



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

Grant Administration Manual

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## Contents

<b>I. Introduction.....</b>	<b>2</b>
A. CDBG-DR.....	2
B. CDBG-MIT.....	4
C. Summary of CDBG-DR Awarded Projects.....	4
<b>II. Definitions.....</b>	<b>10</b>
A. Acronyms .....	10
B. Terms and Definitions .....	12
<b>III. Program Allocation and Administration .....</b>	<b>14</b>
A. Funding Appropriation.....	14
B. CDBG-DR Grant Requirements .....	15
1. Use of Funds .....	15
2. Mitigation Set Aside .....	16
3. Interchangeability of Funds .....	16
4. Timeline for Expenditure of Funds .....	16
5. CDBG-DR Waivers .....	17
C. General Administration Costs Limitation.....	19
D. Public Services.....	20
1. Public Services Cap .....	20
E. Mitigation .....	20
<b>IV. Grant Administration .....</b>	<b>21</b>
A. Grant Management .....	21
1. Action Plan, Amendments, and Benefit Cost Analysis .....	21
B. Implementation.....	23
1. CDBG-DR State Implemented Programs .....	23
2. CDBG-DR Subrecipient Implemented Programs.....	23
3. CDBG-MIT Projects .....	23
<b>V. Financial Management.....</b>	<b>23</b>
A. Internal Controls.....	24
1. Organizational Structure .....	24
2. Staffing .....	24
B. Standard Agreement.....	26
C. Financial Management Systems.....	27
1. Documentation Tracking .....	28
2. Disaster Recovery Grant Reporting System .....	28
3. Reconciliation of Systems .....	29
4. Financial Records .....	29
D. Financial Management Payment Procedures.....	30

1.	Reimbursement Payments .....	30
2.	Advance Funding .....	31
3.	Lump Sum Draw Down .....	34
4.	Payment Processing Procedures.....	35
E.	Program Income .....	36
F.	Salaries and Wages .....	37
G.	Indirect Costs .....	37
1.	De Minimis.....	38
H.	Timeliness of Expenditures .....	38
I.	Ineligible Costs and Improper Payments .....	39
1.	Required Standards for Asset Management.....	40
J.	Audit Requirements.....	40
1.	State of California Single Audit Report .....	41
2.	Uniform Administrative Requirements .....	42
3.	Subrecipient Audit Reports .....	42
4.	HCD Internal Audit .....	44
5.	Allowable Costs.....	44
K.	Preventing Fraud, Waste, and Abuse .....	44
1.	Defining Fraud, Waste, and Abuse .....	45
2.	Applicant Review.....	45
3.	Internal Auditor.....	46
4.	False Claims Act .....	46
5.	Whistleblower Protection.....	47
6.	Reporting Fraud, Waste, and Abuse.....	48
<b>VI.</b>	<b>Procurement and Contract Management.....</b>	<b>49</b>
A.	Personnel .....	49
B.	Code of Conduct .....	49
1.	Solicitation or Acceptance of Gifts .....	50
2.	Organizational Conflicts of Interest .....	50
C.	Pre-Solicitation .....	51
1.	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.....	51
2.	Pre-Qualified Lists.....	51
D.	Solicitation Requirements .....	51
1.	Full and Open Competition .....	52
E.	Ineligible contractors .....	52
1.	Examples of restrictive situations.....	52
F.	Geographic Preferences .....	52
G.	Clear and Accurate Descriptions.....	53

H.	Most Economical Approach .....	53
1.	Lease versus Purchase Alternatives.....	53
2.	Cost Sharing.....	53
I.	Surplus property .....	53
J.	Value Engineering .....	54
K.	Contractor Requirements .....	54
L.	Independent Cost Estimate and Cost or Price Analysis .....	54
M.	Methods of Procurement.....	55
1.	Micro-purchases.....	55
2.	Small Purchases .....	55
3.	Sealed Bids .....	55
4.	Competitive Proposals .....	56
5.	Procurement by Noncompetitive Proposals .....	57
N.	Pre-Award .....	57
1.	Debarment Check .....	57
2.	Contract Costs/Prices .....	58
3.	Prohibited Contracts.....	58
O.	Contract Provisions .....	59
1.	Special Conditions .....	59
2.	Federal Funding Compliance Provisions .....	60
P.	Contract Administration.....	63
1.	Awarding Agency or Pass-Through entity review .....	63
Q.	Disputes .....	63
1.	Rejecting Bids .....	63
R.	Contract Award.....	64
S.	Contract Modifications.....	64
1.	Amendments .....	64
2.	Change Orders.....	64
<b>VII.</b>	<b>Additional Contract Requirements.....</b>	<b>65</b>
A.	Performance Requirements and Penalties .....	65
B.	Additional Standards .....	65
1.	CDBG-DR Green Building Standards .....	65
2.	CDBG-DR Green Infrastructure Standards.....	65
3.	California Green Building Standards.....	65
<b>VIII.</b>	<b>Records Management.....</b>	<b>66</b>
A.	Protection of Personally Identifiable Information.....	67
B.	File Security.....	67
C.	Access to Records .....	68
D.	Retention Policy .....	68

E. Accessibility.....	69
<b>IX. Eligible Activities .....</b>	<b>69</b>
A. Acquisition.....	69
B. Relocation .....	69
C. Housing .....	70
1. Rehabilitation.....	70
2. New construction.....	71
D. Economic Development .....	71
E. Public Facilities and Improvements .....	72
F. Clearance .....	73
G. Mitigation .....	73
H. Planning and Capacity Building .....	73
I. General Administration Costs .....	73
J. Ineligible Activities .....	73
1. Categorically Ineligible .....	74
2. Generally Ineligible.....	74
<b>X. National Objective .....</b>	<b>75</b>
A. National Objective Compliance .....	75
1. Acquisition .....	75
2. Relocation .....	76
3. Housing .....	77
4. Economic Revitalization .....	77
5. Public Facilities and Improvements.....	79
6. Clearance .....	79
<b>XI. Duplication of Benefits .....</b>	<b>80</b>
A. DOB Determination and Potential Sources.....	81
B. DOB Calculation.....	82
C. DOB Verification.....	83
1. Documenting Declined Loans .....	84
2. Documenting Cancelled Loans .....	84
3. Additional Reporting Requirements .....	84
D. Duplication of Benefits Contract Provisions .....	84
E. DOB Monitoring and Recapture .....	84
<b>XII. Other Federal Requirements .....</b>	<b>85</b>
A. Pre-agreement allowances .....	85
B. Americans with Disabilities Act (ADA) .....	85
C. Insurance and property management .....	86
D. Drug-free workplace.....	86
1. Drug Free Awareness Program .....	86

2.	Employee Drug Violation.....	86
3.	Known Workplaces .....	87
4.	Violations.....	87
E.	Davis-Bacon and Labor Standards .....	87
1.	Bidding and Contracting Requirements .....	90
2.	Wage Rate Decisions.....	90
3.	Enforcement of Requirements during Construction .....	90
4.	Restitution for Underpayment of Wages .....	95
5.	Documentation & Reporting Requirements .....	96
6.	Reporting.....	96
F.	Force account labor .....	97
G.	Equal Employment Opportunity .....	97
H.	Minority and Women Business Enterprise .....	98
I.	Section 3 .....	99
J.	Fair Housing.....	100
1.	Affirmative Marketing .....	100
K.	Civil Rights .....	101
L.	Section 104 .....	102
M.	Section 504 requirements .....	102
N.	Conflict of Interest .....	102
O.	Anti-lobbying.....	103
P.	Citizen Participation Plan .....	104
Q.	Language Access Plan .....	105
R.	Website Management .....	106
1.	HCD Website.....	106
2.	Roles and Responsibilities .....	107
	<b>XIII. Environmental Review.....</b>	<b>108</b>
A.	Environmental Review Requirements.....	108
1.	DR Waiver .....	108
2.	Environmental Review Record.....	109
B.	Timetable for Reviews.....	109
1.	Actions triggering environmental review and limitations pending clearance .....	110
C.	State Requirements .....	111
D.	Responsibilities - State and Subrecipients.....	111
1.	The Responsible Entity, Lead Agency, and Official Designations .....	111
E.	Procedures .....	111
1.	HUD Definition of Project .....	111
2.	Activity .....	111
3.	Aggregation .....	111

4.	CEQA definition of Project .....	112
5.	Determine Necessary Level of Review .....	112
6.	Exempt Activities .....	112
7.	Non-exempt Activities .....	113
8.	Environmental Assessment.....	115
9.	Environmental Impact Statement.....	115
10.	CEQA non-exempt activities .....	115
11.	Procedures for an Exempt Activity .....	116
12.	Procedures for Non-Exempt activities.....	116
13.	Environmental Assessment and Environmental Impact Statement.....	118
14.	CEQA Procedures for Non-Exempt Activities .....	119
15.	Environmental Impact Report.....	119
<b>XIV.</b>	<b>Acquisition and Relocation.....</b>	<b>120</b>
A.	Federal Acquisition and Relocation Requirements .....	120
1.	Uniform Relocation Act .....	120
2.	Section 104(d).....	120
3.	Other Resources .....	121
B.	Federal Regulations .....	121
1.	URA.....	121
2.	Voluntary Acquisition.....	121
3.	Section 104 (d).....	122
4.	HUD Program Regulations.....	122
5.	Public Law 105-117.....	123
C.	Activities that Trigger Compliance with the URA and other Federal Laws .....	123
D.	Project Definition .....	123
1.	Review of Program Definition.....	123
2.	Review of Activities .....	123
3.	Project Documentation.....	124
<b>XV.</b>	<b>Reporting Requirements .....</b>	<b>124</b>
A.	DRGR Reporting Requirements.....	124
1.	DRGR Overview.....	124
B.	Grants Network Reporting Requirements .....	124
C.	Quarterly Performance Report.....	125
<b>XVI.</b>	<b>Monitoring and Compliance .....</b>	<b>125</b>
A.	Roles/Responsibilities .....	126
B.	Risk assessment .....	126
C.	Monitoring Strategy .....	127
D.	Desk Monitoring .....	127
E.	On-Site Monitoring .....	128

F. Corrective Action – Finding .....	129
G. Concern and Observation .....	129
H. Technical Assistance .....	129
I. Monitoring Report and Letter Response Review .....	130
1. Monitoring Clearance .....	130
J. Sanctions.....	130
K. Appeal Process .....	131
L. Monitoring Areas .....	131
1. Program Progress .....	131
2. Program Benefit .....	131
3. Environmental Review .....	132
4. Procurement.....	132
5. Labor Standards.....	132
6. Property Acquisition, Relocation and Displacement .....	132
7. Housing Activities .....	133
8. Public Improvements, Public Services and Public Facilities .....	133
9. Equal Opportunity and Fair Housing .....	133
10. Financial Management.....	133
11. Program Income.....	134
12. Certifications.....	134
13. Program Management .....	134
<b>XVII. Closeout Procedures .....</b>	<b>134</b>
A. Closeout of an Individual Activity .....	135
B. Closeout of a Contract .....	135



## I. Introduction

### A. CDBG-DR

#### 2017 Disasters

The State of California experienced two disasters in 2017 as a result of prolonged drought conditions and unseasonably warm weather. The DR-4344 wildfires in October resulted in 152,539 acres of land affected across Butte, Lake, Mendocino, Napa, Nevada, Orange, Sonoma, and Yuba counties. The wildfires of DR-4353 were spread across the counties of Los Angeles, San Diego, Santa Barbara, and Ventura in December 2017. The fires, and subsequent mudslides and debris flows that followed the fires in January 2018, affected 365,199 acres of land. A total of twelve counties across Northern and Southern California were impacted with significant losses in housing stock and infrastructure damage. Residential property damage and losses totaled \$10.6 billion.

Congress passed the Appropriations Act of Public Law 115-123 on February 9, 2018 (named the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018), which appropriated \$212,374,000 to the State of California for DR-4344 October wildfires in Northern California, and the DR-4353 December wildfires in Southern California, including the resulting mudslides and debris flows disasters. Of the \$212,374,000, \$124,155,000 was obligated in Federal Register Notice FR-6109-N-01 to the State of California to address remaining unmet needs from the above disasters.

#### 2018 Disasters

2018 was the deadliest year for wildfires in California's history. In August 2018, the Carr Fire and the Mendocino Complex Fire erupted in northern California, followed in November 2018 by the Camp, Hill, and Woolsey Fires. These were the most destructive and deadly of the dozens of fires to hit California that year. In total, it is estimated over 1.6 million acres burned during 2018. The Camp Fire became California's deadliest wildfire on record, with 85 fatalities.

As a result, the Federal Emergency Management Agency (FEMA) made disaster assistance available for two presidentially declared disasters, DR-4382 covering Butte, Los Angeles, and Ventura counties, and DR-4407 covering Shasta and Lake counties. Many of these communities are now feeling the cumulative impact of several years of destructive fire activity, heightening the need for comprehensive, long-term recovery planning. 2017 and 2018 wildfires resulted in more wildfire-related property damage than the state has experienced in any two consecutive years.

In recognition of the unmet recovery needs, an allocation of \$1,017,399,000 in Community Development Block Grant-Disaster Recovery (CDBG-DR) funds was granted to the State of California on January 27, 2020 under Public Laws 115-254 and 116-20, which cover DR-4407 and DR-4382.

#### 2020 Disasters

The 2020 Fire Season will be counted among the most severe recorded. The state experienced two disasters in 2020 as agencies were battling 367 known fires. The first declared disaster was the state's first giga-fire (a fire spanning over a million acres),

the August Complex, which, due to the immense size of the affected area, had to be managed as four separate incidents within a larger complex. The August Complex wildfires started on August 16-17, 2020 as 38 separate fires ignited by lightning strikes caused by moisture from the remnants of Tropical Storm Fausto, and were further complicated by a historic heatwave and the ongoing COVID-19 pandemic. The DR-4558 wildfires were spread across Butte, Lake, Lassen, Mendocino, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Trinity, Tulare, and Yolo Counties. For context, the impacted area was larger than the state of Rhode Island. Due to the remote location of the fires no civilian fatalities were reported, however, 935 structures were reported destroyed.

The DR-4569 wildfires were spread across Fresno, Los Angeles, Madera, Mendocino, Napa, San Bernardino, San Diego, Shasta, Siskiyou, and Sonoma Counties. In early September 2020, a combination of a record-breaking heat wave and Diablo and Santa Ana winds sparked more fires and explosively grew the active fires. The August Complex was actively burning at the time and the impact of the winds allowed the fires to spread, more than doubling the area impacted by the 2018 Mendocino Complex fire, to become California's largest recorded wildfire. Public Law 117-43 allocated \$231,203,000 to address unmet recovery needs from DR-4558 and DR-4569. The Federal Notice published on February 3, 2022 (87 FR 6364) provides the obligations for these funds.

### 2021 Disasters

In the 2021 fire season, ongoing drought, extreme heat, reduced snowpack, and vastly diminished tree mass ignited an unusually early wildfire season in California. By July 2021, fires had burned more than three times as many acres compared to the previous year. The presidentially declared disaster under FEMA DR-4610, included three fire events:

- The Dixie Fire (July 2021) burned 963,309 acres across five counties, Butte, Plumas, Shasta, Lassen, and Tehama and is currently ranked as California's second largest wildfire.
- The River Fire burned 2,619 acres in Nevada County and Placer County in August 2021.
- The Monument Fire was a wildfire west of Big Bar in Shasta-Trinity National Forest that burned 223,124 acres between July and October 2021.

Public Law 117-43 appropriated funding for 2021 disasters and 87 FR 31636 allocated the State of California \$14,761,000 in CDBG-DR funding for DR-4610. Federal Register notice 88 FR 3198 provided California an additional \$9,647,000 in CDBG-DR funding for DR-4610, for a total allocation of \$24,408,000.

### 2023 Disasters

Significant rainfall from December 27, 2022 through March 25, 2023 across the state caused flooding, landslides, and mudslides. Public Law 117-328 appropriated funding for 2023 disasters and 88 FR 82982 allocated the State of California \$115,022,000 in CDBG-DR funding for DR-4683.

## B. CDBG-MIT

CDBG Mitigation (CDBG-MIT) is an additional source of funding managed by HUD that was initially created in response to the 2017 disasters. CDBG-MIT was allocated by Congress through Public Laws 115-123 and Public Law 116-20. HCD received an allocation of \$83,819,000 in CDBG-MIT for mitigation efforts related to 2017 disasters, and \$64,907,000 in CDBG-MIT funds for 2018 disasters. For requirements specific to CDBG-MIT grants reference the CDBG-MIT Addendum to this Manual.

## C. Summary of CDBG-DR Awarded Projects

The following are brief summaries and budget amount for each program as presented in the approved Action Plan for each CDBG-DR allocation. Further details and requirements can be found in the policies and procedures of each program.

### CDBG-DR 2017

2017 Programs	Allocation
Owner Occupied Housing Rehabilitation and Reconstruction (OOR)	\$47,627,648
Multifamily Housing Program (MHP)	\$70,319,602
Infrastructure	\$36,154,651

- *Owner Occupied Housing Rehabilitation and Reconstruction (OOR)*  
The OOR program will provide decent and safe housing to homeowners in the areas impacted by the October and December 2017 disasters. Homeowners apply for assistance to repair damage to their primary residence. Eligible homeowners will receive grant funding up to \$500,000 for rehabilitation or reconstruction of the property, based on the extent of the damages, total cost for repair, and consideration of any duplication of benefits. HCD manages the OOR program directly. Applicant eligibility and requirements are detailed in the program's policies and procedures.
- *Multifamily Housing Program*  
The Multifamily Housing Program (MHP) focuses on housing development to meet the unmet rental housing need for displaced renters and those made homeless from the 2017 disaster events. MHP projects will include apartment complexes and mixed-use developments, where CDBG-DR funds may be used as gap financing for large scale housing developments. Projects must have a minimum total cost of \$250,000 per project and be located in a Most Impacted and Distressed area under the 2017 CDBG-DR grant, or otherwise have been impacted by DR-4344 or DR-4353 to be considered for MHP funds. These projects will replace the rental housing units available to Housing Choice Voucher holders that were lost and increase the available affordable rental units in impacted areas. MHP will be managed through subrecipients. Program requirements and eligibilities are provided in the program policies and procedures.

- *Infrastructure*

CDBG-DR funds will be used to fund the non-federal share match on approved FEMA Public Assistance (PA) projects. HCD will make funding available to impacted jurisdictions based on the local match requirement for FEMA PA Category D (water control facilities) and F (utilities) projects that can be established as necessary to further the housing recovery process. The maximum assistance allowable per project is the amount necessary to meet the match requirement on a project-by-project basis. As subrecipients, the local governments will manage the projects to ensure compliance with CDBG-DR and FEMA requirements. The program policies and procedures outline requirements and guidelines for project delivery.

### CDBG-DR 2018

2018 Programs	Allocation
Owner Occupied Housing Rehabilitation and Reconstruction (OOR)	\$222,383,622.19
Multifamily Housing Program (MHP)	\$281,139,507.36
Homebuyer Assistance Program	\$26,332,686.65
Infrastructure	\$389,348,700.80
Economic Revitalization - Workforce Development	\$46,542,372.33
Planning	\$782,160.67

- *Owner Occupied Housing Rehabilitation and Reconstruction (OOR)*

The OOR program will provide decent and safe housing to homeowners in the areas impacted by the fires under the 2018 disasters. Homeowners apply for assistance to repair damage to their primary residence. Eligible homeowners will receive grant funding up to \$500,000 for rehabilitation or reconstruction of the property, based on the extent of the damages, total cost for repair, and consideration of any duplication of benefits. Applicants are required to complete an OOR Program-supported housing counseling activity as part of the conditions of receiving an OOR grant award. HCD manages the OOR program directly. Applicant eligibility and requirements are detailed in the program's policies and procedures.

- *Multifamily Housing Program*

The Multifamily Housing Program (MHP) focuses on housing development to meet the unmet rental housing need for displaced renters and those made homeless from the 2018 disaster events. MHP projects will include apartment complexes and mixed-use developments, where CDBG-DR funds may be used as gap financing for large scale housing developments. Projects must have a minimum total cost of \$250,000 per project and be located in a Most Impacted and Distressed area designated the 2018 CDBG-DR allocation, or otherwise have been impacted by DR-4382 or DR-4407, to be considered for MHP funds. These projects will replace the rental housing units available to Housing Choice Voucher holders that were lost and increase the available affordable rental units in

impacted areas. MHP will be managed through subrecipients. Program requirements and eligibilities are provided in the program policies and procedures.

- *Homebuyer Assistance (HBA)*

CDBG-DR funds will provide down payment and other housing assistance to low-to moderate-income households impacted by the 2018 disasters to enable them to relocate outside of the disaster-declared area or other high-risk areas. The Homebuyer Assistance Program (HBA) will be offered in coordination with the OOR program intake process. Applicants will be eligible to receive up to a maximum award of \$350,000 in the form of a forgivable loan. Eligibility and program requirements are detailed in program policies and procedures.

- *Infrastructure*

CDBG-DR funds will be used to fund three categories of infrastructure: non-match infrastructure projects that can be supported 100 percent through CDBG-DR, match on approved FEMA Public Assistance (PA) projects, and match on FEMA HMGP projects. To be eligible for CDBG-DR funding, all projects must have a tie-back to the DR-4382 or DR-4407 disaster events. For FEMA PA, HCD will make funding available to impacted jurisdictions based on the local match requirement for FEMA PA Category C (roads and bridges), Category D (water control facilities), Category E (public buildings and contents), and Category F (utilities), and Category G (parks, recreational, and other activities) projects. The maximum assistance allowable per project is the amount necessary to meet the match requirement on a project-by-project basis. As subrecipients, the local governments will manage the projects to ensure compliance with CDBG-DR and FEMA requirements. The program policies and procedures outline requirements and guidelines for project delivery.

- *Workforce Development*

Under the 2018 CDBG-DR allocation, HCD will set up a Workforce Recovery Program to offer low-to-moderate income participants opportunities to develop skill sets to contribute to California's ongoing recovery effort in the construction and related fields. HCD will partner with established workforce development programs to offer construction trade job training so as to provide opportunities for LMI residents in the impacted areas and build the workforce capacity for recovery efforts. Program requirements and eligibility will be provided within the Workforce Recovery Program policies and procedures.

- *Planning*

Because of the recurring nature of wildfires in the impacted areas, planning efforts will be integral to a sound and long-term recovery process. Additionally, it is critical for all recovery planning projects to incorporate mitigation elements. Therefore, HCD will run all planning programs for 2018 under the Mitigation grant. Through the NOFA process outlined in the Mitigation Action Plan and Policies and Procedures, impacted jurisdictions are encouraged to submit eligible projects through the 2018 Mitigation NOFA. All further details are outlined in the Mitigation

Action Plan No. 2 and the MIT Planning and Public Service policies and procedures.

### CDBG-MIT 2017 and 2018

For a summary of CDBG-MIT awarded projects see the CDBG-MIT Addendum Section I, Part B.

### CDBG-DR 2020

2020 Programs	Allocation
Owner Occupied Housing Rehabilitation and Reconstruction (OOR)	\$45,838,488
OOR Mitigation	\$21,486,863
Homebuyer Assistance Program (HBA)	\$9,167,698
Multifamily Housing Program (MHP)	\$128,347,766
Multifamily Housing Mitigation	\$7,162, 287
Infrastructure	\$7,639,748

- *Owner Occupied Housing Rehabilitation and Reconstruction (OOR)*  
Under the ReCoverCA Housing Programs, the OOR program will provide decent and safe housing to homeowners in the areas impacted by the DR-4558 and DR-4569 disasters. The program will provide rehabilitation or reconstruction assistance to eligible applicants based on the extent of damage to their primary residences, as well as mitigate potential future damage through wildfire mitigation measures. The program is designed to ensure that the housing needs of very-low, low-, and moderate-income households and vulnerable populations, including individuals that were made homeless as a result of the disaster, are addressed to the greatest extent feasible. Homeowners apply for assistance to repair damage to their primary residence. Eligible homeowners will receive grant funding up to \$500,000 for rehabilitation or reconstruction of the property to bring the home to Wildfire Prepared Home standards and obtain designation, based on the extent of the damages, total cost for repair, and consideration of any duplication of benefits. HCD manages the OOR program directly. Applicant eligibility and requirements are detailed in the program's policies and procedures.
- *OOR Mitigation – Home Hardening and Retrofits*  
The mitigation set-aside will assist in covering home hardening costs to include the costs to bring reconstructed homes to Wildfire Prepared Home standards in amounts not to exceed \$50,000. Additionally, under the ReCoverCA Housing Programs, the OOR Mitigation program is eligible to owner-occupied properties that did not suffer damage in the DR-4558 or DR-4569 events, but are located in the MID, and can utilize the rehabilitation activity to enable the single-family unit to meet the WUI code standards to make their homes more resistant to wildfire. OOR applicants applying for rehabilitation to bring their homes up to WUI code standards may receive up to \$50,000 in grant assistance.

- Homebuyer Assistance Program (HBA)*

The Homebuyer Assistance Program (HBA) will be offered in coordination with the OOR program intake process as an additional programmatic option to meet the needs of those impacted by the 2020 disasters. HBA will be a standalone program administered by a Subrecipient and managed by HCD and will provide down payment and other housing assistance to low- to moderate-income disaster impacted survivors, enabling them to relocate outside of high-risk areas or the disaster declared areas. Applicants will be eligible to receive up to a maximum award of \$350,000 in the form of a forgivable loan. Eligibility and program requirements are detailed in program policies and procedures.
- Multifamily Housing Program (MHP)*

The Multifamily Housing Program (MHP) focuses on housing development to meet the unmet rental housing need for displaced renters and those made homeless from the 2020 disaster events. MHP projects will include apartment complexes and mixed-use developments, where CDBG-DR funds may be used as gap financing for large scale housing developments, and replace rental housing units available to Housing Choice Voucher holders that were lost. Projects must have a minimum of five total units and be located in a Most Impacted and Distressed area designated the 2020 CDBG-DR allocation, or otherwise have been impacted by DR-4558 or DR-4569, to be considered for MHP funds. These projects will also be designed to mitigate future impacts from wildfires. MHP will be administered and monitored by HCD through the issuance of a Notice of Funding Availability (NOFA) and competitively award to affordable housing developers. Program requirements and eligibilities are provided in the program policies and procedures.
- Multifamily Mitigation Program*

The Multifamily Mitigation program will provide hardening and wildfire retrofitting of existing affordable multifamily units to withstand future disasters by increasing resilience to future wildfires and reducing or eliminating the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship. HCD will directly administer this program through the issuance of a NOFA and competitively award to affordable housing developers.
- Infrastructure*

Under the 2020 CDBG-DR allocation, HCD will fund the local portion of the non-federal share match for FEMA Category C (roads and bridges), Category D (water control facilities), Category E (public buildings and contents), and Category F (utilities), and Category G (parks, recreational, and other activities). HCD will make funding available to DR-4558 and DR-4569 impacted jurisdictions based on eligible jurisdictions having an opportunity to submit for eligible non-federal share match on approved FEMA PA projects through an application process that demonstrates funds are to be expended on an eligible CDBG activity. Additional details will be provided in the program policies and procedures.

#### CDBG-DR 2021

2021 Programs	Allocation
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Single Family Housing Reconstruction	\$ 20,162,800
Single Family Housing Reconstruction Mitigation	\$ 3,024,800

- *Single Family Housing Reconstruction*  
Under the ReCoverCA Housing Programs, the Single Family Reconstruction Program will rebuild structures destroyed in the 2021 disaster event. The program intends to serve both LMI homeowners and renters by including single family rental for eligible reconstruction projects.
- *Single Family Reconstruction Mitigation*  
To support single family unit homeowners and renters who were impacted but do not require reconstruction, the Single Family Reconstruction Mitigation Program will support home hardening and vegetation management within the MID. The program will leverage the existing 2020 OOR Mitigation Program infrastructure and will help LMI homeowners and affordable single family rental landlords to harden their homes from wildfires.

#### CDBG-DR 2023

- *Program summary and allocation budget for 2023 funding will be included once the Action Plan is approved by HUD.*
- CDBG-DR 2023

2023 Programs	Allocation
Manufactured Home Replacement and Elevation Program (MHRE)	\$35,250,000
DR Multifamily Housing Program Accelerator Program (DR-ACCEL)	\$59,017,900
Community Resilience Center Program (MRCP)	\$15,003,000

- *MHRE*  
The MHRE program will repair, replace and/or elevate manufactured housing units for owner occupants impacted by the 2023 disaster.
- *DR-ACCEL*  
The DR-ACCEL program will award funding to multifamily housing projects that already have other sources of CDBG-DR funding, but are delayed due to funding gaps, in order to bring the projects to completion.
- *MRCP*  
The MRCP is a mitigation program that will improve the facilities that house seasonal agricultural workers in areas of high disaster risk to serve as emergency shelters.



## II. Definitions

### A. Acronyms

<b>Acronym</b>	<b>Meaning</b>
ADA	Americans with Disabilities Act
A/E	Architectural and Engineering Services
AFWA	Anti-Fraud, Waste and Abuse
AMC	Asset Management Compliance
AMI	Area Median Income
BCP	Budget Change Proposal
CAL FIRE	California Department of Forestry and Fire Protection
CBDO	Community Based Development Organizations
CDBG	Community Development Block Grant
CDBG-DR	Community Development Block Grant –Disaster Recovery
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CPD	HUD’s Office of Community Planning and Development
DBRA	Davis-Bacon and Related Acts
DFFA	Division of Federal Financial Assistance
DHS	United States Department of Homeland Security
DOB	Duplication of Benefits
DOL	Department of Labor
DOT	Department of Transportation
DRGR	Disaster Recovery Grant Reporting System
	Disaster Response and Operations Branch
DUNS	Dun and Bradstreet Identification Number
EEO	Equal Employment Opportunity
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ERR	Environmental Review Record
FDRR	Federal Disaster Relief and Recovery sub-Division
FRCD	Federal Recovery Community Development Branch
FRDR	Federal Recovery Data and Reporting Team
FRF	Federal Recovery Fiscal Team
FRH	Federal Recovery Housing Branch
MAC	Federal Recovery Multifamily Programs
	Federal Recovery Single-Family Programs
	Federal Recovery Subrecipient Monitoring and Compliance Team
FEMA	Federal Emergency Management Agency
FCS	Fiscal Compliance Section
FHEO	Office of Fair Housing and Equal Opportunity
FI\$Cal	Financial Information System for California
FLSA	Fair Labor Standards Acts of 1938
FMR	Fair Market Rent
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact

GAAS	Generally Accepted Auditing Standards
HCD	California Department of Housing and Community Development
HCDA	Housing and Community Development Act
HUD	United States Department of Housing and Urban Development
LA	Lead Agency
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LMI	Low to Moderate Income
LOCCS	HUD's Line of Credit Control System
M/WBE	Minority and Women Business Enterprise
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NOC	Notice of Completion
NOD	Notice of Determination
NOFA	Notice of Funding Availability
NOI/RRUF	Notice of Intent to Request Release of Funds
OMB	Federal Office of Management and Budget
OSAE	Office of State Audits and Evaluation
PCA	Program Cost Account
PCC	Public Contract Code
PII	Personal Identifiable Information
QPR	Quarterly Performance Report
RFF	Request for Funds
RFP	Request for Proposals
RFQ	Request for Qualifications
RE	Responsible Entity
SAM	California's State Administrative Manual
SBA	Small Business Administration
SCM	State Contracting Manual
SCO	California State Controller's Office
SCH	California State Clearing House
SOW	Scope of Work
URA	Uniform Relocation Act
USACE	U.S. Army Corps of Engineers
WBE	Women's Business Enterprise

For additional acronyms related to 2017 and 2018 CDBG-MIT grants, see the CDBG-MIT Addendum Section II, Part A.

## B. Terms and Definitions

**Contractor:** A for-profit entity that is awarded a state contract as a result of a competitive procurement to support the implementation of the CDBG-DR or CDBG-MIT grant.

**Davis-Bacon Wage Requirements:** The Davis-Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 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.

**Disaster Recovery Grant Reporting System (DRGR):** The Disaster Recovery Grant Reporting system developed by HUD's Office of Community Planning and Development for the Disaster Recovery CDBG program and other special appropriations. Data from the system is used by HUD staff to review activities funded under these programs and for required quarterly reports to Congress.

**Duplication of Benefits (DOB):** Financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds.

**Environmental Review Record (ERR):** A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents.

**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.

**Fair Market Value:** The hypothetical price that a willing buyer and seller agree upon when they are acting freely, carefully, and with complete knowledge of the situation.

**Grantee:** The term "grantee" refers to HCD.

**Limited English Proficiency (LEP):** A designation for persons that are unable to communicate effectively in English because their primary language is not English, and they have not developed fluency in the English language. A person with LEP may have difficulty speaking or reading English. An LEP person benefits from an interpreter who translates to and from the person's primary language. An LEP person may also need documents written in English translated into his or her primary language so that person can understand important documents related to health and human services.

**Low-to Moderate-Income (LMI):** Low- to moderate-income people are those having incomes not more than the 'moderate-income' level (80 percent 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.

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

**Mitigation (MIT):** Activities that increases resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship by lessening the impact of future disasters.

**Most Impacted and Distressed:** 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:

- 1) Individual Assistance/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 Individual and Households Program (IHP) funding.
- 2) 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.
- 3) Disasters meeting the most impacted threshold. Only 2017 disasters that meet this requirement for most impacted damage are funded: a. One or more most impacted county 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 2017.

**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 give proper consideration to 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.

**Property Owner:** Property Ownership is defined as holding a fee simple title as evidenced by a warranty deed, bargain for sale deed, or a quitclaim deed to the Property to be assisted. The deed must be recorded with the county, city, or appropriate local municipality.

**Reconstruction:** The labor, materials, tools and other costs of rebuilding.

**Rehabilitation:** The labor, materials, tools, and other costs of improving a building or residential structure to decent, safe and sanitary conditions, including the repair or replacement of major building systems.

**Repair:** The labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs.

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

**Request for Qualifications (RFQ):** A procurement document designed to solicit an entity's qualifications for delivering a defined scope of services.

**Responsible Entity (RE):** Under 24 CFR Part 58, the term “responsible entity” (RE) means the agency receiving CDBG, CDBG-DR, CDBG-MIT 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.

**Small Business Administration (SBA):** SBA's Office of Disaster Assistance (ODA) provides affordable, timely and accessible financial assistance to Applicants, renters, and businesses. The SBA low-interest, long-term loans are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses.

**Subrecipient:** The term “subrecipient” refers to a government agency, private non-profit, or private for-profit receiving a direct award from HCD.

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

**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 displace persons from their homes, businesses, or farms.

For additional terms and definitions related to 2017 and 2018 CDBG-MIT grants, see the CDBG-MIT Addendum Section II, Part B.

### III. Program Allocation and Administration

For additional CDBG-MIT program allocation and administration regulations see the CDBG-MIT Addendum Section III.

#### A. Funding Appropriation

HUD allocated nearly \$28 billion in CDBG-DR funds on April 10, 2018, through the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act 2018, Public Law 115-123. The funds were to support long-term recovery efforts for unmet needs and mitigation activities from disasters that occurred in 2017. On August 14, 2018, HUD issued a Federal Register Notice that outlined the uses of funds for the unmet need recovery efforts. This notice builds off of and clarifies the rules and requirements included in the [February 9, 2018 Federal Register Notice](#).

The State of California was awarded \$124,155,000 from HUD to address the unmet needs from the DR-4344 wildfires in October, and the DR-4353 wildfires in December 2017 and subsequent mudslides and debris flows. An additional \$88,219,000 was awarded for mitigation efforts.

In response to 2018 disasters Congress allocated nearly \$4 billion in CDBG-DR funds through two supplemental appropriations for disaster relief, PL 115-254 on October 5, 2018 and PL 116-20 on June 6, 2019. On January 27, 2020 HUD issued the federal register notice [85 FR 4681](#) allocating a total of \$1.02 billion to the State of California for

unmet recovery needs. This federal register notice outlined the uses of funds for the unmet recovery needs and builds off the February 9, 2018 Federal Register Notice. An additional \$64,907,000 was awarded through [86 FR 561](#) for mitigation efforts related to 2018 disaster events.

Specific requirements related to the 2017 and 2018 CDBG-MIT funding are outlined in the CDBG-MIT GAM Addendum.

Through Public Law 117-43, Extending Government Funding and Delivering Emergency Assistance Act, 2021, passed on September 30, 2021, \$5,000,000,000 was appropriated for disaster recovery from presidentially-declared disasters in 2020 and 2021. The State of California was allocated \$231,203,000 to address unmet recovery needs from the 2020 events included under DR-4558 and DR-4569 through the Federal Notice published on February 3, 2022 ([86 FR 6364](#)). On May 24, 2022 Federal Notice [87 FR 31636](#) allocated the State of California \$14,761,000 in CDBG-DR funding for DR-4610 from 2021.

The Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 passed on September 30, 2022 (Public Law 117-180) appropriated \$2,000,000,000 for 2021 and 2022 presidentially-declared disaster events. The related Federal Register notice [88 FR 3198](#), released on January 18, 2023, provided California an additional \$9,647,000 in CDBG-DR funding for DR-4610, for a total 2021 grant allocation of \$24,408,000.

The Disaster Relief Supplemental Appropriations Act, 2023 (Pub. L. 117– 328) approved by the U.S. Congress on December 29, 2022, made \$3,000,000,000 available in CDBG–DR funds. The Federal Register Notice published on November 27, 2023 ([88 FR 82982](#)) appropriated funding for 2023 disasters and allocated the State of California \$115,022,000 to address impacts caused by flooding, landslides, and mudslides under presidentially-declared DR-4683.

## B. CDBG-DR Grant Requirements

### 1. Use of Funds

The Appropriations Acts made funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in areas resulting from a major disaster declaration, pursuant to the Stafford Act.

- Funds for 2017 disasters are subject to the requirements of PL115-123 as outlined in the Federal Register Notice published August 14, 2018 and February 9, 2018.
- Funds for 2018 disasters are subject to the requirements of PL 115-254 and PL 116-20 as outlined in the Federal Register Notice published January 27, 2020.
- Funds for 2020 disasters are subject to the requirements of PL 117-43 as outlined in the Federal Register Notice published February 3, 2022 and May 24, 2022.

- Funds for 2021 disasters are subject to the requirements of PL 117-180 as outlined in the Federal Register Notice published May 24, 2022 and January 18, 2023.
- Funds for 2023 disasters are subject to the requirements of PL 117-328 as outlined in the Federal Register Notice published November 27, 2023.

The Action Plan and Amendments submitted by HCD and approved by HUD outline the approved projects and activities for expending each CDBG-DR grant allocation received.

Additionally, the Federal Register Notice published on June 21, 2022 ([87 FR 36869](#)) consolidated requirements and waivers across multiple appropriations acts. This notice is referred to as the Consolidated Notice, or OMNI notice, and should also be referenced for 2017, 2018, 2020, and all future CDBG-DR allocations.

## 2. Mitigation Set Aside

Beginning in 2017, HUD increasingly incorporated mitigation efforts into disaster recovery funding. While 2017 and 2018 have CDBG-MIT specific grants, 2020 CDBG-DR allocations and the Consolidated Notice (87 FR 36869) established a Mitigation set aside requirement for disaster recovery grants. Fifteen percent of a grantee's CDBG-DR allocation must be spent on mitigation activities in the most impacted and distressed areas of the grant. Tie-back to the specific disaster is not required, but HCD must report on activities that count towards the mitigation set aside and meet the definition of mitigation.

Grants that require the Mitigation set aside must also conduct a Mitigation Needs Assessment to identify risks and impacts of hazards, and inform potential activities for the Action Plan. For definitions and requirements of mitigation activities, refer to the *CDBG-MIT Addendum*.

## 3. Interchangeability of Funds

In accordance with 87 FR 36869, where the most impacted and distressed areas within qualifying disasters overlap, CDBG-DR funds can be used to address the unmet needs in both disasters. This applies to any allocation from 2020 forward, where the grant funds can be used in concert with any prior or future grant when the MID areas overlap. When applying funds from one grant to the unmet needs for another grant, the funding must follow the rules and requirements within the Federal Register notices that apply to the grant year funds are supporting (for example, if 2020 funds are used for unmet needs from 2017, the funds must meet the requirements of the 2017 notices).

## 4. Timeline for Expenditure of Funds

HUD has waived provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and has established that each grantee must expend 100 percent of its CDBG-DR grant on eligible activities within six years



of the date of an executed grant agreement. This timeline applies for the following CDBG-DR grants and their respective notices<sup>1</sup>:

- 2017: 2017 Appropriations Act (Section 904(c) of title IX in division A)
- 2018: January 27, 2020 FRN (85 FR 4681)
- 2020: February 2, 2022 FRN (86 FR 6364), May 24, 2022 (87 FR 31636)
- 2021: May 24, 2022 FRN (87 FR 31636), January 18, 2023 (88 FR 3198)
- 2023: November 27, 2023 FRN (88 FR 82982)

## 5. CDBG-DR Waivers

Waivers, along with alternative requirements, provide additional flexibility in program design and implementation to support full, swift, and resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. Waivers provided through the Stafford Act that are applicable to HCD include the following per Federal Register Notice 83 FR 40317:

### *a. One for One Housing Replacement*

One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 are waived for this allocation. HUD recognizes that these do not account for the changes a major disaster may cause to the local housing stock, population, or economy. This generally applies to lower-income housing units that are damaged by the disaster and are not suitable for rehabilitation. The grantee must define "not suitable for rehabilitation" in its action plan or in policies and procedures to use as justification and consider the overall housing need of an area in its planning.

### *b. Relocation, Rental and Mortgage Assistance*

Time limits for relocation and rental assistance are to be set at 42 months. This waives requirements set in 24 CFR 42.350 for relocation assistance, and sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) for rental assistance. Rental assistance can be considered as a replacement housing payment to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy.

Mortgage assistance can be provided for up to 20 months. This modifies 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) for mortgage assistance. The grantee must establish performance milestones for the rehabilitation/reconstruction that are to be met by the homeowner in order to receive the interim mortgage assistance payments and document in policies how it will determine the amount of assistance to be provided is necessary and reasonable.

### *c. Section 414 of the Stafford Act*

Section 414 of the Stafford Act is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-DR funded project commencing more than one year after the date of the declared

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<sup>1</sup> CDBG-DR Laws, Regulations, and Federal Register Notices; HUD.gov  
[https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/regulations](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/regulations)



disaster. Households or individuals displaced by the disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding the inability to meet occupancy requirements prescribed in the Uniform Relocation Assistance Act. CDBG–DR funded projects shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification, or (2) the date of completion of the site-specific review when a program utilizes tiering, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

*d. Arm's Length Voluntary Purchase*

The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

*e. Homeownership Assistance*

As large numbers of affordable housing units have been damaged or destroyed, 42 U.S.C. 5305(a)(24)(A) and (D) is waived to the extent necessary to allow: (1) Homeownership assistance for households earning up to 120 percent of the area median income (AMI); and (2) down payment assistance for up to 100 percent of the down payment.

While homeownership assistance may be provided to households earning up to 120 percent of the AMI, only those funds used for households with up to 80 percent of the AMI may qualify as meeting the low- and moderate-income person benefit national objective. Funds used for homeowners from 81-120 percent AMI must be counted as urgent need.

*f. Other Agency Environmental Reviews*

Grantees may adopt, without review or public comment, any environmental review, approval, or permit performed by a federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by HCD. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review and retain a copy in its files.

Waivers provided through Federal Register Notice 85 FR 60821 and applicable to HCD's programs are as follows:

*a. Alternative Requirement for FEMA-Approved Elevation Standards (Nonresidential)*

The flood elevation requirements for nonresidential structures under prior Federal Register Notices is waived and HCD may use the FEMA-approved flood-standard when the following conditions are met:

- CDBG-DR or CDBG-MIT funds are used as the non-federal match for FEMA assistance,

- The FEMA-assisted activity, for which CDBG-DR or CDBG-MIT funds will be used as match, commenced prior to HUD's obligation of CDBG-MIT or CDBG-DR funds to the grantee, and
- The grantee has determined, and demonstrated with records in the activity file, that implementation costs of the required CDBG-DR elevation up to two feet is not reasonable as defined in the applicable cost principles at 2 CFR 200.404.

HUD and FEMA will issue joint guidance to assist grantees with implementation of this provision.

### C. [General Administration Costs Limitation](#)

The State of California may use up to five percent of the total grant funds to administer the grant. CDBG-DR funds may be used to pay reasonable activity delivery costs and carrying out charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under the CDBG-DR grant. This category includes both the state's costs of administering the CDBG-DR program as well as the subrecipients' costs of administering funds provided to them by HCD.

Examples of administration activities include:

- General management, oversight and coordination
- Providing local officials and citizens with information about the grant
- Preparing budgets and schedules
- Preparing reports and other HUD-required documents
- Financial management
- Monitoring program activities
- Fair housing activities
- Submission of applications for federal programs
- Citizen participation costs
- Indirect costs charged using an accepted cost allocation plan.

Costs that are appropriately charged to this category are presumed to meet a CDBG national objective and the subrecipient does not have to maintain other documentation for this purpose.

Additionally, HCD uses administration funds to cover its internal staff costs associated with its oversight and management responsibilities. HCD uses activity delivery funds to cover its internal staff costs associated with project delivery. HCD documents costs and time charged through the appropriate means (e.g., invoices, receipts, time and attendance records, etc.). HCD's Administration and Management Division maintains this documentation and it is available upon request.

Per the Federal Register ([85 FR 4686](#), [86 FR 6364](#)), grantees are allowed to use administrative funds awards under Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, 115–254, and 117-43, or any future act for the cost of administering CDBG-DR or CDBG-MIT grants without regard to the particular disaster appropriation from which such funds originated. Administrative costs, examples of which are listed above, will be in accordance with 24 CFR 570.206, Program Administrative Costs. HCD is currently administering CDBG-DR grants for 2017, 2018, 2020 and 2021 disasters,

and CDBG-MIT allocations related to the 2017 and 2018 disasters. Administration budgets as of December 2023 for all grants are listed below.

<b>Grant</b>	<b>Administration Budget (as of December 2023)</b>
CDBG-DR 2017	\$8,110,626
CDBG-MIT 2017	\$4,410,950
CDBG-DR 2018	\$50,869,950
CDBG-MIT 2018	\$3,245,350
CDBG-DR 2020	\$11,560,150
CDBG-DR 2021	\$1,220,400
CDBG-DR 2023	\$5,751,100
<b>Total</b>	<b>\$85,168,526</b>

#### D. Public Services

CDBG-DR funds may be used to pay for labor, supplies, and material, as well as to operate and/or maintain a portion of a public facility in which the public service is located. To utilize CDBG-DR funds for a public service, the service must be either a new service or a quantifiable increase in the level of an existing service which has been provided by the state or another entity on its behalf through state or local government funds. An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the local government.

##### 1. Public Services Cap

The CDBG-DR program has a statutory limitation on the percentage of any grant that may be used for eligible public service activities. The total amount of CDBG-DR funds expended statewide for public service activities must not exceed 15 percent of HCD's CDBG-DR allocation of funds, plus 15 percent of program income received by HCD under its method of distribution. Public service carried out by subrecipients are also subject to the 15 percent public service cap.

#### E. Mitigation

Mitigation funds allow for planning and implementing preventative measures, instead of focusing only on recovery after a disaster, and coordinate with FEMA and the FEMA Hazard Mitigation Grant Program through eligible mitigation activities. HUD has defined mitigation activities as those that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

The 2020 CDBG-DR appropriation under Public Law 117-43 established a 15 percent set aside for mitigation activities for grantee allocations.

## IV. Grant Administration

HCD is responsible for managing the CDBG-DR grant. HCD chose to administer components of the allocations within HCD and some components through subrecipients or contractors.

For additional CDBG-MIT grant administration regulations see the CDBG-MIT Addendum Section IV.

### A. Grant Management

HCD serves as the responsible agency for implementation of its CDBG-DR funds. HCD is legally and financially accountable for the use of all funds and is the sole entity with access to HUD's Line of Credit Control System (LOCCS) through HUD's Disaster Recovery Grant Reporting System (DRGR).

#### 1. Action Plan, Amendments, and Benefit Cost Analysis

##### a. Action Plan

The Action Plan reflects the components funded through the CDBG-DR grant and ensures clear communication of CDBG-DR activities to the public. Changes to the Action Plan are completed as substantial or non-substantial amendments.

##### b. Substantial Amendments

The Federal Disaster Relief and Recovery sub-Division oversees all program and project changes throughout the lifecycle of the CDBG-DR grant. Section Chiefs are responsible for discussing any proposed program changes which would require a budget, scope, or objective change. Changes to the budget, scope, or objectives will trigger a substantial amendment. Substantial amendments are triggered when one or more of the following scenarios occur:

- A change in program beneficiaries or eligibility criteria;
- The addition or deletion of an activity;
- A proposed reduction in the overall benefit requirement; or
- The allocation or reallocation of \$3,000,000 in 2017 funding
- The allocation or reallocation of \$10,000,000 in 2018 funding
- The allocation or reallocation of \$10,000,000 in 2020 funding
- The allocation or reallocation of \$10,000,000 in 2021 funding
- The allocation or reallocation in 2023 funding (to be determined).

HCD must follow the CDBG-DR Citizen Participation Plan and all requirements in the Federal Register Notice prior to making a substantial amendment to the Action Plan.

##### c. Non-substantial Amendments

Amendments that do not fall within the definition of substantial amendment are referred to as non-substantial amendments. HCD must notify HUD at least five business days before a non-substantial amendment becomes effective.

#### *d. Information Required for Amendments*

HCD follows the following guidelines for proposed amendments:

- Highlight, or otherwise identify, each proposed amendment within the context of the approved Action Plan
- Include a section that identifies exactly what content is being added, deleted, or changed, and whether HCD believes that the proposed amendment would result in a significant change to its capacity or soundness of approach
- Include a chart or table that clearly illustrates where funds are coming from and to where they are moving
- Include a revised budget allocation table that reflects the entirety of all funds, as amended
- Make accessible for public viewing as a single document the most recent version of HCD's approved CDBG-DR application and its Action Plan
- Amendments to the Action Plan (substantial and non-substantial) are numbered sequentially and posted on HCD's website

#### *e. Budget Amendments*

The Federal Recovery Housing and Federal Recovery Community Development Branches within HCD oversees program and project changes throughout the lifecycle of the CDBG-DR grant. All Section Chiefs are responsible for discussing proposed program changes that would require a budget, scope, or objective change and potentially trigger a substantial amendment. HCD communicates with HUD regarding amendments and monitoring the grant. During these discussions, HCD addresses any changes in construction and non-construction activities for HUD's input, which may include, but are not limited to, the following:

- 1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
- 2) Change in a key person specified in the application or the Federal award.
- 3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.
- 4) The inclusion, unless waived by HUD, of costs that require prior approval in accordance with Subpart E—Cost Principles of 2 CFR part 200, or 45 CFR part 75 Appendix IX, Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals, or 48 CFR part 31, Contract Cost Principles and Procedures, as applicable.
- 5) The transfer of funds budgeted for participant support costs as defined in §200.75, Participant support costs, to other categories of expense.
- 6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332, Fixed subawards (this provision does not apply to the acquisition of supplies, material, equipment or general support services).
- 7) Changes in the approved cost sharing or matching provided by HCD.
- 8) The need arises for additional Federal funds to complete the project. If additional funds are to be added from HUD awards, this budget change will ultimately require HUD approval of the amendment within DRGR.

- 9) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in 2 CFR part 200, Subpart E—Cost Principles. [2 CFR 200.308(g)].

HCD will submit an Action Plan Amendment to HUD for approval if any changes listed above trigger a substantial amendment. If it is non-substantial, then there is no need for HUD approval and the process described in item c above is followed.

## B. Implementation

Per HUD requirements, HCD submits an Implementation Plan to HUD for all CDBG-DR grants. The plan describes the staffing capacity, roles and responsibilities of staff for each grant as well as the interagency coordination between departments. HCD is responsible for updating the Implementation Plan to incorporate changes throughout the lifecycle of the grant.

### 1. CDBG-DR State Implemented Programs

HCD directly implements the CDBG-DR funded owner-occupied rehabilitation and reconstruction program for homeowners impacted by the qualified disasters from 2017, 2018, 2020, and 2021. Further information regarding the program will be provided in the owner-occupied rehabilitation and reconstruction program manual.

### 2. CDBG-DR Subrecipient Implemented Programs

For other eligible CDBG-DR programs, HCD provides allocations to impacted jurisdictions for the direct implementation of programs. These allocations include program and activity delivery costs. Those jurisdictions submit projects for HCD's approval. Once HCD has approved the project, the subrecipient is responsible for implementation of the project. HCD staff provides oversight, technical assistance, and compliance monitoring of the projects.

### 3. CDBG-MIT Projects

See CDBG-MIT Addendum Section I, Part B for CDBG MIT projects.

## V. Financial Management

HCD is the responsible entity for all administration of CDBG-DR and CDBG-MIT funds for the State of California. Currently, HCD has nine divisions:

- Administration and Management
- Codes and Standards
- Executive
- Federal Financial Assistance
- State Financial Assistance
- Housing Policy
- Legal Affairs
- Legislation
- Organizational Development



The Division of Federal Financial Assistance (DFFA) manages federal programs for HCD.

For additional 2017 and 2018 CDBG-MIT grant financial management regulations, see the CDBG-MIT Addendum Section V.

## A. Internal Controls

### 1. Organizational Structure

To administer the CDBG-DR and CDBG-MIT appropriations, HCD DFFA established the Federal Disaster Relief and Recovery sub-Division inclusive of the Federal Recovery – Housing (FRH), Federal Recovery – Community Development (FRCD) and Disaster Response and Operations (DRO) Branches, to ensure capacity required for Program Implementation, Finance, and Compliance. This structure provides the internal controls for the grant. The DRO Branch has full time staff dedicated to the administration and implementation of the CDBG-DR and CDBG-MIT grants including staff overseeing financial management, data management, and reporting requirements for the grant. The Accounting Branch staff ensure all grant payments are made in a timely manner and in adherence to all federal and state regulations specific to HCD costs. For invoices or requests for payment submitted to HCD, the program and operational staff will review transactions for programmatic and fiscal compliance. The Fiscal Compliance Section ensures that all grant payments are made in a timely manner and in adherence to all federal and state regulations specific to requests for payment to HCD. Additionally, HCD uses the grant management system Grants Network, and the Financial Information System for California (FI\$Cal), the State's financial information system of record for financial management for California, to account for obligations, expenditures, and balances under the grant. The HCD CDBG-DR Organizational Chart outlines the responsible personnel at the state level.

### 2. Staffing

The organizational chart illustrates the staff assigned to HCD's Federal Disaster Relief and Recovery sub-Division. In addition to internal staff, a technical assistance consultant has been integrated into the organizational structure.

The Federal Disaster Relief and Recovery sub-Division has three functional groups to carry out its CDBG-DR and CDBG-MIT activities: FRH and FRCD Branches for Program Implementation and the DRO Branch covering Action Plan development, research, data, finance, monitoring and compliance.

The FRH is led by the Branch Chief (Staff Services Manager III), who oversees one Housing and Community Development Specialist and two Section Chiefs (Staff Services Manager II). The Section Chiefs (program) serve as the CDBG-DR and housing related CDBG-MIT Program Managers and oversee two Housing and Community Development Specialists and three Manager I (program) positions (one for each program area). The Manager I's oversee ten Housing and Community Development Representatives.

The FRCD is led by the Branch Chief (Staff Services Manager III), who oversees one Section Chief (Staff Services Manager II) and two Housing and Community Development Specialists. The Section Chief (Community Development program) serves as the CDBG-DR and CDBG-MIT Community Development Program Manager

and oversees one Housing and Community Development Specialist and two Manager I (program) positions (one for each program area: Infrastructure, Workforce Development Planning and Public Services. The two Manager I (program) positions lead the FRCD Branch's programmatic implementation areas. The two Manager I's oversee seven Housing and Community Development Representatives.

The program implementation groups under the FRH and FRCD consists of program delivery staff members (Representative II) assigned to a specific program areas and report to their respective Staff Services Manager I (program).

The DRO Branch is led by the Branch Chief (Staff Services Manager III), who oversees two Section Chiefs (Staff Services Manager II). The Policy, Research and Data Section Chief oversees five Disaster Response and Recovery Specialists, one Disaster Response and Recovery Representative and the Federal Recovery Data and Reporting team (FRDR). The FRDR Manager I oversees three Housing and Community Development representatives. The Fiscal Compliance Section (FCS) Chief leads the grant management and compliance areas for CDBG-DR and CDBG-IT and oversees two Staff Services Manager I positions which includes the Federal Recovery Fiscal team (Fiscal)), and the Monitoring and Compliance team (MAC). The Fiscal Manager I oversees four Housing and Community Development Representatives. The MAC Manager I oversees four Housing and Community Development Representatives. In addition, the FCS Section Chief oversees a Grant Administration and Compliance Specialist (Housing and Community Development Specialist II) and a Grant Compliance Specialist (Housing and Community Development Specialist II).

The DRO staff provide specific subject-matter expertise related to disaster recovery and mitigation. The groups under the DRO are responsible for environmental compliance, labor compliance, research, data, reporting, subrecipient monitoring, and financial compliance (note that the Administration Division is responsible for financial compliance specific to HCD costs). DRO staff (Representative II's) from each team report to their respective Manager I.

For purposes of this manual, Representative II positions are referred to as either Representative II (program), Representative II (fiscal), Representative II (data and reporting), or Representative II (subrecipient monitoring and compliance).

HCD Federal Disaster Relief and Recovery Capacity:

- Assistant Deputy Director (one position)
- Branch Chiefs (three positions)
- Section Chiefs (five positions)
- Housing and Community Development Specialist II (12 positions)
- Staff Services Manager I (eight positions)
- Representative II (34 of positions)

Finally, the Administration, Internal Audit and legal functions are performed by shared state resources from the respective Divisions and Branches.

HCD frequently assesses capacity to ensure federal requirements are met.

The Administration Division and DFFA leadership work together to establish administrative, grant level fiscal and administrative policy decisions. Federal Disaster



Relief and Recovery Assistant Deputy Director and Branches work together to establish administrative, programmatic, and policy decisions. The Federal Disaster Relief and Recovery Assistant Deputy Director and Branches keep each other apprised of program status and deliverables. In addition to positions throughout the Department that work on Federal Grants, the Department has established the following units focused on Federal Programs in the Administration and Management Division:

- Accounting Branch Federal Payments
- Federal Trust Unit
- Financial Management Office Financial Planning and Analysis

In order to ensure that no one individual will have complete control over external financial transactions, funds requests will also require multiple levels of signatures for approval within the Federal Disaster Relief and Recovery sub-Division and Accounting Branch. Financial transitions specific to HCD costs are reviewed and approved by the Accounting Branch and the Fiscal Team completes the DRGR voucher request.

HCD intends to utilize their technical assistance consultant to provide support to the DR Branch. Cross-cutting compliance and environmental compliance functions will be staffed by the technical assistance consultant.

The DR Fiscal team sets up a communications and reporting plan that enables HCD to accurately track progress and expenditures for each of the funded CDBG-DR activities. This plan will facilitate the transfer of information between the state and federal systems to track milestones, outcomes, and beneficiary data for each CDBG-DR activity, as outlined in the Action Plan approved by HUD.

#### B. [Standard Agreement](#)

HCD's Standard Agreement is the contractual document that details the financial and recordkeeping requirements and standards for entities allocated funds to carry out specific eligible DR activities (subrecipients). The Representative II positions (program) review draft agreements between HCD and its CDBG-DR subrecipients prior to execution to ensure that required federal language is in place. Upon execution of the agreement and completion of NEPA documentation, subrecipients may begin expending funds. For implementation of project activities, a subrecipient must complete the appropriate General Conditions Checklist (GCC) and provide a signed copy of GCC with copies of compliance documentation to HCD for review and approval. Upon HCD review and written approval, the subrecipient can begin incurring costs for DR project pre-agreement costs and implementation activities.

Each Standard Agreement includes the amount of funding committed to that allocation and outlines the required reporting schedule and documentation required by each subrecipient. Representative II (program) works with the subrecipient to ensure timely and accurate reporting. In addition to the formal reports, the Representative II (program) contacts the subrecipients on a regularly scheduled basis to obtain progress updates and to provide technical assistance as the projects progress forward through completion.

HCD's Standard Agreements with subrecipients and contracts with contractors include the requirements of 2 CFR part 200 as conditions of the award. In addition, every public contract must contain a provision stating that the contracting parties shall be subject to

examination and audit, although failing to include such a provision does not preclude the California State Auditor from conducting the audit.

Each project is tracked by the Representative II (program) and the subrecipient involved in the project. Continued evaluation of each project is performed by the Program team, primarily managed by the Representative II (program) and is compared to the data contained in the monthly updates received and quarterly reports submitted.

By executing HCD's Standard Agreement, the subrecipient agrees to comply with all federal and state statutes, regulations, and rules that apply to the CDBG-DR activities, as well as the requirements listed within the contract, in exchange for receiving the grant for the awarded activities. Some requirements must be fulfilled prior to incurring costs and/or prior to requesting funds from HCD.

HCD's Standard Agreement includes, but is not limited to, the following components:

- Scope of work, which includes a description of the work to be performed, a schedule for completing the work, and a budget.
- Reports and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist HCD in meeting HUD's recordkeeping and reporting requirements.
- Program income restrictions and requirements for funds generated as result of the activities funded in the contract, including HCD approval of program income expenditures, along with reporting requirements.
- Uniform administrative requirements, as outlined in both the federal Office of Management and Budget (OMB) and the California State Administrative Manual (SAM)
- Specific grant related requirements.
- Suspension and termination clauses, if HCD finds that any subrecipient materially fails to comply with the terms of the contract, and that the contract may be terminated for cause.
- Reversion of assets clause, stating that upon contract expiration, the subrecipient will transfer any CDBG-DR funds on hand to HCD, along with accounts receivable attributed to the use of the CDBG-DR funds (where they do not meet the definition of Program Income).

### C. Financial Management Systems

In accordance with 2 C.F.R. § 200.302 (2020), HCD has financial management systems in place that provide effective control and accountability for all CDBG-DR and CDBG-MIT funds, property, and other assets; and identify the source and use of funds for CDBG-DR and CDBG-MIT funded activities, including records that:

- Verify the necessity, reasonableness, allowability, and allocability of costs.
- Verify that funds have not been used in violation of any restrictions or prohibitions, through budget controls and adequate accounting records.
- Permit the accurate, complete, and timely disclosure of financial results in accordance with HUD reporting requirements or, for subrecipients, HCD DR reporting requirements contained in the subrecipient agreement.

- Minimize the time between the transfer of funds from the U.S. Treasury and disbursement by the State Controller's Office (SCO).

For CDBG-DR, HCD uses three management systems: DRGR, FI\$Cal, and Grants Network. Together, these three systems will be used to account for CDBG-DR and CDBG-MIT grant funds. HCD ensures that all state systems reconcile with the expenditures reported quarterly in DRGR.

Payments for eligible costs are processed as submitted to HCD as reimbursements for subrecipients and partners. Funds requests for CDBG-DR projects are submitted to HCD, along with supporting documentation, through Grants Network as a Financial Report. Once reviewed by the required Section staff, a DRGR voucher is created and the Financial Report is submitted to AMD Accounting Branch ("Accounting"). Accounting reviews the request, a payment is created in FI\$Cal, and the DRGR voucher is approved. Accounting sends the payment information to the State Controller's Office (SCO) for issuance of the payment warrant once the federal funds are received from LOCCS and updates Grants Network with the payment warrant number.

### 1. Documentation Tracking

The Federal Disaster Relief and Recovery sub-Division Branches are responsible for tracking DR metrics, contracts and subcontracts, project schedules, and funds requests. Subrecipients and contractors will submit forms and required back up documentation, including scanned copies of contracts, invoices, inspection reports, timesheets and other documentation outlined in the Standard Agreements to the appropriate Representative II (program).

### 2. Disaster Recovery Grant Reporting System

HUD requires HCD to use the online DRGR system to set up the grant's Action Plan , which contains project and activity narratives, proposed budgets, and expenditures. HCD must set up each project and eligible activity, process draw requests, provide quarterly progress reports, provide updates on monitoring actions, and report data on approved outcome metrics.

The Disaster Response and Operations Team is responsible to enter and update the grant's Public Action Plan and any amendments into DRGR for disaster years 2020 and moving forward. The Federal Recovery Data and Reporting team is responsible for entering the DRGR Action Plan information into DRGR which includes projects, activities, performance measure and projections.

HCD reports a recap of the progress and expenditures, as well as any challenges or obstacles, in the required QPR in DRGR. The Federal Recovery Data and Reporting team is responsible for preparing and submitting all QPRs in DRGR, with Manager I (Data and Reporting) review and approval. HUD uses DRGR data to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and DOB; to reconcile budgets, obligations, fund draws, and applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; and as a basis for risk analysis in determining a monitoring plan.

The Fiscal Team is responsible for inputting draws into the DRGR to obtain a voucher. Draw requests created by the Representative II (Fiscal Team) is approved

by the Manager I (Fiscal Team) and completed by HCD's Accounting Branch. The Accounts Payable team in AMD is responsible for the approval of all draws in DRGR.

### 3. Reconciliation of Systems

HCD tracks grant awards using Grants Network, FI\$Cal, DRGR, and internal HCD reports. The AMD and FCS coordinate to reconcile systems regularly.

California's accounting procedures are in accordance with Generally Accepted Accounting Standards (GAAS). For CDBG-DR funds, HCD requires that source documentation be submitted with a funds request to Grants Network. A review and approval of documents to ensure that the expenditures are eligible and valid is required before transactions are entered into DRGR by the FCS team and recorded in FI\$Cal by Accounting.

The state's policy on miscellaneous accounting procedures, including minimum reporting requirements, is documented in the State Administrative Manual (SAM), Section 8760, and is available at <http://sam.dgs.ca.gov/>. At a minimum, quarterly financial and performance reporting is required. CDBG-DR report formats are supplied to the subrecipients by the Representative II for the respective program.

### 4. Financial Records

HCD maintains detailed accounting records to form the basis for the grant reports. The records are retained and available for audit for a minimum of five years from the HUD grant closeout. This requirement is longer than the SAM requirement of three years from the date of report date. HCD must use the more stringent requirement whenever conflicts occur between federal and state requirements. For purposes of the CDBG-DR grant, files are retained for five years after HCD is notified by HUD a grant closeout is completed.

All Manager I positions and staff are responsible for closing out the CDBG-DR grants based on each HUD contract specific requirement and terms of subrecipient agreements. Accounting completes the final closeout of grant accounts in FI\$Cal once the Federal Disaster Relief and Recovery sub-Division has completed their review.

### 5. Information Systems for California (FI\$Cal)

HCD's financial system of record is FI\$Cal, a partnership of the State's Department of Finance, Department of General Services, SCO, and the State Treasurer's Office. FI\$Cal is the budgeting, accounting, procurement and cash management system that optimizes the financial business management of California's government, allowing the state to operate as a single enterprise for the first time in history when it was established in July 2018.

Accounts Payables staff process payment requests through FI\$Cal and prepare a physical claim schedule package per payment, which is reviewed and approved by the Payables Accounting Admin I or Senior Accounting Officer. Claim schedules are bundled and given to the Federal Drawdown staff in the General Ledger unit. Each DRGR voucher, once the claim is audited, is updated to reflect the approved release

date (for that same week's Friday date) and approved, which triggers the US Treasury to release funds to California.

Claims are batched by like grants and audited against DRGR by voucher number to ensure the dollar amounts and payees match the claim schedule information.

Claim schedules are couriered to SCO on Wednesday mornings as to arrive at the same time the federal funds are being processed, minimizing the time between the federal funds being drawn from the US Treasury and the funds being sent to the recipient. Accounting staff pull a csv file from FI\$Cal daily, upload it to a secure SharePoint, eCivis (Grants Network vendor) retrieves the file, imports the FI\$Cal csv file into Grants Network and locks in the transactions. The transactions include the warrant issue date.

DRGR User Guides are located at <https://www.portal.hud.gov>.

Claim Schedule instructions and guidance are located on the SCO website at: [http://www.sco.ca.gov/ard\\_state\\_claim\\_sched.html](http://www.sco.ca.gov/ard_state_claim_sched.html)

#### D. Financial Management Payment Procedures

##### 1. Reimbursement Payments

HCD operates on a reimbursement basis for all CDBG-DR projects according to HUD and federal standards, including the requirements of 2 CFR Part 200.305(b)(3). Payments are made to subrecipients on a reimbursement basis and are only made for expenditures that have been incurred and paid for by the subrecipient, except in certain circumstances approved by HCD. Payment schedules for each subrecipient will be included in the Standard Agreement, as well as documented in the program policy and procedures. HCD determines the payment request to be reasonable, accurate, and compliant with program requirements. Once a payment request is reviewed for accuracy and compliance and meets the standards for source documentation (see *Subrecipient Funding* below), HCD submits invoices to the State Controller for payment by creating a warrant in FI\$Cal. All costs must be incurred and paid for by the subrecipient prior to HCD providing a reimbursement from the US Treasury. All subrecipients must submit a funds request through the Grant Management System and provide evidence that all invoices and costs incurred were paid by the subrecipient and the work was inspected by the subrecipient. If a payment request is complete with all supporting documentation, HCD reimburses the subrecipient for eligible incurred costs.

Subrecipients are responsible for maintaining accurate records of expenditures related to all HUD funding. HCD requires that the subrecipient provides source documentation for each expenditure charged to the grant. The subrecipient is required to designate a staff member who is responsible for the oversight of expenditures, as well as obtaining the necessary approvals for the expenses according to the Standard Agreement for the project. If the subrecipient is charging staff time to the grant, they are required to provide timesheets and redacted paystubs for each staff person included on the invoice.

### *a. HCD State Operations*

Effective March 2021 HCD HR launched PeopleSoft electronic timekeeping system for staff timesheet to Division of Federal Financial Assistance. For reimbursements made directly to HCD for State Operations (indirect/direct costs), source documents are typically internal documents such as timesheets and a memo from HCD's AMD. Timesheets verify how many hours an employee worked during a pay period and for what rate of pay. All HCD staff use PeopleSoft to track time for direct billing. The individual time sheets are submitted to Human Resources, and Human Resources reviews and processes the timesheets to submit to the Accounting Branch. The Accounting Branch ensures labor from timesheets is allocated to the correct grant, service location, and task ID on the Labor Reports. The Budgets Office produces the indirect cost allocation percentage based on Labor Reports from the Accounting Branch and Human Resources.

## **2. Advance Funding**

In certain circumstances, the FRH or FRCD Branch Chief may approve advance funding for a project. The OMB Uniform Requirements, 2 CFR 200.3 defines an advance payment as a payment that a federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-federal entity disburses the funds for program purposes.

In the CDBG Final Rule, effective May 23, 2012 [Federal Register Volume 77, Number 78, Monday, April 23, 2012, Rules and Regulations Pages 24139-24146], in an effort to streamline the states CDBG Program and make it more aligned to the Entitlement Program, HUD amended the grant repayment language to remove references to advances. Specifically, 24 CFR §570.489(c) states:

“Federal grant payments. The state's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR §205. The state must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the state to units of general local government. States must also have procedures in place and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the state and disbursement for CDBG activities.”

31 CFR §205 describes the US Treasury/State agreements and requirements.

When advance payments are approved:

1. Advances are defined as payments where the funds to pay invoiced, completed and inspected work have not been paid out by the subrecipient. Work not completed, regardless of subrecipient's payment status, is not eligible for advance payment (with the exception of Housing Rehabilitation contracts requiring escrowed payments; see # 11 below).
2. Payments for construction work shall be made at no more than 95 percent of invoiced amount, requiring a minimum 5 percent retention (unless the



payment is the final retention payment and the subrecipient has verifying evidence no mechanics' liens or other encumbrances have been filed against the property/project) and the advance request shall be the net (95 percent) amount; the invoice amount less the retention.

3. Subrecipients may only request "advance" activity funds from their CDBG-DR contract if they have adequately demonstrated the willingness and ability to minimize the time lapsing between the receipt of HCD's funds and the subrecipient's disbursement and the advanced payments are approved by the Branch Chief [2 CFR §215.2 (b)(5)] and [24 CFR §570.489 (c)(1)].
4. Advances may only cover invoices received for work that has actually been completed, inspected, and approved for payment by the subrecipient and are limited to the amount necessary to pay for actual immediate cash needs, all of which must be documented prior to submitting an advance funds request. Advances will not be processed for work that has not been completed or invoiced. Subrecipients must have internal policies and procedures in place that sufficiently document when invoices are received, as well as when the invoiced work was completed and inspected.
5. Within two business days of receipt of the State of California's warrant for the CDBG-DR payment, the subrecipient must place all advanced funds into an interest-bearing account, where the funds must remain until expended.
6. Subrecipients must pay all invoices (release the funds to the company that have invoiced the work/costs) identified in the advance request within five business days of receipt of funds from HCD.
7. Interest earned on advanced funds, prior to expenditure, is not considered program income and must be returned to HCD each month.
8. Subrecipients are required to complete and submit the reconciliation of each advance within 30 days of the date the warrant for the advanced funds was received. Subrecipients must complete the "Advance Reconciliation" section of the Funds Request to include the date the warrant was received, details of the expenditures covered by the advanced funds, the source and uses of all advanced funds, and any excess cash on hand. Unspent funds (excess cash on hand) must be returned to HCD immediately. Any earned interest and any excess cash must be returned to HCD with the Advance Reconciliation, no later than 30 days from the date the warrant was received. Note: excess cash should rarely, if ever, occur, since each advance request must be based on actual invoices received for completed work already inspected by the subrecipient.

Reconciliations are not completed until HCD has reviewed and approved them; upon approval, HCD will provide the subrecipient an “approved” copy for their program records.

9. Per the Standards for Financial Management Systems, accounting records must be supported by source documentation such as cancelled checks, invoices and demands, payrolls, time and attendance records, contract and sub-grant award documents, etc.
10. Subrecipients are required to maintain financial records and submit the financial reports sufficient to ensure compliance with all recordkeeping and reporting requirements.
11. Escrow Accounts for Housing Rehabilitation [24 CFR §570.511] shall not be used unless the contract between the property owner and the selected rehabilitation contractor specifically requires that payment to the contractor shall be made through an escrow account. No advanced funds can be deposited into the escrow account until after the contract between the property owner and rehabilitation contractor has been fully executed. [24 CFR §570.511 (a)(2)].
  - a) Escrow accounts funded with advanced funds are only eligible for housing rehabilitation projects [24 CFR §570.511a].
  - b) Escrowed funds are limited to only paying actual rehabilitation costs (no soft or administrative costs), and payments made to contractors must withhold a 10 percent retention payment, unless the payment is the final payment due (retention release).
  - c) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of the deposit into the escrow account [24 CFR §570.511 (a)(4)].
  - d) If, for any reason and at any time, the escrow account contains funds exceeding 10 days of cash needs, the subrecipient shall immediately return the excess funds back to HCD [24 CFR §570.511 (a)(4)].
  - e) Funds deposited into an escrow account shall be used only to pay the actual rehabilitation costs incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, i.e., the subrecipient’s administrative costs or rehabilitation activity delivery costs, are not permissible uses of advanced escrowed funds. Such costs may only be paid under HCD’s reimbursement process [24 CFR §570.511 (a)(5)].
  - f) Non-compliance – If HCD determines that the subrecipient has failed to use an escrow account in accordance with



regulations, HCD may require the subrecipient to discontinue the use of the escrow accounts [24 CFR 570.511 (c)].

*a. Advance Funding Procedures*

To ensure advance requests are made in accordance with the policy and regulations noted above, subrecipients requesting advance funds must submit:

1. Funds Request identifying the funds are being requested as an advance:  
All requests for advances must be submitted on the Funds Request form, which must be entirely completed, including a declaration of cash on hand and certification regarding grant funds, Program Income and/or Revolving Loan Fund balances.
2. Advance Request Form/Supporting Documentation:  
An Advance Request detailing what the advanced funds will be used for, specifics about the invoice(s) for the advance request (invoice date, date received by the subrecipient, vendor name, project name, location, total amount due, work covered in invoice), a certification stating the work was inspected (naming inspector and providing their position, date of inspection, description of work inspected and certification that the work was completed in a workmanlike manner) and when the funds will be disbursed. Supporting documentation must be attached to the justification (project budget, copies of third-party contracts, copy of the invoice, inspection, etc.).
3. Certification to Process Form:

On the Certification form the Authorized Signor certifies that:

- a) The funds will be deposited into an interest-bearing account within two days of receipt.
- b) The funds will be expended within five days of deposit.
- c) The documentation supporting the advance request is true and correct.

The general Treasury rules for drawing federal funds require that funds not be drawn until needed. There are, however, two regulatory provisions that allow drawing funds from the Treasury in advance which apply with respect to rehabilitation. They are: (a) Lump Sum Drawdown; and (b) escrow accounts.

Escrow accounts are not expressly authorized in the HCDA; HUD advises states wishing to allow the use of escrow accounts to follow the provisions of 24 CFR 570.511 of the CDBG Entitlement program regulations, which limits the use for rehabilitation and reconstruction of privately owned residential property only and has very specific requirements.

*3. Lump Sum Draw Down*

Section 104(h) of the HCDA requires HUD to establish standards governing the use of lump sum drawdowns. These standards are at 24 CFR §570.513 of the Entitlement program regulations and states operating the CDBG program may choose to adopt

these regulations. On December 20, 2017, HUD issued Notice CPD-17-014 (CPD-17-014), which provides lump sum drawdown requirements, including the limit of advance payments to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the subrecipient or contractor carrying out an eligible activity.

HCD may allow one of their subrecipients to draw, as a single amount, the total amount needed for a specific rehabilitation project if it enters into an agreement with a financial institution that meets the requirements set forth in 24 CFR §570.513(b)(2) and if it complies with other requirements under 24 CFR §570.513. Some of the key requirements outlined in the provisions include:

- The agreement may not exceed two years.
- The financial institution must agree to provide certain benefits in conjunction with the activities paid for from the account.
- There are time benchmarks for when the rehabilitation carried out with funds in the account must begin and the pace at which the funds must be used.
- There are limits to what the funds can be used for.
- Lump sum drawdowns are subject to all advance payment policy requirements.

HCD only allows CDBG-DR subrecipient jurisdictions to request funds in a lump sum for projects to rehabilitate privately owned properties eligible under Section 105(a)(4), (a)(14) and (a)(17) of the HCDA. This includes the rehabilitation of privately owned commercial or industrial buildings, and the rehabilitation of nonprofit-owned nonresidential buildings and improvements that are not public facilities or improvements. Where a property is owned by a for-profit entity, rehabilitation, under §570.202, is limited to exterior improvements of the building and the correction of code violations. For-profit owned properties that require more extensive renovations may be financed with a lump sum drawdown under §570.203 as a special economic development activity. The subrecipient must establish a rehabilitation fund with financial/lending institutions (bank or credit union) for the purpose of financing eligible housing rehabilitation activities (administration and activity delivery funds are not allowed to be drawn in the lump sum). Lump sum draw requests may not be made or processed prior to the execution of the Standard Agreement and the clearance of all general and special conditions (including guidelines, environmental review, procurement, relocation, real property acquisition, lead based paint, labor, etc.) has been issued and HCD has received, reviewed, and approved the subrecipient/financing institution's rehabilitation fund agreement.

For the purposes of the CDBG-DR grant, HCD is implementing the housing program at the state level per the waivers granted by HUD and does not anticipate any lump sum drawdowns at this point.

#### 4. Payment Processing Procedures

Funds requests, along with required supporting documentation, are completed and submitted electronically through the Grant Management System by the subrecipient to HCD. Each funds request is associated with a specific activity; funds requests do not include expenditure information for more than one project outlined in the Standard Agreement.

All payments are made on a project-by-project basis according to the terms of the Standard Agreement between HCD and the entity (jurisdiction or contractor) carrying out the CDBG-DR activities. No one individual will have complete control over financial transactions. All requests for payment are supported with proper documentation and are certified by the Authorized Signor identified in the resolution executed with each agreement. Funds requests, along with required supporting documentation, are reviewed and approved by the Representative II (program) and submitted for review to the respective Manager I. The form in Grants Network is titled "Financial Report". For Standard Agreements with subrecipients and contractors:

- All invoices are submitted through Grant Management System. The Representative II (program) and Manager (program) or the Contract Manager will review the invoice for programmatic compliance and approves the invoice.
- Upon approval, the Financial Report with the invoices transfers to the Fiscal team in Grants Network who will create the DRGR voucher and Check Request.
- The Check Request is submitted to the Manager I (Fiscal) for approval, suspension, or denial via Grants Network. The Manager I (Fiscal) updates the record in Grants Network with the action taken. If the Check Request is approved, the Manager I (Fiscal) signs the Check Request form for the Accounting Branch.
- The Fiscal team submits the Check Request to the AMD Accounting Branch.
- Once reviewed and approved by the Accounting Branch, a payment is created in FI\$Cal and the DRGR voucher is approved. The Accounting Branch sends the payment information to SCO for issuance of the payment warrant once the federal funds are received from LOCCS.
- Accounting updates the Grant Management System as the warrant information is received from SCO.

The Prompt Payment Act requires payment of requests for funds to be paid within 45 calendar days of receipt unless proper documentation and notification is on file when insufficient information was provided. The Federal Disaster Relief and Recovery sub-Division coordinates with the Accounting Branch to review, approve, and submit funds requests to SCO for timely payment.

The Accounting Branch updates the Grant Management System on disbursement.

#### E. Program Income

In some circumstances, CDBG-DR funded activities may generate program income. If program income has been received, it must be used for eligible project or administration costs before additional grant dollars are drawn from the US Treasury. Income generated by a subrecipient may be retained but the income must be reported to HCD on a monthly basis, as detailed in the Standard Agreement between HCD and the subrecipient (Exhibit B, pages 3-4; Exhibit D, page 16). Program income remaining at the end of each quarter is remitted to the state. HCD reports all program income to HUD through the DRGR quarterly.

Any program income remaining at the end of a Standard Agreement is remitted to HCD during closeout where the Accounting Branch tracks and reports the program income as revenue until it is obligated through a new Standard Agreement. Program income held by HCD and awarded is tracked through Grants Management System similarly to HUD grant funds. As HCD finalizes the program design and determines if program

income will be generated, HCD will refine the program income section to accurately describe how program income will be managed. Additionally, HCD does not anticipate that its CDBG-DR program or Standard Agreements with grantees will include any other transfer of outstanding loans or accounts receivable. However, if the need arises for a transfer of loans or accounts receivable from a CDBG-DR grantee, HCD will incorporate provisions requiring timely transfer of outstanding loans and/or accounts receivable upon the agreement's expiration.

#### F. Salaries and Wages

Salaries and wages of staff persons being charged to the DR grant are documented with timesheets and evidence that the work being performed is related to the Federal grants in accordance with the Federal Task IDs made available to staff on the Department's intranet. Disaster Recovery and Mitigation grant specific Task IDs are developed by the Federal Recovery Data and Reporting team and implemented by the Administration Division.

#### G. Indirect Costs

HCD has an approved Indirect Cost Allocation Plan. Expenditures for real property, such as computer equipment, are distributed to each fund source based on the amount of authorized personnel position per program. The annual dollar amount for costs is determined by the scheduled expenditures. When the computer equipment has reached the end of its useful life, it becomes surplus (there is no income or revenue generated), and the equipment either goes to the Prison Industry Authority, to the State of California Department of General Services, or is identified as waste.

CDBG-DR only reimburses or pays for expenses that are directly related to the approved activities and for costs that are reasonable and necessary for operating the program or completing the CDBG-DR assisted project. Appendix VII of Part 200 (OMB regulations) states:

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. Indirect costs include:
  - a. The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards, and
  - b. The costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website at <https://rates.psc.gov>.

Since governmental entities must support indirect costs with an approved cost allocation plan or an indirect cost proposal prepared in accordance with the circular, indirect costs must be allocated in a manner that will result in the grant program bearing only its fair share of total indirect costs. For subrecipients seeking to use an indirect cost rate for costs related to CDBG-DR program awards, HCD will only review and approve indirect cost allocation requests from subrecipients that include an indirect cost rate plan approved by a federal agency.

#### 1. De Minimis

As an alternate to indirect cost allocations, subrecipients that receive less than \$35 million annually in Federal funding may elect to charge a de minimis rate of 10% of Modified Total Direct Costs (MTDC) which may be used indefinitely and does not require additional documentation. However, this methodology must be used consistently for all Federal awards until the subrecipient chooses to negotiate for an indirect rate.

#### H. Timeliness of Expenditures

Under respective Manager I oversight; each project will be tracked by the Representative II (program). Continued evaluation of each project is performed by the Representative II (program) and the Fiscal Compliance Specialist and is compared to the data contained in the monthly updates and quarterly reports.

At a minimum, HCD uses the following procedures to ensure timeliness:

- 1) Include start and end dates in all contracts with local governments, contractors and/or subrecipients. Most contracts have expenditure deadlines six months before the end of the period of performance.
  - a. As part of the contracting and awards process, HCD works with local governments and contractors to develop performance benchmarks that include projected expenditures. The projection is the basis for monitoring expenditure performance on each activity. Projected start and end dates are identified within DRGR and reported in each quarterly report by activity.
- 2) Review and process expenses submitted by subrecipients in Financial Reports against eligible reimbursements and draw down expenditures in DRGR on a monthly reimbursement basis. This allows for internal monitoring of expenditures and ensures that funds are drawn within the system without delay or a lapse in time.

- 3) HCD staff also monitors the progress of activities in order to address any delay in production which could lead to the slow expenditure of DR funds.
- 4) For stalled activities, subrecipients submit a mitigation work plan, or similar document as specified in their Standard Agreement, designed to get the activity back on track so that funds can be drawn down, as outlined in the Standard Agreement Exhibit A performance measures. If an acceptable work plan cannot be approved, HCD re-allocates funds to address other eligible unmet needs through the use of an Amendment to the Action Plan.

#### I. Ineligible Costs and Improper Payments

An Ineligible Cost is a cost for goods or services that are not eligible for reimbursement, as defined by HUD. If a payment is submitted to HCD (either as a reimbursement, advance, or lump sum draw down) and is determined to be an ineligible expense, HCD notifies the subrecipient and the subrecipient revises the request for funds to exclude the ineligible expense.

An improper payment is any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. These include, but are not limited to: a payment to an ineligible party, a payment for an ineligible cost, a duplicate payment, a payment for a good or service not received (except for such payments where authorized by law), a payment that does not account for credit for applicable discounts, any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper, and any payment that was proper and eligible at the time it was made but a change in circumstances caused variation between the prior payment and actual expenditures.

If any CDBG-DR payments have been made for ineligible costs or activities, the total amount of CDBG-DR funds must be repaid in full (activity, activity delivery and/or administrative funds). If the subrecipient's Standard Agreement is still in effect and the contract balance is greater than the amount of the improper payment, HCD notifies the subrecipient of the improper payment and requires an adjustment, in which the correction is made in the next applicable Financial Report. If the amount of the correction is greater than the total expenditures in the Financial Report, the subrecipient submits the balance in the subsequent Financial Report(s) until the amount owed reaches zero. If the Standard Agreement has expired or the amount of improper payment is greater than the contract balance, HCD will recapture the funds. If the grant is still active, recaptured funds will be abated to that same grant. If the grant is closed out, the funds will be returned to the US Treasury. In cases where an improper payment creates substantial risk, HCD may contact HUD to determine the appropriate action.

Further details on the process for subrecipients to address improper payments are provided in the CDBG-DR Management Memo #23-01 (dated May 10, 2023)



## 1. Required Standards for Asset Management

All HCD subrecipients, as well as their contractors, must have internal controls to safeguard CDBG-DR cash, property, and other assets. Documentation must be maintained in the program and project files to support oversight. A combination of written policies, procedures, detailed job responsibilities, named personnel and their chain of command, along with reports showing the control of all assets purchased with CDBG-DR funds are required. Documentation must include the communication and training of changes in policies and procedures.

Loan portfolio management policies and procedures, as well as evidence of regular, ongoing compliance review for all program assets, must be maintained by each subrecipient who has a loan portfolio.

Upon grant closeout, a report showing the status of cash, as well as each asset financed or purchased with CDBG-DR funds, and restrictions in use for those assets, must be submitted to HCD.

## J. Audit Requirements

Congress created the Single Audit Act of 1984 (Act) to improve auditing and management of federal funds provided to state and local governments. The Act requires a single organization-wide financial and compliance audit for state and local governments. The Act is intended to promote sound financial management, including effective internal controls, with respect to federal awards administered by state and local governments and nonprofit organizations. Internal controls encompass a system of accounting and administrative controls, including management and program policies, procedures, and guidance that help ensure effective and efficient use of resources, as well as prevention and detection of fraud, waste, and abuse, and the reliability of financial reporting.

In accordance with the Single Audit Act of 1984 and the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), non-federal entities are required to track federal funds awarded to recipients and pass-through recipients each year. Non-federal entities that receive \$750,000 or more in federal awards in a single year are required to undergo an annual audit to ensure the accountability for federal awards.

The California State Auditor (State Auditor), the state's independent and nonpartisan audit, evaluation, and investigative arm of the Legislature, plays a critical role in the oversight for federal funds received by the state each year.

As the state's external independent auditor, the State Auditor is the only entity that has, by statute, full access to records, accounts, correspondence, property, or other files of state and local agencies, special districts, public contractors, and school districts. The State Auditor's general powers include the ability to subpoena records, take depositions, and administer oaths. The State Auditor's Office is responsible for evaluating HCD's administration and management of public funds and programs to assure that the proper checks and balances are in place.

In addition to conducting high risk assessments as authorized by statute, investigations of misconduct by state employees, and audits mandated in statute or requested and

approved by the Joint Legislative Audit Committee, the State Auditor is statutorily responsible for annually conducting the statewide Single Audit.

## 1. State of California Single Audit Report

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 Act, Single Audit Act Amendments of 1996, and 2 CFR §200 Subpart F-Audit Requirements. The State Auditor conducts the State of California's single audit, along with efforts from California State Controller's Office (SCO), and the Department of Finance (DOF).

The DOF, consistent with its responsibility for serving as the Governor's chief fiscal police advisor, is responsible for federal audit coordination, DOF assigns the Office of State Audits and Evaluations (OSAE) to perform the necessary steps to carry out the State's responsibilities.

The OSAE performs a wide variety of activities, including financial, performance, and compliance audits; quality assurance reviews; budgetary reviews; and consulting services. Audits are performed in accordance with applicable professional standards such as GAAS and Government Auditing Standards (GAS), as deemed necessary.

OSAE accomplishes these multifaceted objectives using staff with diverse backgrounds, professional certifications, and technological expertise. OSAE is committed to adherence to professional standards and to maintaining the credibility of the organization.

The SCO is the Single Audit oversight agency for most California local governments, ensuring the State of California carries out its responsibilities in accordance with this federal act.

State statutes also mandate that the Single Audit be:

- Conducted in accordance with government and industry auditing standards,
- The independent audit of the state's basic financial statements, and
- The independent compliance audit of numerous federal programs administered by California.

Per OMB Regulations 2 CFR §200.512, the SCO electronically submits the state's Single Audit Report data in the prescribed format to the Federal Audit Clearinghouse within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period. The Single Audit Report is also posted on the California Department of Finance website.

If an outside audit firm is procured to perform any of the audit functions, California Contract Code Sections 10330 through 10334 apply to the procurement and contracting of the firm(s).

This comprehensive annual Single Audit fulfills the provisions of the federal Act, Single Audit Act Amendments of 1996, and 2 CFR 200 Subpart F-Audit Requirements.



At the completion of any audit in which follow-up and corrective action are required, HCD completes a corrective action plan. Corrective action plans are applicable to the audit year but reference previous findings, if applicable.

The final audit reporting package is submitted to the Federal Audit Clearinghouse and includes:

- Financial statements and schedule of expenditures of federal awards
- Summary schedule of prior audit findings
- Any auditor's reports
- The corrective action plan

Alternatively, HUD may elect to perform a program-specific audit on CDBG-DR funds. To comply with a program-specific audit, HCD prepares the financial statements for the CDBG-DR program that include, at a minimum, a schedule of expenditures of CDBG-DR funds and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings, and a corrective action plan, if applicable. The completion of the audit is otherwise consistent with agency-wide audits, including the completion of a corrective action plan and submission of the complete audit package to the Federal Audit Clearinghouse as detailed above.

The Federal Audit Clearinghouse operated on behalf of the U.S. Office of Management and Budget (OMB). Its primary purposes are to:

- Distribute single audit reporting packages to federal agencies.
- Support OMB oversight and assessment of federal award audit requirements.
- Maintain a public database of completed audits.
- Help auditors and auditees minimize the reporting burden of complying with Single Audit requirements.

## 2. Uniform Administrative Requirements

Uniform Administrative Requirements at 2 CFR Part 200.512 require that local governments submit their single audit report to the FAC. In addition, entities are required to submit a complete single audit reporting package to the SCO.

To comply with Uniform Administrative Requirements for audits as set forth in 2 CFR Part 200.500-521, HCD prepares financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is being audited. Audits are performed annually in accordance with the State of California's Financial and Compliance Audit requirements and those set forth at 2 CFR Part 200.504.

## 3. Subrecipient Audit Reports

Subrecipients who spend \$750,000 or more in federal funds during a fiscal year are required to have an audit conducted in accordance with 2 CFR 200.501. CDBG-DR subrecipients that are a non-federal entity must comply with the Single Audit requirements. Compliance is reported to both SCO and the Federal Audit Clearinghouse. Subrecipients who spend less than \$750,000 are exempt from the

audit requirements, however, must submit written notification of its exempt status to the SCO and records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the Government Accountability Office.

Documentation showing compliance with the federal single audit requirements includes:

- If the entity expends less than \$750,000 in federal awards, it is required to submit written notification of its exempt status to SCO;
- If the entity expends equal to or in excess of \$750,000 in federal awards and that amount does not include any state pass-through funds, the entity submits either the audit report or an explanation letter to the SCO. If the entity is currently being monitored by the SCO, a “No Review Letter” is issued to the entity in return; or
- If the entity expends equal to or in excess of \$750,000 in federal awards and that amount includes any state pass-through funds, then the SCO requires a complete single audit reporting package to be submitted for review. Reporting packages are reviewed on a first-in, first-out basis.

Contracts involving the expenditure of public funds greater than \$10,000, entered into by any state, local, or public entity, are subject to an audit by the California State Auditor's Office (State Auditor) for a period of three years after final contract payment per California Government Code, Section 8546.7. Every public contract must contain a provision stating that the contracting parties shall be subject to examination and audit, although failing to include such a provision does not preclude the State Auditor from conducting the audit. The State Auditor will notify HCD of any findings. The SCO also reviews all state subrecipient audit reports submissions and notifies HCD if there are findings related to HUD funding.

HCD issues a Management Decision Letter on the outcome of the audit review within 180 days of the date the audit was received by the SCO. If there are findings, the letter defines a period of time for the subrecipient to provide policies and procedures or any other corrective actions needed to ensure findings are mitigated.

The Management Decision Letter also includes a description of the appeal process available to the auditee. HCD reviews the response and notifies the jurisdiction if the response was accepted. Within 60 days of receiving the Management Decision Letter, the jurisdiction must contact the HCD Representative if they intend to appeal. Within 30 days of contacting the HCD Representative, the appeal must be submitted, in writing, including a proposed resolution and the reason for the appeal. Once received, the HCD Representative must review the appeal with their Manager within 30 days and send a final decision to the jurisdiction. If the jurisdiction does not provide a response, it will be considered out of compliance and counted against them on review of any current or future CDBG applications or CDBG-DR applications.

Subrecipients are required to adopt 2 CFR Part 200 for any award using federal funds and comply with auditing requirements. The State Auditor will review a subrecipient's Single Audit Report or financial statements for compliance in reporting federal funds as compared to state-issued contracts and include

subrecipient contract awards with the submission to the Federal Audit Clearinghouse. HCD's Standard Agreement, which is tracked in Grants Network, requires that subrecipients submit their audits electronically to the Federal Audit Clearing House.

#### 4. HCD Internal Audit

HCD has an Internal Audit unit within the Audit and Evaluation Branch. As a requirement of the CDBG-DR grant agreements, Audit and Evaluation conducts quarterly audits to determine if the service contracts, operations and internal controls of the CDBG-DR program are in compliance with applicable regulations and requirements and are designed to detect and deter fraud, waste, and abuse. The Audit and Evaluation Branch conducts audit engagements in accordance with applicable federal and state laws and regulations that include, but are not limited to, 2 CFR Part 200 and Federal Register Notices. In addition, these audits follow International Standards for the Professional Practice of Internal Auditing by the Institute of Internal Auditors and Generally Accepted Government Auditing Standards (GAGAS) when applicable. During the quarterly audit, Internal Audit staff shall review CDBG-DR payment requests (Financial Reports) and the supporting documents to make sure all costs invoiced are reasonable and payments in the Grants Management System correctly reflect the invoiced amounts, service locations, HUD grant(s) and the purchase order number.

Each of the quarterly reports requires a response from the DFFA Deputy Director that includes a corrective action plan for any findings. Although audits encompass a wide range of topics, HCD staff is comprised of highly trained professionals with a depth and breadth of experience that allows them to evaluate programs and recommend ways to make government more efficient, improve management controls, and instill best practices.

#### 5. Allowable Costs

A proportionate share of audit costs is allowed to be paid for with for CDBG-DR funding, provided that the portion of costs is relative to the portion of the audit that is conducted on CDBG-DR activities. The costs associated with a financial statement audit may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

Audit costs that are not allowable include costs associated with audits that have not been conducted in accordance with the requirements set forth by 2 CFR Part 200 Subpart F – Audit Requirements and the costs of auditing an agency or program exempt from Subpart F requirements because the expenditures under federal awards are less than \$750,000 during the fiscal year.

#### K. Preventing Fraud, Waste, and Abuse

HCD's mission is to provide leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. To support the mission, HCD:

- Is determined to maintain a culture of honesty
- Is committed to preventing fraud, financial abuse and/or waste of federal funds or assets

- Requires all employees to conduct themselves in an ethical and legal manner

All levels of management must provide active, ongoing oversight and monitoring processes for the prevention and early detection of fraud and errors in program administration or activity delivery, and must routinely monitor, evaluate, and improve internal controls when necessary.

## 1. Defining Fraud, Waste, and Abuse

HCD uses the following definitions:

- Fraud is:
  - A type of illegal act involving the obtaining of something of value through willful misrepresentation; or
  - A false representation of a material fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he acts, or fails to act to his detriment; or
  - An intentional deception or misrepresentation made by a person or entity, with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person.
- Abuse is:
  - Any action that may, directly or indirectly, result in unnecessary costs; or
  - The involvement of any payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Abuse includes any practices that are inconsistent with good fiscal, business, or professional practices and that result in an unnecessary cost to any HCD programs, or in seeking reimbursement for goods or services that are not necessary or that fail to meet the program standards.

- Waste includes the overutilization of and/or the misuse of program resources that result in taxpayers not receiving reasonable value for money or other assets in connection with any program funded activities due to an inappropriate act or omission by persons with control over or access to the program resources. Waste is primarily the mismanagement, inappropriate actions, and inadequate oversight of the use of program resources. Waste goes beyond fraud and abuse and includes situations when there is no intent to deceive, misrepresent, commit a crime or violate a law.

## 2. Applicant Review

For the Owner-Occupied Rehabilitation and Reconstruction program, Owner-Occupied Rehabilitation and Reconstruction Mitigation program, the Single Family Reconstruction and the Single Family Mitigation program, the Representative II (program) and Manager I (program) will work with the procured program management vendor to develop an AFWA process for each applicant receiving funds. The AFWA process will also make CDBG-DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity. Program policies and procedures will address steps to assist CDBG-DR beneficiaries if any beneficiaries

do experience contractor or other fraud related to its CDBG-DR activities, and outline steps for assistance as required. The full AFWA process is outlined in the respective program manuals.

### 3. Internal Auditor

The California State Auditor promotes the efficient and effective management of public funds and programs by providing to citizens and the state independent, objective, accurate, and timely evaluations of state and local governments' activities. The purpose of the State Auditor is to improve California government by assuring the performance, accountability, and transparency that its citizens deserve. The State Auditor's staff conduct their reviews in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of their audits and investigations.

Additional details on the Internal Auditor's process can be found under Part J "HCD Internal Audit."

### 4. False Claims Act

HCD also requires its subrecipients to behave in a fair and honest way, and to ensure that funds are used in accordance with all federal and state rules, statutes, regulations and guidance. HCD's subrecipients must have policies in place that require reasonable due diligence in detecting fraud, abuse and waste of resources in their process of providing assistance to beneficiaries.

All HCD CDBG-DR recipients must adhere to the requirements listed in the False Claim Act, located in California Government Code Section 12650-12656, which states that any person who commits any of the acts listed below shall be liable to the state or political subdivision for three times the amount of damages that the state or political subdivision sustains because the act of that person:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
- Knowingly makes, uses, or caused to be made or used a false record or statement material to a false or fraudulent claim.
- Conspires to commit a violation of the False Claim Act.
- Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property.
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property to be used.
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or to any political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or to any political subdivision.

- Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

False claims include billings for undocumented, unnecessary goods or services that are outside the scope of the project as awarded by HCD.

## 5. Whistleblower Protection

California Labor Code Section 1102.5 is California's general whistleblower statute, and provides Whistleblower Protection for employees, former employees, or members of an organization who report suspected misconduct to people or entities that have the power to take corrective action.

On October 12, 2013, former California Governor Jerry Brown signed into law SB 496, which, along with two other new laws (SB 666 and AB 263), expanded protections for whistleblowers in California by significantly altering California Labor Code Section 1102.5. The amendments took effect January 1, 2014.

Before it was amended, Section 1102.5 already prohibited employers from retaliating against employees who reported reasonably believed violations of state or federal laws, rules, or regulations to a government or law enforcement agency. SB 496 extended this protection to employees who report suspected illegal behavior:

- Internally to "a person with authority over the employee" or to another employee with the authority to "investigate, discover, or correct" the reported violation; or
- Externally to any "public body conducting an investigation, hearing, or inquiry." Additionally, SB 496 declares unlawful any employer's rule, regulation, or policy that prevents the disclosure of reasonably-believed violations of local (in addition to state and federal) laws, rules, or regulations.

The bill also imposed liability where any person acting on the employer's behalf retaliates against an employee who engages in protected whistleblowing activity. In addition, employers and persons acting on their behalf may not retaliate against an employee for disclosing such information or because the employer believes the employee has disclosed or may disclose the information externally or internally.

SB 496 further provides that the protection of whistleblowers applies regardless of whether disclosing such information is part of the employee's job duties. For example, a company's compliance officer is protected under section 1102.5 for disclosing purported illegal activity even though his job duties may require him to report such activity externally or internally.

California's general whistleblower statute can have serious consequences for employers—not the least of which are civil penalties of up to \$10,000 per violation. Employers should be aware of the fact that they can now be found liable for "anticipatory retaliation" if they, or any person acting on their behalf, take adverse action against an employee based on the mere belief that the employee has disclosed or might disclose information about a reasonably-believed violation of federal, state, or local law.



SB 496 clarified how employers are to handle the conflict that exists among federal courts about whether an individual must first report a reasonably-believed violation of securities laws to the Securities and Exchange Commission (SEC) to receive protection against retaliation under the Dodd-Frank Act; SB 496 requires that regardless of whether a California employee first reports suspected illegal activity to a government or law enforcement agency, to a specified public body, or via an employer's internal reporting procedure, California whistleblower retaliation laws will protect this activity.

## 6. Reporting Fraud, Waste, and Abuse

Per the State Administrative Manual, section 20080, Notification of Actual or Suspected Frauds and Irregularities, entities (including HCD) must notify OSAE and the State Auditor of all cases of actual or suspected fraud, theft, or other irregularities it has become aware of either internally or by referral. This requirement applies to all incidents involving state assets, whether alleged against state employees or others.

Notification is made to OSAE and the State Auditor in writing not later than the first business day following the actual or suspected fraud, theft, or irregularity. The notification includes, as a minimum, the sequence of events, the internal controls that failed, the means of discovery, the corrective actions taken, the actual or estimated dollar amount, and any punitive actions taken or being considered. In those instances where complete information is not available by the first business day following discovery, a preliminary notification will be made. A complete notification is made within thirty (30) days. If not completed within 30 days, a progress report is submitted every 30 days until the entity has resolution or has referred the incident to the proper authority.

Additionally, agencies must notify OSAE of material irregularities in the annual Letter of Representation in accordance with SAM section 20020 (Single Audit Coordination). For reporting lost, stolen or destroyed property, see SAM section 8643.

All HCD employees are obligated to disclose and report any irregularities, possible violations of fiduciary responsibility or possible violations of state or federal statutes, rules or regulations, or serious wrongdoing and/or gross mismanagement to a person with authority to investigate, discover, or correct the possible violation or noncompliance. Whistleblower protection applies to all HCD activity, including CDBG-DR interagency, subrecipient or contractor's actions associated with the funding awarded for eligible activities and administration costs. Reports of suspected or questionable activities must be made to:

Investigations  
California State Auditor  
P.O. Box 1019  
Sacramento, CA 95812  
[www.auditor.ca.gov/hotline](http://www.auditor.ca.gov/hotline)  
800-952-5665  
916-322-3360  
916-322-2603 fax

The State Auditor will review complaints regarding fraud, waste, or abuse of government funds and forward to the HUD Office of Inspector General (OIG) as appropriate via the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).

## VI. Procurement and Contract Management

This section establishes standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other goods and services for CDBG-DR programs.

On January 6, 2016, HUD's regulations were conformed to the "Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements for Federal Awards" (OMB Uniform Requirements). These OMB Uniform Requirements, found at 2 CFR 200, are the result of combining previously individual federal regulations and OMB circulars into a joint government-wide rule. Prior to the OMB Uniform Regulations, HUD's programs and requirements were covered in various locations; 24 CFR §85.36 (known as the "common rule"); A-87, A-110, and A-122 (2 CFR §220, §225, §215, and §230); circulars A-89, A-102, and A-133; and the guidance in circular A-50 on Act follow-up, to name a few.

Procurement involving federal funding shall be conducted in accordance with applicable federal, state, and local laws and regulations. As such, HCD follows the State of California's procurement processes and standards, which it has certified are equivalent to the procurement standards at 2 CFR 200.317 through 200.327. While the federal standards act as the minimum procurement and contracting requirements for the state's CDBG non-entitlement program, if inconsistencies between federal, state and local procurement requirements arise, HCD will follow the strictest of the requirements.

In addition, HCD follows the policies and procedures identified in the SAM and applicable sections of the Public Contract Code (PCC). Subrecipients must adopt and follow the federal procurement standards at 2 CFR 200.318 through 200.327. HCD is responsible for ensuring CDBG funds are used in accordance with program requirements and the use of contractors does not relieve HCD of this responsibility.

### A. Personnel

The Procurement Division, Department of General Services (DGS), is responsible for every purchase of non-IT supplies or equipment more than \$10,000 and for contracts for purchases for every state agency with such exception as stated in Public Contract Code Sections 10295, 10298, 10430, and 12100.5.

The DGS assists agencies in making determinations relative to the appropriate method of acquisition of their equipment needs. DGS also provides effective means of acquiring equipment, whether the acquisition is to be made by purchase or through non-purchasing techniques. (See, *State Administrative Manual* §3500.)

### B. Code of Conduct

2 CFR 200.318(c)(1) requires HCD to maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. To meet these standards, HCD



follows the requirements of Article 8: Conflict of Interest § 10410,10412 of the PCC, which state, “no officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer’s or employee’s regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.”

### 1. Solicitation or Acceptance of Gifts

2 CFR 200.318(c)(1) allows grant recipients to set “standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.”

The State of California requires HCD and its subrecipients to uphold ethics and bar conflicts of interest in their procurement standards. This includes real and perceived conflicts of interest. The appearance of a conflict of interest includes any indirect or non-cash gifts, such as donations to employee fund-raising drives, event tickets, meals, or giveaway gifts like a Thanksgiving turkey or iPad drawing given in an employee-affiliated organization. These gifts could be considered potential conflicts of interest as they may create influence, real or perceived, over the decisions regarding awards of federal funds.

### 2. Organizational Conflicts of Interest

Conflict of interest requirements are specified by HUD; however, they are also dictated by state and local law. Subrecipients must ensure compliance by reviewing their local government situations and determining if the decision-making process was followed appropriately to ensure HUD as well as California and local standards are followed.

California’s conflict of interest standards of conduct applies to all procurement activities.

All non-procurement activities (acquisition and disposition of property, direct assistance to individuals, businesses) are subject to the HUD requirements described in 570.489(h). The general rule is persons acting on behalf of state or local government in a state CDBG-DR decision making role or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from state CDBG funded activities. This prohibition ends one year after the decision-making person has left their position.

HCD evaluates and decides the outcome of a CDBG-DR subrecipient employee, agent, consultant, officer, elected official, appointed official of the state, locality, any designated public agencies, subrecipients or other recipient on behalf of their employees or agents which are receiving CDBG-DR funds. The regulations contain a list of factors to be included in any requests, and which must be considered when evaluating them, including:

- Whether the exception would provide a significant cost-benefit or essential degree of expertise that would otherwise be missing.

- Whether an opportunity was provided for open competitive bidding.
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries, and the exception will allow the person to receive the same benefits as other members of the class.
- Whether the person has withdrawn from the role of decision- maker.
- Whether the interest or benefit was present before the affected person became an employee, agent, consultant, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subrecipients, which are receiving CDBG-DR funds.
- Whether undue hardship will result to the state, units of general local governments, or affected person when weighed against the public interest.
- Any other relevant considerations.
- Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law.

If a subrecipient has a parent, affiliate, or subsidiary organization, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest refer to situations where, because of the relationships with a parent company, affiliate, or subsidiary organization, the subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

### C. Pre-Solicitation

HCD is required to engage with small and minority businesses, women owned business enterprises, and with labor surplus area firms. In addition, HCD follows certain procedures when it develops and maintains lists of pre-qualified firms.

#### 1. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Per 2 CFR 200.321, HCD "must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible." To meet this important goal, HCD follows the procedures set forth in PCC Article 12: Minority Business Participation §10470-10474.

#### 2. Pre-Qualified Lists

Per 2 CFR 200.319(d), HCD "must ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition." Also, HCD "must not preclude bidders from qualifying during the solicitation period."

HCD does not currently anticipate the use of pre-qualified lists for procured work under the CDBG-DR grant. If that practice changes, this manual will be updated with procedures.

### D. Solicitation Requirements

Per 2 CFR 200.319, HCD has written selection procedures for all procurement transactions prior to securing contract services. These procedures ensure that solicitations include:

- A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- All requirements which the offerors must fulfill.
- All other factors used in evaluating bids or proposals.

#### 1. Full and Open Competition

One of the primary purposes of a procurement process is to ensure full and open competition. Specifically, 2 CFR 200.319 requires that, “all procurement transactions must be conducted in a manner providing full and open competition.” To fulfill this obligation, the State of California has committed to a program of active competition in the procurement of goods and services.

Public Contract Code Section 10318 makes it illegal for any agency or employee to draft or cause to be drafted any specifications in such a manner as to limit the bidding directly or indirectly to any one specific concern, or any specific brand, product, thing, or service. It is the aim and desire of the Procurement Division, Department of General Services, to require that such competition be at all times by responsible suppliers and the materials bought through such competition be properly suited to the job intended both as to price and quality (SAM § 3503).

#### E. Ineligible contractors

In line with the requirements of 2 CFR 200.319(a), HCD is committed to ensuring that contractor performance is measured objectively and that unfair competitive advantages are eliminated from the procurement process. Therefore, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals are to be excluded from competing for such procurements.

#### 1. Examples of restrictive situations

For procurements to be truly open and fair, governments make sure not to exclude any qualified firms from the process. Accordingly, HCD takes action to eliminate the following situations as outlined in 2 CFR 200.319 (a), which are considered to restrict competition:

- Placing unreasonable requirements on firms for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

#### F. Geographic Preferences

To make the process fair and open, all eligible firms are allowed to participate, regardless of where they typically do business. Allowing outside firms to compete gives HCD the best opportunity at finding the right company for the job. Therefore, HCD has committed to following 2 CFR 200.319 (b), which states that HCD, “must conduct procurements in a manner that prohibits the use of statutorily or administratively

imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.”

#### G. Clear and Accurate Descriptions

For HCD to procure exactly the goods or services that it needs, it is important for its staff to draft the procurement language as carefully as possible. As required by 2 CFR 200.319(c)(1), HCD ensures that solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.

Per 2 CFR 200.319(c)(1), these descriptions “may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specification should be avoided if at all possible.”

While federal requirements allow purchasing agents to specify the use of “brand name products or equivalent” to define the performance or other salient requirements of procurement, the specific features of the named brand which must be met by offers is clearly stated.

#### H. Most Economical Approach

Per 2 CFR §200.318(d), HCD has written procedures that seek to avoid the “acquisition of unnecessary or duplicative items.” Therefore, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase.

##### 1. Lease versus Purchase Alternatives

One way governments can avoid the purchase of unnecessary items is to lease goods, instead of purchasing them. Steps are taken, where appropriate, to analyze “lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.”

##### 2. Cost Sharing

Another key tenet of procurement is to foster greater economy and efficiency. To promote the cost-effective use of shared services across the Federal government, HCD examines the effectiveness of entering into state and local inter-governmental agreements for procurement or use of common or shared goods and services in accordance with 2 CFR 200.318(e).

#### I. Surplus property

2 CFR 200.318(f) encourages HCD “to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.” To meet this goal, the State of California adheres to Public Contract Code Section 12153, which authorizes the Department of General Services to, “draft,

establish, and implement policies that ensure the procurement and use of recycled resources.”

Per PCC Article 6: Purchase of Federal Surplus Property §10385-10389, HCD may “purchase, lease or otherwise acquire from the federal government or any agency thereof for use of state agencies, surplus real property, including buildings, fixtures, and equipment situated thereon, whenever in the department’s judgment the purchase or acquisition and the terms and conditions thereof are in the best interests of the state.”

To meet this goal, the Department of General Services:

- Keeps in constant touch with federal agencies charged with the sale or disposition of federal property and secures from them full details as to the nature and availability of the property and the terms and conditions under which it can be purchased or acquired.
- Transmits information thus secured to all state agencies in order that they may possess complete and up-to-date information as to the nature and selling price of available property.
- Prescribes procedures consistent with this article to be followed by state agencies in requisitioning and paying for the property and informs them of the procedures.

#### J. Value Engineering

Per 2 CFR 200.318(g), HCD examines the effectiveness and, where appropriate, uses value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

#### K. Contractor Requirements

Per 2 CFR 200.318(h), HCD awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### L. Independent Cost Estimate and Cost or Price Analysis

HCD and its subrecipients are required to determine that costs are reasonable through performing a cost or price analysis in connection with every procurement action above the Simple Acquisition Threshold [currently set at \$250,000], including contract modifications. There are two parts of the cost or price analysis. First there is the Independent Cost Estimate (ICE) which is done prior to bidding or at least accepting bids for a procurement. Second, a cost or price reasonable analysis must be done after receiving bids but before executing a formal agreement. More detailed information on procurement requirements for CDBG-DR can be found in the [HUD Buying Right Guide](#).

A cost analysis is performed when the respondents are required to submit the elements of their estimated cost, as occurs under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established based

on a catalog or market price of a commercial product sold in substantial quantities to the public or on prices set by law or regulation.

A price analysis is used in all other instances to determine the reasonableness of the proposed contract price.

HCD and its subrecipients will develop an Independent Cost Estimate, which documents the good or service being procured, the method for completing the estimate, the outcome of the estimate, and the supporting documentation used to substantiate the estimate.

#### M. [Methods of Procurement](#)

HCD and its subrecipients are required to use one of the following methods of procurement.

##### 1. [Micro-purchases](#)

2 CFR 200.320(a) defines a procurement by micro-purchase as, “the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-federal entity distributes micro-purchases equitably among qualified suppliers. Micro-purchases are awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.”

##### 2. [Small Purchases](#)

2 CFR 200.320(b) defines a procurement by small purchase as, “those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.”

Where the dollar threshold involved is \$10,000 or less , the Procurement Division requests informal quotations in lieu of using the more expensive formal method. Informal quotations are also used to determine if previous prices are still in effect when dollar amounts are relatively small. These quotes are obtained from qualified sources via telephone, fax, email, mail, or any other reasonable method. In addition, HCD maintains written documentation on the names of the businesses contacted and how they were contacted, the prices that were quoted, and the basis for selecting one firm or supplier over the other(s).

Procurements valued at \$10,000 and less are considered informal and are conducted in accordance with the State Contracting Manual (SCM), Volume II, Purchasing Authority, Chapter 1, Section A requirements for informal competitive non-IT goods procurements.

##### 3. [Sealed Bids](#)

2 CFR 200.320(c) defines sealed bids as procurements that, “are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.” Sealed bids are the preferred method of



procurement for construction contracts, assuming the following conditions from 2 CFR 200.320(c) have been met:

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

HCD follows the requirements of PCC Article 3: Competitive Bidding and Other Acquisition Procedures §10300-10334. Except for contracts and purchases covered by SAM Chapter 1200 and SAM Chapter 5200, contracts and purchases in amounts exceeding \$10,000 are normally made by sealed bid procedure. In emergency situations or other special circumstances, statutes may exempt purchases from the bid procedure. Sealed bids are opened and read at a specified time and are maintained on file (Public Contract Code Section 10301). SAM § 3503.

HCD makes a diligent effort to secure at least three competitive bids. If it cannot obtain three competitive bids, the employee who solicited the bids prepares and signs a list of the firms or individuals contacted. The agency attaches the bid solicitation list and the bids received.

#### 4. Competitive Proposals

Per 2 CFR 200.320(d), the technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

HCD follows the requirements of PCC Article 3: Competitive Bidding and Other Acquisition Procedures §10300-10334. For services contracts, HCD follows PCC Article 4: Contracts for Services §10335-10381. Competitive proposals are used for purchases over 10,000. This procurement method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.

If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- The non-federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and

the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms who are a potential source to perform the proposed effort.

## 5. Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals, also known as sole source procurement, occurs when a proposal is solicited only from one source. Noncompetitive procurement requires HCD approval in writing and may be approved for use only when the award of a contract is infeasible under small purchase procedures, sealed bids, or RFP/RFQ proposals and one of the following circumstances applies:

- Where the item is available from only a single source. This requires a letter from the Authorized Representative explaining the circumstances and requesting a sole source approval from HCD.
- Where a public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods. This also requires a letter from the subrecipient's Authorized Representative explaining the circumstances and requesting a sole source approval from HCD.
- Where after solicitation of a number of sources (RFP/RFQ), competition is determined to be inadequate (one responsible proposal). This requires a letter from the subrecipient's Authorized Representative requesting a sole source approval from HCD and must include the following full procurement file to date:
  - Copy of RFP/RFQ (with all exhibits and attachments).
  - Cost analysis, completed prior to issuing RFP/RFQ (or at a minimum, before receiving bids).
  - Solicitation list, public notices (with proof of publication) and/or other method(s) of distribution, including proof that RFP/RFQ was delivered to the solicitation list.
  - List of all proposals received. If any were considered non-responsive or non-responsible, include the written justifications.
  - Full copies of all bids received, including non-responsive proposals.
  - Review scoring results for each respondent based on selection criteria indicated in RFP/RFQ, including names of subrecipient's review panel.
  - Proof of non-debarment of all proposals received.
  - Complete draft contract (ready-to-execute). This must include all CDBG-DR and CDBG-MIT federal contract provisions.

## N. Pre-Award

### 1. Debarment Check

Per 2 CFR 200, Appendix II (I), "a contract award must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM)...the Excluded Parties List System in SAM contains the names



of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority.”

Prior to a contract being awarded, the CDBG-DR Contract Representative takes the follow steps:

- Search for the awarded party's name at: <https://www.sam.gov/portal/public/SAM/>.
- Verify that the awarded party has not been included on any federal or state debarment lists.

## 2. Contract Costs/Prices

2 CFR 200.324 requires HCD to “perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.”

### a. *Negotiating Profits*

2 CFR 200.324(b) requires HCD to, “negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.”

HCD and its subrecipients negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where a cost analysis is performed. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry standard profit rates in the surrounding geographical area for similar work.

### b. *Cost Reasonableness Determination*

HCD and its subrecipients use a standard form to document the outcomes of the cost or price analysis and determine whether the cost of the bid or proposal is reasonable. The form includes a description of the method used to analyze the cost, a comparison of the cost to the independent cost estimate, and the outcome of profit negotiations.

## 3. Prohibited Contracts

The following types of contracts are either prohibited by 2 CFR 200 or should be used sparingly, with careful oversight.

#### *a. Time and Materials Contracts*

Both federal and state regulations forbid the use of time and materials contracts, except in specific scenarios. These types of contracts create an open-ended contract price, which provides no positive incentive to the contractor to control costs or labor efficiency.

2 CFR part 200.318(j)(1) states that HCD, “may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of: (i) the actual cost of materials; and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.”

Time and material type contracts may be used only after a determination has been made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at their own risk.

A time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiencies. Therefore, subrecipients must document how they will maintain a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. If a time and materials contract is required and justified, the contract must outline clear terms for labor and materials to be included and set a maximum threshold based on cost analysis.

Additional information is provided in the CDBG-DR Management Memo #23-01 specific to time and material contracts located at [CDBG DR MIT Management Memo #23-01 \(ca.gov\)](#).

#### *b. Cost Plus Contracts*

2 CFR 200.324(d) states that, “the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.”

### **O. Contract Provisions**

The following provisions must be included in any contract between a vendor or contractor and HCD.

#### **1. Special Conditions**

##### *a. Insurance Requirements*

HCD requires that, at a minimum, contractors provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by HCD. Federally-owned property need not be insured unless required by the terms and conditions of the federal award.

##### *b. Bonding Requirements*

2 CFR 200.326 requires that, for construction contracts or subcontracts exceeding the Simplified Acquisition Threshold, HCD obtain assurances that its interest is adequately protected.

All HCD subrecipients and contractors must obtain fidelity bonds sufficient to safeguard against fraud and misuse of funds, per 2 CFR Part 200.304(b).

In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. The state and its employees acting in the course and scope of their employment are insured for tort liability arising out of official state business.

HCD subrecipients or contractors that are not state agencies must provide evidence of fidelity bonding to meet the OMB requirements listed in 2 CFR Part 200.304(b) and 31 CFR Part 223, Surety Companies Doing Business with the United States, or provide a self-insurance certification to HCD for the activities associated with any CDBG-DR activities.

*c. Procedures for When Bids Exceed Cost Estimates*

In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, the contractor or vendor must notify the CDBG-DR Representative II, who consults with the Department of General Services to determine the best option to proceed.

**2. Federal Funding Compliance Provisions**

In addition to other provisions required by HUD, all contracts made by HCD under the CDBG-DR grant award must contain provisions covering the following, as applicable.

*a. Equal Employment Opportunity.*

Except as otherwise provided under 41 CFR §60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR §60-1.3 must include the equal opportunity clause provided under 41 CFR §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR §1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR §60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

*b. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).*

When required by Federal program legislation, all prime construction contracts more than \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR §5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.

The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR §3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the Federal awarding agency.

*c. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).*

Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR §5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours.

Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

*d. Rights to Inventions Made Under a Contract or Agreement*

If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and HCD or its subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” HCD and its subrecipients must comply with the requirements of 37 CFR §401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

*e. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardee to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal

awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

*f. Energy Policy and Conservation Act*

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

*g. Debarment and Suspension (Executive Orders 12549 and 12689)*

A contract award (see 2 CFR §180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR §180 that implement Executive Orders 12549 (3 CFR §1986 Comp., p. 189) and 12689 (3 CFR §1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

*h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier-up to the non-federal award.

*i. Solid Waste Disposal Act*

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR §247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines."

*j. Domestic Preferences for Procurements*

A non-federal entity as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods,

products, or materials produced in the United States (including but not limited to iron, aluminum steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- Produced in the “United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### P. [Contract Administration](#)

Per 2 CFR 200.318(i), HCD “must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

In addition, 2 CFR 200.318(b) requires HCD to “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

##### 1. [Awarding Agency or Pass-Through entity review](#)

Per 2 CFR part 200.325, HCD must make available, upon request by HUD or the State of California, technical specifications on procurements. HCD and its subrecipients must ensure that the procurement policies and procedures are comprehensive regarding the level of documentation to be maintained for the purchase of any goods or services. Whenever outside parties (contractors) or subrecipients conduct procurement process, HCD must obtain records of contracts, amendments and evidence of procurement review (contractors or subrecipients may keep originals for their records and provide copies) and make them available and readily accessible for audit, monitoring or other reviews.

#### Q. [Disputes](#)

Per federal regulations, HCD is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of a procurement. These include, but are not limited to, source evaluation, protests, disputes, and claims.

##### 1. [Rejecting Bids](#)

Subrecipients must have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to HCD. A protestor must exhaust all administrative remedies with the subrecipient before pursuing a protest with HCD, and with HUD. Reviews of protests by HCD are limited to:



- Violations of state or federal law or regulations and the standards of procurement
- Violations of the subrecipient's protest procedures for failure to review a complaint or protest. Protests received by HCD other than those specified above will be referred to the subrecipient.

When the range of bids received is such that purchase is not in the best interest of the state, all bids will be rejected. When all bids are rejected, all bidders will be advised. Also, all bids may be rejected when with the consideration of the surrounding circumstances it is determined that it would be in the state's best interest to do so.

## R. [Contract Award](#)

Depending on the type of procurement used, HCD executes the required contract type. Regardless of the services provided or templates used, all contracts must include all required CDBG Compliance Provisions (see Section VI, Part M).

## S. [Contract Modifications](#)

### 1. [Amendments](#)

HCD reviews all proposed contract amendments to ensure that the amendment is in accordance with CDBG-DR program or project objectives. Any amendment that does not meet CDBG-DR objectives is not eligible for consideration.

Prior to approving an amendment that adjusts project costs, the Representative II (procurement/contract management) completes cost or price analysis, including an independent cost estimate. Once the independent cost estimate is complete, HCD reviews the proposed costs from the contractor and ensures that the costs are reasonable. In addition to project costs, HCD reviews amendments to ensure that the proposed change in scope and project timeframe are reasonable and necessary to complete CDBG-DR objectives.

HCD reserves the right to extend existing agreements via amendments, so long as full and open competition is not jeopardized as set forth in 2 CFR Part 200.319, and that the ability to extend the agreement is stipulated within the existing agreement.

### 2. [Change Orders](#)

The procurement process extends to change orders received for previously procured work. Amendments or change orders must be reviewed by HCD before approval or execution by the contractor and must be determined to be reasonable and necessary to complete the contracted task.

Before approving the change order, an independent cost estimate must be completed by HCD to ensure that the change order is reasonable. Once the independent cost estimate is completed, HCD may compare it to a quote supplied by the contractor to perform the work.

Where feasible and appropriate, care must be taken to limit change orders to prevent a violation of free and open competition for CDBG-DR funds. Once accepted, the change order becomes a part of the contract record and all record retention policies governing contracts are applicable.

## VII. Additional Contract Requirements

### A. Performance Requirements and Penalties

Per the February 9, 2018 Federal Register Notice (83 FR 5844) performance requirements and penalties are required to be incorporated into procured contracts using CDBG-DR funds.

The specific requirements and associated penalties to be included in each contract vary based on the type of service(s) or good(s) procured. For all contracts, performance requirements and penalties follow the below guidelines:

- Clearly define performance goals, benchmarks, and deliverables
- Establish deadlines for the completion of each goal, benchmark, or deliverable
- Account for the quantity and quality of services provided, including:
  - Outputs (the products or assistance delivered)
  - Outcomes (the consequences of the products or assistance)
- Establish HCD's methods for monitoring performance requirements
- Outline penalties associated with failing to meet established deadlines
- Define the nature of the penalty (e.g. liquidated damages for failing to meet a deliverable deadline)
- Establish the contractor's method(s) for curing noted deficiencies
- Adhere to established reporting schedules and methods

### B. Additional Standards

#### 1. CDBG-DR Green Building Standards

HUD requires all rehabilitation, reconstruction, and new construction to be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Wherever feasible, the State of California follows best practices, such as those provided by the U.S. Department of Energy, Home Energy Professionals: Professional Certifications and Standard work specifications.

For CDBG-DR funded projects, HUD requires green building standards for replacement and new construction of residential housing.

#### 2. CDBG-DR Green Infrastructure Standards

HUD encourages the implementation of Green Infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's (EPA) Green Infrastructure website (<https://www.epa.gov/green-infrastructure>).

#### 3. California Green Building Standards

The State of California encourages, where appropriate, construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and reduction of hazard risk, including possible sea level rise, storm surge, and flooding. In addition to the federal standards outlined above, the State of California follows all state building codes.



## **VIII. Records Management**

Records are maintained in accordance 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). Records are kept to document compliance with program requirements, with federal, state and local regulations, and to facilitate audit review by HUD. CDBG-DR records are subject to the Freedom of Information Act and California Access to Public Records.

For each CDBG-DR funded activity, grant file records must contain reliable and up-to-date information. At a minimum, the records must include:

1. A copy of the grant received
2. Full description of activities undertaken
3. Documentation that all activities undertaken meet at least one of the CDBG National Objectives
4. Documentation of determination of eligibility of all activities
5. Documentation of acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR assistance
6. Documentation of compliance with all applicable HUD cross-cutting requirements (such as Davis-Bacon and Section 3)
7. Financial records as required by 2 CFR part 200, 24 CFR part 570.502, and state requirements, which include:
  - a. Current authorizations and obligations of CDBG-DR funds
  - b. Unobligated balances (funds remaining available for distribution)
  - c. Assets and liabilities
  - d. Program income if any
  - e. Actual outlays or expenditures, with a breakdown of the grant program the funds were derived from
  - f. Clear evidence indicating the use of program funds belongs to the eligible activity
  - g. Evidence each expenditure is necessary, reasonable and directly related to the project

In addition to the above requirements, construction project files must also contain the following information:

1. Full description of the project
2. Project budget
3. Evidence of obligated and committed funding (all sources)
4. Work specifications
5. Bid documents, including the RFP, cost estimate, evidence of contractor solicitation, scoring, evidence of non-debarment, and selection
6. Davis-Bacon prevailing wage determination
7. State prevailing wage determination
8. Weekly payroll certifications and back up documentation
9. Payroll deduction authorizations
10. Employee field interviews

11. Progress and final inspections, including documentation of the subrecipient's periodic on-site inspections and final inspection
12. Change orders, including evidence of necessity and approval prior to work being completed
13. All correspondence related to construction
14. Progress and final disbursements records. Files must contain documentation that payments were paid only for completed work, and data in the project file must agree with the project financial records

A detailed list of programmatic documentation needed for the successful monitoring of each CDBG-DR project is listed in the Section XVI, Monitoring and Compliance.

#### A. [Protection of Personally Identifiable Information](#)

In the normal course of grant administration, HCD and its subrecipients may receive personally identifiable information (PII). PII is information that can be used to distinguish or trace and individual's identities. Examples of PII include names, addresses, income verification documents, disability status, employment status, etc. which can be linked or is linkable to a specific applicant and/or beneficiary of CDBG-DR programs. HCD anticipates receiving PII information during the administration of housing recovery programs, such as:

- First and last names
- Mailing and/or damaged addresses
- Driver's license numbers or other identification numbers
- Birth dates
- Telephone numbers and email addresses
- Financial and employment information
- Limited medical information, such as disability or handicap

HCD, its subrecipients, and its contractors take the following steps to protect personally identifiable information:

- Limit collection of PII
- Maintain hard copies of PII records in locked filing cabinets
- 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 DOB analyses.

If records containing PII are subject to Freedom of Information Act or California Access to Public Records requests, such records shall only be released in accordance with state and federal law. PII records will only be stored as long as is necessary, in accordance with record retention requirements at 2 CFR 200.333 and 24 CFR 570.502(a)(7).

#### B. [File Security](#)

Active HCD records are maintained in limited access areas. Employee keycard access is required to enter office areas containing paper records. Electronic records are stored on restricted access shared drives, servers, or web portals.

### C. Access to Records

Representatives of HUD, the Inspectors General, the Comptroller General of the United States, or any of their authorized representatives have the right of access to any documents, papers, or other records pertinent to a CDBG-DR award to complete audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to HCD's personnel for interview and discussion related to such documents.

HCD also provides citizens access to records regarding the use of CDBG-DR funds on HCD's CDBG-DR website. HCD protects PII in the public access of CDBG-DR records, consistent with State of California Civil Code section 1798 guaranteeing the privacy of California citizens and providing limits on the collection, management, and dissemination of personal information by state agencies. Subrecipients are also required to make information on programs funded by CDBG-DR easily available to citizens and by any public requests.

### D. Retention Policy

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. 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.
- When records are transferred or maintained by HUD, the retention requirement will no longer apply to HCD.

Records involving assets, change of use provisions, outstanding loan balances, other receivables, or contingent liabilities must be retained for as long as those provisions continue to apply to the activity or until liabilities have been satisfied. Any exemption or other regulations that apply to records retention will be included in a subrecipient's Standard Agreement, but all subrecipients must comply with 24 CFR part 570.490.

Additionally, HCD subrecipients and contractors must maintain accounting records that adequately identify the sources and application of CDBG-DR funds. For each CDBG-DR funding award, each organization must have the following:

- Chart of accounts which includes general assets, liabilities, expenses and revenues
- Cash receipts and disbursement journal
- Payroll journal
- General ledger

- Original contracts and procurements

#### E. [Accessibility](#)

HCD websites are developed in compliance with Section D of the California Government Code 11135. Code 11135 requires that all electronic and information technology developed or purchased by the State of California Government is accessible to people with disabilities. There are various types of physical disabilities that impact user interaction on the web. Vision loss, hearing loss, limited manual dexterity, and cognitive disabilities are examples, with each having different means by which to access electronic information effectively. The goal is to provide a good web experience for all visitors.

## IX. [Eligible Activities](#)

Activities must meet at least one CDBG program eligible activity listed below or approved in a subsequent waiver from HUD. For a detailed overview of all CDBG eligible activities, please refer to 24 CFR Part 570.480 and 570.200, where applicable. The following list includes the eligible activities that correspond to planned CDBG-DR projects and programs.

For additional CDBG-MIT eligible activities see the CDBG-MIT Addendum Section VI.

#### A. [Acquisition](#)

CDBG-DR funds may be used by HCD and its subrecipients to acquire real property in whole or in part by purchase, long-term lease, donation, or otherwise. In order to be considered acquisition, a permanent interest in the property must be obtained. Long-term leases are considered to constitute a permanent interest for this purpose if the lease is for a period of 15 years or more.

CDBG-DR funds may be used under this category by HCD, its subrecipients, a public agency, a public nonprofit entity, or a private nonprofit entity to acquire real property for any public purpose. This authority is subject to limitations of 24 CFR §570.207(a)(1), which would preclude the acquisition cost attributable to a building to be used for the general conduct of government and 24 CFR §570.207(a)(3) and the acquisition of property to be used for political activities.

In addition, use of the property is subject to 24 CFR §570.489(j) so that any local government seeking to change the use or planned use of any property acquired by CDBG-DR funds in an amount greater than the small purchase procurement threshold (2 CFR §200.88) must provide reasonable notice to citizens on the change and opportunity for public comment. The new use must meet one of the national objectives and eligibility criteria. If the local government changes the use of the property, and it does not meet the qualifications for eligibility, the state may seek reimbursement of CDBG-DR funds expended for the acquisition at the current fair market value of the property. This standard applies from the date the CDBG-DR funds are first spent on the property until five years after closeout of the agreement with the local government.

#### B. [Relocation](#)

Relocation payments and assistance for displaced individuals, families, businesses, nonprofit organizations, and farm operations, where the assistance is (1) required

under the provisions of §570.606 (b) or (c); or (2) determined by HCD and its subrecipients to be appropriate under the provisions of §570.606(d).

CDBG-DR funds may be used for optional relocation payments and assistance to persons (individuals, families, business, nonprofit organizations, and farms) displaced by an activity that is not subject to the requirements described above. This may include payments and other assistance for temporary relocation (when persons are not permanently displaced). While HCD and its subrecipients must make every effort to prevent or limit the displacement of families in its programs, relocation assistance is an eligible activity and expense.

Optional relocation payments and assistance may also include payments and assistance at levels higher than required. Unless optional payments and assistance are made pursuant to state or local law, the subrecipient may make such payments and assistance only upon the basis of a written determination that such payments and assistance are appropriate, and only if the subrecipient adopts a written policy available to the public, setting forth the relocation payments and assistance it elects to provide. The written policy must also provide for equal payments and assistance within each class of displaced persons. For more information, refer to 24 CFR §570.201(i) and 24 CFR §570.606(d).

### C. [Housing](#)

Eligible housing activities for HCD and its subrecipients include new construction and rehabilitation of single-family or multifamily units that address needs in the disaster-related areas. Activities carried out for housing are also required to coordinate with HUD-certified housing counseling organizations to ensure that information and services are made available to both renters and homeowners.

Per the Appropriations Acts, Public Laws 115-123, 115-124, and 116-20 it is prohibited to use CDBG-DR funds for activities that are reimbursable by FEMA and the U.S. Army Corps of Engineers and policies must be in place that ensure CDBG-DR funds are not used to duplicate funding provided by these agencies or any other potential sources of assistance.

#### 1. Rehabilitation

CDBG-DR funds may be used to assist existing homeowners with the repair, rehabilitation, or reconstruction of housing units that were damaged by the qualifying disaster. Eligible rehabilitation activities under 24 CFR §570.202 include improvements for privately owned residential units; single-family residential property which is also used as a place of business, and where repairs are required in order to operate the business; low-income public housing and other publicly owned residential buildings; and manufactured housing as part of the community's permanent housing stock.

Multifamily rental projects with eight or more units that are rehabilitated or reconstructed with CDBG-DR funds are subject to a minimum affordability period of 15 years. If the property is already in an affordability period, HCD has the option to run the 15 years required by this allocation concurrently.

Reconstruction is also eligible under rehabilitation when demolishing and rebuilding a housing unit on the same lot in substantially the same manner. The

number of housing units on the lot may not be increased, however, the total number of rooms in a unit may be changed, or the number of housing units on the lot may be decreased to reduce density. If decreasing a housing unit's size or number of units, relocation may be required for any LMI households that are displaced.

The cost-effectiveness of rehabilitation or reconstruction must be documented for each proposed project to assist a household under any housing repair program. If the criteria for determining cost-effectiveness show the cost of the rehabilitation or reconstruction of the unit will be more compared to other means of assisting the property-owner, such as buyout or acquisition of the property, then using the most cost-effective method for assistance should be pursued.

## 2. New construction

HCD, or its subrecipients, may also construct new single-family or multifamily homes to replace housing stock in the target disaster-related areas for LMI households. All newly constructed single-family housing is subject to a minimum five-year affordability period. In addition, HCD shall establish resale or recapture requirements for new single-family housing funded by CDBG-DR. New developments of multifamily rental housing with five or more units that is constructed with CDBG-DR funds have a minimum affordability period of 20 years.

## D. Economic Development

For CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the local economy through the attraction, retention and return of businesses and jobs. The activity may address job losses, or negative impacts to tax revenues or businesses.

Economic development activities for low to moderate persons under 24 CFR §570.203 are primarily focused on job creation or retention efforts, where the jobs created are permanent and the business benefiting from CDBG-DR funds employs 51 percent LMI persons.

Under economic development, jobs can be created or retained. In order to be eligible for the activity, positions made available to LMI persons must meet certain criteria and thresholds set in the SA or by the subrecipient. These include:

- The jobs do not require specialized skills that take more than one year of training or work experience, or education beyond high school, unless the business agrees to hire and train unqualified persons.
- The business must set out hiring practices that ensure LMI persons receive first consideration, such as at least 51 percent of LMI persons interviewed would be hired.
  - In considering offering a position, the distance from an LMI person's residence and the job site must be a reasonable commute.
- The number of jobs must be set based on full time equivalency (FTE) counts.
- Eligible LMI jobs do not have to be funded by CDBG-DR. However, jobs indirectly created from CDBG-DR assistance are not included.

Income for employees at the time of CDBG-DR assistance must be collected to determine the LMI benefit. This would be prior income for a job created, and current income for a job retained. A person can also qualify as presumed LMI if living in a



census tract or block area that has at least 70 percent LMI residents, or both the business and the job are located in a census tract or block area that meets the federal Enterprise Community or Empowerment Zone criteria, which can be found under 24 CFR §570.208(a)(4)(iv) and (v).

All economic revitalization activities must address the economic impact(s) caused by the disaster (e.g., loss of jobs, loss of public revenue).

A waiver of the public benefit standard was provided for CDBG-DR funds under the Federal Register Notice [83 FR 5844](#) and [84 FR 45838](#) for CDBG-MIT.

#### E. Public Facilities and Improvements

The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in 24 CFR §570.207(a).

Neither the HCDA nor the Code of Federal Regulations define the terms “public facilities” or “public improvements.” However, in the CDBG program, these terms are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public.

Public facilities include firehouses, civil defense shelters, public schools, libraries, and housing shelters. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property, such as trees, sculptures, pools of water and fountains, and other works of art.

Activities may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in §570.207(a)(1). In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG-DR assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. CDBG-DR funded projects must ensure a review of all architectural and engineering design is complete before a project begins.

Facilities designed for use in providing shelter for persons having special needs are considered public facilities. Such facilities include shelters for the homeless, convalescent homes, hospitals, nursing homes, battered spouse shelters, halfway houses for run-away children, drug offenders or parolees, group homes for handicapped individuals and temporary housing for disaster victims.

In certain cases, nonprofit entities and subrecipients, including those specified in 24 CFR §570.204, may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance are subject to the policies in §570.200(b). For more information, see 24 CFR §570.201(c).

## F. Clearance

Clearance refers to the demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

For activities under this category that are integral to the construction of a building or improvement on the cleared property, where such construction is also to be assisted with CDBG-DR funds, the clearance activities may be treated as a part of the construction costs and do not need to be qualified separately under the program.

## G. Mitigation

HCD may incorporate preparedness and mitigation measures into CDBG-DR assisted activities to rebuild communities to be more resilient to future disasters.

## H. Planning and Capacity Building

HCD is authorized to use CDBG-DR funds to conduct studies, analyses, data gathering, prepare plans, and identify actions to implement plans. Funds can be used under this category for activities designed to improve HCD's capacity to plan and manage programs and activities for HCD's CDBG-DR program. See 24 CFR 570.205.

Planning and capacity building activities do not include:

- Engineering, architectural, and design costs related to a specific project
- Other costs of implementing plans

The amount of funds that can be used under this category is subject to the statutory limitation on planning and administrative costs of five percent of the CDBG-DR grant award.

Documentation of a national objective compliance is not necessary for this activity because planning and capacity building is considered to address the national objectives of the CDBG-DR program as a whole. See 24 CFR 570.208(d)(4).

## I. General Administration Costs

General administration costs include staff and related costs required for overall program management, coordination, monitoring, reporting, and evaluation of the CDBG-DR grant.

Activities eligible under this category include citizen participation costs, fair housing activities, and staff costs for project delivery. See Section 105(a)(13) of the HCDA.

The amount of funds that can be used under this category is subject to the statutory limitation on planning and administrative costs of five percent of the CDBG-DR grant award.

## J. Ineligible Activities

The general rule is that any activity that is not authorized under the provisions of 24 CFR §570.201-570.206 as eligible should be considered ineligible. The activities stated below have been determined to be ineligible.



If any CDBG-DR payments have been made for ineligible costs or activities, the total amount of CDBG-DR funds must be repaid in full (activity, activity delivery and/or administrative funds). HCD will return the funds to the Standard Agreement for use for eligible activities if the Standard Agreement is still in effect. If the Standard Agreement has expired, HCD will return funds to the grant to redistribute as long as the grant is active. If the grant is near closeout and amendments or additional activities are no longer allowed, HCD will submit options for use of the returned funds to HUD to determine the appropriate action.

### 1. Categorically Ineligible

The following activities may not be assisted with CDBG-DR funds under any circumstances:

- **Buildings or portions thereof used for the general conduct of government as defined under 24 CFR §570.3(d).** This does not include, however, the removal of architectural barriers involving any such building, which may be assisted under the category of Public Facilities and Improvements. Also, where acquisition of real property includes a building or other improvement that to be used for the general conduct of government, the portion of the acquisition cost attributable to the land may be assisted under the category of Acquisition of Real Property.
- **General government expenses.** Except as otherwise specifically authorized under OMB requirements at 24 CFR §200, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.
- **Political activities.** CDBG-DR funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG-DR funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

### 2. Generally Ineligible

The following activities may not be assisted with CDBG-DR funds, unless authorized under provisions of 24 CFR 570.203, an activity providing economic development assistance to a for-profit business, or when carried out by an entity under the provisions of 24 CFR 570.201(c), by an eligible nonprofit organization.

- **Purchase of equipment.** The purchase of equipment with CDBG-DR funds is generally ineligible, however exceptions for the following can be found in 24 CFR §570.207(i):
  - Construction equipment
  - Fire protection equipment
  - Furnishings and personal property
- **Operating and maintenance expenses.** Generally, any expense associated with repairing, operating, or maintaining public facilities, improvements, and services is ineligible. Specific exceptions to this general

rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG-DR program.

- **Income payments.** The general rule is that CDBG-DR funds may not be used for income payments. For purposes of the CDBG-DR program, “income payments” is defined as a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments.

## X. National Objective

All CDBG-DR funded activities must meet one of the three national objectives required under the authorizing statute of the CDBG program:

- Benefit Low and Moderate Income (LMI) persons
- Aid in the prevention or elimination of slum or blight (Slum and Blight)
- Meet a need having a particular urgency (Urgent Need)

CDBG regulations state that a project is not considered to have met a national objective until it is complete. This requires HCD to track each project through completion and closeout phase.

HCD’s CDBG-DR projects meet the following National Objectives:

Programs	National Objective
Housing Rehab and Reconstruction	Low- and Moderate-Income Housing and Urgent Need
Workforce Development	Moderate-Income Limited Clientele (LMC), under LMI
Infrastructure	Low and Moderate-Income area benefit
Multifamily Housing	Low and Moderate-Income Housing and Urgent Need
Public Services	Benefit Low- and Moderate-Income persons

For additional CDBG-MIT national objectives see the CDBG-MIT Addendum Section VII.

### A. National Objective Compliance

#### 1. Acquisition

Qualifying an acquisition activity under one of the CDBG national objectives depends entirely on the use of the acquired real property following its acquisition.

A preliminary determination of compliance may be based on the planned use and documentation shows that the property was acquired at fair market value. Eligibility for the use of the property should be documented based on the national objective that it is intended to meet, for example if the national objective is LMI Area Benefit, then it must be shown that the property will be used in a purpose that will benefit all residents in a designated area that is at least 51percent LMI. If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, HCD and its subrecipients must document the general use it intends for the property, the national objective category it expects will be met, and make a written commitment to use the property only for

a specific project under that general use that will meet the specified national objective.

The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use” under 24 CFR §570.503(b)(8) or §570.505, as applicable.

Since the ultimate use of the property determines how a national objective will be met, whenever the use differs from that considered at the time of acquisition, a review must be made of the new use to ensure it will meet a national objective. When such review results in the determination that the national objective being met differs from that ascribed to the activity initially, an adjustment must be made to the program records.

If property acquired with CDBG-DR funds, or any interest therein, is subsequently transferred to another entity, the property or interest must be sold to the entity at the current fair market value unless the property will be used for an activity which meets a CDBG national objective. Sale proceeds would be program income. The purchase of real property by HCD and its subrecipients or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Among other things, this could mean that persons displaced as a result of the acquisition must be provided with financial assistance. Temporary easements, acquisition from another public agency, and voluntary offers in response to a public solicitation are exempt from Uniform Act requirements. Reference: 24 CFR §570.606.

## 2. Relocation

The compliance of relocation activities with the national objectives of the CDBG-DR program must be determined in one of two ways, depending on whether the relocation assistance is mandatory. Where such assistance is required under the Uniform Act or the CDBG statute, the activity may qualify as meeting the national objective of benefiting LMI persons only where the acquisition or rehabilitation causing the relocation can also qualify under that objective.

If HCD or its subrecipients acquire property for construction of a public facility that will serve an area that qualified under the slums/blight objective, but cannot qualify as benefiting LMI income persons, the payment of assistance to those displaced by such activity would qualify under the slums/blight objective even if most or all of those displaced are LMI persons. This is because HCD and its subrecipients are required by law to make such payments and therefore it must be viewed as an integral part of the displacing activity.

In any case where the payment of such assistance is voluntary on the part of HCD or its subrecipients, however, the relocation payments could qualify either on the basis of the re-use of the property or the income of the recipients of the relocation assistance, at HCD and its subrecipients' option. Thus, HUD would accept a claim of addressing the LMI benefit objective where the voluntary payment of relocation benefits is made to LMI persons who were displaced by an activity that could not

be considered to meet that objective. This is because the payment of such benefits clearly would not be needed to make possible the activity causing the displacement.

Because of the relationship of the optional versus mandatory aspects of relocation payments to the national objective determinations, it is critical that HCD and its subrecipients make this distinction in its program files and identify the displacing project.

### 3. Housing

#### *Rehabilitation*

Homeowner rehabilitation may be an urgent need activity or a benefit to low and moderate-income households, but it must be documented that the home sustained damage as a direct result of either wildfire event. Proof of the damage sustained can be provided by copies of applications for FEMA assistance, private insurance claims, or other third-party verification, and ideally, photographs should also be provided. An independent damage assessment and a calculation of benefits received from other agencies or sources for assistance must be included in determining the amount of rehabilitation to be provided from CDBG-DR funds.

#### *New construction*

New housing construction can qualify under the urgent need national objective as long as the need is documented as a result of the disaster event and no other funds can be made available for the construction. The final sale of the homes must be to qualified eligible income households.

### 4. Economic Revitalization

#### *Job Creation*

Activities tied to LMI jobs or LMJ are qualified under CDBG as economic development serving low and moderate income persons. Compliance is documented through multiple records maintained by the business receiving assistance and HCD:

- **Written agreement.** The agreement between HCD, and/or the subrecipient, and the business receiving CDBG assistance states the specific number of jobs to be created or retained and the actions the business, and the subrecipient, or HCD, will take to ensure the jobs will benefit LMI persons.
- **Jobs created or retained.** Records must be maintained on which jobs were created or retained, what the FTE of each position was, and whether each job was held by or made available to an LMI person.
- **Jobs filled by LMI.** For those positions filled by LMI persons, the records must also include the exact job titles and the name, address, and income status of the person who took the job. Refer also to the presumption criteria under Section IX – “Eligible Activities” to determine LMI status.
- **Jobs made available.** If positions were not filled, but the business wants to count them toward the required number set in the agreement, the records must document the title, description and FTE of each position, as well as any prerequisites, skills or education required to qualify for the position and if the business committed to provide necessary training. In addition, records must show how consideration was given to any LMI application, the name of

persons who interviewed, along with the date of the interview and the income status of the applicant.

- **Jobs retained.** To document jobs retained by CDBG funds, records must include:
  - Evidence that jobs would have been lost without CDBG assistance
  - A listing of the jobs held by LMI persons and the FTE status of each job
  - Information on the family size and income status of each LMI person in a retained job

Evidence that jobs would be lost without funding can be documented by notices to employees or public announcement of job cuts, or an analysis of financial records to support that the employer would be required to cut jobs without assistance.

- **Job turnover.** As turnover is a part of any workplace, it must be included in the documentation for economic development compliance. Specifically, files must include:
  - Listing of current positions that were retained and are projected to turn over and become available for LMI persons within two years of CDBG assistance and the basis for projecting the turnover
  - Documentation of the date of any turnover and the name and income status of the individual filling the vacancy
  - If the person filling the vacancy is not LMI, the file must show how the job was made available to an LMI person

### *Workforce Development*

Workforce Development projects that provide job training under an Economic Revitalization program use the eligible category of public services activities to carry out the job training. These projects that provide job training and do not include job creation within the project scope will be documented as meeting the LMI National Objective through serving eligible individuals that meet the requirements of the “Low- and Moderate-Income Limited Clientele” category.

The LMI Limited Clientele category may be used when the project documents any or all of the following:

- At least 51 percent of clients are LMI;
- Serves a group of individuals generally presumed to be principally LMI. This presumption covers abused children, battered spouses, elderly persons, severely disabled adults (see the box below), homeless persons, illiterate adults, persons living with AIDS and migrant farm workers;
  - Sets income eligibility requirements limiting the activity to LMI persons only; and/or
- Program activities or the program location are such that it can be concluded that clients are primarily LMI.

Workforce Development projects that provide assistance to for-profit businesses will be structured to provide job training that will also result in job creation. In this case the activity will be documented as meeting the LMI Job Creation National Objective.

## 5. Public Facilities and Improvements

As provided in Section 105(a)(2) of the Housing and Community Development Act of 1974, the acquisition, construction, reconstruction, and improvements of public works, facilities, and site or other improvements (except for buildings for the general conduct of government) are eligible for CDBG funding.

Public facilities or public improvements are generally defined as those which are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. Site improvements of any kind made to property that is in the public ownership or use are considered to be a “public improvement”.

Except for highly specialized facilities, most public facilities and improvements are intended to benefit all residents of an area. Therefore, to qualify under the national objective of benefit to LMI persons, the CDBG funded public facilities and improvements must serve a primarily residential area having at least 51 percent LMI residents.

The appropriate service area of the intended benefit is dependent on the anticipated use and scale of the improvement. HUD does not prescribe a singular methodology for establishing service area boundaries. However, HUD has established that census data, including census tracts or block groups, may be used to determine the LMI ratio in an anticipated service area. If there is a reasonable expectation that the census information does not support that the intended service area would benefit a predominately LMI population, a survey using appropriate methodology for obtaining LMI income data may be used in lieu of conflicting census information.

## 6. Clearance

Section 105(a)(4) of the Housing and Community Development Act of 1974 defines Clearance as:

- The demolition of buildings and improvements
- The removal of demolition products (rubble) and other debris
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless
- Movement of structures to other sites

Clearance may be considered a separate CDBG activity, but in scenarios where clearance is an integral part to the construction or improvement on a CDBG funded site, the clearance activity may be treated as a part of the construction costs and scope and need not be qualified separately under the CDBG program. Meeting the national objective is dependent on the purpose of the proposed clearance project:

National Objective	Qualifying Condition
LMI – Area Benefit	The cleared property will be used for a purpose the benefits of which are available to all the residents in a particular area, and at least 51% of those residents are LMI persons.
LMI – Limited Clientele	The cleared property will be used for an activity the benefits of which are limited to a specific group of people, at least 51% of who are LMI persons.
LMI Housing	The cleared property will be used for providing housing to be occupied by LMI persons. Rental units for LMI income persons must be occupied at affordable rents.
LMI Jobs	The clearance is part of an activity that will create or retain permanent jobs, at least 51% of which are for LMI persons.
Slum or Blighted Areas	The clearance activities are within a designated blighted area and are designed to address one or more conditions that contributed to the deterioration of the area.
Spot Blight	The clearance activity is undertaken to eliminate specific conditions of blight or physical decay on a spot basis not located in a designated slum or blighted area.
Urgent Needs	The clearance is part of an activity designed to alleviate existing conditions and the grant recipient certifies that those conditions are a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.

## **XI. Duplication of Benefits**

Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) prohibits federal agencies from providing assistance to any “person, business concern, or other entity” for any loss to which the entity has already received financial assistance from another source (42 U.S.C. 5155(a)). The Federal Register Notice, published November 16, 2011 (Docket No. FR-5582-N-01), requires adequate policies and procedures in place to prevent a duplication of benefit and the recapture of funds, if necessary. Additional guidance was published on July 25, 2013, titled “Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR assistance,” which was further updated on June 20, 2019, in a Federal Register notice entitled, “Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees” (2019 DOB Notice). The steps and actions described in the 2011, 2013, and 2019, 2023 guidance documents are mandatory requirements applicable to the use of CDBG-DR funds.



As stated in the Federal Register Notice published September 28, 2020 (85 FR 60821), the 2019 Notice and updates shall be used for any new programs or activities identified within an Action Plan or Action Plan Amendment. Existing programs (prior to September 2020) must apply the 2019 Notice requirements, as applicable, when updating or revising policies and procedures and amend the related Action Plan to correct any duplication of benefit policy inconsistencies.

As stated in the Federal Register Notice published November 27, 2023 (88 FRN 82982), the Disaster Recovery Reform Act of 2018 (DRRA) loan exceptions shall not apply to any disasters occurring in 2022 or 2023, therefore, subsidized loans may be a duplication of benefits for the 2023 CDBG-DR grant. The DRRA loan exception ended as of October 2023. As of this allocation, most subsidized loans duplicate CDBG-DR funds for the same purpose (there are limited exceptions for declined, cancelled, or subsidized short-term loans to pay for eligible costs before CDBG-DR funds became available.). Reimbursement of costs paid with the proceeds of subsidized loans is not permitted as of the end of the DRRA.

A duplication of benefit (DOB) occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular funding need. The amount of the duplication is the amount of assistance provided in excess of the need. It is HCD's responsibility to ensure that each CDBG-DR program or project provides assistance only to the extent that the recipients project's funding needs have not been met by another source.

Uniform procedures for addressing potential DOB are incorporated into the design and administration of projects and programs. At a minimum, these procedures include required actions for:

- Verifying all sources of disaster assistance.
- Determining the amount of the unmet need (for projects or applicant-based programs) before determining or awarding assistance.
- Ensuring beneficiaries enter a signed agreement to repay the assistance if they later receive other disaster assistance for the same purpose.
- Identifying a method to monitor compliance with the terms of the agreement for a reasonable period.
- Identifying the personnel or unit of government responsible for carrying out the DOB review
- The completion and retention of documentation demonstrating the review process in compliance with CDBG-DR record keeping requirements.

#### A. DOB Determination and Potential Sources

It is the responsibility of HCD to determine that no DOB exists before paying CDBG-DR funds to a project to ensure that beneficiaries are not receiving a DOB. These responsibilities include, but are not limited to:

1. **Assess the needs of the beneficiary based on the CDBG-DR activity.** HCD determines the amount of assistance needed to complete a CDBG-DR activity. An independent estimate is used to establish the project cost. This assessment must be conducted prior to the receipt of CDBG-DR funds. All costs determined

for assistance to beneficiaries must meet the “necessary and reasonable” definitions in 24 CFR Part 225 and 2 CFR Part 200.

**2. Identify all available and duplicative assistance.** HCD identifies the total assistance available to a subrecipient or applicant for the project, including funds and assistance received or reasonably anticipated. Potential DOB Sources include:

- Other HUD funds, including CDBG and CDBG-DR
- Federal Emergency Management Agency (FEMA) Public Assistance (PA) or Individual Assistance (IA) funds
- United States Forest Service (USFS) funds
- U.S. Army Corps of Engineers funds
- U.S. Department of Transportation (DOT) funds
- Federal Economic Development Agency funds
- Small Business Administration (SBA) loans (NOTE: the 2019 DOB Notice states that declined or cancelled loans are no longer considered a DOB)
- National Flood Insurance Program (NFIP) funds
- Private insurance funds
- Local and state funds, including CAL FIRE and CalOES funds
- Other federal program funds
- Private and nonprofit organization funds

**3. Exclusion of non-duplicative funds.** Identify assistance that is not available for the project or CDBG-DR activity. Potential non-duplicative funds include:

- Funds received that are not for the same purpose as the project or CDBG-DR activity (e.g. CDBG-DR funding used for housing recovery when the CDBG-DR activity is not funding a housing recovery project).
- Funds for the same purpose as the project or CDBG-DR activity but intended for a different eligible use (e.g. previous USFS funds provided for fuel reduction in a separately impacted area from CDBG-DR projects).
- Funds not available for CDBG-DR projects or activities (e.g. contractor fraud, etc.). Funds are considered “available” when they are received by a subrecipient and the subrecipient gains legal control of them, or when a subrecipient has been approved for a duplicate funding source, even if they have not yet drawn on the funds.
- Funds from private loans not guaranteed by the SBA.
- Declined or cancelled subsidized loans (e.g. SBA loans).
- Reimbursement of costs paid for with subsidized loans for eligible CDBG purposes.

## B. DOB Calculation

The maximum CDBG-DR award can be calculated by subtracting the duplicative assistance from the proposed program or project cost. Below is an example of a DOB analysis on residential rehabilitation work:

1. Identify Total Need (accomplished through an independent cost estimate of the damage assessment and necessary repair work)	
2. All potentially duplicative assistance (insurance payments, FEMA)	
3. Assistance determined duplicative (i.e. drywall repair occurring in the same section of house as planned CDBG-DR assistance)	
4. Maximum eligible award (1 less 3)	
5. Program Cap (if applicable)	
6. Lesser of Maximum Eligible Amount or Program Cap = Final Amount	

Disaster recovery assistance needs are calculated at a point in time. As a result, subsequent adjustments may occur that affect the need. If, after the assistance has been calculated and/or a CDBG-DR award has been made, and the subrecipient demonstrates a change in circumstances, then the award calculation may be subsequently re-evaluated. The change in circumstances may be an increase in cost of materials and/or labor, unknown project requirements, contractor fraud, or a change in local zoning law or building codes, or other factors.

Additional assistance requests must be fully documented and include the method for identification and verification of the unmet need (physical inspection and professional appraisals are the standard; any variation from this standard must be approved by HCD prior to additional assistance being provided to any beneficiaries). Additional assistance requests must also be verified as not duplicative benefit. See table below for an example of additional assistance determination.

Final Award (from initial Need assessment)	
Demonstrated Additional Unmet Need (e.g. 6 months later, project costs have increased due to prices increasing based on shortages)	
Amount of Eligible Additional Award	
Program Cap	
Final Adjusted Amount (Final Amount + Eligible Additional Amount)	

### C. [DOB Verification](#)

As required by the Stafford Act and prior to providing or awarding CDBG-DR funds, HCD conducts a DOB verification for each project or program to be funded by CDBG-DR funds.

Suitable documentation is dependent on the source of the DOB, but may include award letters from federal agencies, funding commitment letters from philanthropists or subrecipients, and SBA loan documents. DOB source documentation is added to the program or project file and retained in accordance with the CDBG-DR record retention requirements.

## 1. Documenting Declined Loans

To exclude declined loans amounts from the DOB calculation, HCD documents that all or a portion of the loan has been cancelled or declined unless the loan qualifies under an exclusion.

HCD documents declined loans if sufficient data is available to indicate that the applicant received and subsequently declined an offer for subsidized loan assistance. If HCD is aware that the applicant received a loan offer and cannot ascertain from available data that the applicant declined the loan, then it will obtain a written self-certification from the applicant that the applicant did sign the loan documents and did not receive the loan.

## 2. Documenting Cancelled Loans

To document that a loan has been cancelled, HCD will obtain:

- 1) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
- 2) A legally binding agreement between the HCD, subrecipient, and the applicant that indicates that the loan is no longer available, and the applicant agrees not to take actions to reinstate the loan or draw undisbursed loan amounts.

Per the procedures outlined above, the outcome of the DOB verification is documented and included in the project or applicant file.

## 3. Additional Reporting Requirements

In addition, one year from the approval of an action plan amendment that addresses the treatment of subsidized loans, HCD is required to provide HUD with the following information:

- 1) Total amount of funds used for reimbursement of SBA and other subsidized loans;
- 2) Total number of households and LMI households reimbursed; and
- 3) SBA loan number and FEMA ID for each individual household that was reimbursed for its SBA loan costs.

## D. Duplication of Benefits Contract Provisions

In each agreement between HCD, or its subrecipient, and a beneficiary, two clauses are included, a DOB Clause and a Subrogation Clause. The DOB Clause requires the beneficiary to disclose all sources of possible duplicative assistance to HCD, or its subrecipients, and must include the following language, “*Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C 287, 1001, and 31 U.S.C. 3729.*” The Subrogation Clause requires any person who receives further assistance to repay that assistance, if the amount of assistance exceed the funding required for the project.

## E. DOB Monitoring and Recapture

DOB is reconciled at the time of project completion for all programs. The period of monitoring for DOB after project completion will be determined for each program based

on the program's eligible activities, overall level of risk, and post-completion requirements (such as an occupancy period). HCD provides a method to monitor compliance for a reasonable period for each program in the program specific policies and procedures. This includes the basis for the period of time in which HCD or its subrecipient will monitor for compliance. HCD will conduct DOB monitoring of the individual OOR program projects during the two years following project closeout. All other HCD CDBG-DR programs will be monitored for DOB in compliance with grant agreements at project closeout. HCD will monitor compliance with agreements by verifying amounts with support agencies listed in the original calculation, and recalculating DOB if required.

If a DOB is discovered after CDBG-DR assistance has been provided, the duplicative funds will be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose.

The method of recapturing funds and the timeframe for doing so are determined on an individual project or program basis. However, the recapture method and timeframe will be consistent with the OMB Circular A-87 (2 CFR 225) or other applicable cost principles, any relevant guidance or handbook issued by the HUD Office of the Inspector General, and the Stafford Act, which requires that duplicative assistance shall be collected in accordance with 31 U.S.C 37, relating to claims for debt collection.

## **XII. Other Federal Requirements**

For additional CDBG-DR federal regulations see the CDBG-DR Addendum Section VIII.

### **A. Pre-agreement allowances**

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

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

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

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

### C. Insurance and property management

Counties are required to provide insurance coverage for real property and equipment acquired or improved with CDBG-DR funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the CDBG-DR awards.

### D. Drug-free workplace

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

1. Specifies actions HCD will take against employees for violating its drug free workplace policy
2. Ensures each employee abides by the terms, as a condition of employment
3. Requires the employee to notify HCD in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction

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

#### 1. Drug Free Awareness Program

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

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

#### 2. Employee Drug Violation

If an employee is convicted of a drug violation in the workplace, or if HCD learns of the conviction, HCD must notify HUD within ten (10) calendar days after learning of the conviction. The notification must:

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

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

### 3. Known Workplaces

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

### 4. Violations

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

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

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

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

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

### E. Davis-Bacon and Labor Standards

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

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



Federally Financed / Funded Activity	DBRA Applies to Subrecipients?	DBRA Applies to Vendors/ Related Private Construction Covered?
Land Acquisition	No	No
Debris removal (no construction on-site contemplated)	No	No
Demolition (no construction on-site contemplated)	No	No
Demolition (to be followed by on-site construction)	Yes	<u>No</u> , if demolition done by subrecipient or its contractor before transfer of land to developer.  <u>Yes</u> , if demolition contracted for by same entity doing private construction and will be carried out while contracting entity controls site.
Off-site improvements (street work, storm sewers, utility construction, etc.)	Yes	No
On-site improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/stripping, site lighting, landscaping, etc.)	Yes	<u>No</u> , if done by subrecipient or its contractor before transfer of land to developer.  <u>Yes</u> , if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; and will be carried out while contracting entity controls the site.
Cleaning during construction	Yes	Yes
Cleaning after construction to prepare for occupancy (separate from construction contract)	No	No
Materials purchase	No	No
Equipment, machinery, and fixtures purchase (as opposed to installation)	No	No

Equipment, machinery, and fixtures installation (as opposed to, or in addition to, purchase)	Yes, if more than incidental (14% or over) amount of construction work involved.	Yes, if more than an incidental amount of construction work involved in the installation.
Legal fees/accounting fees	No	No
Architectural and engineering Fees	No	No
Construction management	No	No
Tenant allowances for non-construction expenses (furniture, business licenses, etc.)	No	No
Rehabilitation of residential property designed for fewer than eight families	No	No
Contracts for public utility services including electric light and power, water, steam, and gas	No	No

Davis-Bacon Related Acts include:

- The Copeland Anti-Kickback Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 §Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326-332; and 29 CFR §4, 5, 6 and 8; 29 CFR §70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$31 (after January 16, 2023) or \$29 (prior to January 15, 2023) per day per violation).
- Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Please see the Section 3 topic of this manual for more information (Section XII, Part I).

HCD ensures that all applicable programs and services are in compliance with DBRA, and state prevailing wages as published by the CA Department of Industrial Relations (DIR), through its monitoring of certified payroll records and through onsite interviews of prime and subcontractor laborers. HCD may procure a contractor to assist with monitoring. HCD will hire a technical assistance consultant in addition to the Labor and

Compliance Specialist II. One of the roles that the technical assistance consultant and Specialist will serve is completing cross cutting compliance requirements including DBRA compliance for all CDBG-DR projects.

### 1. Bidding and Contracting Requirements

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

### 2. Wage Rate Decisions

The Davis-Bacon wage decision contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Wage determinations can be retrieved from [www.dol.gov](http://www.dol.gov).

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

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

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

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

### 3. Enforcement of Requirements during Construction

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

#### a. *Pre-construction Conference*

HCD or its contractor holds pre-construction conferences prior to the start of work to set performance expectations. During this conference, HCD reviews contractual requirements including labor and performance schedules. While pre-

construction conferences are no longer required in order to comply with Federal labor standards, HCD continues to hold conferences with contractors.

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

- Provide a copy of the “Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.” This guide can be downloaded at <http://www.hud.gov/offices/olr/library.cfm>
- Review prime contractor responsibility to:
  - Obtain and review payrolls and Statements of Compliance from all subcontractors.
  - Submit weekly payrolls and Statements of Compliance signed by an officer of the company.
  - Confirm that paid wages conform to wage rate decisions included in the contract. HCD confirms the job classifications and discuss if additional classifications are needed. Discuss the classifications to be used. If additional classifications are needed, contact HCD immediately.
  - Confirm that employee interviews will be conducted periodically during the project.
  - Confirm that a copy of the wage rate decision must be posted at the job site.
  - Confirm that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Department of Labor. If apprentices or trainees are to be used, the contractor must provide HCD with a copy of the certification of his/her program.
  - If the contract is \$100,000 or greater, workers must be paid overtime if they work more than 40 hours in one week, and failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$31 (after January 16, 2023) or \$29 (prior to January 15, 2023) per day for every day each worker exceeded 40 hours a week without being paid time and a half.
  - Any payroll deductions that are not specifically listed in the Copeland Anti-kickback Act provisions require the contractor to obtain written permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
  - Posters are required to be posted at the job site, such as the “Notice to All Employees Working on Federal or Federally Financed Construction Projects.” These posters and others that are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
  - Confirm that HCD will conduct compliance monitoring throughout the duration of the project and that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Provide an overview of labor standards provisions and confirm that labor standards and technical specifications are legally binding. Failure to pay specified

wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

*b. Notice to Proceed*

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

*c. Payroll Review*

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

The prime/general contractor must submit certified payroll reports to HCD within a reasonable timeframe to ensure compliance, which is typically no more than 10 working days, following the end of the payroll period.

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

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

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

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

- The Statement of Compliance has been signed by the owner or an officer of the firm.

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

#### *d. On-Site Interviews*

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

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

HCD uses HUD's Record of Employee Interview form (HUD-11) for on-site interviews. The form can be found at: <https://www.hudexchange.info/resources/documents/HUD-Form-11-Record-of-Employee-Interview.pdf>.

A Spanish language version of the form can also be found at: <https://www.hudexchange.info/resources/documents/HUD-Form-11-Sp-Spanish-Version-Record-of-Employee-Interview.pdf>.

Interviews follow the below guidelines:

- Interviews are conducted on the job site and privately (this is a one-on-one process)
- The interviewer observes the duties of workers before initiating interviews
- Employees of both the prime contractor and subcontractors are interviewed
- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself
  - Clearly state the purpose of interview
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission
- When conducting employee interviews, the interviewer pays particular attention to:
  - The employee's full name
  - The employee's permanent mailing address
  - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear

that these questions relate solely to work on the project and no other work

- The employee's hourly rate of pay, to determine if the worker is being paid at least the minimum required by the wage decision. The interviewer ensures the worker is not quoting their net hourly rate or "take-home" pay
  - If it appears the individual may be underpaid, the interviewer closely questions the worker by asking for any records and arranging to re-interview the employee
- Enter the worker's statement of his/her classification
- Observe duties and tools used:
  - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form
  - If there are discrepancies, detailed statements are necessary
- Enter any necessary comments
- Enter interview date

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

- If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person; and
- If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

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

#### e. *Progress Payments*

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

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

Although retainage is not a requirement, it has been found to be helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of unresolved problems.



#### *f. Final Payment*

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

- All weekly payrolls and [Statements of Compliance](#) have been received and any discrepancies have been resolved
- All discrepancies identified through job site interviews have been resolved
- All files are complete

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

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

HCD must notify the prime contractor in writing, of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.

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

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

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

HCD should review the corrected payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. In these cases, at the end of the project the prime contractor is required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. HCD should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers is forwarded to HUD.

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

## 5. Documentation & Reporting Requirements

### *a. Documentation*

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

- Bid and contract documents with the labor standards clause and wage decision
- Payroll forms from the contractor and subcontractors, including signed statements of compliance
- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies
- Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime)
- Enforcement reports

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

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

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

## 6. Reporting

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

Semi-annual labor reports are due to HUD in April and October. Labor Standards Report forms are located on HCD’s CDBG website at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/formsreports.html>.

## F. Force account labor

Force account labor occurs when subrecipients use their own workforce to complete construction of a CDBG-DR project funded through HCD. Subrecipients must justify the use of force account labor by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work. Subrecipients that proceed without prior approval risk disallowance of all incurred costs.

## G. Equal Employment Opportunity

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

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

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

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

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

- The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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<sup>3</sup> 41 CFR §60

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

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

#### H. Minority and Women Business Enterprise

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

Women's Business Enterprises (WBEs) are entities that are at least 51 percent owned and/or controlled by women (under the 10 percent and 8 percent statutes).

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

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
5. Using the services and assistance, as appropriate, of such organizations as the SBA and the Minority Business Development Agency of the Department of Commerce
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above

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

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

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

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

#### I. [Section 3](#)

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended, requires that economic opportunities generated by CDBG-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. HUD updated Section 3 regulations effective November 30, 2020 (85 FR 61524), increasing the project threshold and changing reporting designations for Section 3 workers.

Section 3 workers and business are defined under 24 C.F.R § 75 as:

- **Section 3 workers:** Low or very low-income individuals (< 80% AMI), current or previous YouthBuild participants, and/or individuals employed by a Section 3 Business Concern
- **Section 3 Business Concern:** Fifty-one percent owned by low- or very low-income persons; or greater than seventy-five percent labor hours are performed over prior three-month period performed by low- or very low-income workers; or greater than fifty-one percent owned or controlled by current residents of public housing or Section 8-assisted housing
- **Targeted Section 3 workers:** Section 3 workers living within the defined service area of the project, current or previous YouthBuild participants, and/or employed by a Section 3 Business Concern.

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.

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

- Prepare and utilize a Section 3 Plan for HCD and any subrecipients
- Designate a Section 3 Coordinator
- Take affirmative steps to follow the Section 3 Plan and document best efforts
- Reporting on key outcome benchmarks

- Promoting sustained employment and career development
- Creating targeted benchmarks for Section 3-covered assistance
- Align reporting with standard business practices
- 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 will be required for contracts and sub-contracts in excess of \$200,000

Subrecipients and contractors with applicable contracts are expected to report to HCD on the number of hours worked by Section 3 workers and Targeted Section 3 workers as a percentage of total labor hours on the project:

$$\frac{\text{Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 25\% \text{ or more}$$

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 5\% \text{ or more}$$

Note: Noncompliance with HUD's regulations in 24 C.F.R § 75.19 may result in actions to correct deficiencies identified, sanctions, debarment and/or suspension and limited denial of participation.

## J. Fair Housing

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

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

### 1. Affirmative Marketing

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

- Methods for informing the public, owners and potential tenants about fair housing laws and the jurisdiction's policies (for example, use of the Fair Housing logo or equal opportunity language)



- A description of what owners and/or the jurisdiction will do to affirmatively market housing assisted with CDBG-DR funds
- A description of what owners and/or HCD will do to inform persons not likely to apply for housing without special outreach
- Maintenance of records to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met

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

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

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

Actions to ensure fair housing include:

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

## K. [Civil Rights](#)

HCD is required to comply with the Civil Rights requirements of Title I of the Housing and Community Development Act and the Fair Housing Law. Recipients must demonstrate compliance with the following requirements contained in the Housing and Community Development Act.

- Affirmative steps to promote fair and equal access to housing must be taken, regardless of the type of grant
- Equal opportunities must be afforded to all persons



- No person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age or disability
- Minority and female-owned businesses must be informed of grant funded contracts. Affirmative steps must be taken to assure this
- To the greatest extent feasible, Section 3 residents and business owners should be given preference in employment, training, and contracting

#### L. [Section 104](#)

Section 104(d) of the Housing and Community Development Act of 1974 requires relocation assistance for lower-income persons who are displaced as a result of conversion of a rental unit at market rent or below HUD Fair Market Rent (FMR) to above FMR, or demolition of a rental unit to a non-residential use for a project in which CDBG funds are used.

Relocation assistance provided by Section 104(d) includes:

- Advisory service such as referrals to comparable suitable homes
- Replacement housing inspection to ensure established standards are met
- Assistance in preparing claim forms for relocation payments
- Counseling and other assistance to minimize the impact of the move
- Payment for moving expenses, in the form of:
  - Payment for actual reasonable moving and related expenses
  - Moving expense and dislocation allowance
  - A combination of both, based on circumstances
- Security Deposit
- Interim living costs, when required
- Replacement Housing Assistance, in the form of either rental assistance or purchase assistance

Rental assistance is based on estimated needs for a period of 60 months. Assistance may be in the form of cash or under the Housing Choice Voucher Program. Purchase assistance is limited to mutual housing and cooperative housing.

CDBG-DR funding used solely for relocation assistance or project administration does not trigger Section 104(d) requirements.

#### M. [Section 504 requirements](#)

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

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

#### N. [Conflict of Interest](#)

Conflict of interest requirements are dictated by HUD as well as California state and local law. California's conflict of interest standards of conduct applies to all procurement

activities, while all non-procurement activities (acquisition and disposition of property, direct assistance to individuals, businesses) are subject to HUD requirements described in 570.489(h).

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

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

- Whether the exception would provide a significant cost-benefit or essential degree of expertise that would otherwise be missing
- Whether an opportunity was provided for open competitive bidding
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries, and the exception will allow the person to receive the same benefits as other members of the class
- Whether the person has withdrawn from the role of decision-maker
- Whether the interest or benefit was present before the affected person became an employee, agent, consultant, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subrecipients which are receiving CDBG-DR or CDBG-MIT funds
- Whether undue hardship will result to the state, HCD or affected person when weighed against the public interest
- Any other relevant considerations
- Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law

#### O. [Anti-lobbying](#)

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

- No CDBG-DR funds have been paid or will be paid, by or on behalf of HCD, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than CDBG-DR funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, HCD will complete and submit Standard Form-LLL, "[Disclosure Form to Report Lobbying](#)," in accordance with its instructions.

- HCD requires that the language of paragraph 1 and 2 of this anti-lobbying section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

#### P. Citizen Participation Plan

CDBG-DR funds utilize a streamlined process for citizen participation to ensure a timely disbursement for disaster recovery grant funds. The citizen participation requirements found in 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR §570.486, §91.105(b) and (c), and §91.115(b) and (c), are waived for CDBG-DR funds only and replaced by the requirements below:

HCD maintains a public website at all times, including:

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

The CDBG-DR grant information is easily navigable from HCD's website homepage. Additional details related to maintaining a comprehensive public website are included below in Section XII, Part R – Website Management. Plan publication efforts must meet the effective communications requirements of 24 CFR 8.6 and other fair housing and civil rights requirements, such as the effective communication requirements under the Americans with Disabilities Act.

HCD must specify criteria for determining what changes in the plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment:

- A change in program benefit or eligibility criteria;
- the addition or deletion of an activity;
- The allocation or reallocation of a monetary threshold specified by the subrecipient in its action plan.

HCD must publish each substantial amendment to its Action Plan and provide no less than 30 days for citizen comment and citizen access regarding the use of grant funds. Public comments are acceptable by electronic submission, email, fax, and standard mail. HCD provides a written response to every comment within 30 days, when practicable. A summary of public comments shall be attached to the substantial amendment.

Public hearings are held in facilities that are physically accessible to persons with disabilities, or, where physical accessibility is not achievable, HCD gives priority to alternative methods of product or information delivery regarding programs and activities to qualified individuals with disabilities in the most integrated setting appropriate, in

accordance with HUD's implementing regulations for section 109 of the HCD Act and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) at 24 CFR §8 and all applicable laws and regulations. In addition, all notices of and communications during training sessions and public meetings are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities, or by providing other means of accommodation for persons with disabilities, consistent with Section 504 of the Rehabilitation Act of 1973 and HUD's Section 504 regulations.

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

#### Q. [Language Access Plan](#)

HCD complies with state and federal laws to ensure all interested individuals, applicants and beneficiaries under CDBG-DR are provided equal access to all available programs, services and information. HCD follows the Safe Harbor rule, contained in HUD's final guidance<sup>4</sup>, to determine when to provide translation of vital documents. The Safe Harbor rule for written translation of vital documents is based on the number and percentages of the market area-eligible population or current beneficiaries and applicants that are Limited English Proficiency (LEP).

Per the Safe Harbor Rule, HUD would expect translation of vital documents to be provided when the eligible LEP population in the market area, or current beneficiaries exceeds 1,000 persons, or if it exceeds 5 percent of the eligible population, or beneficiaries along with more than 50 people. In cases where more than 5 percent of the eligible population speaks a specific language but fewer than 50 persons are affected, there should be a translated written notice of the person's right to an oral interpretation.

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

1. The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services).
2. The frequency with which LEP persons come into contact with the program.
3. The nature and importance of the program, activity, or service provided by the program.
4. The resources available and costs to the recipient.

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

- Free language assistance to LEP individuals for important critical junctures, such as assistance with the application, the application interview, recertification, health and safety related issues, fair housing related matters (including any discussions regarding the need for reasonable accommodation), conflict resolution between residents, lease violation notification and related meetings, and relocation and displacement issues.

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

- Official meetings will automatically provide an interpreter for any LEP population that requires a translation of vital documents, in accordance with the Safe Harbor Rule for written documents.
- Announcement of major languages in any public notice of meeting that anyone in need of language interpretation may contact HCD before the meeting to request an interpreter. Interpretation services shall be provided free of charge.

#### R. [Website Management](#)

Below is an outline for the maintenance of HCD's webpage, including CDBG-DR. The website is located at: [Disaster Recovery & Mitigation | California Department of Housing and Community Development](#)

##### 1. HCD Website

HCD's website is designed to have a clean and uniform appearance while maintaining efficient navigation and maintenance. A uniform look from page to page enhances the overall understanding for the user. The website must conform to style and navigation standards set forth by the California Department of Technology. The HCD website serves as a comprehensive disaster recovery resource. HCD manages separate web pages dedicated to its disaster recovery activities assisted with CDBG-DR funds that include accessible documents pertinent to the public. Necessary content for the website includes the following compliance and reporting information:

- The current approved DRGR Action Plan, and activity/program information for activities described in the Action Plan;
- All Action Plans and Action Plan Amendments;
- Procurement policies and procedures;
- A description of services and goods currently being procured by the HCD;
- A copy of contracts the HCD has procured directly;
- A summary of all procured contracts, including those procured by HCD or subrecipients (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.);
- QPRs;
- Citizen participation requirements; and
- Any other information necessary to account for the use of the funds.

HCD will also maintain ReCoverCA as the program portal for owner-occupied housing projects. It will primarily be used for:

- Links to program application portals
- Program outreach (i.e., monthly newsletters, recorded webinars, community partner toolkits, and mailing list signups)
- Program materials (i.e. policies and procedures, Frequently Asked Questions ("FAQs") and program minimum design standards)
- Case management contact information

ReCoverCA can be found at [ReCoverCA | California Department of Housing and Community Development](#) . The ReCoverCA website will allow HCD to provide information to homeowners seeking program funding, and for HCD to track interest and stay informed on homeowner needs. HCD's CDBG-DR website will also be linked on ReCoverCA as another path for citizens to access the CDBG-DR grant information.

Documents available for review on HCD's website are accessible to persons with disabilities and persons with limited English proficiency. Upon request, HCD will take reasonable steps to ensure meaningful access to their programs and activities by limited English proficiency persons, including members of protected classes, vulnerable populations, and individual from underserved communities. Similar to measures previously written above, HCD will take necessary measures to satisfy review of documentation available on the HCD website for all.

HCD updates the website regularly as needed to ensure the most up to date information related to disaster recovery is available and accessible to the public.

## 2. Roles and Responsibilities

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

### a. *Content Provider*

The Content Providers are the Federal Disaster Relief and Recovery sub-Division staff in their respective program areas who have been trained by the Information Technology (IT) staff in the technical aspects and procedures of how to prepare and transmit content to IT staff through the DFFA Admin staff for posting to the website. The Content Providers are responsible for:

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

Content for CDBG-DR will be reviewed regularly and updated as necessary.

CDBG-DR documents are posted to the website located at: [Disaster Recovery & Mitigation | California Department of Housing and Community Development](#)

### b. *Approving Content*

The Federal Disaster Relief and Recovery staff are responsible for requesting approved content to be placed on the site and approving test content before changes are pushed on to the live site for their respective areas. Content must be appropriate for public distribution, not violate copyright or trademark laws, or contain sensitive or personal information. Information on HCD's Privacy and Security Policy may be found at: [Privacy](#)



[Policy | California Department of Housing and Community Development](#); or contact staff in the LAD.

*c. Information Technology Staff*

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

*d. Procedure for Placing Content on The Website*

All requests to have content placed on the web must be provided by the Content Creator to the DFFA Operations and Support Section. This Section is responsible for providing these documents to IT. The Content Creator prepares the package, which must include the information, data, pictures, and/or graphics being requested to be posted, along with the routing document, and manage the packet through the approval process.

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

### **XIII. Environmental Review**

**A. Environmental Review Requirements**

An environmental review is the process of analyzing the potential impact a proposed project could have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

An environmental review is necessary for all HUD-assisted projects, including projects funded partially or in full by CDBG-DR, and all projects implemented or funded by a California public agency, or that require discretionary approval by a public agency. Responsible Entities (RE) must complete the environmental review prior to obligating any funds to the project, regardless of the source. This requirement also applies to projects funded with CDBG-DR generated program income.

Regulations that govern the environmental review include:

- 24 CFR §58
- National Environmental Policy Act of 1969 (NEPA); 40 CFR §1500 – 1508
- California Environmental Quality Act (CEQA); California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 – 15387

**1. DR Waiver**

Usually, a state distributes CDBG funds to units of local government and the unit of local government takes on HUD's role in receiving environmental certifications from



the grant recipients and approving releases of funds. For this grant, HUD allows the State of California to carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR §58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

## 2. Environmental Review Record

Documentation of the environmental review is maintained in the environmental review record (ERR) by HCD. This record, which is to be prepared and maintained by HCD, contains the description of all activities that are part of the project and an evaluation of the effects of the project on the human environment and vice versa. The ERR must be made available for public review. HCD should start to establish the record as soon as the activity is approved as an undertaking.

The ERR shall contain:

- A Project Description that:
  - Provides location specific information and geographic boundaries, as well as a delineation of all activities included in the scope of the project
  - Captures the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are part of the project. Activities should be aggregated according to the regulations at 24 CFR §58.32, which says that a Responsible Entity (HCD) must group together and evaluate as a single project all individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions
  - May not be identical to the description of the project and activities used by the funding program, as the project description in the environmental review may consider activities not financed by HUD
  - If the project or environmental review contains information that can be considered sensitive, such as the location of a domestic violence shelter, sacred site, or endangered species habitat, that information is omitted from the publicly reviewable environmental review record
- Evaluation of the effects of the project or the activities on the human environment
- Public Notices
- Documentation of compliance with applicable statutes and authorities
- Record of written determinations and other review findings required by 24 CFR §58

ERRs vary in length and content depending upon the level of review required for the categories of activities. Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

### B. Timetable for Reviews

It is recommended that the environmental review process begin once the activity for a project is verified to be eligible and meets a national objective, as defined by HUD.

HUD's regulations at 24 CFR 58.22 prohibit grant recipients from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion

of an environment review once a project has become "federal." This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review.

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

#### 1. Actions triggering environmental review and limitations pending clearance

According to the NEPA (40 CFR 1500-1508) and 24 CFR 58, the Responsible Entity is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, 24 CFR 58 prohibits the commitment or expenditure of CDBG-DR funds until the environmental review process has been completed and the Responsible Entity receives a HUD issued release of funds, as evidenced by an Authority to Release Grant Funds.

- HCD may not spend either public or private funds, including CDBG-DR or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.
- HCD must avoid actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e. the natural, physical, social and economic environment).
- Activities that have physical impacts, or which limit the choice of alternatives, cannot be undertaken, even with HCD or other project participant's own funds, prior to obtaining environmental clearance as evidenced by the ATUGF.
- For the purposes of the environmental review process, "commitment of funds" includes:
  - Execution of a legally binding agreement (such as a property purchase or construction contract)
  - Expenditure of CDBG-DR funds
  - Use of non-CDBG-DR funds on actions that would have an adverse impact (e.g. demolition, dredging, filling, excavating)
  - Use of non-CDBG-DR funds on actions that would be "choice limiting" (e.g. acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures)

With HCD approval, it is acceptable to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim

to any amount of CDBG-DR funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

### C. State Requirements

The California Environmental Quality Act (CEQA) applies to activities of state and local public agencies that are defined by CEQA as “projects.” CEQA requires that California State and local agencies follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt all feasible measures to mitigate those impacts.

The procedure for CEQA compliance should be completed in tandem with NEPA and 24 CFR 85; however, the requirements and procedures are slightly different.

### D. Responsibilities - State and Subrecipients

#### 1. The Responsible Entity, Lead Agency, and Official Designations

The RE is responsible for the completion of the Federal environmental review process for CDBG-DR funded projects. The Lead Agency (LA) is responsible for completion of the state environmental review process for California. For CDBG-DR funding projects and programs, HCD is the RE and LA.

The RE/LA’s responsibilities include:

- The designation of two responsible parties:
  - Certifying Officer – The person that has the authority to assume legal responsibility for certifying that all environmental requirements have been followed
  - Environmental Officer – The person responsible for conducting the review and facilitating responses to comments and findings
- Ensuring compliance with 24 CFR 58, NEPA, and CEQA
- Issuing public notifications
- Ensuring the ERR is complete
- Submitting the certifications (when required)
- Submitting requests for Release of Funds

### E. Procedures

#### 1. HUD Definition of Project

The term “Project” means an activity or aggregated group of integrally related activities designed to accomplish, in whole or in part, a specific goal.

#### 2. Activity

The term “activity” means an action that the RE takes on, as a part of the HUD-assisted project, regardless of whether that action is directly funded via HUD funds.

#### 3. Aggregation

The activities should be aggregated (grouped) to consider the combined environmental effect of the project. Activities that are related either geographically, functionally, or as logical parts of a composite contemplated action can be aggregated. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street paving, and

construction of a water line, would be aggregated together under one project. Aggregation will reduce the number of ERRs that the RE will have to complete.

Activities where project aggregation would occur include:

- Activities are in a concentrated area
- Activities are within unspecified sites
- Multi-year activities
- Special HUD initiatives

#### 4. CEQA definition of Project

A project is an activity that causes a direct or indirect physical change in the environment, undertaken by (1) a public agency or (2) a private entity that must receive some discretionary approval from a government agency (the agency/agencies that have the authority to deny a requested permit or approval).

#### 5. Determine Necessary Level of Review

##### a. HUD Review Categories

Project activities fall into one of the below environmental review categories:

- Exempt activities
- Non-exempt activities
  - Categorically excluded activities
  - Environmental Assessment activities

##### b. CEQA Review Categories

- Exempt activities
- Non-exempt activities
  - Negative declaration activities
  - Environmental Impact Report activities

#### 6. Exempt Activities

##### a. HUD Exempt Activities

HUD Exempt activities are not subject to NEPA or 24 CFR 85. These are activities that are highly unlikely to have any direct impact on the environment. A list of activities that are considered exempt can be found at 24 CFR 58.34(a). These include, but are not limited to, the following:

- Environmental and other studies
- Information and financial services
- Administrative and management activities
- Engineering and design costs
- Interim assistance (emergency) activities, if the assisted activities do not alter environmental conditions, and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration

- Public service activities that will not have a physical impact or result in any physical changes
- Inspections and testing of properties for hazards or defects
- Purchase of tools or insurance
- Technical assistance or training
- Payment of principal and interest on loans made or guaranteed by HUD
- Any of the categorically excluded activities subject to 24 CFR 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other Federal laws and authorities listed at 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5

*b. CEQA Exempt Activities*

CEQA exempt activities are not subject to CEQA's environmental review requirements. CEQA exemptions fall under two categories: Statutory and Categorical.

Statutory exemptions (CEQA Guidelines Article 18) are provided to types of projects given a blanket exemption from environmental review requirements. Types of statutory exemptions include, but are not limited to:

- Feasibility and planning studies
- Adoption of coastal plans and programs
- Ministerial projects (issuance of building permits, business licenses)
- Approval of final subdivision maps)
- Emergency projects

Categorical exemptions (CEQA Guidelines Article 19) are provided to types of projects that have been determined not to have significant impact on the environment. Certain projects may trigger exceptions to the categorical exemption. Types of categorical exemptions include, but are not limited to:

- Minor alterations to existing structures
- Inspections or enforcement actions
- Acquisition of land
- Loans
- Training programs
- Emergency projects

**7. Non-exempt Activities**

*a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5*

The following activities, listed at 24 CFR 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 58.5 compliance determinations.

- Tenant based rental assistance
- Supportive services, including but not limited to, health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services and services

- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs
- Economic development activities, including equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact

*b. Categorically excluded from NEPA, but subject to 24 CFR §58.5*

The following activities are categorically excluded from NEPA regulations but subject to the regulations of 24 CFR §58.5, per the list at 4 CFR §58.35(b):

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units
    - The land use is not changed
    - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased
  - For multifamily residential buildings (with more than four units):
    - Unit density is not changed more than 20 percent
    - The project does not involve changes in land use from residential to non-residential
    - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation
  - For non-residential structures including commercial, industrial and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent
    - The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another
- Individual Actions

- An individual action on up to four-family dwelling where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between.
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- “Individual action” refers to new construction, development, demolition, acquisition, disposition or refinancing (does not include rehabilitation which is covered previously).
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Any combinations of the above activities.

## 8. Environmental Assessment

An Environmental Assessment (EA) level of review, required for compliance with NEPA and 24 CFR 58, is applicable to all projects for activities not covered under a categorical exclusion or an exemption. This also applies when extraordinary circumstances exist that elevate the level of review.

## 9. Environmental Impact Statement

The Environmental Impact Statement (EIS), required for compliance with NEPA and 24 CFR 58 is applicable in accordance with 24 CFR 58.37, and includes the following circumstances:

- An EA concludes a Finding of Significant Impact
- The complexity of the project exceeds the scope of an EA
- Extraordinary circumstances exist and elevate the review
- Noise levels exceed into what is considered the unacceptable noise zone
- Project includes 2,500 or more housing units or beds

## 10. CEQA non-exempt activities

### *a. Initial Study*

If a project is not exempt, the Lead Agency is to produce an Initial Study, per CEQA Guidelines Article 5. The purpose of the Initial Study is to provide a preliminary analysis of the proposed project to determine if it may have a significant effect on the environment; thus, whether a Negative Declaration or an Environmental Impact Report should be prepared.

An Initial Study should include:

- Project information
- Project description (including all phases – project planning implementation, and operation)
- Environmental factors potentially affected
- Determination
- Evaluation of environmental impacts



### *b. Negative Declaration*

A Negative Declaration (CEQA Guidelines Article 6) is a determination, based on the Initial Study, that there is no substantial evidence that the project, or any of its aspects, could result in adverse impacts. A Mitigated Negative Declaration is also possible if revisions are made to the project, prior to public review, that would mitigate the potentially significant effects.

### *c. Environmental Impact Report*

An Environmental Impact Report (EIR) (CEQA Guidelines Article 7) is necessary if the Initial Study presents substantial evidence that the project may have a significant effect on the environment; and a Mitigated Negative Declaration is not possible.

## 11. Procedures for an Exempt Activity

### *a. HUD procedures for exempt activities*

If a project is determined to be exempt, the Responsible Entity must:

1. Create and record in ERR written documentation that the activity meets the conditions for exemption per 24 CFR §58.35. The certification should include:
  - A description of the activity/project
  - A citation of the applicable subsection of 24 CFR §58.35(a)
  - Documentation of total estimated activity/project cost
2. Determine and document in ERR whether the activity triggers any of the other requirement of 24 CFR §58.6, which are: The Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones
3. No Request for Release of Funds is needed

### *b. CEQA procedures for an exempt activity*

If project is determined to be exempt the Lead Agency must:

1. Create and record in the ERR a Notice of Exemption (NOE) that includes the following requirements (per CEQA Guidelines Section 15062). Notice of Exemption form available: <http://opr.ca.gov/docs/NOE.pdf>
  - A brief description of the project that supports the specific exemption and explains that no exceptions to the exemption apply
  - A finding that the project is exempt from CEQA, including citation to the CEQA Guideline(s) under which it is found to be exempt
  - A brief statement of reasons to support the finding
2. Send NOE to Office of Planning and Research (OPR).

## 12. Procedures for Non-Exempt activities

### *a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5*

The Responsible Entity:

1. Creates and records in ERR written documentation that the activity meets the conditions for categorically exempt from NEPA, NOT subject to 24 CFR 58. The documentation should include:
  - A description of the activity/project
  - A citation of the applicable subsection of 58.35(a)
  - Documentation of total estimated activity/project cost
2. Determine and document in ERR whether the activity triggers any of the other requirement of 24 CFR 58.6, which are: The Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones.
3. No Request for Release of Funds is needed.

*b. Categorically excluded from NEPA, but subject to 24 CFR 58.5*

The Responsible Entity:

1. Creates and files in ERR written documentation of the determination. The documentation should include:
  - a. A description of the activity or project;
  - b. A citation of the applicable subsection of 24 CFR §58.35(a); and
  - c. Documentation of total estimated project cost.
2. Complete NEPA Statutory Checklist;
3. Determine and Document in ERR if there are any circumstances that require compliance with any other Federal laws and authorities, as cited in 24 CFR §85. These include the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones; and
4. Consult with the necessary regulatory agencies.
  - a. If it is determined that compliance with other environmental laws and regulations is necessary than proceed with the following:
    - i. Create Notice of Intent to Request for Release of Funds (NOI/RROF). Notice of Intent example; <https://www.hudexchange.info/resource/2754/sample-notice-of-intent-to-request-release-of-funds/>
    - ii. Publish or Post NOI/RROF for public review
      1. Should be available for a minimum of 7 days if published and 10 days if posted/mailed.
      2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF then the activity/project must be re-evaluated accordingly.
    - iii. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD. Request for Release of Funds form is available: <https://www.hud.gov/sites/documents/7015.15.PDF>
    - iv. A 15-day period commences for HUD to receive objections to the release of funds.
    - v. HUD issues authority to release funds and Environmental Review is complete.

- vi. It may also be possible that significant environmental impact is identified and compliance with NEPA will be evoked.
- b. If it is determined that compliance with any other environmental laws and regulations is NOT necessary than proceed with the following:
  - i. Convert project to exempt status per 24 CFR 58.34(a)(12).

### 13. Environmental Assessment and Environmental Impact Statement

The Responsible Entity:

1. Completes NEPA statutory checklist
2. Completes NEPA Environmental Assessment Checklist form
3. Determination of Significant Impact
  - a. If a Finding of No Significant impact (FONSI) is made:
    - i. Publish or Post NOI/RROF and notice of FONSI for public review
      1. Should be available for a minimum of 15 days if published and 18 days if posted/mailed
      2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF then the activity/project must be re-evaluated accordingly
      3. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD
      4. A 15-day period commences for HUD to receive objections to the release of funds
      5. HUD/state issues authority to release funds and Environmental Review is complete
  - b. If a Finding of Significant Impact is made:
    - i. Publish a Notice to Prepare Environmental Impact Statement (EIS)
    - ii. An EIS details the RE's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. REs must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR §58, Subpart G, and 40 CFR §1500-1508)
    - iii. Prepare and Publish Draft EIS
    - iv. Prepare and Publish Final EIS
    - v. Publish or Post NOI/RROF:
      1. Should be available for a minimum of 7 days if published and 10 days if posted/mailed
      2. All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly
      3. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD
      4. A 15-day period commences for HUD to receive objections to the release of funds

5. HUD issues authority to release funds and Environmental Review is complete.

#### 14. CEQA Procedures for Non-Exempt Activities

##### a. *Negative Declaration*

On the basis of the Initial Study, the Negative Declaration should be created and filed with the California State Clearinghouse (SCH). It is the responsibility of the Lead Agency to create and assemble the Negative Declaration package.

The declaration should include:

- a. A brief description and title of the project
- b. Location of the project
- c. A proposed finding that the project will not have a significant impact on the environment
- d. An attached copy of the Initial Study documenting reasons to support the finding
- e. Mitigation measures, if any, included in the project to avoid potentially significant effects

The Negative Declaration, along with the Notice of Completion (NOC) shall be submitted to the SCH. Notice of Completion form available: <http://opr.ca.gov/docs/NOC.pdf>

- a. The SCH circulates the Negative Declaration package to selected state agencies for review and comment
- b. Comments are forwarded to the Lead Agency at the end of the 30-day review period
- c. Initiate 20-30 day public review period
- d. Adopt Negative Declaration. The Lead Agency considers the comments received and makes any necessary revisions prior to adopting the Negative Declaration
- e. File Notice of Determination (NOD) with the county/counties clerk and the SCH within 5 working days of approving the project. Notice of Determination form available: <http://opr.ca.gov/docs/NOD.pdf>

#### 15. Environmental Impact Report

An Environmental Impact Report should be created on the basis of the Initial Study. It is the responsibility of the Lead Agency to create the Environmental Impact Report.

1. Create the Notice of Preparation (NOP). <http://opr.ca.gov/docs/NOP.pdf>  
The notice should include, at a minimum:
  - a. Description of the project
  - b. Location of the project
  - c. Probable environmental effects of the project
2. Circulate the Notice of Preparation (NOP) for a 30-day review period. The Lead Agency should create and circulate a NOP to the SCH and all Responsible and Trustee Agencies for review and comment

- a. The Lead Agency circulates the NOP to the SCH and the Responsible and Trustee Agencies
  - b. Comments are forwarded to the Lead Agency at the end of the 30-day review period
3. Prepare Draft EIR.
4. Initiate 45-day review period. The Draft EIR, along with the Notice of Completion form (NOC) shall be submitted to the SCH
  - a. The SCH circulates the Draft EIR package to selected state agencies for review and comment
  - b. Comments are forwarded to Lead Agency at the end of the 45-day review period
5. Initiate 30-60 day public review period
6. Prepare Final EIR. The lead agency responds to comments, prepares and finalizes EIR, and makes final decisions on the project
7. File Notice of Determination (NOD) with the county/counties clerk and the SCH within five working days of approving the project

## **XIV. Acquisition and Relocation**

HCD and its subrecipients shall make every effort to minimize displacement of families from their home and/or neighborhood, according to the state's [Residential Anti-displacement and Relocation Assistance Plan](#), however if relocation is required, the following applies. Certain elements of the CDBG-DR grant undertaken by HCD and/or its subrecipients may trigger compliance with Federal Acquisition and Relocation laws. The purpose of this section is to provide guidance on what actions to take to ensure compliance with Federal and HUD acquisition and relocation requirements. If one dollar of CDBG-DR funds is invested in a project where acquisition, rehabilitation, demolition, or code enforcement activities are involved, HCD and its subrecipients are responsible for ensuring that proper relocation processes are followed, and benefits delivered in compliance with appropriate relocation and acquisition laws, waivers, alternative requirements outlined in applicable Federal Register Notices.

### **A. Federal Acquisition and Relocation Requirements**

#### **1. Uniform Relocation Act**

In using HUD funds for projects, 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 will not be impacted by the HUD assisted activity. URA was amended by Public Law 105-117.

#### **2. Section 104(d)**

Section 104(d) of the Housing and Community Development Act of 1974, as amended, provides that, as a condition for receiving assistance under CDBG, HCD and its subrecipients or contractors must certify that they are utilizing a residential anti-displacement and relocation assistance plan (RARAP) for their grant. Section

104(d) further requires relocation benefits to be provided to low-income persons who are displaced as the result of a CDBG-assisted project and establishes requirements for the replacement of low-income housing, which is demolished or converted. The implementing regulations for Section 104(d) can be found in 24 CFR Part 570(a).

### 3. Other Resources

HUD Handbook 1378 consolidates the basic statutory and regulatory requirements of the URA and Section 104(d), and related implementing regulations, including Handbook 1378 Changes 1-4. It is a comprehensive and valuable reference for all jurisdictions participating in HUD-funded programs.

A copy of Handbook 1378 is available on HUD's [website](#). Relocation information for displaced persons is also available at the Federal Highway Administration's web site at [www.fhwa.dot.gov/realestate/relrght.html](http://www.fhwa.dot.gov/realestate/relrght.html)

## B. Federal Regulations

### 1. URA

The implementing regulations for the URA are found at 49 CFR 24. The Department of Transportation (DOT), through the Federal Highway Administration (FHWA) is the lead agency for the URA and as such promulgates the regulations and provides guidance in a series of Frequently Asked Questions and Answers (FAQ).

HCD must comply with the URA for its HUD-funded programs. It is important to note that there is no threshold for triggering URA. The URA's major objective is to ensure that property owners and displaced persons impacted by federally funded projects are treated fairly, consistently and equitably; that property owners are paid a fair market price for their property; and displaced persons are provided required relocation assistance. The URA also seeks to minimize litigation and ensure that federal agencies implement the regulations efficiently and cost effectively.

### 2. Voluntary Acquisition

HCD and its subrecipients must understand the critical difference between acquisition of property when the sale is voluntary or involuntary. The difference between these two types of transactions is similar to the difference between temporary relocation and permanent displacement previously discussed, in that, both temporary relocation and voluntary sales are much more common in CDBG-DR funded activities and much easier to manage. Both permanent displacement and involuntary sales are much more complex and create a great deal more work to manage compliance requirements; as such they are often handled by professional consultants. Because voluntary sales are the norm for most programs and projects, this will be addressed first. If you have an involuntary sale then you should read the second part of this section and ascertain if you have the capacity to conduct this activity or if it would be best to hire a professional consultant to help go through the process to ensure proper compliance. While there are protections for sellers in both voluntary and involuntary sales, only involuntary sales trigger the URA requirements for the formal acquisition process. The formal acquisition process using eminent domain requires the use of knowledgeable attorneys.



Federal acquisition rules apply to sales with federal assistance whenever:

1. Title to the property is purchased
2. Permanent easements- not temporary easements –are purchased
3. Someone holds a life estate to the property
4. Someone holds a long-term lease to the property, which allows for an extension of fifty years or more

Acquisition rules must also be followed whenever HCD or its subrecipients:

1. Undertake the purchase of property directly
2. Provide a non-profit or for profit entity with funds to purchase the property
3. Hire an agent or consultant to act on their behalf
4. Provide federal assistance to individuals who are acquiring their own home.

All CDBG-DR funded property acquisition or other activities which involve displacement or relocation (temporary or permanent) of low-income households or which involve the demolition or conversion of residential units occupied by low-income households must adhere to the requirements of two federal laws--Section 104(d) of the Housing and Community Development Act of 1974, as amended, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended--and their implementing regulations. Section 104(d) regulations do not apply to acquisition if the project does not include conversion or demolition. The primary purpose of these laws is to ensure that when CDBG-DR funded projects result in the demolition or conversion of units occupied by targeted income group persons, all affected persons receive the proper relocation assistance and benefits.

State law often has an impact on federally-funded acquisition; therefore, grantees must be familiar with these requirements as well as the URA rules. When federal, state, or local laws are not consistent with each other, grantees must comply with whichever is the most restrictive. HCD monitors for compliance with federal regulations.

The URA recognizes two types of acquisitions: involuntary and voluntary. Involuntary acquisitions are subject to the provisions of Subpart B of the URA, while voluntary acquisitions are exempt from those provisions.

### 3. Section 104 (d)

The regulations for Section 104(d) can be found at 24 CFR 42. Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling. In addition, it requires a one-for-one replacement for lower income units demolished or converted to other uses.

### 4. HUD Program Regulations

Each HUD program has regulations that further explain how to implement projects that involve acquisition and relocation. For the CDBG program, see 24 CFR part 570.606.



## 5. Public Law 105-117

Public Law 105-117 prohibits URA relocation benefits, with some exceptions, from being paid to individuals who are not legally present in the U.S.

### C. Activities that Trigger Compliance with the URA and other Federal Laws

When carrying out the following activities with HUD funds, a determination must be made on what is required to comply with the URA:

1. Acquisition or demolition of residential or commercial property
2. Rehabilitation of housing (hard and soft costs) including mitigation of lead-based paint or other hazards
3. New construction of housing, commercial structures or public facilities/improvements, if part of a project involving acquisition or demolition
4. Rehabilitation of public facilities or improvements
5. Economic Development (acquisition of land, and commercial rehabilitation)
6. Permanent easements for water, sewer, or other public facility projects

### D. Project Definition

The first step, which should be done as early as possible, is to identify which projects funded with CDBG-DR funds involve the acquisition of real property through any means (e.g. donation, purchase, code enforcement) and selection of specific parcels (or easements) to be acquired. In deciding the particular properties to be acquired, you may contact property owners or real estate agents for information but may not involve appraisers during this step or indicate intent to purchase the property.

You must establish a file for each property to be acquired, and include copies of all notices, along with other acquisition documents.

#### 1. Review of Program Definition

HCD staff determines what activities and geographic boundaries comprise the project and document the file accordingly. Staff reviews project definitions in HUD program regulations or, if project is not defined in program regulations, reviews the URA definition at 49 CFR §24.2(a)(22).

#### 2. Review of Activities

HCD staff reviews all activities connected with the project that took place within one year of the application to determine whether the prior activities trigger compliance with the URA and/or Section 104(d). This includes projects where the acquisition or demolition occurred prior to the application, where funds are being requested for a new use like new construction/rehabilitation of housing, commercial structures or public facilities or improvements. Federal acquisition and relocation regulations apply to all the activities within the project area, not just those activities solely funded by HUD. When necessary, staff consults with the Relocation Specialist at the HUD Field Office early in the planning phase.

### 3. Project Documentation

HCD staff documents the project file with a map that identifies project boundaries with streets, addresses, buildings, and all parcel numbers, and the names of all property owners and tenants for each building.

## **XV. Reporting Requirements**

### **A. DRGR Reporting Requirements**

#### **1. DRGR Overview**

HUD requires recipients of CDBG-DR grants to submit an Action Plan detailing the projected use of funds and to report on their accomplishments. The DRGR System is used to submit these plans and quarterly reports. DRGR is managed under the auspices of HUD's Office of Community Planning and Development (CPD).

HUD collects information from DRGR to comply with Congressional reporting requirements with respect to the use of CDBG-DR funds awarded under HUD's Disaster Recovery Initiative and for other program management purposes. The use of DRGR for reporting purposes is mandatory and information submitted to HUD via the DRGR system is public.

DRGR is a web-based system used to gather, package, and provide access to a central database containing a wide body of information. The system allows reporting across an integrated set of information. Data can be aggregated and analyzed in a number of forms convenient to HUD management. This, in turn, allows for comprehensive report generation and provides an accurate picture of the program when reporting to Congress. The system also provides a common format for capturing, storing, searching, and reporting DRGR System information, while also providing a consistent data archive of historical information on program performance.

### **B. Grants Network Reporting Requirements**

HCD requires subrecipients to submit monthly activity reports for all CDBG-DR/MIT programs via Grants Network. HUD's recordkeeping requirements for CDBG-DR/MIT funds administered by the Department are contained in 24 CFR Part 570. Specifically, 24 CFR 570.490 (a)(3) states that "The State shall make entries...to accurately capture the state's accomplishment and funding data." Performance accomplishments are based on progress made by subrecipients towards project outcomes.

The state is required by HUD to report performance accomplishments for grant-funded activities on a quarterly basis through the DRGR. The monthly reports submitted in Grants Network facilitates the timely submission of quarterly DRGR reports. Reporting in Grants Network is based on activity types and accompanying performances measures associated with each CDBG-DR/MIT program.

Subrecipients are required to submit monthly activity reports. For projects funded with more than one CDBG-DR/MIT grant, subrecipients must submit separate reports in Grants Network, one for each grant, and required to maintain supporting documentation for each project and its outcomes.

Activity reports submitted in Grants Network include performance reporting on key metrics and narrative style project updates. Narrative status updates include, but are not limited to:

- A description of status of each project activity, including number of units leased, and households assisted, if applicable.
- A description of the project activities planned for the next reporting period.
- A description of the challenges encountered during project implementation and strategies taken to address these challenges.
- A recent success of the project.

HCD Program Representatives, at their discretion, may require additional performance accomplishments or project status narrative information.

### C. Quarterly Performance Report

HUD requires a QPR to assess the progress of CDBG-DR grant activities. QPRs are submitted through the DRGR system on a set schedule. Refer to the table below for the standard QPR reporting dates. The Representative II (data and reporting) is responsible for submission of QPRs.

Table 1- QPR Reporting Dates

Reporting Period End Date	Grantee QPR Submission Deadlines
31-March	30-Apr
30-Jun	30-Jul
30-Sep	30-Oct
31-Dec	30-Jan

The QPR must relate back to the activities expressed in the CDBG-DR approved application. The following items must be reflected in the QPR:

1. Update race/ethnicity and income data, if applicable
2. Report baselines (one time only) and update values per the frequency outlined in the Action Plan (Outcome Value Activities only)
3. Update performance measures as accomplishments are made
4. Report CDBG-DR expenditures
5. Report direct leverage expenditures
6. Report supporting leverage expenditures
7. Enter progress narrative
8. Enter the actual completion date (when the activity is completed)
9. Additional information as determined by HUD

## XVI. 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 CDBG-DR programs and activities. HCD is required to ensure that its subrecipients comply with all regulations governing administrative, financial and programmatic operations,

and that they achieve performance objectives on time and within budget. Monitoring enables HCD to verify compliance with both regulatory and performance requirements.

HCD's responsibilities and procedures for the day-to-day management of the CDBG-DR program are also outlined in the CDBG-DR Standard Agreement, federal CDBG regulations, Federal Register Notices, Title 25 of the California Code of Regulations, Department Management Memos and HCD's Grant Administration Manual.

Full policies and procedures for HCD's oversight, monitoring and risk assessment efforts for CDBG-DR programs are available in the CDBG-DR Monitoring Plan at [Disaster Grant Administration & Reporting | California Department of Housing and Community Development](#).

Subrecipients are responsible for carrying out their programs to meet these compliance requirements, including monitoring their project administrators, contractors and subcontractors. Monitoring may include on-site visits to the subrecipient's offices or desk monitoring at HCD.

#### A. Roles/Responsibilities

Monitoring is the responsibility of HCD and its subrecipients and contractors. HCD, its subrecipients, and contractors perform monitoring to ensure compliance with executed agreements, applicable state and federal laws and regulations, and project/program performance criteria. The Representative II (monitoring/compliance) monitors subrecipients on a periodic basis—based on the results of an annual risk assessment. HCD provides subrecipients with proper notification of a monitoring visit.

#### B. Risk assessment

HCD leverages a risk-based methodology and assessment to determine monitoring frequency. HCD employs a combined effort of ongoing desk monitoring and onsite monitoring throughout the implementation process for Subrecipients that are identified as high risk. The monitoring schedule and type of monitoring are based on the status of project expenditures and progress narratives. A review of monitoring needs for each subrecipient is done annually. Factors considered when determining monitoring needs include, but are not limited to:

- Jurisdictions "exempt" from Single Audit submission
- Single Audit Compliance (missed or late reporting, findings, etc.)
- Complexity of project or program
- Number of open contracts
- Contract activities
- Program income
- Length of time since last monitoring
- Advance payments processed for contract
- Nomination from staff/management
- Knowledge of program requirements & cross-cutting Federal requirements
- Citizen complaints

### C. Monitoring Strategy

Based on the risk assessment, the Manager I (monitoring/compliance) will implement a monitoring strategy in accordance with the selected subrecipients and activities that need to be monitored. A monitoring may be a comprehensive compliance review, or it may be oriented toward assessing compliance or performance in a specific area. Whether a monitoring review is conducted at HCD or on-site, the annual strategy defines the scope and focus of the effort. The monitoring strategy includes, but is not limited to:

- Specific subrecipients or activities or compliance standards to be reviewed
- Type of reviews proposed, desk or on-site
- Subrecipient names and contact information for monitoring
- Identification of monitoring checklists to be used and documents that need to be provided
- A monitoring schedule, with proposed monitoring dates

HCD staff may perform a desk review or conduct an onsite monitoring visit of a subrecipient or a contractor at any time.

The monitoring strategy includes desk reviews, onsite monitoring visits, risk assessments, and technical assistance. HCD conducts an annual risk assessment of all the CDBG-DR projects and conducts on-site monitoring visits for that year according to the results of the risk assessment. HCD staff conducting the monitoring may focus on the program management and progress, benefits and outcomes, compliance, including procurement or labor standards, or a number of other compliance or programmatic topics that may be raised by HCD or the subrecipient. The subrecipient should cooperate with HCD staff and provide them with all records and files pertaining to the program, as well as any other information requested.

For further details on monitoring methods and procedures, refer to Section V of the CDBG-DR Monitoring Plan.

### D. Desk Monitoring

HCD uses formal, structured desk reviews (or “desk monitoring”) for discrete focused monitoring. These desk monitoring events have limited documentation requirements so that there is not a burden of shipping boxes of paper files or transferring large electronic files. Desk reviews are performed in HCD offices regardless of subrecipient location and provide HCD with the ability to monitor subrecipients on specific subject matters on a regular basis so that the Plan’s goal of monitoring all subrecipients and their activities can be achieved.

The Representative II (monitoring/compliance) contacts the subrecipient at least 30 days prior to the start of desk monitoring via a monitoring notification letter. The letter states the purpose of the desk review and the subrecipient’s responsibilities related to the monitoring effort. The letter also identifies the activity and compliance standards to be monitored, the documentation to be delivered to the Manager I (monitoring/compliance) or appropriate monitoring staff, and the method(s) for providing the documentation to the HCD office.

The timeframe from the notification letter to the commencement of desk monitoring allows a sufficient period for the subrecipient to organize monitoring documentation,

review their policies and procedures, and initiate internal controls they determine to be appropriate in advance of the formal monitoring. Also included in the letter is the monitoring checklist or document request checklist that must be used to compile the documentation for subrecipient submission to HCD.

Once the subrecipient returns the completed document request checklist with supporting documentation to HCD, the Representative II (monitoring/compliance) performs a preliminary review to determine that all requested documentation has been provided. In accordance with monitoring objectives, the Representative II (monitoring/compliance) may exercise their judgement to determine if additional, reasonable guidance would improve monitoring results or if the documentation is a satisfactory for compliance verification.

Typically, desk monitoring is only conducted for low risk to medium risk subrecipients who pose the least amount of risk to HCD and its grant with HUD. Special circumstances may arise that require a special desk monitoring for a high risk subrecipient (e.g. a news report related to a CDBG-DR funded project where actions may require a special on-site monitoring).

#### E. On-Site Monitoring

The Representative II (monitoring/compliance) and appropriate HCD personnel will conduct on-site monitoring visits in accordance with the annual schedule developed by the assessment and monitoring strategy. On-site monitoring activities are conducted at a site where the subrecipient administration and activity record keeping systems are in place. On-site monitoring is an effective way to validate desk review results, identify and/or research discrepancies, and more closely monitor larger compliance standards.

Similar to the desk monitoring process, the subrecipient is sent a monitoring notification letter and document request checklist by the Representative II (monitoring/compliance) or Manager I (monitoring/compliance) in advance of the site visit. The letter is sent at least 30 days before the site visit to allow time for sufficient preparation. The letter states the purpose of the on-site monitoring, length of time the HCD monitor(s) will be on-site, and the subrecipient's responsibilities in assisting the monitor's onsite monitoring activities. The letter must clearly identify areas to be monitored and state that appropriate subrecipient staff and any applicable consultants must be on-site to provide clarification and/or take part in interviews as determined necessary by the monitor. The subrecipient is required to have records, files, and documentation available for review during the visit.

The timeframe from the notification letter to the commencement of desk monitoring allows a sufficient period for the subrecipient to organize monitoring documentation, review their policies and procedures, and to ensure required individuals are available – onsite – to assist monitoring staff. This will also afford the HCD monitor(s) sufficient time to start the preparation work for the on-site visit.

Monitoring visits are an opportunity to increase the subrecipient's capacity to deliver services and implement projects or programs and for communication and problem-solving technical assistance between HCD and its subrecipient.



HCD aims to conduct on-site visits annually through grant closeout. An onsite monitoring may also be conducted if a significant deficiency is identified during desk monitoring, technical assistance visit, or other interaction with the subrecipient.

#### F. Corrective Action – Finding

Findings are deficiencies in program performance based on noncompliance with a statutory, regulatory, or program requirement for which sanctions or other corrective actions are authorized. These deficiencies are considered to be higher-risk issues that could potentially result in questioned costs and/or impact the integrity of program operations. Findings require a response or that a directed action be undertaken by the subrecipient known as a corrective action plan. Findings are recorded with a specific regulatory citation of the requirement that is not being adhered to, as well as a description of the condition which is causing the finding. Where possible, references should be made to specific dates, documents, payments, costs, or activities, rather than general operations.

#### G. Concern and Observation

A Concern is a deficiency or inconsistency that warrants review and if left unchecked, has the potential to result in a Finding. The Concern could potentially result in higher-risk findings based on the nature of the deficiency (i.e., repeat violations, issues indicative of systemic problems in fiscal operations, questioned costs, etc.). Concerns do not always require a response by the subrecipient; however, the subrecipient may elect to provide a response and/or supporting information to address or resolve the issue.

Concerns may be more broadly described than a finding and not specifically cite a requirement. Concerns often reference a deficient process and not a deficient item. Subrecipients may be required to address the concerns with details of remedy actions. HCD may also provide recommendations and has the right to approve or reject the action.

An Observation is an area of note that may be performed better or differently for improved results. It requires attention and further analysis to ensure it does not elevate to a Concern or Finding. Observations do not require a response from the subrecipient.

#### H. Technical Assistance

During an on-site monitoring, the monitor may discover an action or document that shows the subrecipient may have a weak understanding of an area of CDBG-DR or MIT program management that could lead to a concern or finding, but at the time of the monitoring, it is not an issue. If the monitor identifies a situation like this during a monitoring, they can provide on-site technical assistance or coordinate future technical assistance with HCD subject matter expertise, as appropriate. This technical assistance may be conducted at the time the issue is identified during the review or during the exit conference. When providing this – proactive – technical assistance, the monitor should cover the documentation reviewed and where there appears to be a weak understanding of requirements and/or regulations. It should be explained so that the subrecipient or program staff understands the issue and has examples of best practices to help guide future actions in the correct manner.



On-site technical assistance must be identified in the report following the monitoring event. The monitoring report should provide a brief overview of what was identified, a summary of the assistance provided, and statements providing additional resources. It is important to record technical assistance provided during the monitoring in the event the issue is not corrected.

#### I. Monitoring Report and Letter Response Review

When desk or on-site monitoring events are completed, the Representative II (monitoring/compliance) details the outcomes of the monitoring review in a monitoring report, including any corrective actions to be addressed by the subrecipient. The report is reviewed and approved by the Manager I (monitoring/compliance) and the Fiscal Compliance Section Chief. The DRO Branch Manager reviews the report if there are any findings or concerns. The Manager I (monitoring/compliance) provides the subrecipient with the approved report.

The subrecipient has 30 days from the date the monitoring report letter is issued to respond to any findings and/or concerns identified therein.

After the HCD office receives the subrecipient's response to the monitoring report, it is reviewed to determine if the response satisfies the required corrective actions as stated in the monitoring report letter. During this review period, the Representative II (monitoring/compliance), Manager I (monitoring/compliance) and the Fiscal Compliance Section Chief will assess the actions that have been put in place to avoid future occurrence of noncompliance and determine if the actions are sufficient or insufficient. If it is determined that the official response is insufficient, the Representative II (monitoring/compliance) will make recommendations to the Manager I (monitoring/compliance) on next steps, which can include HCD taking more severe actions against the subrecipient.

The Manager I (monitoring/compliance) will review the recommendations submitted by the monitor with the Fiscal Compliance Section Chief. During this review, the Manager I (monitoring/compliance) and Fiscal Compliance Section Chief will either approve the recommendation – in part or in full – or will reject the recommendation – in part or in full. The Manager I (monitoring/compliance) will respond to the Representative II (monitoring/compliance), instructing on next steps as detailed in the Monitoring Plan.

#### 1. Monitoring Clearance

After all follow-up actions are completed, the subrecipient must submit a monitoring resolution letter listing all findings and concerns with statements regarding resolution of concerns and completion of corrective action plans. HCD will provide a final monitoring clearance letter. The final outcomes of the desk monitoring will be recorded in Grants Network and DRGR.

#### J. Sanctions

If a finding remains uncorrected, one or more sanctions will be imposed. The severity of the sanction(s) is governed by the type and seriousness of deficiency. Possible sanctions include, but are not limited to:

- Reporting subrecipient in federal debarment system
- Suspension of grant payments
- Termination of grant

- Disqualification from consideration for other CDBG funds
- Legal action pursued by CA Attorney General

If the subrecipient does not address the deficiencies after being sanctioned, additional sanctions may be imposed.

#### K. Appeal Process

If a subrecipient disagrees with a finding, the specific requirement of the finding, or the accompanying corrective actions or sanction(s) that appear in the monitoring report letter or subsequent review responses, the subrecipient may appeal the disputed decision no later than 30 calendar days from the date of issuance of the monitoring report letter according to the subrecipient appeals process and rights included in the CDBG-DR Monitoring Plan under Exhibit 16.

#### L. Monitoring Areas

The Representative II (monitoring/compliance) and other HCD personnel conducting monitoring activities use established monitoring checklists as a guide to the applicable laws and requirements when reviewing administrative and programmatic files and records.

A general description of each area tested during monitoring is provided below. Included in each description are the checklists that are used to facilitate the review. In addition, the applicable checklists are sent to the grantee with the Monitoring Notification Letter for each area to be reviewed.

##### 1. Program Progress

The Representative II (monitoring/compliance) compares the schedule in the Standard Agreement to the actual progress to date (both in actual results and funds expended) to ensure the program is progressing in accordance with the time frame established.

##### 2. Program Benefit

Each activity must provide a specific benefit, which is referred to as the National Objective of that activity. The activity and the corresponding National Objective are listed in the Standard Agreement.

The Representative II (monitoring/compliance) reviews the program files to ensure the appropriate National Objective has been met, and that the method of determining eligibility was performed in compliance with the state's *Income Calculation and Determination Guide for Federal Programs*. The Representative II (monitoring/compliance) reviews progress reports submitted by the subrecipient to determine how many beneficiaries have been served and compares the actual number to the number projected in the approved funding application.

Activities that do not meet the defined National Objective may be determined to be ineligible and a repayment of funds may be required.

### 3. Environmental Review

HCD conducts a review of the Environmental Review Record (ERR) during the visit to verify that environmental clearance procedures comply with National Environmental Protection Act (NEPA) requirements. This includes determining whether required procedures, finding forms, applicable supporting documentation, and necessary notices, public participation and actions are part of the ERR and available at the local government office for public review. The Representative II (monitoring/compliance) makes sure that any required mitigation or follow-up actions indicated by HCD correspondence have been carried out. For more information, see Section XIII, Environmental Review.

### 4. Procurement

The subrecipient's records are reviewed for compliance with federal, state and local bidding and contract requirements. Representative II (monitoring/compliance) evaluates the method of procurement, records of bids and proposals, selection procedures and the processes and documents for procuring professional services, supplies, materials, and construction contracts. Contracts and Agreements are reviewed to ensure the required language and provisions has been included. For more information, see Section VI, Procurement.

### 5. Labor Standards

Records are reviewed to assure compliance with applicable labor laws and state required record keeping. Documentation and compliance requirements are further outlined in Section XVI, Part H, Number 5, Labor Standards.

For CDBG-DR projects that require public construction contracts and monitoring of federal and state prevailing wage compliance, HCD's Labor and Compliance Specialist will be the Labor Standard Compliance Officer in coordination with HCD's technical assistance contractor. They are responsible for ensuring any public construction activity is bid out using federal CDBG procurement standards and incorporate all prevailing wage language and processes. (See Section VI, Procurement for specifics.) The Labor Compliance Officer coordinates with HUD Region IX Labor Specialists for all construction activity implementation, including the submission of all labor reports.

### 6. Property Acquisition, Relocation and Displacement

The Representative II (monitoring/compliance) determines if state and federal procedures and requirements were followed, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act Amendments of 1987 (URA). The review includes Section 104(d) relocation and one-for-one replacement housing requirements, where applicable. The Representative II (monitoring/compliance) determines if the recipient followed the correct procedures, including initial contact with the property owner, documentation of response, appraisal and review, just compensation determined, and offer made and accepted. Section XIV, Relocation and Acquisition provides further details associated with the URA.

## 7. Housing Activities

The subrecipient's records must include a copy of HCD's approval notification for program guidelines, policies and procedures, and the approval must pre-date any work performed. When the subrecipient is carrying out housing activities, the review may include on-site visits to HCD-selected properties. The Representative II (monitoring/compliance) notifies the subrecipient regarding which sites are to be visited and allows sufficient time to make arrangements with the households. On-site inspections include a review of the rehabilitated unit for property standards compliance, and assessment of the quality of the work, reasonableness of cost, and compliance with applicable laws and requirements. Representative II (monitoring/compliance) also verifies that the number and location of units agree with the application.

## 8. Public Improvements, Public Services and Public Facilities

Representative II (monitoring/compliance) reviews subrecipient's records to ensure the projects or services funded are in compliance with all related regulations, meets a national objective and serve the area approved by HCD.

## 9. Equal Opportunity and Fair Housing

Prior to the release of grant funds, subrecipients must outline the actions to be taken to affirmatively further fair housing in a fair housing plan submitted to HCD, if the project involves public housing. Subrecipient records must include an assessment of the effectiveness of the program's marketing and outreach efforts, to ensure equal access to and non-discrimination in all program benefits. This includes a comparison between the subrecipient's general population, program applicants and beneficiaries that received assistance or services. Applicants and beneficiaries that do not mirror the general population may indicate inadequate outreach. Documentation of actions taken is reviewed.

The Representative II (monitoring/compliance) also reviews employee hiring practices to see if they are exclusionary. If there are any outstanding complaints or lawsuits related to equal employment, then the Representative II (monitoring/compliance) will require additional details on the subrecipient's hiring practices. The Representative II (monitoring/compliance) also determines compliance with Section 504 of the URA, regarding non-discrimination on the basis of disability and accessibility to program benefits, facilities and services. Finally, the Representative II (monitoring/compliance) reviews compliance with the requirements of Section 3.

## 10. Financial Management

Representative II (monitoring/compliance) determines compliance with the financial management requirements outlined in Section V. In particular, the review will determine if records are maintained in compliance with 24 CFR §85, 2 CFR §200 and other state requirements. Typically, Representative II (monitoring/compliance) reviews ledgers, invoices, cancelled checks, bank statements and draw down requests to verify that the subrecipient has an adequate financial management system.

## 11. Program Income

When applicable, Representative II (monitoring/compliance) reviews records pertaining to CDBG program income. Representative II (monitoring/compliance) verifies that records are maintained, and expenditures comply with federal requirements and an approved *Program Income Reuse Plan*. The Representative II (monitoring/compliance) determines if the appropriate accounting records are being maintained and if accurate annual reports are being submitted to HCD. An on-site review will be made to determine that program income expenditures were carried out as approved in the *Program Income Plan*.

## 12. Certifications

Subrecipients are required to certify that they understand and will adhere to key regulatory requirements associated with the CDBG-DR funds. The Representative II (monitoring/compliance) reviews certifications submitted to ensure compliance. The Representative II (monitoring/compliance) will review the Citizen Participation Plan, Needs Assessment, public hearings and all meeting minutes and citizen comments, as well as the Residential Anti-displacement and Relocation Assistance Plan, as applicable. Policy statements concerning excessive force by law enforcement are reviewed along with lobbying, special assessments and public access to records.

## 13. Program Management

Representative II (monitoring/compliance) verify that overall program management to assure the continuing capacity of the subrecipient to properly administer approved CDBG-DR funds. The Representative II (monitoring/compliance) reviews program record keeping, timeliness of reporting, history of receiving stop payments, program files, the subrecipient's ability to work within a designated time frame, and the effectiveness of the subrecipient's managements system.

## **XVII. Closeout Procedures**

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 activities are eligible, were completed, and met a national objective
- 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
- All audit and monitoring issues affecting the grant were resolved

At this time, CDBG-DR specific guidance on closeout has not yet been produced. Final grant closeout may be adjusted to meet the closeout criteria set forth by HUD in a future federal register or through other official means.

### A. Closeout of an Individual Activity

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

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

- The total amount of funds drawn down for the activity
- The activity type
- The national objective
- The grant activity accomplishments

Individual activity completion should also be reflected in the QPR.

### B. Closeout of a Contract

Prior to project completion, subrecipients are required to submit a final activity and financial report via Grants Network that includes all relevant supporting documents and certifications. HCD's Program Teams and Fiscal Compliance Section teams ensure all requirements per each subrecipient's agreement have been met before the activity closeout.

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
- If applicable, the final products 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." As a final step, projects are marked as closed in HCD's grant and financial management systems as well as DRGR.

Once all documentation has been processed and DRGR has been updated, HCD sends a Close-Out Letter to the subrecipient, outlining all closeout requirements. HCD 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:

1. 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.
2. Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart.
3. 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
- 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 completed.