

CHAPTER 2

CDBG-DR and CDBG-NDR PROGRAMS OVERVIEW

Whenever Congress appropriates additional CDBG funding to be used in response to presidentially declared disasters, the authorizing legislation defines the eligible areas and activities for which the funds may be used. Additionally, under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), unless waivers are defined in a Notice published in the Federal Register, the statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of CDBG-DR and CDBG-NDR funds. In accordance with the Supplemental Appropriations Act, HUD reconsiders every waiver contained in the Notice on the two-year anniversary of the day this Notice is published (Pub. L. 110–252, approved June 30, 2008).

CDBG-DR

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. 110–329, approved September 30, 2008) (hereinafter, “Second 2008 Act” to differentiate it from the earlier 2008 Supplemental Appropriations Act) (Pub. L. 110–252 approved June 30, 2008) (hereinafter, “First 2008 Act”) governs the CDBG-DR program (also known in Department documents as the DRI program, since many references identify the program as “Disaster Recovery Initiative” funds).

The Federal Register Notice published on August 14, 2009 (Federal Register / Vol. 74, No. 156 / Friday, August 14, 2009 / Notices) granted additional allocations and waivers to the Stafford Act. California, as a newly listed Grantee, was required to submit an Action Plan for Disaster Recovery by December 30, 2009 (California was not named in the February 13, 2009 Notice).

Based on the eligible activities and requirements of the above Notices, HUD approved the State’s Action Plan and awarded California \$39,531,784 for forward-thinking planning and other smart strategies to help prevent or reduce damage from future fires. In addition, \$311,602,923 was identified as discretionary Disaster Recovery Enhancement Fund (DREF) dollars, to allow for secondary allocations to Grantees that anticipate unmet disaster recovery needs after developing and undertaking their award forward-thinking strategies and activities.

The State’s CDBG-DR program was established in early 2010 to distribute federal funds to assist physical and economic recovery from wildfire disasters in 2008 that affected 14 California counties and two Indian tribes. In late 2010, HUD offered additional funds from the DREF to extend and improve the recovery, by offering incentives to eligible jurisdictions to mitigate the danger of future disasters (e.g., earthquake, flood, fire) through forward-thinking planning measures, such as updated building codes and code enforcement, creation of Local Hazard Mitigation Plans (LHMPs) and/or the adoption of Safety Elements of local General Plans. The DRI Program includes the DREF allocation. To use these funds, eligible jurisdictions must budget their

DRI awards for use in “forward thinking mitigation, enhancements and land use planning activities.”

A maximum amount of \$8,500,000 was allowed, depending on the percentage of low- and moderate-income beneficiaries. Up to \$150,000 was allowed for the creation/update of Local Hazard Mitigation Plans (LHMPs), and up to \$250,000 was allowed for the creation/update of General Plan Safety Elements.

Eligible applicants were those cities and counties (entitlement and non-entitlement) within the declared areas included in a 2008 Presidential fire disaster declaration; : Butte, Kern, Los Angeles, Mariposa, Mendocino, Monterey, Orange, Plumas, Riverside, Santa Barbara, Santa Clara, Santa Cruz, Shasta and Trinity counties, as well as the Hoopa Valley Indian Tribe and the Yurok Indian Tribe of the Yurok Reservations.

Eligible Activities include construction, acquisition, rehabilitation and preservation of affordable rental and ownership housing, homeless shelters and transitional housing; public services; public facilities and infrastructure projects for the primary benefit of low- and moderate-income persons; where applicable, the development or retention of jobs for lower income workers; and forward thinking hazard mitigation planning activities.

Applications are accepted over-the-counter (OTC) until available funds are exhausted. Applications are reviewed based on eligibility threshold criteria in the original 2010 CDBG-DR Notice of Funding Availability (NOFA), as amended in 2011.

A list of Grantees and the awarded activities for each announcement are located on the HCD Disaster Recovery webpage at <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/disasterrecoveryinitiative.html>.

CDBG-NDR

Public Law 113-2 (Pub. L. 113–2, H.R. 152, 127 Stat. 4, enacted January 29, 2013), includes Division A: Disaster Relief Appropriations Act, 2013 and Division B: Sandy Recovery Improvement Act of 2013 authorized \$60 billion for disaster relief. On January 21, 2016, HUD announced the winners of HUD’s \$1 billion CDBG-NDR competition, which is funded through the Community Development Block Grant-Disaster Recovery (CDBG-DR) appropriations in the Disaster Relief Appropriations Act of 2013.

California was awarded \$70,359,459 for the following activities located within Tuolumne County:

- (1) Forest and watershed health work (green public infrastructure),
- (2) A biomass energy facility and wood products campus (public facility or economic development loan), and
- (3) A community resilience center (public facility).

As part of the competitive process, CDBG-NDR Applicants were required to include a proposed method of distribution (MOD) at the time of application. The Sierra Nevada Conservancy (SNC), a California state agency, will administer the forest and watershed health work, as well as the biomass/wood products campus development and implementation. HCD's oversight, technical assistance and administrative roles and responsibilities, along with SNC's implementation roles and responsibilities are outlined in an inter-agency agreement. Tuolumne County will enter into a Standard Agreement with HCD for the development of the community resilience center. The Standard Agreement will include the award amount, a description of the scope of work, project and performance milestones, and compliance requirements. As per provisions of the Stafford Act, no public works project may be funded with federal monies in excess of the amount necessary to meet disaster needs.

The Disaster Relief Appropriations Act made funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas resulting from a major disaster declared pursuant to the Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Disaster Relief Appropriations Act requires funds to be used only for these specific disaster-related purposes.

CBBG-DR AND CDBG-NDR WAIVERS

Waivers provided through the Stafford Act (**CDBG-DR**) include the following:

- I. **Overall Benefit to Low- and Moderate-Income Persons.** Pursuant to explicit authority in the Supplemental Appropriations Act, HUD granted an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each Grantee is "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD waived the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give Grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD would only provide additional waivers of this requirement if it finds a compelling need. The requirement that each activity meet one of the three national objectives is not waived.
- II. **Expanded Distribution and Direct Action.** The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government

are consistent with waivers granted for previous, similar disaster recovery cases. HUD believes that, in using very similar statutory language to that used for the CDBG supplemental appropriations for Hurricane Katrina, Rita, and Wilma recovery, Congress signaled its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD waived program requirements to support this. HUD also included in the CDBG-DR Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

- III. **Consistency with the Consolidated Plan.** HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a Grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the HCD Act, HUD is limiting the scope of the waiver for consistency with the consolidated plan; it applies only until the Grantee first updates its consolidated plan priorities following the disaster.

- IV. **Use of Subrecipients.** The State CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities rather than using a method of distributing funds to local governments. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice when using subrecipients.

- V. **Reporting.** HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the Grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the Grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of the CDBG-DR Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each Grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting (DRGR) system, which uses a streamlined, Internet-based format. HUD will use Grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; 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 Grantee must post the report on a Web site for its citizens within 3 days of the report's submission to HUD. If a Grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, other HUD monitoring and technical assistance activities undertaken during the quarter, and any significant conclusions related to

fraud or abuse of funds or duplication of benefits.

VI. Eligibility—Housing Related. The waiver of Section 105(a) of the 1974 Act that allows new housing construction and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent (120%) of median income and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The broadening of the Section 105(a)(24) waiver, in accordance with the state's request, will allow the state to implement mixed-use housing recovery programs included in its HUD-accepted action plan.

VII. Program Income. A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

CDBG-DR and/or CDBG-NDR Grantees must report all program income received, expended and on hand to the Department on the appropriate forms twice a year: semi-annual report #1 is due January 31 for the reporting period July 1 through December 31; semi-annual report #2 is due July 31 for reporting period January 1 through June 30; and the annual Program Income report is due July 31, which is a fiscal year reporting for all Program Income activity.

The Department records program income activity in Excel workbooks and reports the expenditures to HUD through the federal Disaster Relief Grant Reporting (DRGR) system.

VIII. Allow reimbursement for pre-agreement costs. The provisions of 24 CFR 570.489(b) are applied to permit a Grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

IX. Clarifying note on the process for environmental release of funds when a state carries out

activities directly. Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a state Grantee to also 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.

X. Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "non-entitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or federally recognized Indian tribes. The state is required instead to distribute funds to activities assisting a declared county or counties and eligible under this Notice without regard to the status of a local government or Indian tribe under any other CDBG program.

b. Additionally, because the state Grantees under this appropriation have requested a waiver to carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects each state Grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

CDBG-NDR waivers, included in the June 7, 2016 Federal Register, are:

- I. **Overall benefit waiver and alternative requirement.** The primary objective of the HCD Act is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of a CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many Grantees affected by the Qualified Disasters. Grantees under this NOFA experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement may prevent Grantees from providing assistance to damaged areas of need. Therefore, CDBG-NDR waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides Grantees with greater flexibility to

carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

Grantees may seek to reduce the overall benefit requirement below 50 percent of the total grant, but must submit a justification for a consistent with the instructions in Appendix E. The 50 percent overall benefit requirements will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold. California requested an overall benefit requirement reduction waiver from 50 percent to 47 percent for the CDBG-NDR award.

California's application for CDBG-NDR funding included a waiver requesting that the percentage of low- and moderate-income (LMI) persons for activities in Tuolumne County be lowered from fifty-one percent (51%) to thirty-eight percent (38%).

- II. **Use of the urgent need national objective.** The certification requirements for the documentation of urgent need, located at 24 CFR 570.483(d), are waived for grants under the CDBG-NDR NOFA until two years after the date HUD obligates funds to a Grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since HUD only selected Grantees for CDBG-NDR awards based on documented disaster-related impacts (as supported by data provided by FEMA, SBA, and the applicants), each Grantee is limited to spending CDBG-NDR funds only in counties identified as the most impacted and distressed area in their Action Plan. For California, Tuolumne County was the only area identified in the CDBG-NDR Action Plan.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, to more effectively and quickly implement disaster recovery programs, CDBG-NDR Grantees must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the Grantee.

As a reminder, at least 50 percent of each Grantee's CDBG-NDR grant award must be used for activities that benefit LMI persons, unless waived.

- III. **National Objective Documentation for Economic Development Activities.** 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the Grantees under this CDBG-NDR NOFA to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which Grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., number of persons). Thus, it streamlines the documentation process by allowing the collection of wage data from the assisted business for each position created or retained, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG-DR

Grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to LMI persons. The Department has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

- IV. **Public benefit for certain economic development activities.** The public benefit provisions set the standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the Grantee may provide to a critical activity.

For CDBG-NDR HUD waived the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, Grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD also waived 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

- V. **Clarifying note on Section 3 income documentation requirements.** Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, the Secretary is authorized to establish income limits to consider an individual to be a Section 3 resident. The CDBG-NDR NOFA authorized Grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

- VI. **Waiver and modification of the job relocation clause to permit assistance to help a business return.** Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another—if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h) are waived to allow a Grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business.

- VII. **Alternative requirement for assistance to businesses, including privately-owned utilities.** The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: when Grantees under this CDBG-NDR NOFA provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR Part 121. CDBG-DR funds made available under this CDBG-NDR NOFA may also not be used to directly assist a privately-owned utility for any purpose. Note that a private utility

may be a Partner to the Applicant for purposes of implementing a CDBG-NDR program.

VIII. Expenditure Deadline. CDBG-NDR funds are subject to **31 U.S.C. 1552(a)**, and, therefore, are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. In addition, the Appropriations Act requires all CDBG-NDR funds be obligated by September 30, 2017. The Appropriations Act (Section 904(c) of title IX in division A) also requires that all funds be expended within 2 years of the date HUD obligates funds.

The Office of Management and Budget (OMB) granted HUD a waiver of the expenditure timeline because certain CDBG-NDR activities satisfy the OMB criteria for “activities that are long-term by design where it is impracticable to expend funds within the 24-month period and achieve program missions.” The NDRC NOFA outlined the process for applicants to request an extension of the expenditure deadline as part of its application to HUD. The June 7, 2016, Notice in the *Federal Register* (81 FR 36557) further clarified that awardees may submit such requests following the award of funds. On April 19, 2016, HCD submitted a request for extending the timeline and justified the need for the extension, outlining the challenges necessitating additional time and an appropriate timeline for project completion. HUD has assessed HCD’s request for an extension in the context of the unique nature of the project funded through the CDBG-NDR initiative. On July 18, 2016, HUD approved HCD’s request to extend the expenditure deadline to September 30, 2022. It is important to note that only the remaining balance of the grant as of the end of the initial 24-month expenditure period will be extended.

CDBG-DR AND CDBG-NDR ADDITIONAL REQUIREMENTS

PREVENTION OF FRAUD, ABUSE, WASTE

The Stafford Act directs the HUD Secretary to require CDBG-DR Grantees to establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

The Department of Housing and Community Development’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, and
- 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, and must routinely monitor, evaluate, and improve internal controls when necessary.

HCD also requires its CDBG Grantees, subrecipients and/or any contractors (HCD CDBG recipients) to behave in a fair and honest way, and to ensure that funds are used in accordance of all federal and state rules, statutes, regulations and guidance. HCD CDBG recipients 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 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 of the act of that person:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval; or
- Knowingly makes, uses, or caused to be made or used a false record or statement material to a false or fraudulent claim; or
- Conspires to commit a violation of the False Claim Act; or
- 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; or
- 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; or
- 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; or
- 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; or
- 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.

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, 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:

- (1) 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
 - (2) 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.

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 and CDBG–NDR inter-agency, sub-recipient 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:

Department of Housing and Community Development
Attention: Marc Wilson, Deputy Director
Audit and Evaluation Division
2020 West El Camino Ave.
Sacramento, CA 95833
Marc.Wilson@hcd.ca.gov
916-263-3397

Or, reports may be made to the
California State Attorney General’s Whistleblower Hotline
1-800-952-5225 or 916-322-3360

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 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.

Per the California State Administrative Manual (SAM), section 20080, Notification of Actual or Suspected Frauds and Irregularities, entities (including HCD) must notify the Office of State Audits and Evaluation (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 will be made to OSEA and the State Auditor in writing not later than the first business day following the actual or suspected fraud, theft, or irregularity. The notification will include, 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 will be made within thirty (30) days. If not completed within thirty days, a progress report will be submitted every thirty 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.

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.

DUPLICATION OF BENEFITS (DOB)

Section 312 of the Stafford Act prohibits federal agencies from providing assistance to any person, business concern, or other entity for “any part of such loss as to which he has received financial assistance under any other program or from insurance or any other 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.

Duplication of Benefit (DOB) occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the need. All costs included in assistance to beneficiaries must meet the “necessary and reasonable” definitions in 24 CFR Part 570 and OMB circulars.

In order to assess the need (which must be completed prior to assistance being provided), Grantees must use an independent third party contractor’s estimate to establish the project cost. The “total” assistance available to an applicant includes all funds/assistance received or reasonably anticipated (e.g., insurance claims or any federal benefits such as Small Business Assistance loan proceeds), funds that are not reasonably anticipated when the source and/or amount is indefinite, and/or any additional funds the applicant is unaware of that become

available. Not included would be any funds for a different purpose of the CDBG activity, or general, non-specific purposes (e.g., previous funds provided by a local non-profit for interim housing when the current CDBG activity is housing rehabilitation), or funds for the same purpose of the CDBG activity intended for a different (eligible) use (e.g., previous FEMA housing assistance funds that were used for interim housing while the current CDBG activity is housing rehabilitation), and funds not available (e.g., forced mortgage payoff, where the beneficiary receives a lump sum insurance settlement based on an estimated cost of repairs; any additional benefits that *may* have been received by requesting reimbursement for each item are not “available”). Funds are considered “available” if an applicant has received and has legal control of them (funds are “available” when an applicant has been approved for a loan even if the applicant has not yet drawn them), or when an applicant would receive the funds by acting in a commercially reasonable manner.

Documentation for the determining the total amount of assistance and to ensuring that beneficiaries are not receiving a duplication of benefits include, but are not limited to:

1. An assessment of the needs of the beneficiary based on the CDBG activity, and
2. Identification of all available assistance, and
3. Exclusion of non-duplicative funds.

Below is an example for rehabilitation of a single family housing unit for an eligible household that sustained damage of a wildfire:

1. Identify Total Need (accomplished by Grantee’s Housing Rehabilitation Program inspector)	\$100,000
2. All potentially duplicative assistance (FEMA assistance, insurance coverages, home equity line of credit balance available, etc.)	\$ 35,000
3. Assistance determined duplicative (insurance payout)	\$ 30,000
4. Maximum eligible award (1 less 3)	\$ 70,000
5. Program Cap (if applicable, such as Grantee’s program guidelines)	\$ 50,000
6. Lesser of Maximum Eligible Award or Program Cap = Final Award	\$ 50,000

Since disaster recovery needs are calculated at a point in time and a subsequent change may affect the need calculation (increase in cost of materials and/or labor, or unknown repair requirements, vandalism, contractor fraud, etc.) additional assistance may be provided if the initial need was not fully met. Any additional assistance 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). Any additional assistance must also be verified as not duplicative benefit. See table below for an example of additional assistance determination.

1. Identify Total Need (accomplished by Grantee’s Housing Rehabilitation Program inspector)	\$85,000
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2. All potentially duplicative assistance (FEMA assistance, insurance coverages, home equity line of credit balance available, etc.)	\$ 50,000
3. Assistance determined duplicative (insurance payout)	\$ 50,000
4. Maximum eligible award (1 less 3)	\$ 35,000
5. Program Cap (if applicable, such as Grantee's program guidelines)	\$100,000
6. Lesser of Maximum Eligible Award or Program Cap = Final Award	\$ 35,000
Final Award (from initial Need assessment)	\$ 35,000
Demonstrated Additional Unmet Need (e.g., 6 months later project costs have increased due to prices increased based on shortages)	\$ 9,800
c. Amount of Eligible Additional Award	\$ 9,800
d. Program Cap (Grantee's Rehab Program Guidelines)	\$100,000
e. Final Adjusted Award (Final Award + Eligible Additional Award)	\$ 44,800

CDBG-DR or CDBG-NDR funds must be used only for the eligible purpose of the activity or program for which they have been awarded by HCD (and as defined in the Standard Agreement or Inter-Agency Agreement Scope of Work). CDBG-DR or CDBG-NDR funds may not be used to pay down Small Business Administration (SBA) loans.

Any HCD Grantee that provides duplicative funding will be responsible for the repayment to HCD. As such, all HCD Grantees must have recapture policies and procedures, and require all applicants to sign, as part of the application and prior to any assistance being provided, an agreement giving the Grantee the legal right to pursue any rights, claims, or securities associated to the activity and project.

See the Duplication of Benefits Spreadsheet and Certification forms in Appendix D.

MAINTAINING A COMPREHENSIVE WEBSITE

Below is an outline for the maintenance of the Department's Webpage, including CDBG-NDR and CDBG-DR. The website is located at:

<http://www.hcd.ca.gov/nationaldisaster/resiliencecompetition.html>.

HCD WEBSITE

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

ROLES AND RESPONSIBILITIES

WEBSITE STEERING COMMITTEE

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

CONTENT PROVIDERS

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

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 only content that has been reviewed and approved by a program manager;
- Reviewing the website to ensure that content is up to date.

For the NDR program, the Content Providers include the Project Manager, Contract Management Representative or Manager, and/or the Fiscal Representative or Manager. Necessary content includes, but is not limited to, such items as the Action Plan, Substantial Amendment, Quarterly Reports, forms, narratives, links to project and/or HUD documents relating to the NDR program.

CDDB-DR documents are posted to the website located at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/disasterrecoveryinitiative.html>.

Documentation and content pertaining to CDBG-DR will be provided by the identified Content Providers in the Policy & Evaluation (P&E), Operations (including Contract Management Section), or Asset Management (including the Financial, Reporting, Evaluation and Disbursements, or FRED Section) branches.

PROGRAM MANAGERS

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

There are designated Content Providers for the Division of Community Affairs, Division of Codes and Standards, Housing Policy Division, and the Personnel Office. The Director for Marketing and Communications is the Content Provider for the Legislative Division, Legal Affairs Division and Directors Office. The Program Manager, Deputy Director, or Information Technology staff (Webmaster) will identify the Content Providers for each program other than CDBG-NDR and CDBG-DR.

INFORMATION TECHNOLOGY STAFF

HCD's IT staff are responsible for ensuring that the format and design of all 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.

PROCEDURE FOR PLACING CONTENT ON THE WEBSITE

All requests to have content placed on the web must be provided to IT by the appropriate Content Provider. Content Providers will prepare the package, which must include the information, data,

pictures, and/or graphics being requested to be posted, along with the routing document, and will manage the packet through the approval process and subsequently to IT for posting to the site. The minimum time required by IT to post content to the site is 48 hours.

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

Under certain circumstances, IT may need to place content on the site after business hours. In this case your Content Provider will request an after-hours phone number for the staff person providing the content. This allows IT staff the ability to resolve any questions/issues that may arise during the posting process and be able to post the content by the required due date.

PURCHASE OF SURPLUS PROPERTY

Grantees are encouraged to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

The website for how to purchase federal surplus property is located at:

www.gsa.gov/portal/content/102085, while the State of California's Surplus Property and Reutilization website is located at:

<http://www.dgs.ca.gov/ofam/Programs/StSurplus/Auctions/SurplusPropAuction.aspx>.