 Plan is required for contracts and sub-contracts in excess of \$200,000.

2.3.11 Fair Housing

The Fair Housing Act requirements are adhered to when applicable, the Fair Housing Act requires all Grantees, Subrecipients, and/or Developers funded in whole or part with HUD financial assistance for housing related activities to certify that no person was 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 grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements, provide a marketing plan, and report on compliance in accordance with the Fair Housing

Act and the associated forms on HCD's website, where applicable⁶. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant affirmatively furthers fair housing throughout applicable HCD disaster recovery programs.

2.3.12 Residential Anti-Displacement

When applicable, HCD and its Subrecipients shall make every effort to minimize displacement of families from their homes and/or neighborhood, according to the State of California's Residential Anti-displacement and Relocation Assistance Plan.⁷

2.3.13 Uniform Relocation Act and Real Property Acquisition

When applicable, HCD and its subrecipients must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987 (URA or Uniform Act). The URA contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program in which HUD financial assistance is provided. The implementing regulations, 49 CFR Part 24, include steps which must be taken with tenant occupants, including those who are not impacted by the HUD assisted activity. URA was amended by Public Law 105-117.

Real Property

If DR-Infrastructure Program funds are used to acquire real property, HCD ensures that the property is acquired voluntarily and continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to protect and maintain it, and that if the property is sold, HCD is reimbursed for the CDBG-DR share of the property's value.

This approach to the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector grantee (the rules are generally more explicit for governmental grantees). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights) (Property Management and Disposition Regulations 24 CFR 570.503; all subrecipients (subs) 24 CFR 85.32; 85.34, govt. subs 24 CFR 84.32; 84.34, nonprofit subs) (as amended by 2 CFR 200 as needed).

2.3.14 Financial Management

HCD ensures that its grant management as well as those administering DR-Infrastructure Program funds demonstrate conformity with financial management requirements shown in 2 CFR 200 and applicable Federal Registers. These requirements include, but are not

⁶ <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>

⁷ https://www.hcd.ca.gov/policy-research/plans-reports/docs/Appendix_D-Relocation_and_Anti-Displacement_Plan.docx
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limited to, areas covering Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and Single Audit provisions pursuant to 2 CFR 200 Subpart F. HCD's financial management system is consistent with and in compliance with 24 CFR Parts 84, 85, and 570 (as applicable), which ensures that DR-Infrastructure Program funds are managed with high levels of accountability and transparency.

HCD's Monitoring and Compliance team ensures that Subrecipient's financial management practices adhere to the following:

- Internal controls are in place and adequate;
- Documentation is available to support accounting record entries;
- Financial reports and statements are complete, current and reviewed periodically; and
- Audits are conducted in a timely manner and in accordance with applicable standards.

2.3.15 Insurance and Property Management

For all projects in the DR-Infrastructure Program, all Subrecipients, with the exception of those in the PA Match Program, must procure and maintain insurance for the duration of the subrecipient agreement to protect all contract assets from loss due to any cause, such as theft, fraud and physical damage. If CDBG-DR funds are used to acquire real property or personal property, the Subrecipient is responsible for ensuring that:

The property continues to be used for its intended (and approved) purpose;
The Subrecipient keeps track of, and takes care of, the property; and
If the Subrecipient sells or disposes of the property within 5 years after the expiration of the subrecipient agreement or a longer period as HCD deems appropriate, the Subrecipient reimburses HCD for the share of the property's value according to the Agreement.

2.3.16 Recordkeeping, Retention, and File Management

Record retention is a requirement of the DR-Infrastructure Program. Records are maintained to document compliance with Program requirements and Federal, State, and local regulations and to facilitate a review or monitored by HUD.

HCD adheres to State of California record retention requirements, which require all records to be maintained for a period of five years after the CDBG-DR grant closeout with HUD. This requirement is in line with 24 CFR part 570.490, or as required by applicable laws and regulations under 24 CFR parts 570.487, 570.488 and 570.502(a)(7). Exemptions to the five-year period are provided in the applicable laws and regulations under 24 CFR parts 570.487, 570.488 and 570.502(a)(7). Exceptions include, but are not limited to:

- If any litigation, claim, or audit, is started before the expiration of the five-year period, records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
- When HCD is notified by HUD, or another federal agency, that the record retention period requirement has been extended;
- Records for real property and equipment acquired with CDBG-DR funds must be retained for three years after disposition; or
- When records are transferred or maintained by HUD, the retention requirements no longer apply to HCD.

HCD Subrecipients shall retain all records, such as financial records, supporting documents, statistical records, and all other records pertinent to the MSA for a period of not less than five years after the fiscal year of their grant in accordance with CDBG-DR record retention requirements. HCD notifies Subrecipients when the HUD grant has been closed. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the retention period, then all such records must be retained until completion of the actions and solution of all issues, or the retention period, whichever occurs later.

Every Subrecipient is required to establish and maintain at least three major categories of records: Administrative, Financial Management, and Project Files.

Administrative Records

These are files and records that apply to the overall administrative of the Subrecipient's CDBG-DR activities. They include the following:

- Personnel files;
- Property management files;
- General program files: files relating to the Subrecipient's or contractor's project information, grant agreement(s), program policies and procedures, and correspondence with grantees, and reports; and
- Legal files: articles of incorporation, bylaws of the organization, tax status, board or council minutes, contractors, and other agreements.

Financial Records

These include records such as the chart of accounts, cash receipts and disbursement journal, payroll journal, general ledger, and any applicable accounting policies and procedures. Source documentation (purchase order/change, paid invoices, payroll records, timesheets and attendance records, canceled checks, etc.), procurement files, bank account records, audit files, and/or another mechanism approved by HCD in writing for the specific grant, etc.

Project Files

These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

2.3.17 Procurement Policy

Subrecipients must follow Federal, State, and local procurement rules when purchasing services, supplies, materials, and/or equipment. Subrecipients are required to adopt procurement procedures in 2 CFR 200.318 - 326. All procurement transactions funded in whole or in part with CDBG-DR funds, regardless of dollar amount, must be conducted to provide “maximum open and free competition.” 2 CFR 200.318(i) requires that Subrecipients maintain records sufficient to detail the significant history of each procurement.

Subrecipient procurement transactions shall also follow best practices of cost reasonableness and must meet the critical tests below. The costs must be:

- **Necessary:** The expenditures fill a necessary gap to address an unmet need that cannot be filled by another funding source, as demonstrated by completed DOB analysis for each project/activity.
- **Reasonable:** This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent businessperson would pay.
- **Allowable:** The costs must be allowable under the eligibility requirements of CDGB-DR funds.
- **Allocable:** The costs are logically related to or required in the performance of the project contract. Many costs may be allowable but not related to the work required under the contract.

The Subrecipient is responsible for procuring contractors and ensuring compliance with local, state and federal regulations. For active previously procured contract that the subrecipient would like to apply towards a DR-Infrastructure project, the Subrecipient must provide the procurement file to HCD for review. HCD program staff are responsible for identifying any concerns regarding conforming to the minimum procurement requirements found at 2 CFR 200.318 – 326. Compliance with all applicable local, state, and federal regulations will be certified by subrecipients when financial reports are submitted to HCD and reviewed by HCD during subrecipient monitoring visits.

2.3.18 Audit Trail

All records defined by the organization as important are captured in HCD’s three record management systems: HUD’s Disaster Recovery Grant Reporting System (DRGR), the State’s Financial Information System for California (FI\$Cal), and the system of record, Grants Network. Together, these three systems are used to account for DR-Infrastructure Program funds, with Grants Network serving as the primary system of records. Grants Network contains both Subrecipient and project level files including, but not limited to, NOI documentation, Application and project documentation, Subrecipient expenditure tracking, applicable procurement documentation, available funding, Subrecipient agreements and other agreements, financial management, labor compliance (Section 3 and Davis-Bacon), and citizen participation data. Grants Network ensures data security and oversight creating a clear audit trail of the DR-Infrastructure Program.

All Subrecipient and project data is secured in HCD's System of Record, Grants Network, in accordance with the State of California's CDBG-DR Grant Administration Manual's retention policy.

Recordkeeping, including scanning and uploading to Grants Network, and filing of pertinent DR-Infrastructure Program documentation retention policies are to provide both a physical and an electronic record of activities so that documentation is available for audit purposes.

To protect personally identifiable information (PII), data security measures are in place. HCD, its Subrecipients, and contractors take the following steps to protect PII:

- Limit collection of PII;
- Maintain hard copies of PII records in locked cabinets; and
- Password protect access to electronic files containing PII.

Filing cabinet keys and electronic passwords are shared with program staff only. HCD releases records containing PII upon request, after verification, by federal and state auditor and other federal or state agencies for duplication of benefits (DOB) analyses.

2.3.19 Conflicts of Interest and Confidentiality

Conflicts of interest between covered persons (e.g., Eligible Applicants, recipients, program administrator, contractors, or program staff) and other parties are strictly prohibited by Federal law. A "covered person" is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or any designated public agencies, or recipients that are receiving CDBG-DR funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict of interest regulations contained in the contract between the recipient and HCD prohibit locally elected officials, State staff, recipient employees, and consultants who exercise functions with respect to CDBG-DR activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, from receiving any benefit from the activity either for themselves or for those with who they have family or business ties, during their tenure or for one year thereafter.

2.3.20 Environmental Review

An environmental review must be performed on the project prior to federal funds being committed or disbursed by HCD and Subrecipients. The environmental review shall document compliance with 24 CFR Part 58, NEPA, and all related laws, authorities, and executive orders. For DR-Infrastructure, each Subrecipient receiving DR-Infrastructure

funds becomes the Responsible Entity for completing environmental reviews of all projects and must submit complete Environmental Review Records and a Request for Release of Funds to HCD to grant the authority to use grant funds. Pursuant to 83 FRN 40314, HCD may accept another federal agency's environmental review. Subrecipients are also responsible for ensuring compliance with CEQA, including the submission or designation of applicable waivers to the CEQA Clearinghouse with a copy to HCD. No work may start on a proposed project, or proposed site acquisition, if applicable, before both the federal and state environmental review processes are completed, even if that work/acquisition is being done using non-federal funds. The DR-Infrastructure Program does not reimburse projects that have been determined to have a Finding of Significant Impact (FOSI).

Subsequent to submission of an application by a Subrecipient for the use of DR-Infrastructure funds, there can be no **choice-limiting actions** on the part of the Subrecipient until environmental clearance is received in the form of an Authority to Use Grant Funds (ATUGF) or environmental clearance letter issued by the Department. The concept of prohibiting **choice-limiting** actions is to prevent the Subrecipient from investing in a project before all necessary environmental clearances are obtained. Market studies, environmental studies, plan development, engineering or design costs, inspections and tests are not considered "choice-limiting" actions. **Choice-limiting actions** are defined as any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition by the Subrecipient, construction, demolition of buildings or infrastructure, or rehabilitation or reconstruction of buildings or infrastructure. Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the project, reimbursement by Subrecipient to HCD for the amount expended, or suspension of the disbursement of funds for the affected activity.

Environmental Review Procedures

An environmental review that complies with the National Environmental Policy Act (NEPA) must be completed before CDBG-DR funds are expended. However, HUD grantees are permitted to adopt FEMA's environmental review if that Federal agency has previously performed an environmental review for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In those cases, the work performed by FEMA and HUD must be exactly the same work.

For FEMA PA Match, HMGP Match, and other federally funded match projects, eligible projects are able to adopt FEMA's completed environmental review. If a project's scope changes beyond what was approved in the project worksheet, an additional HUD environmental review must be completed. When adopting FEMA's environmental review, the Subrecipient must obtain a completed copy of FEMA's environmental review record and keep the copy in its project file. If the environmental review documentation is not available, verification from FEMA or the California Governor's Office of Emergency Services (Cal OES) is necessary.

For Stand-Alone projects, each Subrecipient is required to perform a NEPA environmental review on the Project prior to any choice-limiting actions. The Subrecipient is allowed to use DR-Infrastructure Program Activity Delivery funds to complete environmental reviews. Activity Delivery expenses for environmental compliance work for intended Project Applications may be incurred prior to the execution of the NTP provided that such expenses are eligible and are supported by documentation satisfactory to the Department. The environmental review shall document compliance with 24 CFR Part 58, NEPA, and all related laws, authorities, and executive orders. To process the environmental review for each Stand-Alone project, use the steps below as a guide:

- 1) Once a Subrecipient enters into an Agreement with HCD and is ready to submit an Application, the Subrecipient must submit all Environmental Review Records (ERRs) and request for release of funds (RROF), if applicable, to HCD for review. If the Subrecipient is using DR-Infrastructure Program activity delivery funds to complete the environmental review prior to issuance of the related NTP, the Subrecipient must notify HCD of their intentions in writing prior to expending any funds. If activity delivery funds will not be expended until after the NTP is issued, a written request is not necessary.
- 2) Upon receipt, review, and approval of a completed ERR, HCD provides Subrecipient with an Authority to Use Grant Funds (ATUGF), if applicable, or environmental clearance letter.
- 3) Upon receipt of the ATUGF or environmental clearance letter and Notice to Proceed, Subrecipient may incur Project costs and draw down funds.

For all projects, Subrecipients are responsible for ensuring that DR-Infrastructure Program projects are in compliance with the California Environmental Quality Act (CEQA) and obtain all necessary local and state permits.

Flood Insurance and Floodplain Elevation Requirements

The Subrecipient shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

Subrecipients must comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to public facilities in flood hazard areas. All structures designed for public facilities use within a special flood hazard area (SFHA), or one percent annual chance, floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of 83 FR 5850 and 83 FR 5861.

2.4 FEMA PA Match

2.4.1 FEMA PA Categories

The FEMA Public Assistance (PA) program is designed to provide assistance to the impacted jurisdictions for emergency work (under FEMA Sections 403 and 407) and permanent work (Sections 406 and 428) on infrastructure and community facilities. Emergency work takes place immediately after an event and permanent work restores or rebuilds a damaged asset or facility.

FEMA PA projects fall under the following categories:

Emergency Protective Work
Category A – Debris Removal
Category B – Emergency Protective Measures

Permanent Work
Category C – Roads and Bridges
Category D – Water Control Facilities
Category E – Public Buildings and Equipment
Category F – Public Utilities
Category G – Parks, Recreational, and Other Facilities

2.4.2 Eligible Activities

HUD allows Grantees to use CDBG-DR funds to address the non-federal cost share, as noted in the authorizing Federal Register Notice, but requires that the funded project meet at least one additional HUD eligible activity and a National Objective. Infrastructure repair is an eligible activity according to 42 USC 5305(a)(2), which authorizes the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.

2.4.3 Eligible Projects

Proposed projects are assessed by HCD. Eligibility criteria include:

- The proposed project must be located in a city or county impacted by DR-4382 or DR-4407;
- The proposed project must be approved for FEMA PA funds under Categories C through G only;
- All sources of funding required to complete the project must be identified and secured or readily accessible; and
- The proposed project must relate to infrastructure and tie back to the 2018 disaster.

2.4.4 Eligible Use of Funds

FEMA PA projects eligible for PA Match funding under the DR-Infrastructure Program fall under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018; 83 FR 40314 published August 14, 2018; 84 FR 97 published January 9, 2019; and 84 FR 6813 published February 28, 2019.

CDBG-DR funds may fund required FEMA PA local non-federal share (match) funding for approved projects under the following FEMA PA permanent work categories:

- Category C (Road and bridges);
- Category D (Water control facilities);
- Category E (Public buildings and equipment);
- Category F (Public utilities); and
- Category G (Parks, recreational, and other facilities).

All projects must meet a National Objective as detailed in Section 2.2.2.

2.4.5 Ineligible Uses of Funds

Ineligible FEMA PA Match costs include required FEMA PA Match funding for approved projects under Categories A (Debris Removal) and Category B (Emergency Protective Measures). Any increase in scope or modification of a FEMA PA project is also ineligible for funding. Further ineligible costs include those costs that are covered by another party as detailed in Section 2.2.4. in order to preclude Duplication of Benefits.

2.4.6 Labor Compliance

FEMA PA Match projects completed prior to December 1, 2020, that were not Davis Bacon or Section 3 compliant are eligible for non-federal match funding under the DR-Infrastructure Program. Eligibility of FEMA PA Match projects that were completed after December 1, 2020 or are in progress at the time of the application requires that the Eligible Applicant must show project compliance with federal regulations and federal labor regulations (i.e., Davis-Bacon Compliance and Section 3).

2.5 FEMA HMGP Match

2.5.1 Eligible Uses of Funds

Eligible FEMA HMGP costs are those activities eligible under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018; 83 FR 40314 published August 14, 2018; 84 FR 97 published January 9, 2019; and 84 FR 6813 published February 28, 2019. As such, CDBG-DR funds may fund required FEMA HMGP local non-federal share (match) for approved projects that meet the CDBG-DR requirements, including a tie-back to the DR-4382 or DR-4407 disaster events. All projects must meet a National Objective as detailed in Section 2.2.2. To be eligible for FEMA HMGP Match, the project must be a project obligated by FEMA have a service location in an area impacted by DR-4382 or DR-4407, and tie to disasters DR-4382 or DR-4407.

Examples of eligible HMGP Match project types include:

- Acquisition
- Defensible Space
- Flood Control (wildfire soil stabilization, debris catchment, etc.)
- Generators (fixed in place, clear disaster tie-back, and usage is CDBG-eligible)
- Planning (wildfire mitigation plans, hazard mitigation plan updates)

FEMA HMGP infrastructure projects that are approved by Cal OES are eligible for funding under the DR-Infrastructure Program. Eligible projects must tie back to the DR-4382 or DR-4407 disasters. Eligible Applicants are responsible for providing documentation on the tie-back to the DR-4382 or DR-4407 disaster events. Projects that are complete or in progress at the time of application must show compliance with federal regulations and federal labor regulations (i.e., Davis Bacon and Section 3) to be eligible.

2.5.2 Ineligible Uses of Funds

FEMA HMGP projects that are not related to infrastructure and/or without a tie-back to the 2018 disaster events are ineligible for funding. FEMA HMGP costs covered by another funding source and are a Duplication of Benefits as detailed in Section 2.2.4. are ineligible for funding. Ineligible projects include:

- Seismic-related projects
- Portable generators

2.6 Other Non-Federal Share Match

2.6.1 Eligible Uses of Funds

HCD may fund the local portion of the non-federal share for other federally grant-funded infrastructure projects with a tie-back to the DR-4382 or DR-4407 disaster events.

From the unmet needs analysis conducted during the 2018 Action Plan Amendment 1 process, Eligible Applicants indicated that there was an unmet need for the local share on Federal Highway Administration (FHWA) and United States Department of Agriculture (USDA) grants for disaster-related projects. If Subrecipients submit applications for non-federal share match for other federal programs that otherwise meet HCD's eligibility requirement, HCD will evaluate the eligibility of match on a case-by-case basis. HCD may provide a non-federal share up to 25% of the total cost of the project.

If the non-federal share of U.S. Army Corps of Engineers projects is being funded, Eligible Applicants cannot exceed \$250,000 for the non-federal share of the project.

2.6.2 Ineligible Uses of Funds

Projects that have a local share requirement that are not federally funded, are not related to infrastructure, and do not have a tie-back to the 2018 disaster events are ineligible for funding.

2.7 Determining the Non-Federal Share Amount

The non-federal share match is that portion of the project funding that is not covered by the federal government. FEMA administers its grants according to Federal cost sharing requirements as outlined in Title 2 of the Code of Federal Regulations, Sections 200.29, 200.306, and 200.434 and consistent with Title 44 of the CFR, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the National Flood Insurance Act, as amended. In general, FEMA funds may be used to pay up to 75 percent of eligible activity costs.

The non-federal share for FEMA PA Match and HMGP Match project totals 25% of the overall project cost. For FEMA PA projects, of the 25% non-federal share, the State of California's National Disaster Assistance Act (NDAA)⁸ funds 75% of the remaining non-federal share (18.75% of the total). The DR-Infrastructure Program provides the remaining 25% of a project's non-federal local share (i.e., 6.25% of the total).

For HMGP Match projects, the DR-Infrastructure Program is available for up to 25% of the overall project cost. There is no State cost share for HMGP projects.

Federal Agency	Federal Programs	Federal Cost Share	Non-Federal, State Cost Share	Non-Federal, Local, Share	Disasters
FEMA	Public Assistance (PA)	75%	18.75%	6.25%	DR-4382, DR-4407
FEMA	Hazard Mitigation Grant Program (HMGP)	75%	None	25%	DR-4382, DR-4407

2.8 Stand-Alone Infrastructure

2.8.1 Eligible Uses of Funds

Eligibility of Stand-Alone Infrastructure Projects requires that the projects are non-match, stand-alone infrastructure projects that have a tie-back to the DR-4382 or DR-4407 disaster events and address identified unmet disaster recovery needs. Further, Stand-Alone Infrastructure Projects must be those activities eligible under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018; 83 FR 40314 published August 14, 2018; 84 FR 97 published January 9, 2019; and 84 FR 6813 published February 28, 2019. All projects must meet a National Objective as detailed in Section 2.2.2. Examples of Stand-Alone Infrastructure Project activities that potentially tie back to the 2018 disasters include, but are not limited to:

⁸ <https://www.caloes.ca.gov/cal-oes-divisions/recovery/public-assistance/california-disaster-assistance-act>

- Soil stabilization in impacted areas following the fires;
- Generators that are affixed to the structure (i.e., not mobile) with a specific disaster tie-back;
- Undergrounding power lines that were damaged by the disaster event;
- Acquisition of land for fire mitigation and/or to make the community more resilient; and
- Hillside or streambank stabilization due to mud/rockslides related to the disaster event.

2.8.2 Ineligible Uses of Funds

Projects not related to infrastructure, increased code compliance, direct support of housing recovery, or DR-4382 or DR-4407 disaster events are ineligible for funding. Further, any costs for non-match, stand-alone projects that are funded by another source as detailed in Section 2.2.4. are ineligible for funding.

Private infrastructure activities are ineligible for program funding. Private infrastructure activities include but are not limited to funding the construction, repair, or replacement of private roads, bridges, and private utilities.

3 Implementation Policies

3.1 Project Selection

3.1.1 NOI Process

The purpose of the NOI is to facilitate the completion of an unmet need assessment that HCD uses to allocate funds based on the NOI review (Section 3.1.3) and NOI allocation methodology (Section 3.1.5) described below. Eligible Applicants submit eligible DR-Infrastructure Program Projects identifying an unmet need through a Notice of Intent (NOI) via Grants Network. Only eligible Projects submitted during the NOI process will be considered for an award during the application phase (see Section 3.1.7). Even if the Project is otherwise eligible, if it is not submitted as part of the NOI/unmet need assessment and determined to be eligible by HCD during the application phase, it will not be considered for an award.

For the 2018 DR-Infrastructure Program, there are two rounds of NOIs that align with HCD's unmet needs Priority Levels. The Priority Levels are as follows:

- Priority 1: Projects addressing an unmet need that meet the LMI national objective
- Priority 2: Projects addressing an unmet need that do not meet the LMI national objective

Round 1 of the NOI accepts Priority 1 projects only and Round 2 accepts both Priority 1 and Priority 2 projects. The LMI national objective does not need to be verified at the NOI stage, but the expectation is that the Eligible Applicant can provide service area or area benefit data to support the project Priority Level.

Following the release of each NOI round, Eligible Applicants must complete and submit the NOI fields in the Grants Network Program Portal detailing eligible DR-Infrastructure Program projects within four (4) weeks for Round 1 and eight (8) weeks for Round 2. If HCD has questions or feedback regarding potential project unmet needs, Eligible Applicants are allowed to provide clarifications. HCD determines program allocations following a final review and evaluation of all submitted NOIs.

If LMI and most impacted and distressed (MID) funding targets, see Section 3.1.10, are not able to be met by the potential projects submitted through the NOI process, HCD reserves the right to pause the NOI process and reevaluate the DR-Infrastructure Program as a whole. HCD could reopen the NOI release period for as long as it deems necessary to meet LMI and MID funding targets.

3.1.2 NOI Requirements

Eligible Applicants are required to submit the information below for projects during the NOI phase, unless otherwise noted as optional. Failure to submit the required information may disqualify the project from being included in the allocation calculation. The submission of optional information does not impact the eligibility of projects, nor the Eligible Applicant's allocation. The required information is as follows:

- Declaration of project type (Stand-Alone, FEMA PA Match, FEMA HMGP Match, or Other Non-Federal Share Match)
- Project Details:
 - Identify which of the 2018 declared disasters the submitted project is related to.
 - Identity of the Eligible Applicant.
 - Indication if the project is on behalf of another government entity or special district other than the Eligible Applicant
 - If yes, name of other government entity or special district
- Project Title
- Project Description / Scope of Work
- A description or scope of work for infrastructure projects is required.
- Project Location Description, including address, as applicable
- Project City
- Project Zip Code
- Does the Project service area benefit LMI population or area?
 - If yes, describe how the project service area benefits and LMI population or area
 - What is the percentage of LMI persons that benefit from this project?
 - Upload documentation that supports the LMI service area (optional)
- Does the Project service area benefit the MID area?
 - Include MID service area Map (optional)
- Provide a map of the service area showing MID and LMI benefit (optional)
- FEMA PA Project Number – PA Match Only
- FEMA PW Number – PA Match Only
- FEMA PA Category – PA Match Only
 - Category C: Roads and Bridges

- Category D: Water Control Facilities
 - Category E: Public Buildings and Equipment
 - Category F: Public Utilities
 - Category G: Parks, Recreational, and Other Facilities
- OES Number – HMGP Match Only
- FEMA HMGP Status
- Other Federal Match Project Number
- Affirmation and documentation of project compliance from the start of construction with Davis-Bacon Act and Section 3 if in-progress or completed after December 1, 2020
 - If project is complete, date of the completion
- Provide the current status of the project
- Total Project Cost (\$ amount), The Total Project Cost (\$ amount) is the total amount of the cost of the project. This includes any matching funds, the unmet need, Activity Delivery Costs and/or administrative costs, and the amount being requested from the 2018 CDBG-DR Infrastructure program)
- Federal Funding Identified/Committed (\$ amount)
- Federal share of the total project cost
- State Matching Funds (\$ amount)
- Local Match (\$ amount) Anticipated CDBG-DR funding request (\$ amount)
- (This is the total amount of unmet need funding being requested from HCD for the DR-Infrastructure Program allocation. This includes hard project costs and Activity Delivery Costs).
- Is there a gap between total project unmet need and CDBG-DR funding request?
 - If yes, please explain how the gap is anticipated to be funded and provide estimated dollar amounts.
- Have you applied for other sources of funds for this project?
 - If yes, please explain the source, how much and the status of application or award
- Provide cost estimate documentation from a qualified professional (Optional) (If provided, the documentation should clearly demonstrate the reasoning of the cost estimate and support the description of the cost estimate and/or unmet need)
- Was the project denied by FEMA for PA or HMGP funds?
 - If yes, provide a descriptive reason why the project was denied by FEMA. Additional documentation may be requested.
- What eligible CDBG activity does this fall under?
- Has a NEPA Environmental Review been started?
- Has a NEPA Environmental Review been completed?
 - If yes, upload completed NEPA Environmental Review (Optional)
- Has a CEQA Environmental Review been started?
- Has a CEQA Environmental Review been completed?
 - If yes, upload completed CEQA Environmental Review (Optional)
- Explain how the proposed project ties back to DR-4382 or DR-4407 and how it will address an unmet need.
- Explain how the proposed project supports housing recovery

Optional Uploads (Note: these are required fields for the application)

- Tieback Documentation: The documentation should demonstrate a clear tie back to the 2018 disasters. See Section 3.2.1 on types of documentation
- Documentation demonstrating the project supports housing recovery
- Project Timeline

3.1.3 NOI Review

To ensure that the unmet need of each Eligible Applicant is calculated correctly, HCD reviews projects submitted in NOIs based on the following criteria:

- Project Eligibility
- National Objective
- Total Unmet Need
- Overall Housing Recovery
- Priority Level 1 (LMI) or 2 (Urgent Need)

Project Eligibility

HCD reviews projects to determine evidence of eligible disaster tie-back to DR-4382 or DR-4407. Disaster tie-back for FEMA PA Match are assumed to have a tie-back due to the eligibility requirements of the FEMA PA program. All FEMA HMGP Match, Stand-Alone, and other Non-Federal Share Match projects shall include a description in the NOI describing how the project ties to DR-4382 or DR-4407. If the NOI submission does not provide sufficient explanation or evidence of disaster tie-back, HCD may inform the Eligible Applicant of the need to clarify tie-back. If HCD asks for clarifications, the Eligible Applicant is given two weeks to provide clarification of the disaster tie-back. If the tie-back explanation is insufficient to establish tie-back, the project is not considered an unmet need and not included in the allocation determination.

FEMA HMGP Match, Stand-Alone, and Non-Federal Share Match infrastructure projects must be an eligible CDBG activity and eligible use of the funds (see Sections 2.4.4, 2.5.1, 2.6.1, and 2.7.1). If HCD staff identifies a project that does not meet these requirements, HCD allows one (1) week for the Eligible Applicant to provide sufficient documentation showing that it is an CDBG activity and eligible use of the funds. If the Eligible Applicant is unable to provide sufficient evidence for the project to qualify as an eligible CDBG activity and is an eligible use of the funds, the project is not considered an unmet need and is not included in the allocation determination.

National Objective

HCD staff evaluates all projects for meeting a national objective (see Section 3.2.2). Projects must either benefiting Low- and Moderate-Income (LMI) persons or meet a need with a particular urgency (urgent need). The information provided by the Eligible Applicant will be used to determine the project's national objective and its placement as a Priority Level, 1 or 2.

Total Unmet Need

For all projects, HCD reviews the current unmet need presented by the Eligible Applicants related to total project cost and other sources of funding. No formal budget analysis is

completed at the NOI stage, but further clarification may be asked of the Eligible Applicant if unmet need calculations are incorrect or if total project costs appear to be unreasonable.

Overall Housing Recovery

As stated previously in Section 3.2.1, for all projects, HCD reviews how each project supports the overall housing recovery from DR-4382 or DR-4407. Projects that support overall housing recovery are infrastructure projects that enable the recovery of residential areas by meeting transportation needs, restoring essential utilities, and addressing other public infrastructure and facility needs. Examples of infrastructure projects that support overall housing recovery include, but are not limited to: public roads, school facilities, stormwater drainage improvements, potable water, sanitary sewer, electric and gas utilities, fire protection measures, wastewater treatment facilities, parks, and other public facilities that are important publicly owned assets.

Priority Level

There are two rounds of NOIs that align with HCD's unmet needs Priority Levels. The Priority Levels are as follows:

- Priority 1: Projects addressing an unmet need that meet the LMI national objective
- Priority 2: Projects addressing an unmet need that do not meet the LMI national objective

Round 1 of the NOI accepts Priority 1 projects only and Round 2 accepts both Priority 1 and Priority 2 projects. The LMI national objective does not need to be verified at the NOI stage, but the expectation is that the Eligible Applicant can provide service area or area benefit data to support the project's Priority Level.

3.1.4 NOI Approval

The DR-Infrastructure Program Review Board evaluates Infrastructure Program allocations and provides concurrence of the allocations calculated by HCD staff. The Review Board consists of three to five HCD staff members and is assisted by additional staff or subject matter experts, as needed. The DR-Infrastructure Program Manager chairs the Review Board. If the DR-Infrastructure Program Manager position is vacant, the Acting DR-Infrastructure Program Manager shall serve as the Review Board chair. Review Board decisions are unanimous. If consensus cannot be reached in favor or against allocations, an Issue(s) Memo is developed by the dissenting Board Members and submitted to the CDBG-DR Section Chief for consideration and further discussion until consensus is achieved. Once consensus is achieved, the allocation amount for Eligible Applicants based on their submitted projects is submitted to the CDBG-DR Section Chief, Branch Chief, and Deputy Director for final approval. Upon approval, the decision shall be documented in a letter to the Subrecipient and HCD's Internal Loan Committee (ILC) will be notified.

3.1.5 Allocations from NOI

Allocations are provided to Eligible Applicants based on the unmet infrastructure need established during the two NOI rounds. Of the total project funds available for DR-Infrastructure, 55% (\$174,585,668) of the program budget is reserved for Priority 1, LMI project unmet needs, and 45% (\$142,842,820) is reserved for Priority 2, non-LMI project unmet needs.

To ensure that the DR-Infrastructure meets the HUD requirement that 80% of the grant-wide funds spent in MID areas, the total dollars allocated to non-MID areas shall not exceed \$63,485,698, or 20% of the overall Infrastructure Program budget, whichever is less.

Allocations are calculated based on the total dollar amount for unmet infrastructure needs, with 55% of the total funds reserved for eligible Priority 1 unmet infrastructure needs and 45% reserved for eligible Priority 2 unmet infrastructure needs. If the requested amount from Eligible Applicants is less than the total funding for each Priority (\$174,585,668 for Priority 1 and \$142,842,820 for Priority 2) and all project unmet needs are determined to be eligible and assigned the correct Priority Levels, Eligible Applicants are allocated 100% of their requested unmet needs. If at any point the total project unmet needs exceed the funds available for each Priority, the funds are proportionally reduced by each Priority round so the percent requested equals the percent allocated.

HCD reserves the right to provide partial funding to Eligible Applicants, increase select Eligible Applicant allocations to ensure project feasibility, open another NOI round, and/or reprogram Infrastructure Program funds. Allocations cannot exceed the unmet need amount submitted under the NOI.

3.1.6 Authorizing Resolution & MSA

The Authorizing Resolution is necessary for completion of an executed MSA. Subrecipients must submit an executed authorizing resolution on the template provided by HCD. Jurisdictions that already have a resolution template are requested to embed the HCD template language inside of the jurisdiction's approved template. Any deviation from the HCD authorizing resolution template language may delay implementation of the Eligible Applicant's project(s). The authorizing resolution documents each applicant's authority to submit applications and enter into an agreement between the Eligible Applicant and HCD for the DR-Infrastructure Program. No agreement between HCD and a jurisdiction will be valid until the respective jurisdiction's authorizing resolution is submitted and accepted by HCD. If allowed by local policies, HCD can accept a resolution from the governing board authorizing specific Eligible Applicant staff to enter into an agreement and submit a project application on the Eligible Applicant's behalf.

The MSA is the contractual arrangement between the Department and the Subrecipient which sets forth the terms and conditions by which CDBG-DR funds must be utilized with regards to Approved Projects. Following an allocation to the Eligible Applicant by HCD and an executed authorizing resolution, HCD routes the Subrecipient's MSA for approval, and when ready, will be delivered to the Subrecipient for execution via Grants Network.

3.1.7 Project Application Process

HCD opens the Grants Network Portal to Subrecipients to complete project applications for a period of 90 days following the execution of an MSA. If the Subrecipient cannot meet the application deadline, an extension request must be made by the Subrecipient prior to the deadline and are made on a case-by-case basis. The HCD DR-Infrastructure Manager or Section Chief can approve the extension request. Eligible Applicants must use the Grants Network Portal to submit project applications.

Eligible Applicants are limited to submitting project applications that align with the projects submitted in Round 1 or Round 2 of the NOI process and projects must meet the HCD Priority Level LMI/Urgent Need breakdown of the allocation. HCD reviews application submissions and provides a follow-up response to subrecipients including, but not limited to, request for Due Diligence items, if not already requested, feedback, questions, and comments within 60 calendar days of receiving a completed application. The HCD review process ensures compliance with regulatory requirements and confirms the project is consistent with broader recovery goals.

3.1.8 Application Requirements

The purpose of the application is to establish the final eligibility and budget of submitted projects, demonstrate that the project adheres to program policies and grant conditions, submit final construction design plans, identify and document all funding sources, and provide additional documentation to show compliance with state and federal regulations. The required information is as follows:

- Authorizing Resolution
 - HCD provides a template that must be used
 - Due Diligence (See Section 3.2)
- Overall Project Description/Scope of Work
 - The overall project description and scope of work provides a complete summary of the project with supporting documentation that ties the project to the 2018 disasters and demonstrates support of housing recovery. The project description includes the ownership of the project and who benefits from the project. The scope of work includes a full description of construction activities.
- National Objective/MID Documentation
 - Ensure that the final proposed project service area hasn't changed from the NOI. If the project benefits MID areas, the service area must show the MID area benefit.
 - For LMI projects, the Subrecipient must complete a beneficiary form detailing demographic calculations and supporting maps/figures.
 - Urgent Need documentation – resolution from the city council or county board stating that no other funding is available for this project.
- Complete Cost Estimate/Budget
 - Complete list of all project funds and sources of funds (CDBG, local, private, other state funds, federal funds, other).
 - Final budget (eligible activity costs and project delivery costs)

- Design and construction cost estimates with description of materials needed, quantities, unit prices, and an itemized amount (if possible).
- Provide justification of any additional testing, investigations, or other engineering fees (soil boring tests, environmental site assessments, etc.).
- Duplication of Benefits
 - Complete list and supporting documentation of potentially duplicative funds for the same purpose (insurance, utility settlements, state and local grants, etc.).
 - Final duplication of benefits is calculated by the Subrecipient.
- Project Maps
 - Detailed maps of the existing infrastructure and proposed infrastructure improvements (can be combined, if needed).
 - Service area of the project.
 - Census tract/block groups related to the service area of the project.
- Project Timeline
 - List of project milestones (design, preconstruction, phases of construction, and completion).

3.1.9 Application Review

The DR-Infrastructure Review Board reviews all aspects of the project application, including scope, budget, eligibility, environmental review, legal/policy issues, procurement, and compliance. Concerns noted from the NOI review are also reviewed prior to voting on the project. Projects that receive approval must be unanimous by the Review Board. Applications that need clarification or further information may be amended and resubmitted to the Review Board in accordance with the Review Board's requests and deadline for response. If all options have been explored and the project cannot meet the program requirements, a notice of denial is issued. The notice of denial includes guidance on actions the Eligible Applicant can take for application reconsideration.

Once consensus is achieved among the Review Board members for projects that meet all eligibility requirements, the projects are submitted to HCD's Disaster Recovery Branch Chief for final approval. Once an application has been approved, applicants are notified of the decision via email and an acceptance letter is uploaded to Grants Network.

Following the application approval, HCD will work with the Subrecipient to issue an NTP. The NTP will outline the details regarding the use of funds (see Section 4.1.10).

3.1.10 Application Award Methodology

HCD evaluates projects based on the eligibility requirements as outlined in Section 3 and the required project information detailed in Section 4.1.2.

For eligible project applications, HCD reviews special conditions in the Agreement, if applicable and requests any outstanding items to satisfy the special conditions. HCD completes a review of the Eligible Applicant's allocation and determines whether each Eligible Applicant's application amount across its projects fall within its allocation amount. HCD notifies jurisdictions if they have exceeded the allocation amount and request

application resubmission. Eligible Applicants with submitted applications at or below the allocation amount proceed to award recommendation.

If an evaluation of submitted applications by HCD determines that the proposed projects do not result in HCD meeting its grant-wide 70% LMI requirement and program-specific 80% MID requirement funding levels, HCD reserves the right to reevaluate the program and weigh options for ensuring that DR-Infrastructure Program meets HUD requirements.

3.1.11 Notice to Proceed

Once the Project's award recommendation is approved, the Project may not proceed to construction, with the exception of FEMA match projects that have already started construction prior to the NOI release, until HCD provides a Notice to Proceed (NTP) for the project. The NTP specifies the award amount, project milestones, LMI and MID targets, and other related details. To receive an NTP, the Subrecipient must have a complete and approved Environmental Review, all special conditions in the Agreement must be cleared via a letter of clearance issued by HCD. The NTP enables the Subrecipient to proceed to the project's construction and expect to be reimbursed for eligible costs incurred after the NTP exaction date.

3.1.12 Appeals Process

Subrecipients have the right to appeal the DR-Infrastructure Program Review Board's determination regarding the issuance of an NTP.

The Subrecipient must submit their appeal in written form, within 60 days from the date the award decision was issued via Grants Network.

An authorized person of HCD Leadership shall review the appeal and then discuss the merits of the appeal with the CDBG-DR Section Chief and the DR-Infrastructure Program Review Board before rendering an independent decision concerning the appeal. The decision of the authorized person of HCD Leadership shall be final.

3.2 Subrecipient Due Diligence

For HCD's Subrecipient capacity assessment, as required in Federal Register Notice 83 FR 5867, Eligible Applicants are required to provide documents and information as part of the Due Diligence process. As Subrecipients, Eligible Applicants are required to comply with the requirements, requests, and results of HCD's capacity assessment and maintain the capacity to carry out disaster recovery activities in a timely manner. The Due Diligence process may result in special conditions in the Agreement to ensure the capacity to carry out disaster recovery activities in a timely manner. As such, the completion of the Due Diligence is a necessary prerequisite to entering into an NTP.

3.3 Technical Assistance to Subrecipients

HCD provides various types of technical assistance (TA) to Subrecipients and vendors throughout the program from the release of the NOI to agreement closeout. The objectives of technical assistance are to initially aid the Subrecipient and vendors to

clearly understand the program requirements and appropriately submit the project application. Also, HCD, through the provision of TA, supports Subrecipients to maintain their day-to-day compliance with federal and state regulations and program requirements. In addition, HCD performs a risk assessment to determine a Subrecipient's capacity and to identify deficiencies in complying with applicable grant and program requirements. According to the risk assessment results, HCD provides technical assistance and guidance to Subrecipients to improve their performance, develop or increase capacity, and augment management and technical skills. Some examples of technical assistance include:

- Verbal or written advice
- Formal training and workshops
- Documentation and guidance

3.4 Activity Delivery Costs

3.4.1 Allowable Costs After MSA and Before NTP

Subrecipient may begin to perform project related activities and to incur Activity Delivery Costs (ADCs) once its MSA is executed, and prior to a Notice to Proceed, so long as such activities would not be considered a choice-limiting action (see 2.3.20 for more details on choice-limiting actions). ADCs incurred do not have to be tied to a specific project.

ADCs are allowable costs incurred for implementing and carrying out eligible CDBG activities. ADCs cover the costs of staff directly carrying out the activity in addition to engineering, design, architecture, and environmental services that are necessary for successful completion of the activity. ADCs must be allocable to a CDBG-assisted activity or an activity that is CDBG-eligible, meet a national objective, and meet all other CDBG program requirements. There is no maximum cap on ADCs, but Subrecipients must show that ADCs are reasonable for the CDBG-eligible activity being carried out, as authorized under [24 CFR 570.201-570.204](#). If the proposed ADCs exceed 20% of the total project cost, additional justification and documentation are required to justify the need for ADCs that exceed 20% of the total project cost.

3.4.2 Authorization to Incur Costs Before an Executed MSA

There are two circumstances when ADCs may be incurred prior to the execution of an MSA. First, with Program Manager or Section Chief written approval, ADC expenses for environmental compliance work for intended Project Applications may be incurred prior to execution of an MSA between the Subrecipient and HCD provided that such expenses are eligible and are supported by documentation satisfactory to the Department. Second, with Program Manager or Section Chief written approval, other costs may also be incurred prior to the execution of an MSA, such as the cost of procuring consultants and architectural, engineering, and other professional services required to prepare plans, drawings, specification, or work write-ups not more than 24 months prior to the Approved Project being set up in DRGR, provided the Subrecipient procured contracts are conducted in a manner consistent with 2 CFR 200.317 – 200.326, "Procurement

Standards.” In no event shall the Subrecipient’s activities authorized under these two exceptions be considered choice-limiting actions.

3.4.3 Subrecipient ADCs with Incomplete Projects

If the initial project(s) are unable to be completed, a review of the causes of the project failure is performed. The Subrecipient needs to provide documentation demonstrating the cause of the project’s failure for HCD to review. Depending on the specifics of the situation, HCD may require more evidence of the causes of failure during the review process. If, after the review, the evidence demonstrates that the project was put forth and preceded in good faith on the part of the Subrecipient, then HCD would consider a new eligible project from the subrecipient , as long as the initial ADCs can be shown to have contributed to the new project. Prior to any funding of the new project, a new capacity assessment, project evaluation, and amended agreement with stricter grant conditions is required.

If it is shown that the project failed due to egregious behavior or actions, including but not limited to conflicts of interest, fraud, waste, abuse, and similar types of issues or actions, on the part of the Subrecipient, then any funding payments made toward the project are required to be repaid and the Subrecipient is allowed to put forth a new project submission. If the review shows that the Subrecipient acted in a reasonable manner, then the Subrecipient is allowed to put forth a project proposal. If the project put forth by the Subrecipient does not meet the eligibility requirements, Priority Level requirements for a new project, or does not sufficiently demonstrate that the initial project’s ADCs have contributed to the new project, HCD shall open the outstanding funding for other Eligible Applicants in order to meet the Eligibility and Priority Level requirements of the DR-Infrastructure Program.

4 Program Operations

4.1 Subrecipient Agreements

- A. HCD shall enter into one or more funding Agreement with Subrecipients, which will specify the terms and requirements of Subrecipients’ receipt of funding. HCD utilizes multiple agreement templates, including, but not limited to, standard agreements and master standard agreements. The type of Subrecipient agreement used depends on the type and number of projects, among other factors. HCD determines the type(s) of agreement used on a case-by-case basis in the reasonable exercise of HCD’s discretion.
- B. Upon HCD approval of individual projects and clearance of any special conditions (if applicable), HCD issues a Notice to Proceed (NTP), if applicable, to the Subrecipient. The NTP is a binding document, approved as to form a component of the Agreement between the Subrecipient and HCD by committing funds to a specific project and gives official notice to the subrecipient that they can begin work on the project. The NTP includes project details, including but not limited to:
 - A description of the approved project and the permitted uses of program funds;

- The approved project development budget and sources and uses of funds and financing;
- The approved schedule of the project, including design, if any, commencement and completion of construction work;
- Performance milestones; and
- Performance penalties.

4.2 Agreements with Contractors or Other Parties

Per 2 CFR 200.213, Subrecipient shall not enter into any agreement, written or oral, with any contractor, vendor, or other party without the prior determination that the contractor, vendor, or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

The term “other party” is defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive Grant Funds from a Subrecipient to undertake eligible projects.

Requirements of an agreement between the Subrecipient and any Contractor, or other party shall contain, but not be limited to the following:

- Compliance with all State and federal requirements including those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace Act
- Maintenance of at least the minimum State-required Workers’ Compensation Insurance
- Maintenance of unemployment insurance, disability insurance and liability insurance which is reasonable to compensate any person, firm or corporation who may be injured or damaged during the performance of project activities
- Contractors shall:
 - Comply with the applicable provisions of the California Labor Code;
 - Perform the project activities in accordance with federal, state and local housing and building codes, as applicable; and
 - Provide security to assure completion of the project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual project are required.

4.3 Document Retrieval Process

All documentation at each step of the process of the project’s life, from NOI to grant closeout, must be submitted through the Grants Network Program Portal. This ensures that all the required documents are available for review and retrieval in one location. To submit or retrieve a document, the Subrecipient needs to enter their project Workspace through the Grants Network Program Portal and upload the document into the proper location.

4.4 Disbursement of Funds

Payments are made directly to Subrecipients as reimbursements based on the documented completion of agreed upon project milestones, as outlined in the agreement. Reimbursement-based means that Activity Delivery and project costs must be incurred by the Subrecipient and documented as required by the terms of the agreement for payment of invoices. HCD retains a total of 5% of the overall project cost until the project is fully closed out and all federal and state requirements are met. Please see the state's CDBG-DR Grant Administration Manual, Section V for additional financial management procedures and requirements.

4.5 Reporting Requirements

Subrecipients are required to submit reports at times indicated in the agreement, in accordance with HCD and HUD reporting requirements, and via Grants Network. At a minimum, during the term of the agreement, on a monthly basis the Subrecipient shall submit to HCD a progress report which addresses the following topics:

- A description of the current status of the project activity;
- A description of activities to be undertaken in the next reporting period;
- A description of problems or delays encountered in project implementation and course of action taken to address them;
- Any questions that have arisen during implementation or a request for technical assistance;
- A description of actions taken to achieve project expenditure deadlines; and
- A summary of project fiscal status, including:
 - Award amount;
 - Funds drawn; and
 - Remaining balance.

At any time during the term of the agreement, HCD may perform or cause to be performed an independent financial audit of any and all phases of the Subrecipient's project(s). At HCD's request, the Subrecipient shall provide, at its own expense, a financial audit prepared by a certified public accountant. As stated in the State of California's CDBG-DR Grant Administration Manual, Section VJ1 on internal audits, all non-federal entities that expend \$750,000 or more in federal awards in a fiscal year are required to have a single audit for that year in accordance with the Single Audit Act of 1984, Single Audit Act Amendments of 1996, and 2 CFR §200 Subpart F-Audit Requirements.

4.6 Monitoring and Compliance

HUD describes monitoring as an integral management control standard and requires any entity receiving HUD funding to monitor and evaluate program performance and compliance, see CDBG Regulation 24 CFR 570.501(b). HCD staff monitors all CDBG-DR programs and activities. HCD is required to ensure that its Subrecipients comply with:

- The requirements of the DR program;
- FRN requirements applicable to the DR program and any applicable waivers;

- Other federal regulatory guidance, such as Uniform Administrative Requirements, cost principles, and audit requirements outlined in 2 CFR 200;
- Specific conditions as stated in 2 CFR 200.205 and 200.207 respectively to mitigate the risk of the grant;
- The Agreement with HCD, including amendments if applicable; and
- The annual monitoring assessment and strategy.

Monitoring provides information about program participants, assesses quality of performance over time and is critical for making informed judgements about program effectiveness and management efficiency. It also identifies instances of fraud, waste, and abuse.

HCD's Monitoring of Subrecipients

HCD monitors its subrecipients and contractors/vendors, when applicable, based upon an assessment of risk posed by the jurisdiction or contractor/vendor and according to specific monitoring criteria per 2 CFR 200.331. HCD conducts a Risk Assessment on all subrecipients and contractors/vendors on an annual basis. In accordance with 2 CFR 200.221, 24 CFR 570.492 and 42.U.S.C Section 5304(e)(2), the risk assessment seeks to gauge subrecipients capacity to implement program or project, its compliance with the Agreement, performance objective and assess operational risk. The goal of this process is to determine the highest risk areas across all CDBG-DR activities and inform HCD with the programs, subrecipients, and/or contractors/vendors who require the greatest administrative oversight. The results of the risk assessment advise HCD of those high risk subrecipients, contractors/vendors for technical assistance, capacity training, scheduling frequency, and type of monitoring activities.

The Monitoring Plan provides HCD's responsibilities and procedures for monitoring its subrecipients, as well as the Annual Monitoring Strategy. Two types of monitoring will be employed by HCD: desk monitoring and onsite monitoring. Both desk monitoring and on-site monitoring follow the same process as follows:

- HCD sends notification letter the subrecipient;
- Document collection and pre-monitoring work begins for the next 30 days after issuance of the notification letter;
- Entrance Conference via teleconference for desk monitoring and in person for onsite monitoring;
- Review of documents, interview of subrecipients, and requests for additional documents;
- Exit conference via teleconference for desk monitoring and in person for on-site monitoring. Review of findings and concerns including next step discussion; and
- Monitoring is concluded with a Monitoring Report which is issued to the subrecipient within 30 days of the Exit conference.

Desk Monitoring

Desk monitoring is conducted at the HCD office regardless of the location of the subrecipient's office. It commences 30 days after the subrecipient is notified via the

notification letter. During the 30-day notification period, the subrecipient will provide HCD with any documentation requested in the notification letter. A desk monitoring can either be area specific (e.g., Procurement and Contract, Environmental, Section 3, Financial Management) or a comprehensive review of the project. Typically, desk monitoring is only conducted for low risk to medium risk subrecipients and on some cases may trigger an onsite monitoring based on the findings of the HCD monitor. The outcome of the desk monitoring is communicated to the subrecipient via an Exit conference and in writing via a Monitoring Report.

Onsite Monitoring

During the onsite visit, HCD representative reviews files for compliance with applicable federal and program requirements. This review is similar to the desk monitoring process. To prepare for onsite visits, the HCD monitor uses information contained within Grants Network, the Agreement, and Program Application. These may include items such as employee timecards, financial statements, project file documents, draw requests, and policies and procedures provided by the Subrecipient. Typically, on-site monitoring is reserved for medium-high to high risk subrecipients. This group of subrecipients present the greatest risk to HCD's compliance with HUD's grant requirements. On-site monitoring is intended to be a more comprehensive assessment of the subrecipients' management of the DR program in compliance with applicable Federal, state and local regulations and requirements. This level of monitoring is performed at the subrecipient's location and is more formal than a desk monitoring.

Generally, HCD does not monitor a Subrecipient's construction contractor. Rather, HCD monitors the Subrecipient's monitoring of the contractor since monitoring the contractors is the responsibility of the Subrecipient. However, if HCD determines that a Subrecipient has not performed adequate monitoring of its Subrecipients or contractors, HCD may directly monitor the Subrecipient or contractor to confirm that applicable regulatory compliance is being provided. When necessary, the HCD representative arranges onsite project inspections with the Subrecipient and its contractors to confirm eligible CDBG-DR activities are being conducted, eligible costs are being charged and that the required national objective is being met.

Subrecipient Monitoring Responsibilities

HCD requires the Subrecipients to develop their own monitoring plan for their projects and contractors that complete construction on DR-Infrastructure funded projects. Therefore, Subrecipients are responsible for carrying out their projects to meet these compliance requirements. HCD monitoring plan is available for guidance to the subrecipient to develop their own monitoring plan.

For construction projects, it is the responsibility of the Subrecipient to monitor projects to ensure compliance with terms of the Agreement and applicable regulations. Subrecipient monitoring should include:

- Ensuring project scopes of work are consistent with the scope of work described in the Project Applications;

- Physical inspection should include the inspection of all construction projects to ensure the project;
- Monitoring construction contractors for equal opportunity, federal and state labor standards and Section 3 requirements;
- Following procurement processes in accordance with 2 CFR §200 or local standards if higher;
- Project milestones are being met;
- Environmental reviews are completed and documented properly;
- Complying with the terms and conditions of the Agreement with HCD, especially anti-fraud and abuse;
- Monitoring contractors/vendors for federal compliance standards;
- Financial Management: internal controls, accounting, program income and record keeping are in compliance with 2 CFR 200 and CDBG-DR costs are eligible, allowable, reasonable, and allocable; and
- Documenting national objective compliance for all activities.

Please see the State of California's CDBG-DR Grant Administration Manual, Section XVI for additional monitoring and compliance procedures and requirements.

4.7 Record Keeping

HCD's Agreement with the Subrecipient is the contractual document that details the financial and recordkeeping requirements and standards for Subrecipients allocated funds to carry out specific eligible DR-Infrastructure activities. Such reports and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular record and the timeline for maintaining them are to assist HCD in meeting HUD's recordkeeping and reporting requirements per Section 104(e); (a)(2)(D) and (a)(3)(b), §570.506 (records to be maintained), and §570.508 (public access to records). Further record keeping requirements as detailed in 85 FR 4681 and per HCD's agreement with HUD include, but are not limited to:

- Executed agreement(s)
- Description, geographic location and budget of each activity
- Eligibility and national objective determinations for each activity
- Evidence of having met a national objective
- Evidence of having met the MID criteria
- Evidence of having met the LMI criteria
- Subrecipient agreement
- Any bids or contracts
- Characteristics and location of the beneficiaries
- Compliance with special program requirements
- Personnel files
- HUD monitoring correspondence
- Citizen participation compliance documentation
- Fair Housing and Equal Opportunity records
- Environmental review records

- Documentation of compliance with crosscutting requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint, etc.)
- Budget and expenditure information
- Chart of accounts
- Accounting procedures
- Accounting journals and ledgers
- Source documentation (purchase orders, invoices, canceled checks)
- Procurement files (including bids, contracts, etc.)
- Real property inventory
- Draw down requests
- Payroll records and reports
- Financial reports
- Audit files
- Relevant financial correspondence
- The status of the project and/or activity

Further, Subrecipients are required to maintain financial records and submit the financial reports sufficient to ensure compliance with all recordkeeping and reporting requirements. Per the Standards for Financial Management Systems, accounting records must be supported by source documentation such as canceled checks, invoices and demands, payrolls, time and attendance records, contract and sub-grant award documents, etc.

4.8 Grant Closeout

The closeout of a grant is a process through which HUD determines that all applicable administrative and program requirements of the grant were completed. In general, a grant is ready for closeout when the following conditions are met:

- All individual activities were completed, met a national objective, and closed out in DRGR;
- All contracts have completed closeout;
- All grant funds were expended in full or all remaining funds are planned to be returned to HUD;
- All reporting requirements were completed and submitted (except for the final report that is submitted during the closeout process, if applicable);
- Any special conditions of the grant were met; and
- All audit and monitoring issues affecting the grant were resolved.

Closeout of an Individual Activity

Individual elements of the CDBG-DR grant may be closed out as a course of grant closeout. Closeout of individual activities are coordinated between HCD and the Subrecipients. Upon completion of the activity, DRGR must be updated with the project status.

As individual activities of the grant are preparing to closeout, HCD reviews and updates the following in DRGR:

- The total amount of funds drawn down for the activity

- A final check for DOB
- The activity type
- The national objective
- The grant activity accomplishments

Individual activity completion should also be reflected in the QPR.

Closeout of an Agreement

CDBG-DR Subrecipients are required to submit the following to HCD for each contract to complete closeout:

- The final request for funds;
- Evidence of a public hearing reporting the grant accomplishments and expenditures of each project to the residents of the jurisdiction; and
- If applicable, the final projects of the grant funding (planning studies, environmental review records, etc.).

HCD reviews the documentation and processes the final funds requests if all provided documentation and the circumstances of the project warrant contract closeout. HCD disencumbers any remaining funds, if applicable, and enters all needed information in DRGR to show the activities and projects are “completed.”

Once all documentation has been processed and DRGR has been updated, HCD sends a Closeout Letter to the Subrecipient, outlining all closeout requirements. Subrecipients are required to retain CDBG-DR records for a period of not less than five years after the fiscal year of their grant in accordance with CDBG-DR record retention requirements. HCD notifies Subrecipients when the HUD grant has been closed.

Once these items have been completed, HCD completes the Subrecipient Closeout Certification Form (HUD Form 40175) along with the Grant Closeout Checklist (HUD Form 40183) and submits these forms to HUD.

Within 90 days of the execution date of the Closeout Certification, HCD submits to HUD a copy of the final performance and evaluation report described in 24 CFR part 91 as well as Federal Financial Report SF-425 or a financial report that meets the criteria in 24 CFR part 570.489(d). These requirements must:

- Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions and the terms and conditions of the award;
- Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and
- Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.

HCD may satisfy this requirement by:

- Using fiscal and administrative requirements applicable to the use of its own funds;
- Adopting new fiscal and administrative requirements; and/or

- Applying the provisions in 2 CFR part 200.

If opting to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of 2 CFR part 200, HCD must comply with all requirements therein. Additionally, HCD must ensure that recipients of the state's CDBG-DR funds comply with 2 CFR part 200.

Concurrent with the financial report is a final QPR as well as an update of all transactional data in DRGR. If an acceptable report is not submitted, an audit of the grant activities may be conducted by HUD.

Once a review has been completed by HUD, the HUD field office prepares a closeout agreement. The grant is considered closed on the date that the appropriate HUD official executes the closeout agreement. Any unused grant funds are recaptured by HUD as a course of the closeout process.

Note that grants cannot be closed out if there are open monitoring reports associated with the contract; all monitoring findings, concerns and requirements must be received and approved by HCD, and HCD must also receive a Clearance Letter stating the monitoring has been complete.