



State of California
Department of Housing and
Community Development
Community Development Block
Grant
National Disaster Resilience
Grant Administration Manual

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I. Introduction

A. Purpose of Grant Administration Manual

The purpose of this Grants Administration Manual (GAM) is to provide HCD NDR staff and NDR subgrantees with a reference guide to all policies, procedures and requirements that pertain to the programs and activities funded by the State of California's Community Development Block Grant National Disaster Resilience (CDBG NDR) award. This document provides CDBG NDR specific guidance for HCD and subgrantee staff on implementation and compliance for the Department of Housing and Urban Development (HUD) and state regulations as they are relevant to HCD's NDR activities. Staff will use this manual in conjunction with other HCD grant administration procedures and HUD resources.

The content of the GAM describes the three pillars of the NDR program and their objectives, HCD's role within each pillar, how programs will be managed, and HCD's administrative policies and requirements. Staff may use this as a reference to understand contractual relationships between HCD, partners and subgrantees as they pertain to the NDR grant. It also provides guidance on regulatory requirements, such as procurement, environmental reviews, labor standards, acquisition, and monitoring to comply with HUD regulations and the Federal Register Notices that pertain to NDR. There are forms and sample documents associated with this manual and they will be used by HCD and subgrantees for compliance and reporting requirements. Forms and sample documents are referenced in the GAM.

Whenever possible, forms and sample documents from HUD Exchange or other regulatory oversight agency will be used and the manual will provide links to the respective websites. Current versions of HCD NDR forms and sample documents will be made available to subgrantees by DR staff as needed for grant compliance. This GAM will be updated from time to time based on changes to compliance or NDR activity implementation that affect grant administration. GAM updated versions will be provided to HUD for their records.

B. CDBG NDR Background

On September 17, 2014, the Department of Housing and Urban Development (HUD) posted the National Disaster Resilience Competition (NDRC) Notice of Funding Availability, which outlined an innovative, two phased approach to the awarding of nearly \$1 billion in Community Development Block Grant (CDBG) NDR funding to eligible jurisdictions impacted by qualifying disasters. The goals of the NDRC are:

- To fairly allocate remaining Public Law 113-2 CDBG Disaster Recovery (DR) funds.
- To apply science based and forward-looking risk analysis to address recovery, resilience, and revitalization needs.
- To leave a legacy of thoughtful, innovative, and resilient approaches to addressing future risks.
- To help communities plan and implement projects that make them more resilient to future threats while improving quality of life and making communities more resilient to economic stresses or other shocks.

- To fully engage stakeholders about the impacts of climate change and to develop pathways to resilience.
- To leverage investments from the philanthropic community to help communities define problems, set goals, explore options, and craft solutions.

During Phase I, eligible jurisdictions were asked to frame their unmet recovery needs, vulnerabilities and community development objectives, and on June 22, 2015, the highest scoring applicants were announced as Phase I winners. Selected jurisdictions were then invited to participate in Phase II, where they were asked to fully articulate the resilience enhancing disaster recovery and revitalization projects or programs intended to address community development objectives as well as mitigate or address identified risks and vulnerabilities.

The two-phased approach included technical assistance from the Rockefeller Foundation, with the establishment of five regional Resilience Academies and a Federal Resilience Workshop during Phase I and two regional Resilience Academies and a Resilience Funder's Summit in Phase II. Eligible jurisdictions were required to submit their Phase II applications by October 27, 2015, and, after scoring by HUD, the winners of the competition, which included the State of California, were announced on January 21, 2016.

C. Summary of CDBG NDR Awarded Projects

HUD allocated \$70,359,459 in CDBG NDR funds to the State of California's Department of Housing and Community Development (HCD) to implement the Community and Watershed Resilience Program (CWRP) within Tuolumne County, which includes the Rim Fire burn and evacuation areas.

The Rim Fire started in August 2013 in the Stanislaus National Forest and burned a total of 257,314 acres, making it the largest wildfire on record at the time in the Sierra Nevada mountain range. After a nine-week firefighting battle, the fire was fully contained in October 2013. However, log piles continued to smolder due to a lack of winter rains for more than a year before the fire was declared officially out. Beyond the Rim Fire's obvious impacts to forest health and private property, it also threatened the Hetch Hetchy Reservoir, which provides 85 percent of the city of San Francisco's water supply.

The CWRP consists of a suite of resilience building initiatives in three integrated pillars. They include the Forest and Watershed Health Program, which implements forest and watershed investments and identify opportunities for investments in other watersheds, as well as the development of a Biomass Utilization Fund to facilitate biomass economic development projects and two Community Resilience Centers, which provide year round public services and act as emergency centers during future disasters. All three of these CWRP activities will support the local economy and increase disaster resilience in the area.

HCD has developed a Core Team comprised of partnerships established in the NDRC Phase 2 application process. These Core Team partners consist of federal, state and local agencies. The Core Team members meet regularly with HCD and technical advisors to help support and coordinate pillar activities throughout the stages of program design, feasibility and implementation. Once feasibility analysis is

complete for specific projects, the Core Team reviews them for NDR funding compliance and provides approval or requests additional compliance information as needed. After the Core Team reviews projects, HCD will require that a General Conditions checklist is completed and upon completion and approval, HCD provides a release of project funds to the subgrantee.

D. Forest and Watershed Health Program

HUD awarded approximately \$28.6 million to the State of California's Forest and Watershed Health Project (FWHP). The project implements green public infrastructure in the Rim Fire burn area through forest and watershed investments, which includes reforestation, biomass removal and fuels reduction, noxious weed abatement, expansion of fuel breaks and rangeland reconstruction, which is all part of implementation of sustainable forest management practices. HCD is using the United States Forest Service to implement these activities, in partnership with a number of other agencies. This component supports a healthy resilient forest and protect some of CA Sierra Nevada watershed area responsible, which in total provides for 60 percent of the state's water supply. It also provides wildfire protection to local communities and develops economic opportunities to diversify and strengthen local economies. The FWHP encompasses five distinct activities to ensure outcomes are met:

- a. Reforestation and restoration through reduction of existing fuel loads to preserve natural regeneration and the planting of resilient and diverse forests where regeneration is not sufficient to restore the landscape.
- b. Expand and develop eight strategically placed fuel breaks to provide forest and community protection by reducing the size and intensity of wildfires.
- c. Reconstruct rangeland infrastructure destroyed by the Rim Fire, including reconstruction of destroyed fencing and troughs.
- d. Mitigate sedimentation and soil erosion and initiate the treatment of noxious weeds to ensure the health of reforested and restored areas.
- e. Reduce wildfire fuel loads by conducting fuel reduction activities and biomass removal.

E. Biomass Utilization Fund

HUD awarded approximately \$22 million to the State of California for the planning, development and implementation of one or more biomass utilization projects. The 2015 original proposal was for HCD to directly fund one biomass utilization campus facility, however, after completion of the planning and feasibility study in 2019, HCD determined that development of a Biomass Utilization Fund (BUF) would be a better option. HCD reached out to a number of Community Development Finance Institutions (CDFI) and found one, Rural Community Assistance Corporation (RCAC), which agreed to act as a BUF program operator. RCAC will use NDR funds to create a BUF economic program for funding of wood product businesses and create more

markets for biomass removed from the Rim Fire and surrounding areas. This component encourages job creation and diversifies economic development, while promoting forest health, and local energy security. The BUF employs a two-phased development process consisting of:

- f. Phase I – Community outreach, planning and feasibility studies, develop method of distribution.
- g. Phase II – Release funding, accept funding proposals, award and project implementation.

F. Community Resilience Center

HUD awarded approximately \$19.7 million to the State of California to plan and develop one or two Community Resilience Centers (CRCs). HCD is using the County of Tuolumne for the planning and development of the CRCs. After completing the CRC planning and feasibility analysis, HCD determined that the county could develop two CRCs, in the communities of Groveland and Tuolumne. The county will own and operate the multi-use CRC projects. Each CRC will provide eligible year-round public services to local residents and use the CRCs during an emergency. This component provides education and job training opportunities and proposes to coordinate activities local community colleges and other local agencies. The CRC employs a two-phased approach to development:

- h. Phase I – Engage the community, delineate service needs and finalize designs, using principles of Rebuild by Design to engage residents, community groups, business and elected officials.
- i. Phase II – Construction and operation of two facility.

II. Acronyms and Definitions

<u>Acronym</u>	<u>Meaning</u>
ADA	Americans with Disabilities Act
AD	Activity Delivery (NDR Funding)
A/E	Architectural and Engineering Services
AFWA	Anti-Fraud, Waste and Abuse
AMC	Asset Management and Compliance (HCD)
AMI	Area Median Income (HUD)
BCA	Benefit Cost Analysis (HUD)
BCP	Budget Change Proposal (CA)
BUF	Biomass Utilization Fund-NDR Projects
CAL FIRE	California Department of Forestry and Fire Protection (NDR Subgrantee)
CALSTARS	California State Accounting & Reporting Systems- (Discontinued July 2018 and replaced with FISCAL)
CAPEX	Consolidated Automated Program Enterprise System- (HCD)
CBDO	Community Based Development Organizations (HUD)
CCC	California Conservation Corps (NDR Subgrantee)
CCR	California Code of Regulations
CDBG	Community Development Block Grant (HUD)
CDBG NDR or NDR	Community Development Block Grant – National Disaster Resilience
CEQA	California Environmental Quality Act
CEA	Cooperative Endeavor Agreement (HCD-USFS)
CFR	Code of Federal Regulations
CPD	Office of Community Planning and Development (HUD)
CRC	Community Resilience Centers (NDR Projects)
CWRP	Community and Watershed Resilience Program
DBRA	Davis Bacon and Related Acts (Federal labor standards)
DFA	Division of Financial Assistance (HCD)
DGS	Department of General Services (State procurement)
DHS	United States Department of Homeland Security

DIR	California Department of Industrial Relations (State Prevailing Wage)
DOB	Duplication of Benefits
DOL	Department of Labor (Federal Prevailing Wage)
DOT	Department of Transportation
DRGR	Disaster Recovery Grant Reporting System (HUD)
DR	Disaster Recovery Branch (HCD)
DUNS	Dun and Bradstreet Data Universal Numbering System Identification Number
EEO	Equal Employment Opportunity
EIR	Environmental Impact Report (CEQA)
EIS	Environmental Impact Statement (NEPA)
ERR	Environmental Review Record
FB	Federal Programs Branch (HCD)
FEMA	Federal Emergency Management Agency
FI\$Cal	Financial Information System for California (all CA state entities)
FLSA	Fair Labor Standards Acts of 1938
FMR	Fair Market Rent
FOIA	Freedom of Information Act (Federal)
FONSI	Finding of No Significant Impact
FWHP	Forest and Watershed Health Program (NDR Project)
GAAS	Generally Accepted Accounting Standards
GA	General Administration (NDR Funds)
GMS	Grant Management System (HCD)
GMR	Grant Management Representative (DR Staff)
GMM	Grant Management Manager (Manages DR Staff)
GMFR	Grant Management Fiscal Representative (DR Staff)
GMRR	Grant Management Reporting Representative (DR Staff)
GMF	Grant Management Fiscal Manager (Manages fiscal and reporting staff)
GPM	Grant Project Manager (DR Specialist 2)
HCD	California Department of Housing and Community Development

HCDA	Housing and Community Development Act (CDBG Statute)
HUD	United States Department of Housing and Urban Development
ICRP	Indirect Cost Rate Plan
LA	Lead Agency (CEQA)
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LMI	Low and Moderate Income
LMA	Low and Moderate Income Area
LMJ	Low and Moderate Income Job
LOCCS	Line of Credit Control System (Federal)
M/WBE	Minority- and Women-Owned Business Enterprise (Federal)
NDRC	National Disaster Resilience Competition (HUD NOFA)
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NOC	Notice of Completion
NOD	Notice of Determination
NOFA	Notice of Funding Availability
NOI/RROF	Notice of Intent to Request Release of Funds
NOP	Notice of Preparation
OIG	Office of Inspector General (HUD)
OMB	Office of Management and Budget (Federal)
OSAE	Office of Audits and Evaluation (HCD)
OPR	Governor's Office of Planning and Research (CA)
PCA	Program Cost Account (HCD)
PCC	Public Contract Code (CA)?
PII	Personal Identifiable Information
PRA	Public Records Act (CA)
QPR	Quarterly Performance Report
RCAC	Rural Community Assistance Corporation (NDR)

	subgrantee)
RFF	Request for Funds-(HCD Funds Request Form)
RFP	Request for Proposals
RFQ	Request for Qualifications
RE	Responsible Entity
RARAP	Residential Anti-Displacement and Relocation Assistance Plan (HUD 104(d))
SA	Standard Agreement (HCD)
SAM	State Administrative Manual (CA Procurement)
SBA	Small Business Administration (Federal)
SCO	State Controller's Office (CA Budget Authority and Disbursements)
SCH	State Clearing House (CA CEQA Posting)
SNC	Sierra Nevada Conservatory (NDR Subgrantee)
SOW	Scope of Work
URA	Uniform Relocation Act (Federal acquisition and relocation)
USFS	United States Forest Service (NDR Subgrantee)
WUI	Cal FIRE Wildland Urban Interface (Areas of Risk for Wildfires)

A. Terms and Definitions

Activity Delivery: The NDR funding used to pay for tasks required for preparation and support of activity implementation but not directly related to implementation.

Biomass Utilization Fund (BUF): The BUF originally referred to single Biomass Utilization Facility (campus) project. Upon completion of the biomass facility feasibility study in 2019, HCD determined that focusing on one BUF project was not feasible and that multiple biomass projects should be pursued under a revolving Biomass Utilization Fund. HUD agreed that smaller biomass projects could meet the same goals and NDR funding requirements as the one large facility proposed in the NDRC application. Thus, the biomass utilization facility in the NDRC funding application was changed to a biomass utilization fund.

Community Based Development Organization (CBDO): The term “CBDO” refers to an eligible non-profit entity receiving a direct award from HCD. HCD used the CBDO eligibility standard on RCAC as part of their implementation of BUF activities.

Cooperative Endeavor Agreement (CEA): HCD used the Standard Agreement format to engage the USFS in implementation of the FWHP. The Standard Agreement includes CEA language. The CEA language is in place because of the special relationship between HCD, a state agency providing HUD funds to the USFS, a federal agency. The CEA contains all the other NDR requirements, which must be followed by the USFS.

Contractor: The term “contractor” refers to a third-party firm formally procured by HCD or subgrantee, to assist with carrying out NDR activities. Contractor agreements are not the same as subgrantee agreements because not all the federal overlay compliance requirements are needed for a contractor.

Core Team: The Core Team is a group of Federal, State, and local agencies that work together to promote NDR grant activity success and ensure positive outcomes as outlined in the NDRC application. Some Core Team members are committed as subgrantees and some are committed via partnership agreements.

Disaster Recovery Grant Reporting System (DRGR): The Disaster Recovery Grant Reporting system was 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 NDR funds.

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

Federal Acquisition Regulations (FAR): A Federal procurement standard used by USFS.

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.

Funds Request/Financial Report: HCD has used a standard NDR funds request form, executed and submitted by subgrantees and consultants, to process payments of eligible costs incurred. With the implementation of the GMS, the funds request form is incorporated via the financial report. Subgrantees using the GMS will not submit a fund request but will create a financial report in the GMS to request payments.

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.

GCR Inc. also known as Civix: The contractor hired by HCD to support the DR Section staff in NDR grant compliance and administration of the HUD grant.

General Administration (GA): The NDR funding set aside for overall administration of the HUD grant. GA funding is limited to five percent of grant award.

Grant Management Systems (GMS): The computer software systems that HCD uses to oversee the NDR HUD grant and Standard Agreements. HCD may use one or more software systems over the course of the HUD grant term.

Department of Housing and Urban Development (HUD): Federal department through which the CDBG NDR funds were provided to HCD.

Department of Housing and Community Development (HCD): State department through which California is administering the CDBG NDR funds.

Indirect Cost Rate Plan (ICRP): The financial analysis of indirect costs of an entity receiving state or federal funds. The ICRP establishes an agreed upon percentage of indirect costs associated with administration of funding. The ICRP and resulting percentage of costs must be reviewed and approved by a cognizant agency.

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 Limited English Proficiency 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): For LMI benefit national objective, a LMI persons has a family income that is "moderate". HUD moderate income' level is 80 percent of county median, adjusted for family size. Income levels are set annually by the federal government for the HUD programs.

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

Most Impacted and Distressed: An area that was declared by the President to be a major disaster area under the Stafford Act for a disaster event occurring in calendar years 2011, 2012 and 2013.

Most Impacted and Distressed Unmet Recovery Need (MID URN): An area approved by HUD in the NDRC application as being a Most Impacted and Distressed area with an unmet recovery need from a disaster occurring in calendar years 2011, 2012, and 2013.

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.

National Objective: HCDA and HUD regulations require all CDBG eligible activities to meet a national objective benefit. There are three national objectives, with benefit to LMI persons being the most common one and for CDBG NDR, over 50% of the funds expended must meet LMI. FWHP activities were HUD approved for the national objective of benefit of meeting an Urgent Need.

Pillar: The term "pillar" is used to refer to any of the three CWRP activities, CRCs or BUF of FWHP.

Planning Activity: Activities that are conducted to determine design and financial feasibility of an NDR activity prior to implementation. HUD requires all NDR activities to have feasibility analysis prior to implementation. The FWHP did not use NDR funding for planning but USFS documented feasibility of activities prior to release of funds. CRCs and BUF activities both use NDR funds for formal planning processes conducted prior to HCD approval of implementation.

Partners: Agencies who have agreed to assist HCD in implementation of NDR activities and meeting their goals and objectives. Most Partners are also subgrantees, but not all. All Partners participate on the Core Team.

Procurement: A competitive method of securing goods or services. Compliance standards fall under both state and federal regulations. HCD is using state procurement process and standards and has certified to HUD that state procurement standards are substantially the same as federal standards.

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.

Quarterly Performance Report (QPR): HCD must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on HCD's official web site.

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

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 proposal 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 assistance. The RE 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 nonfarm, private sector disaster losses.

Standard Agreement: The HCD agreement format used for NDR funding. The Standard Agreement language is edited by the GMR, HCD legal team and engaged entity to reflect the type and nature of the relationship between the agreement's parties. For example, the Standard Agreement format can be used for subgrantees, subrecipients and procured consultants but specific compliance language is modified based on the legal relationship being established.

Subgrantee: The term "subgrantee" refers to any jurisdiction, subrecipient, or state agency receiving a direct NDR award from HCD, which is administered using a Standard Agreement.

Subrecipient: The term "subrecipient" refers to non-profit entities that can receive a direct allocation of HUD funds without a formal procurement process.

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.

III. Program Allocation and Administration

A. Funding Appropriation

HUD issued a Federal Register Notice listing the 13 awardees of Phase 2 of the NDRC on June 7, 2016. Pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113-2 (Appropriations Act), awardees were collectively allocated almost \$1 billion.

NDRC awardees were allocated CDBG–NDR grant funds on a competitive basis. These funds were made available by the Appropriations Act for disaster recovery from major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act) in 2011,

2012, and 2013.

On January 17, 2017, HUD executed a grant agreement with HCD for \$70,359,459 in CDBG NDR funding for the Community and Watershed Health Resilience Program for activities throughout Tuolumne County, which was designated as the Most Impacted and Distressed with Unmet Recovery Needs (MID URN) area of the Rim Fire Disaster. Because HUD award was approximately half of what was originally requested in the Phase 2 application, HUD and HCD agreed to the following allocation of awarded funds to the three project activities:

- Forest and watershed health work (\$28,604,459)
- Biomass Utilization Facility (\$22,000,000).
- Community Resilience Center (\$19,755,000).

As part of the competitive HUD application process, NDRC applicants were required to include a proposed method of distribution including Partners who were signed legal agreements to conduct proposed activities. Thus, the method of distribution for NDR funding was pre-determined in the Phase 2 application, which is why HUD used it as the official NDR Action Plan for HCD.

After execution of HUD grant agreement, January 26, 2017, HCD began entering into Standard Agreements (SA) with each Partner identified in the application who is administering NDR activities. HCD serves as the overall grant administrator, managing each subgrantee as well as consultants hired to assist in NDR implementation. The first consultant hired after HUD executed the CDBG NDR grant agreement with HCD was GCR Inc. GCR was hired as a technical assistance consultant to support HCD and all Partners in NDR implementation work. The full CDBG NDR Application, along with all SAs and Contracts, HUD reports and compliance documents are posted on [HCD's NDR website](#).

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

B. NDR Grant Requirements

1. Use of Funds

a. General

The 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 Unmet Recovery Needs (MID-URN) 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, which includes the Rim Fire Disaster. The Appropriations Act also requires that the awardee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act. The State of California submitted the financial certifications required and completed a Certification Checklist.

b. Action Plan, Amendments, and Benefit Cost Analysis

i. Action Plan

Phase 1 and Phase 2 submissions by the State of California for the NDRC constitute, together, the Action Plan, which reflects the components funded through the CDBG–NDR grant and ensures clear communication of CDBG–NDR activities to the public. Changes to the Action Plan are completed as substantial or non-substantial amendments.

ii. Substantial Amendments

HCD must receive approval from HUD and follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application prior to making a substantial amendment to the Action Plan.

Per the July 7, 2016, Federal Register Notice (and as amended in the [August 7, 2017, Federal Register Notice](#)), certain modifications constitute a substantial amendment:

- Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD’s scaling and scoping of the award), would present a significant change to HCD’s capacity to carry out the grant (including loss of a partner without addressing lost capacity through replacement or contingency plan identified in the application).
Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD’s scaling and scoping of the award), would undermine HCD’s soundness of approach (including the benefit cost analysis).
- Any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA).
- Any change in program benefit, beneficiaries, or eligibility criteria, and the allocation or reallocation of more than 10 percent of the grant award.
- Any change to the leverage that was pledged and approved in HCD’s grant agreement.
- The addition or deletion of an eligible activity.

To facilitate HUD’s review of a substantial amendment, HCD must submit adequate documentation that demonstrates the following:

- Capacity of HCD, its partners USFS, CalEPA and OPR, and its subgrantees to implement the funded activities.
- Changes to partners who will assist in the amended activity
- Scope and beneficiaries of the funded activities.

- Committed direct and supporting leverage.
- An updated BCA (if requested by HUD).

iii. **Nonsubstantial Amendments**

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

iv. **Information Required for Amendments**

HCD follows the following process for making nonsubstantial 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 the most recent version of HCD's approved CDBG NDR application and its Action Plan accessible for public viewing as a single document.
- Amendments to the Action Plan (substantial and non-substantial) are numbered sequentially and posted on HCD's website.

v. **Benefit Cost Analysis**

HCD completed a benefit cost analysis (BCA) as part of its Phase 2 application, which included a narrative description of the proposal and expected costs and benefits. The benefits included environmental, economic, social, and resilience values – both quantitative and qualitative. HUD reviewed the BCA as part of its process for determining NDRC awards. At the direction of HUD, the completed BCA may need to be revised as part of substantial amendments Action Plan.

c. **Timeline for Expenditure of Funds**

The Appropriations Act (Section 904(c) of title IX in division A) requires that all funds be expended within two years of the date HUD obligates funds (September 30, 2017). CDBG NDR funds are subject to 31 U.S.C. 1552(a), and, therefore, are to remain available for expenditure for five years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. Based on this HUD expenditure deadline, all SAs and Contracts executed by HCD will end on or prior to the September 30, 2022.

2. CDBG NDR Waivers

Waivers, along with alternative requirements, provide additional flexibility in program design and implementation to support full and swift, resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. Waivers provided through the Stafford Act that are applicable to HCD were listed in two Federal Register Notices (FRN) for this appropriation, 81 FR 36557 and 82 FR 36812. The waivers that apply to the State of California are detailed in the sections below.

a. 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 the 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 grant recipient 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 grant awardees 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.

b. Low to Moderate Income Area Benefit

Additionally, Section 105(c)(2) of the HCDA requires activities that will be available to benefit all of the residents of an area that is predominately residential (referred to as a “low to moderate area benefit,” or “LMA” activities), meet the standard of at least 51 percent of the residents are low to moderate income (LMI) persons. The state’s approved NDRC application included a waiver requesting that the percentage of LMI persons for the determination of area benefit be lowered from 51 percent to 38 percent. This request was based on the fact that the most impacted and distressed areas with remaining unmet disaster recovery needs to be served by the project encompasses the nonentitlement jurisdictions of Tuolumne, Mariposa and Calaveras counties, where 38 percent of the residents are LMI. The state received a waiver permitting activities carried out in service areas with an LMI percentage of not less than 38 percent to qualify under the LMA benefit national objective. HCD will utilize this waiver for the CRC pillar and any other activities that qualify under this waiver’s 38% low and moderate income area benefit standard.

c. Use of Subgrantees

HUD granted a waiver allowing states to carry out activities directly, which creates a situation in which the state may use subgrantees to carry out CDBG NDR 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 subgrantees 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 the state to take advantage of the waiver, which allows it to carry out activities directly. The state must follow the alternative requirements, drawn from the CDBG entitlement rule and specified in the NDR March 5, 2013 Federal Register Notice when using subgrantees to implement activities.

d. Public Benefit for Economic Development Activities

HUD waived the \$35,000 public benefit rule and only requires that some reasonable level of public benefit be obtained when using NDR funding for economic activities that trigger public benefit compliance. HCD plans to utilize this waiver with the BUF projects.

HUD is also allowing HCD and subgrantees to document LMI job compliance by documenting new job position wages meet LMI standard, not by having to income qualify each new hire.

e. Use of Planning Activities

HUD granted a waiver allowing state planning activities to be conducted without having to document meeting a national objective. Like entitlements regulations, NDR state grantees can presume that the planning activity meets a national objective.

C. General Administration (GA) Costs Limitation and Eligible Uses

The HCD may use up to five percent of the total grant funds to administer the grant. CDBG NDR general admin funds may be used to pay reasonable costs associated with oversight and reporting for the HUD grant. This category includes both the state's costs of administering the CDBG NDR grant, third party consultants assisting with GA work as well as the county and SNC subgrantees. Currently HCD, GCR Inc./Civix, SNC and County are the only recipients of NDR GA funds.

Examples of administration activities include:

- General management, oversight and coordination.
- Providing local officials and citizens with information about the program.
- Preparing budgets and schedules.
- Preparing reports and other HUD required documents.
- Management of financial and grant reporting systems, including DRGR.

- Monitoring program activities.
- Fair housing activities.
- Submission of applications for Federal programs.
- Citizen participation costs.
- Indirect costs charged using an accepted cost allocation plan.
- Staff and overhead costs for project delivery.

Costs that are appropriately charged to this category are presumed to meet a CDBG national objective, so HCD and subgrantees do 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 documents costs and time charged through the appropriate means (e.g. invoices, receipts, time and attendance records, etc.). HCD's finance team maintains the documentation, which is submitted via HUD's DRGR system as part of draw down requests to HUD.

1. HCD Administrative Draw Requests

Accounting will submit a request for a draw with Memo and the supporting documents to the Section Chief/Fiscal and Compliance Manager to process the Admin Draw. The Section Chief/Fiscal and Compliance Manager will review the supporting documents. If further information needed, accounting will be contacted. Once the Section Chief approves the request for the Admin Draw, it will then move to the Finance Rep II for processing. Once the Finance Rep II process voucher through DRGR and check request in GMS, it will then come to the Fiscal & Compliance Manager for final review and signing the check request. Upon signing the check request the Finance Rep II, generates three copies of the draw request and delivers them to the Accounting Office to be processed. Accounting enters the draw request into DRGR to approve the voucher and then processes the request through FI\$Cal.

D. Public Services Costs Limitation and Eligible Uses

HCD did not apply for public service funding in its NCRC Application and HUD did not include any funding for public services in its award or approved Action Plan. HCD may choose to request a substantial amendment to the Action Plan to allow for NDR public service activities, but that is not anticipated at this time.

If HCD and its Partners decide to use NDR funding for public services and HUD approved the amended Action Plan, then CDBG NDR funds could 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 NDR 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 NDR 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 NDR funds expended statewide for public services activities must not exceed 15 percent of HCD's yearly allocation of funds, plus 15 percent of program income received by HCD under its method of distribution. Note that this cap applies to the entire HCD allocation, not just to the amount of funds allocated under the NDR grant. Public services carried out by subgrantees are also subject to the 15 percent public services cap.

2. Public Services in Action Plan

HCD did not include public service activities in the approved application. If a need is determined by HCD to reallocate funds from other activities to public services activities, a substantial amendment must be submitted and approved by HUD within the time period for expending funds. If HCD completes an amendment to its NDR Action Plan to include public services, this section of the manual will be updated to reflect the required standards.

IV. Subgrantees - Subrecipients (Direct Recipients verses Contractors)

HCD is the HUD Grantee and is responsible for managing the HUD CDBG NDR grant and overseeing project implementation activities. HCD is required by HUD to utilize Partners from the Phase I and Phase II application to administer components of the three pillar project activities and these Partners are Subgrantees. If any partner in the application is not utilized, then that will trigger a substantial amendment to the Action plan. New partners added to the NDR grant will require a non-substantial amendment.

There are two types of NDR partners for the CWRP. One type does not receive any NDR funds from HCD and functions under the Partnership Agreement executed in the Phase II application. Two partners, California Environmental Protection Agency (CalEPA) and Governor's Office of Planning and Research (OPR) provide key leadership roles on the Core Team but are not under an agreement that includes payments of NDR funding.

For those partners who are under a funding SA with HCD, HUD does allow flexibility with respect to the method of establishing the legal relationship, via procurement contracts or pass through agreement with partners. Specifically, partners qualify for special considerations relative to the noncompetitive (i.e. sole source) procurement guidelines outlined in 2 CFR part 200. HCD uses its NDR partners to ensure program compliance and effectiveness and outlines these expectations the terms of each partner's agreement.

Partners who will be under funding agreements with HCD include,

- Sierra Nevada Conservancy (SNC)
- California Department of Forestry and Fire Protection (CAL FIRE)
- Tuolumne County
- United States Forest Service (USFS)

- California Conservation Corps (CCC)
- Rural Community Assistance Corporation (RCAC)

A. Subgrantee and Partner's Roles and Responsibilities

HCD serves as the responsible agency for implementation of its CDBG NDR funds. HCD is legally and financially accountable to HUD for the use of all funds and is the sole entity with access to HUD's Line of Credit Control System (LOCCS) through DRGR. HCD passes this legal and financial accountability through to partners in their agreements and monitors them to ensure they are accountable for funds used on their respective activities.

To implement the CDBG NDR funds, HCD has executed Standard Agreements with the Sierra Nevada Conservancy (SNC) and Tuolumne County. HCD entered into a three-party Standard Agreement with SNC and the California Department of Forestry and Fire Protection (CAL FIRE). Finally, HCD has entered into a three-party cooperative endeavor agreement (CEA) with SNC and the United States Forest Service (USFS) to assist with implementing the Forest and Watershed Health Program. As a federal entity, the USFS is not considered a subgrantee and is referred to separately for the purposes of administering the NDR grant. HCD developed a CEA to cover the unique relationship where HUD (a federal agency) grants funds to HCD (a state), who in turn provides funds to USFS (another federal agency). The CEA fulfills the same role as the Standard Agreement, covers the FWHP work, and was executed by HCD, SNC and USFS. There are also number of Partners in the NDRC application which are not subgrantees but who do have formal Partnership Agreements which require their support in implementation of NDR activities. HUD expects HCD to utilize all partners who were included in the NDRC application.

HCD's Standard Agreement, modified to function as a CEA, serves two purposes. First, it sets out the roles and responsibilities of each party, scope of work with deliverables, performance milestones with timelines and penalties for non-performance, reporting requirements and both federal / state compliance standards. Second, it also serves as the legal authority for HCD to make reimbursement payments from California's current statewide fiscal accounting system (FI\$Cal).

HCD's subgrantees may work with developers, nonprofits, contractors, or any combination of these entities to implement CDBG NDR activities. However, different sets of HUD and OMB rules apply to these entities in certain situations (see Section VI – Procurement).

HCD's main role in administering its CDBG NDR grant manage the HUD NDR grant and to ensure federal regulatory compliance for all projects and activities under is achieved, especially expenditure of funds by the current NDR expenditure deadline. HCD also must ensure state regulatory compliance and ensure state goals are met. This is achieved by using DR staff for overseeing NDR Standard Agreements and consultant contracts and ensuring all partners have a clear understanding of their roles and responsibilities for progress of each funded activity. This relationship requires HCD to provide technical assistance as the projects progress forward through completion. DR staff are also responsible for ensuring that HCD, in its role as Responsible Entity (RE) completes the proper processes for federal and state regulatory compliance. All this oversight includes DR staff reviewing documentation

submitted and providing written approvals or denials, telephone and email communications regarding program and/or project status, technical assistance, trainings, and monitoring of the subgrantees' work.

HCD's subgrantees are required to submit reports to document the progress of the awarded activities; the required reports and their frequency are defined in their Agreements. Inaccurate, incomplete, or missing reports impact HCD's ability to report the progress of the activities to HUD. Subgrantees also participate in monthly calls to discuss project activity status and any impediments they perceive.

For the CRC project being administered by Tuolumne County, HCD is responsible for verifying that each proposed project meets the CDBG LMA national objective, meets eligibility activity and cost requirements, is in compliance with federal statutes and regulations, and that CDBG NDR funds are the best available resource for implementation of the project. For BUF and FWHP projects, which are coordinated by SNC, HCD is the lead agency responsible for ensuring regulatory compliance and monitoring.

B. NDR Subgrantees

1. Sierra Nevada Conservancy

HUD approved HCD's application to allocate funds to Sierra Nevada Conservancy (SNC), a California state agency, entered into a Standard Agreement (16-NDR-11311) with HCD on May 30, 2017, to provide general administration and project management support. SNC acts as project manager and coordinator of FWHP and BUF activities. SNC reports out to and seeks project guidance from the Core Team (Figure 1 below). SNC assists with general administration activities including, file management, reporting, monitoring, grant close out, and assisting HCD with meeting federal compliance and reporting requirements. Project management takes place from feasibility studies through construction and operation.

2. Tuolumne County

Tuolumne County entered into a Standard Agreement (16-NDR-11291) with HCD on May 9, 2017, to provide general administration, planning and project development to develop a minimum of one Community Resilience Center (CRC). The county's responsibilities include a feasibility study and siting for the CRC(s), design and construction of the facility, as well as grant close out. Tuolumne County manages all aspects of the CRC development and construction, coordinating with HCD and the Core Team to ensure the CRC meets the goals of the NDRRC.

3. California Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (CAL FIRE) entered into a three-party Standard Agreement (16-NDR-11511) with HCD and SNC to assist with program implementation for the Forest and Watershed Health pillar (FWHP) including National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance, fuel break design and construction and oversight. SNC supervises CAL FIRE and its work.

4. California Conservation Corps

The California Conservation Corps (CCC) has entered into a three-party Standard Agreement (16-NDR-12631) with HCD and SNC to assist with reconstruction of rangeland fences. CCC is overseen by USFS on these construction activities and will be responsible for most of the fence reconstruction activities under the FWHP.

5. Rural Community Assistance Corporation

Rural Community Assistance Corporation (RCAC) has entered into a three-party Standard Agreement (16-NDR-12731) with HCD and SNC to implement the BUF program on behalf of HCD. RCAC coordinates BUF activities with SNC and will be supported by HCD in their BUF pillar implementation efforts.

6. United States Forest Service

HCD entered into a formal three-party CEA with USFS and SNC to manage the labor and conduct the five activities associated with FWHP: 1) biomass removal, reforestation, and restoration activities associated with the FWHP. HCD's oversight, technical assistance, and administrative roles and responsibilities, along with USFS' implementation roles and responsibilities, are outlined in the CEA. The USFS is not considered a subgrantee to HCD since it is a federal agency. It is also not required to follow 2 CFR part 200 but will comply with Federal Acquisition Regulation (FAR) under 48 CFR part 1. The unique relationship between HCD and USFS (another federal agency) will be addressed regularly throughout the life of the FWHP.

V. Financial Management

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). The OMB Uniform Requirements, found at 2 CFR part 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 Single Audit Act follow up, to name a few. Prior to HUD issuing their NDR grant agreement, HCD was required to submit certifications of financial capacity to meet these standards. HCD has eight divisions:

- Administration and Management.
- Audit & Evaluation.
- Codes and Standards.
- Executive.
- Financial Assistance.
- Housing Policy.

- Legal Affairs.
- Legislation.

HCD uses the Division of Financial Assistance (DFA) to manage annual federal appropriation funding awards through its Federal Programs Branch and DR Branch. Because of all the recent disasters in California and the large amount of HUD funding coming from disaster appropriations, which are separate from annual appropriations, HCD has established a Disaster Recovery (DR) Branch to oversee the HUD DR awards. NDR is considered DR funding and will be managed under this Section.

To set up CA annual budget authority that allows HCD to spend NDR grant funds, GMR staff generates an Admin 47 form for each NDR Standard Agreement and consultant contract. Each Admin 47 form outlines the amount, name, activities, and related information needed for HCD Budgets and Accounting offices to submit annual state budget authority requests to State Controller's Office (SCO). Once established by SCO, the budget authority will last for five years. If that budget authority time runs out, then HCD staff must resubmit to SCO for approval. Currently all NDR grant funding has SCO budget authority and is fully obligated in DRGR. Each agreement and contract receiving budget authority must include the amount of total amount of NDR funding committed and budget break out of eligible HUD cost categories.

By executing an HCD Standard Agreement or contract, the subgrantee or consultant agrees to comply with all federal and state statutes, regulations, and rules that apply to them and their CDBG NDR activities, in exchange for receiving the NDR funds. Some compliance requirements, listed in the General Conditions Checklist for each project, must be fulfilled prior to incurring costs and/or prior to requesting funds from HCD.

HCD's SA 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 the 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 all other state and federal regulatory requirements
- Specific NDR grant related waivers and additional requirements.
- Suspension and termination clauses, if HCD finds that any subgrantee materially fails to comply with the terms of the contract, and that the contract may be terminated for convenience. Performance measures and penalty language to ensure timely completion of Scope of Work.
- Reversion of assets clause, stating that upon contract expiration, the

subgrantee will transfer any CDBG funds on hand to HCD, along with accounts receivable attributed to the use of the CDBG funds (where they do not meet the definition of Program Income).

A. Financial Management Systems

For CDBG NDR, HCD utilizes three management systems: HUD's Disaster Recovery Grant Reporting System (DRGR), the State's Financial Information System for California (FI\$CAL), and a Grant Management System (GMS). Each of these systems is used to track grant activity budgets and expenditures. Some systems focus on agreement or contract management and some track outcome metrics. To ensure that all state systems are reconciled on a regular basis with DRGR, HCD assigns a program cost account (PCA) code also called a service location that allows tracking of activities and funds, including encumbrances (when funds are committed to a Standard Agreement or CEA), disencumbrance, expenses or payments, and/or return of funds associated to the HUD grant.

HCD utilizes separate PCA codes/service location for each NDR activity budget items in the Standard Agreement and contract to track expenditures and available funding. In addition, separate PCA codes/service location are assigned to the GA funds for each partner or consultant paying for administration costs (HCD, GCR/Civix, Tuolumne County, SNC), allowing the identification of each organization's GA expenditures and budget.

HCD staff working on the NDR grant charge off costs against a specific index/PCA/service location combination based on the work being performed, GA or AD. Indirect costs are billed based on the annual HUD approved Cost Allocation Plan. DR GMFM staff coordinate with accounting staff to ensure all the necessary back up documentation is in place for HCD staff costs. After validating the correct staff costs, GMM access DRGR to draw funds for reimbursement of all HCD staff charging to GA or AD on the grant.

On a quarterly basis, Budgets Office staff prepares budget update reports and submits them to the Department Branch and Section Chiefs. The report may be used by the Section Chief to review budgets for accuracy, address needs or gaps reflected, ensure budget authority remains in place and to ensure cost savings, where available, are being maximized.

Subgrantees and contractors submit funds request form with support documentation via the GMS to HCD for reimbursement of NDR eligible costs. Upon receipt, DR staff use the current NDR Funds Request Checklist to review and approve the funds requests for payments. First, GMR reviews the request and support documentation and if sufficient, the request is provided to the GMFR who reviews and confirms payment information and generates a Voucher in HUD's DRGR and a Check Request in HCD's CAPES. The GMM signs off on the funds request package, with Voucher and Check Request, and returns it to GMR for approval and signature. The GMR reviews and then submits the full payment package to GMFM for final review signatures and GMM then returns to GMR, who submits the Check Request to Accounting for accounts payable for processing through SCO. Accounts Payable team in the Division of Administration and Management (DAM) verify the payment in CAPES, processes the payment request in the FI\$Cal system and approves the draw

in DRGR. Further details regarding the payment process are outlined in Section V (B) 5 of this manual.

1. Grant Management System (GMS)

HCD uses GMS software, an online grants management platform, to track NDR agreements, contracts, and funds requests. Subgrantees and contractors submit funds requests through the GMS. In addition to the signed funds requests form(s), all payment requests must have required back up documentation including scanned copies of contracts, invoices, inspection reports, timesheets and other documentation outlined in the Agreements. Upon submittal of a funds request and back up documents through GMS, the following approvals are needed by Pillar:

- **Community Resilience Center.** Tuolumne County staff submits funds requests, and all required back up documentation electronically through GMS. The GMR either approves or denies the funds request submittal and the county is notified that it is approved or refused and must be resubmitted. The GMR signs the approved FRC form and submits in accordance with process described above.
- **Forest and Watershed Health Project.** For SNC Agreement costs, SNC staff submits funds requests and all required documentation in the same manner as the county, described above.

For the three-party agreements, USFS, CCC and CAL FIRE there is a two-step process. First USFS, CCC or CAL FIRE submits fund requests and required payment back up documentation through GMS for review and approval by SNC. As the Project Coordinator, SNC is responsible for verifying work completed under FWHP agreements. Once payment is approved by SNC, DR staff process the payment the same as above.

- **Biomass Utilization Facility.** For the three-party agreement between RCAC, HCD and SNC, the same two-step process as described above is followed for payments to RCAC.

2. Disaster Recovery Grant Reporting System

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

HCD reports a recap of the progress and expenditures, as well as any challenges or obstacles, in the required Quarterly Performance Reports (QPR) in DRGR. The GMR is coordinates with DR reporting staff on for submitting all QPRs. HUD uses DRGR data to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, funds requests, 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 GMR and DR reporting staff are responsible for inputting the QPR in a timely fashion and posting it on the NDR webpage. GMR and DR fiscal manager (GMM) coordinate on making changes to the Action Plan, non-substantial and substantial, as needed. The GMFM assists with setting up eligible activities, changing budgets and obligating funds.

3. DRGR User Guides are located at

<https://www.hudexchange.info/resource/4915/drgr-user-manual/>

4. Reconciliation of Systems

GMR staff in the DR Section regularly reconcile CDBG NDR grant funds (identified in Action Plan and SA budget). Reconciliation is done with HUD DRGR reports, CAPES data and reports and GMS reports. Each reconciliation contains the following categories: total HUD grant amount, encumbrances, and available balances. Each category is used in conjunction with SA, Consultant Contracts and HCD's administration allocation. For the NDR grant, HCD staff track SA awards, obligations, unobligated balances, and expenditures, using CAPES, DRGR, and GMS.

California's accounting procedures are in accordance with Generally Accepted Accounting Standards (GAAS). For CDBG NDR funds, HCD requires all source documentation be submitted electronically through GMS. A review and approval of documents to ensure that the expenditures are eligible, funds requests are signed, and valid is required before payments transactions created in DRGR and CAPES by the GMR and recorded in FISCAL by Accounts Payable.

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, HCD submits quarterly financial and performance reporting required with the QPR. On a monthly basis, CDBG NDR subgrantees and USFS submit reports on financial performance to HCD through GrantCentral. Reports are reviewed and approved by the GMR and incorporated into the QPR reports.

5. Financial Records

HCD must maintain detailed accounting records which form the basis for the grant reports, and must retain these accounting records and make them 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 NDR grant, files are retained for five years after HCD gets HUD grant closeout completed.

Grant Management Section managers and staff are responsible for closing out HUD NDR grant as well as Agreements with subgrantees, based on close out requirements in each Agreement.

6. Financial Information Systems for California

Note: As of July 1, 2018, FISCAL replaced the California State Accounting & Reporting System, or CALSTARS as the financial accounting systems for all state agencies. HCD is required to set up each NDR SA in FISCAL to

establish budget authority and to allow NDR funding to be disbursed.

Prior to July 1, 2018, California State Accounting & Reporting System, or CALSTARS, was HCD's accounting system of record. However, effective July 1, 2018, HCD converted to Financial Information System for California (FI\$Cal), which is a partnership of the state's Department of Finance, Department of General Services, the State Controller's Office, and the State Treasurer's Office. FI\$Cal is the budgeting, accounting, procurement and cash management system that optimize the financial business management of California's government, allowing the state to operate as a single enterprise for the first time in history.

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 State Controller's Office (SCO) on Wednesday mornings for them 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. SCO forwards a report reflecting journal entry postings of HCD's federal funds received that week to HCD accounting. Upon receipt of the SCO journal report, Accounts Payables staff enter the warrant issue dates into HCD's CAPES.

Claim Schedule instructions and guidance are located on the SCO website at: http://www.sco.ca.gov/ard_state_claim_sched.html

B. Financial Management Payment Process

1. Reimbursement Payments

For all CDBG NDR projects, HCD operates on a reimbursement basis. HCD may allow for advances on SAs, but even for these advances, the subgrantee must provide documentation that the work was completed and inspected/reviewed by subgrantee or third party prior to processing an advance payment. All costs must be incurred and paid for by the subgrantee or USFS prior to HCD providing a reimbursement. Payment requests must be submitted along with evidence that all invoices and costs incurred were paid by the requester and the work was inspected. Because SNC is the coordinator for FWHP and BUF activities, SNC staff review all funds requests and back up documents submitted by subgrantees or consultants under these two NDR activities prior to submittal to HCD. HCD defines evidence as one or more of the following:

- Timesheets showing hours worked,
- Paid invoices from subcontractors' purchase of supplies, travel costs,

- Bank statements from the subgrantee showing the funds were expended.
- Cancelled checks matching the invoices paid by the subgrantee.
- Another mechanism approved by HCD in writing for the specific grant.

The GMR reviews and processes all payment requests to ensure only eligible costs are reimbursed. See “Funds Request Payment Processing” below for more details on the review process.

2. Advance Funding

Currently, all NDR agreements with subgrantees and contractors restrict payments to reimbursement only. HCD will allow a subgrantee to use an advance payment system, if they make a formal written request to HCD and provide documentation that their local accounting procedures allow for advance funding for an activity. HCD will have to do a SA amendment to allow subgrantee to do an advance. Advance funds requests must be submitted with documentation of invoices and completed work, however, HCD will not require the subgrantee to pay the invoice first, which is considered a reimbursement under Section 1 above.

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 nonfederal 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 subgrantee. Work not completed, regardless of subgrantee 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 five percent retention (unless

the payment is the final retention payment and the subgrantee 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) Subgrantees, USFS and consultants may only request "advance" activity funds from their CDBG NDR contract if they have adequately demonstrated the willingness and ability to minimize the time lapsing between the receipt of HCD's funds and the subgrantee's disbursement and the advanced payments are approved by the Section 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 subgrantee 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 are not processed for work that has not been completed or invoiced. Subgrantees 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 NDR payment, the subgrantee must place all advanced funds into an interest bearing account, where the funds must remain until expended.
- 6) Subgrantees 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) Subgrantees 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. Subgrantees 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 subgrantee.

Reconciliations are not completed until HCD has reviewed and approved them; upon approval, HCD provides the subgrantee an "approved" copy for their program records.

- 9) Per the Standards for Financial Management Systems [2 CFR part

215.21], accounting records must be supported by source documentation such as cancelled checks, invoices and demands, payrolls, timesheets and attendance records, contract and subgrant award documents, etc.

- 10) Subgrantees 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 because neither HCD nor subgrantees will be doing housing related activities. This type of disbursement will 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 subgrantee shall immediately return the excess funds back to the Department [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 subgrantee's administrative costs or rehabilitation activity delivery costs, are not permissible uses of advanced escrowed funds. Such costs may only be paid under the Department's reimbursement process [24 CFR §570.511 (a)(5)].
 - f) Noncompliance – If the Department determines that the Grantee has failed to use an escrow account in accordance with regulations, the Department may require the Grantee to discontinue the use of the escrow accounts [24 CFR

570.511 (c)].

3. Advance Funding Procedures

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

a) 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.

b) 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 grantee, 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.).

c) Certification to Process Form:

On the Certification form the Authorize Signor certifies that:

- 1) The funds will be deposited into an interest bearing account within two days of receipt; and,
- 2) The funds will be expended within five days of deposit; and,
- 3) The documentation supporting the advance request is true and correct.

The general U.S. 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. HCD and subgrantees will use neither of these HUD fund disbursement method because both are restricted specifically to housing rehabilitation. NDR funding can never be used by HCD for housing rehab, because it is not an eligible activity under the NDRC application and there were few houses impacted by the 2013 Rim fire.

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 of privately owned residential property only and has very specific

requirements.

4. Lump Sum Draw Down

Section 104(h) of the Housing and Community Development Act of 1974 (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 subgrantee carrying out an eligible activity.

HCD may allow one of their subgrantees 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 subgrantees 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, rehabilitation 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 subgrantee 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 subgrantee/financing institution's rehabilitation fund agreement.

For the purposes of the CDBG NDR grant, HCD is not funding housing rehabilitation activities, and does not anticipate any lump sum drawdowns.

5. Funds Request Payment Processing

Funds requests, along with required supporting documentation, are completed and submitted by the subgrantees and USFS to HCD via GMS. Each funds request is associated with a specific Agreement or contract. Requests are submitted separately according to the budget line items in the agreement and do not include expenditure information for more than one budgeted line item. Funds requests are broken out by monthly costs.

All payments are made according to the terms of the SA and budget between HCD and the entity (jurisdiction, state agency, contractor, CBDO, USFS) carrying out the CDBG NDR activities. 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 GMR and submitted for review through GMS. For service contracts, the GMS same payment system is used to process through HCD accounting.

Upon receipt, GMR notes the receipt of the funds request/financial report in the GMS system. The GMR reviews all submitted documentation for compliance to the federal and state requirements, compares the activity amounts available to the GMS system to ensure funds are available, validates that any advanced funds have been fully reconciled, and that the funds request certifications are signed by the authorized signor, per the resolution or Agreement. The GMR works with the submitting agency to obtain any information/documentation necessary (if needed) to complete the funds request documentation. Communications are documented (notes taken for verbal conversations, emails printed and maintained in the contract file). Once all information/documentation is received, the GMR indicates that they have approved the funds request through GMS and submits the approved request electronically to the GMR and GMFM for processing in DRGR and GMS. Once all DR review staff have signed off on the payment request, it is submitted to accounting for processing.

The GMR reviews the funds request documentation and approves the request electronically in GMS. For USFS, CAL FIRE, CCC and RCAC and consultants associated with FWHP and BUF, SNC staff reviews and approves the documentation in GMS first before the GMR reviews the funds request. The approval of the funds request is entered into the CAPES system and an RFF which acts as a check request for accounting is developed. The RFF is then approved by the GMM and sent to HCD Accounting staff for review and processing. Accounting staff check the RFF against HCD annual budget numbers in FI\$Cal for payment processing. Accounting staff approve and send the RFF/check request to SCO for payment.

Because SNC fully reviews subgrantee and consultant funds requests for the FWHP and BUF, HCD staff will not do a full review of each of these NDR payment requests. Instead the GMR will review one or two SNC reviewed payment requests annually to ensure SNC is doing a reasonable verification of costs. HCD will also review a sample set of funds requests at annual SA monitorings of

subgrantees. The monitoring of the funds request requires source documentation for all costs listed on the funds request to be submitted by the selected subgrantee or contractor. Desk and/or onsite monitoring is coordinated with HCD audit staff and agency staff submitting the funds request.

Each of the six subgrantees is monitored annually. The annual monitoring of subgrantees is completed by DR monitoring staff that is not affiliated with the implementation of CDBG NDR activities. This will ensure an independent ongoing review. This review process supports HCD's oversight and verification of accuracy, identifies areas that need improvement, and ensures cost savings, where available, are maximized. Funds request status is discussed during the regularly scheduled meetings. The generation for the QPR is also discussed to ensure timely reporting of performance outcomes and expenditure of the CDBG NDR funds.

GCR, the GMR, and GMM review the performance measures and outcomes for CDBG NDR activities each quarter using the DRGR quarterly report. This information is shared with the Core Team to inform them as to the progress being reported to HUD on each of the activities.

As part of submitting a final funds request, after the project has been completed, all beneficiary data is reported to HCD using a Project Completion Report. The GMR and GCR works with the subgrantees and partners to close out their SAs. Note: HUD has yet to announce the NDR grant closeout requirements; HCD issues a Management Memo outlining the documentation needed for grant closeout upon receipt of additional guidance from HUD. Once the documentation needed according to the HUD guidance is collected, reviewed, and complete, HCD will close out the subrecipient SA. For procured consultants, DR staff will follow HCD Contract staff process for SA close out..

a. Lawsuits

In the case of a legal suit filed against the NDR program legal expenses are not considered General Administrative expenses. HCD must wait for lawsuit to be dropped by plaintiffs or a court decision in HCD's favor, prior to drawing down fund from DRGR.

C. Approved Leverage Funds Verses Match Funding Reporting

The State of California does not have "approved or mandated leverage" funding requirements under the NDR grant agreement with HUD. Therefore, no approved leverage will be reported in DRGR.

However, HUD does encourage the State of California to report any and all "match" funds provided as part of implementation of CWRP activities. CDBG-NDR match from other sources of funding increases the impact of the HUD award dollars. Matching funds include financial assistance provided by local governments, state agencies, federal agencies and private sources. Match funds will be reported on subgrantee/partner monthly reports and provided to HUD via DRGR on a quarterly basis.

D. Program Income

HCD manages CDBG-NDR program income through the provisions in the Standard

Agreement, which all subgrantees sign to receive NDR funding from HCD. Each program may or may not generate program income based on the activities engaged in and the project outcomes.

In the case where partners or subgrantees report program income to HCD through a request for payment, HCD requires that subgrantees use program income prior to requesting additional funds from HCD. Subgrantees provide monthly reports to HCD on program income generated and retained. If at the end of a Standard Agreement there is remaining program income, it is returned to HCD during closeout where the Accounting Section tracks the program income until it is obligated in a new Standard Agreement and tracked through CAPEs. However, any program income generated after the HUD CDBG-NDR close out will become CDBG Program Income for the county. HCD reports all program income to HUD through the DRGR.

After HCD finalizes the project activities, it will determine if NDR program income will be generated. Should NDR program income be generated, HCD will refine the program income section to accurately describe how program income will be managed.

E. Salaries and Wages

Salaries and wages of HCD, subgrantee or contractor staff persons being charged to the NDR grant are documented with timesheets and evidence the work being performed is related to the grant (if staff work on multiple programs, functional timesheets that have been approved by a senior position must be documented in the files). HCD's finance team maintains the documentation, which is submitted via HUD's DRGR system as part of draw down requests to HUD.

F. Indirect Costs

HCD has an Indirect Cost Allocation Plan (ICRP) which is approved annually by HUD. HCD accounting staff use that rate along with staff timesheets to determine the monthly voucher amounts in DRGR generated for HCD NDR administration expenses. HCD CDBG-NDR expenses 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 percentage of indirect 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 revenues 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.

Contractors are not allowed to charge indirect costs. Subgrantees are allowed to charge indirect costs upon documentation of an approved Indirect Cost Rate Proposal (ICRP). Documentation of an ICRP includes: 1) a current ICRP approval letter from a federal funder acting as the cognizant agency; 2) requesting an ICRP approval from HCD. HCD has developed a formal ICRP approval process for review and approval of subgrantee ICRPs as the cognizant agency. NDR subgrantees and partners may choose not to use an ICRP.

HCD will only request reimburses 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 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.

Indirect costs are normally charged to federal awards by the use of an indirect cost rate, established by plan. 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 which results in the grant program bearing only its fair share of total indirect costs.

G. Timeliness of Expenditures

Each NDR project is tracked in GMS, CAPES and DRGR. The parties involved in the project, as well as HCD staff (GMR, along with other interested parties) have access to the shared file(s). Continued evaluation of each project is performed by HCD, primarily managed by the GMR and is compared to the data contained in the monthly reports and regular calls that provide updates on activity implementation.

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

- 1) Include start and end dates in all contracts with local governments, contractors and/or subgrantees. Most contracts will have expenditure deadlines six months before the end of the period of performance, or the HUD grant expenditure deadline.
 - a) As part of the contracting and awards process, HCD works with subgrantees and contractors to develop performance benchmarks to

include in the Agreement. The benchmarks are the basis for monitoring implementation and performance on each activity. HCD includes projected start and end dates within DRGR and benchmarks are reported in each QPR by activity.

- 2) Review and process expenses against eligible reimbursements provided by subgrantees and draw down expenditures in DRGR on a quarterly 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 monitors the progress of activities via the monthly reports in order to address any delay in production which could lead to the slow expenditure of NDR funds.
- 4) For stalled activities, the SA contains penalty language which requires the subgrantee or contractor to submit a mitigation work plan designed to get the activity back on track so that funds can be drawn down, as outlined Exhibit A performance measures of HCD's Agreements. If an acceptable work plan cannot be approved by HCD, then funds are withheld until a path forward for completing the activity is established. If not path forward is possible, HCD will use termination clauses in the SA to repurpose the funding to address other eligible unmet needs through the use of an Amendment to the Action Plan.

H. Improper Payments

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 good or service, 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, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

If a funds request is submitted to HCD and it is determined to have one or more ineligible expense, GMR notifies the subgrantee or contractor to revise the funds request and to exclude the ineligible expense. Payment will be processed once the updated funds request and back up documents are received and verified.

If any CDBG NDR payments have been made for ineligible costs or activities, or if an overpayment occurs or underpayment occurs, the total amount of ineligible CDBG NDR funds must be adjusted in accordance with the category of cost: GA, AD, Planning and activity implementation it falls under. HCD will allow for a subgrantee to make the necessary adjustments to their funds requests to repurpose the overpayment or underpayment of funds at their local level for the same category type of eligible cost. Subgrantees will use an approved HCD Adjustment/Reconciliation Memo to document the local adjustments being made and provide final balances for the budget items impacted. The Memo and all corrected funds requests along with supporting documentation will be submitted to the GMR for review, approval and payment.

If the SA has expired or the amount of improper payment is greater than the current budget balance, then GMR will work with subgrantee and HUD to determine the appropriate action.

I. Internal Controls

1. Staffing

HCD's Division of Financial Assistance assigns one full time staff person in the Disaster Recovery Section to oversee contract management for the CDBG NDR funding. This position, the Grant Management Representative II and known as the GMR, ensures HUD grant compliance by HCD and oversees the SA work performed by all subgrantees and contractors and ensures performance and payment compliance. GMR works closely with HCD Contract staff on routing and execution of each subgrantee SA and any amendments. GMR also works with HCD Contracts staff on procurement of contractors needed for NDR implementation and administration. Once procured by HCD, the GMR oversees the contractors SA and amendments

In addition, HCD has contracted with a third-party technical assistance contractor, GCR Inc. also known as C to support the GMR in HUD compliance for HCD, subgrantees and partner as well as contractor oversight work. TA contractor provides guidance to GMR and staff in relation to the DRGR as well as creating documents that build HCD compliance capacity and the capacity of subgrantees. The TA contractor has regular meetings with HCD staff, provides trainings to HCD and subgrantees on NDR requirements and regulatory compliance. On-site visits are conducted as needed to provide hands on training. The GMR works with the HCD Specialist II who serves as the NDR Project Manager and as the liaison between the GMR and HCD leadership.

The GMR works closely with the TA contractor to set up regular communications and reporting that enables HCD to accurately track progress and expenditures for each of the funded CDBG NDR activities. The TA consulting firm provides grant management software, GMS, that facilitates the transfer of information between the state and federal systems to track milestones, outcomes and beneficiary data for each CDBG NDR activity, as outlined in the Action Plan approved by HUD.

The GMR and TA contractor reviews draft NDR agreements between HCD and its CDBG NDR subgrantees or contractor prior to execution to ensure that required federal language is in place. The TA contractor also reviews the agreements or contracts between the subgrantee and their contractors or subrecipients.

Upon execution of the agreement and completion of NEPA documentation, subgrantees and contractors may begin expending any general administration funding. Project administration funding may also be utilized as long as it is work that qualifies under the NEPA category of exempt and will be covered by an exemption form for general administration. The County of Tuolumne, as Responsible Entity (RE), completes NEPA/CEQA reviews for general administration and CRC planning and implementation activities. HCD is the NEPA RE and CEQA lead agency on general administration activities NDR pillar planning and implementation activities for FWHP and BUF.

For implementation of project activities, a subgrantee must complete the

appropriate General Conditions Clearance checklist (GCC). The GMR will provide a GCC to the subgrantee for each eligible activity that must obtain a release of funds. Subgrantees provide a signed copy of the GCC with copies of compliance documentation to HCD for review and approval. Upon HCD review and written approval, the subgrantee can begin incurring costs for NDR project implementation activities. Contractors are not required to complete a GCC.

HCD's Standard Agreement is the contractual document that details the financial and recordkeeping requirements and compliance standards for subgrantees and contractors awarded funds to carry out specific eligible NDR activities. Normally HCD uses the SA to enter into contractual relationships with California jurisdictions (cities and counties). For NDR, HCD is using the SA to enter into contractual relationships with other state entities (SNC, CCC and CAL FIRE), which HUD considers subgrantees. The HCD SA format is being used for contracting with other state entities as subgrantees but the language in the SA is modified to reflect the relationship between HCD and other state agencies.

In the case of the USFS, it does not fall under HUD's definition of CDBG subgrantee, and to cover the unique relationship where HUD (a federal agency) grants funds to HCD (a state), who in turn provides federal funds to USFS (another federal agency), HCD developed a CEA. The CEA is in a Standard Agreement format that provides the necessary compliance and relationship language to clearly define the special relationship between HCD, SNC and USFS. In this context, HCD referees to USFS as a subgrantee although they are treated differently based on the SA language.

Yet another special relationship exists between RCAC and HCD. For BUF implementation, a three-party SA between HCD, SNC and RCAC was developed. HCD established that RCAC is an eligible non-profit for administering BUF economic development planning and financial assistance, revolving loan activities. HCD selected RCAC from a number of other non-profit Community Development Finance Institutions (CDFIs). As part of the selection process, HCD verified that RCAC would qualify as a HUD CBDO. As such, HCD used the SA format to establish a CBDO relationship with RCAC and to include SNC as the BUF program coordinator. The CBDO SA is being used to engage and manage the relationship needed for successful implementation of the BUF.

HCD does not have a separate unique contractor agreement, but uses the SA format and modifies the language with it to reflect the federal and state compliance requirements associated with the contractor's relationship with HCD.

Together, the SA format, state agency, CEA, CBDO and contractor language comprise HCD's formal agreements with subgrantees and consultants. Each Agreement outlines the budget line items, scope of work, performance measures, reporting schedule and timetable for deliverables. HCD's GMR and contractor staff work with the subgrantee to ensure timely and accurate reporting. In addition to the formal reports, the GMR contacts subgrantees on a regularly scheduled basis to obtain progress updates and to provide technical assistance as the projects progress forward through completion.

The GMR provides guidance on labor compliance for CDBG NDR construction activities in accordance with subgrantee and partner agreements. Each subgrantee that conducts construction activities is required to name a Labor Standard Compliance Officer to monitor federal and state prevailing wage compliance for each public construction project and directly manage any labor compliance on the projects they are implementing on behalf of HCD (USFS, RCAC and Tuolumne County). The GMR provides guidance to subgrantees on following federal procurement processes, including the incorporation of applicable prevailing wage language and processes for public construction activities in all bid and contract documents (see the Procurement chapter for specifics). The GMR coordinates with the HUD Region IX Labor Specialist for construction activity implementation, including the submission of labor reports. Procurement and contractor bidding details can be found in Section VI. Additional information on Davis-Bacon can be found in Section VI part O, 2b.

2. Required Standards for Asset Management

HCD, subgrantees whose use of NDR funding will generate assets, as well as any of their contractor whose activities generate assets must provide documentation of internal controls to safeguard CDBG NDR cash, property and other assets. Documentation must be maintained in the files to support oversight. A combination of written policies, procedures, detailed job responsibilities, named personnel and the chain of command, along with reports showing the control of all assets purchased with CDBG NDR funds are required. Documentation must also include the communication and training for any changes in policies and procedures.

HCD staff will require, when applicable, portfolio and asset management policies and procedures, as well as evidence of regular, ongoing compliance review for all program assets, must be maintained by each subgrantee who has a loan portfolio. GMR will work with County on CRC public facilities to ensure they continue to provide public services to local area residents for at least five years after opening.

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

J. Audits

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.

1. State of California Single Audit Report

The California State Auditor (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 policy 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. Our audits are performed in accordance with applicable professional standards such as Generally Accepted Auditing Standards and Government Auditing Standards, as deemed necessary. OSAE also performs non-audit services. OSAE accomplishes these multifaceted objectives using staff with diverse backgrounds, professional certifications, and technological expertise. In an effort to promote transparency of governmental activities, our reports are posted to this site.

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.

The Federal Audit Clearinghouse (FAC) operates on behalf of the 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.

Uniform Guidance, 2 CFR 200.512 requires 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.

Uniform Guidance 2 CFR 200.513 and 2 CFR 200.331 describe the responsibilities of federal agencies and pass-through entities. Specifically, Uniform Guidance, 2 CFR 200.331 prescribes the responsibilities of a pass-through entity for the federal awards it makes. To ensure that the State of California carries out its responsibilities in accordance with this federal act, the State Administrative Manual, Section 20070, gave the SCO the responsibility of coordinating single audit activities in local governments. A part of those responsibilities includes the monitoring and review of the single audit reports. In summary, local governments entities are required to submit their reports to the FAC and the SCO.

2. Subrecipient Audit Requirements

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. 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.

3. Internal Audit

HCD has an Internal Audit Unit within the Audit & Evaluation (A&E) Division. Internal Audit will conduct periodic audits to determine if the NDR internal controls are operating effectively and efficiently and are designed to detect and deter fraud, waste, and abuse. A&E conducts audit engagements in accordance with applicable federal and state laws and regulations that include, but is not limited to, 2 CFR Part 200 and Federal Register Notices. In addition, A&E 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.

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 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. HCD provides whistle blower information easily accessible on

SharePoint and on printed posters throughout the office, and staff attend fraud prevention trainings with OIG to improve their ability to prevent and detect fraud.

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.
 - 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.
 - 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.
 - 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 is:
 - 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. False Claims Act

Subgrantees, partners and contractors are held to the same expectations of fraud prevention as HCD. HCD also requires its subgrantees and partners 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's subgrantees and partners 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 NDR recipients must adhere to the requirements listed in the False Claim Act, located in California Government Code Section 12650 to 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.
- 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.

3. 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.

SB 496, SB 666, and AB 263 expanded protections for whistleblowers in California by significantly altering California Labor Code Section 1102.5.

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.

4. 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 the 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 30 calendar days following discovery of the incident and update reports are required every 180 days from the date of initial notification until the incident is resolved.

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–NDR interagency, subgrantee 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
800-952-5665 phone
916-322-3360 phone
916-322-2603 fax

VI. Procurement and Contract Management

This section provides guidance on standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other goods and services for CDBG NDR activities by HCD and subgrantees. Depending on who is procuring the goods or services (HCD, subgrantee, contractor), and what is being procured, there are different standards of procurement. Subgrantees adopt federal procurement standards in signing the HCD Agreement and as such must follow the applicable federal procurement standards at 2 CFR part 200.317 through 200.326. HCD is responsible for ensuring NDR funds are used in accordance with federal and state regulatory requirements. The use of subgrantees or contractors does not relieve HCD of this responsibility.

Procurement standards apply differently to different recipients of NDR funding, who are using them to implement different eligible activities. For instance, all subgrantees who are jurisdictions are required to follow the procurement standards from 2 CFR 200, or local standards, whichever is more restrictive. For example, the County of Tuolumne will follow federal procurement standards, unless their local procurement standards are higher. For subgrantees who are state agencies, they will follow HCD certification of state procurement standards meeting federal standards. So, for SNC and CAL FIRE, they must use state standards but ensure that any federal standards that are higher are followed. For subgrantees that are non-profits, RCAC, they must follow federal procurement standards. For contractors, private citizens or businesses using CDBG NDR funding, they are not required to follow 2 CFR 200, however HCD requires them to document that their procurements meet basic federal procurement standards of being necessary and reasonable costs.

Lastly, due to the USFS’ unique position as a federal partner to HCD and because it is a

Federal Agency, HCD will allow them to follow the procurement standards from the Federal Acquisition Regulations, or FAR, which outlines the procurement policies and procedures for federal agencies. While the FAR and 2 CFR 200 are closely related, they do have several important differences, such as allowing service contract procurements to be used for non-construction FWHP activities. Detailed requirements related to procurements are outlined in each recipient's agreement or contract used with CDBG NDR funding.

HCD has conducted several procurement trainings for the subgrantees and has provided them with HUD's "Buying Right" procurement guide. HCD has developed procurement forms, like Independent Cost Estimate (ICE) and Cost Reasonable forms that help guide DR staff and subgrantee staff through the federal procurement process. HCD and GCR staff support subgrantees through their procurement processes and review documents as needed.

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 part 200.317 through 200.326. HCD Legal has drafted a crosswalk between state procurement and 2 CFR 200.317-326 to demonstrate how the state standards align with federal requirements. In addition, HCD follows the policies and procedures identified in the State Administrative Manual (SAM) and applicable sections of the Public Contract Code (PCC). While the federal standards act as the minimum procurement and contracting requirements for the HCD and other state agencies receiving NDR funding, if inconsistencies between federal, state and local procurement requirements arise, they follow the strictest of the requirements.

A. Personnel

The Procurement Division, Department of General Services (DGS), is responsible for every purchase of non IT supplies or equipment more than \$100 and for contracts for purchases for every state agency with such exception as stated in PCC Sections 10295, 10298, 10430, and 12100.5. HCD has an agreement with DGS that allows for Contract staff to conduct procurements. Larger HCD procurements must be reviewed and approved by DGS prior to executing the SA.

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.*)

HCD procurements using CDBG NDR funding are coordinated with GMR and Contract staff and DGS. Contract staff work in the HCD's Business Services office and are tasked with meeting state procurement standards. GMR staff are tasked with meeting federal procurement standards. Together the two staff coordinate procurement processes for NDR and ensure procurement files contain all the necessary documentation for state and federal procurement standards. Contract staff hold the "file of record" for procurements and DR staff have copies of procurement documentation, including all documentation of federal compliance standards.

B. Code of Conduct

2 CFR part 200.318(c)(1) requires HCD and subgrantees 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 and the guidance under part 7.10 of the State Contracting Manual, 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 part 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 subgrantees 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 noncash gifts, such as donations to employee fundraising 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 under PCC §§ 10410 – 10411. CDBG NDR subgrantees must ensure compliance by reviewing their local government situations and determining if the decision-making process was followed appropriately to ensure all HUD, California and local standards are followed; if there are conflicts, the most restrictive standards must be documented and adhered to.

California’s conflict of interest standards of conduct applies to all procurement activities. A booklet on all state requirements for conflicts of interest can be found through the State of California Department of Justice webpage at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>.

All non-procurement activities (acquisition and disposition of property, direct assistance to individuals and/or businesses) are subject to the HUD requirements described in 24 CFR part 570.489(h). The general rule is persons acting on behalf of state or local government in a State CDBG decision making role, or who are in

a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from State CDBG funded activities. This prohibition ends one year after the decision-making person has left their position.

HCD evaluates and decides if conflict of interest exists for a subgrantee/partner, employee, agent, contractor, officer, elected official, appointed official of the state, locality, any designated public agencies, subgrantees or other recipient on behalf of their employees or agents which are receiving CDBG 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, contractor, officer, or elected official or appointed official of the state, or locality, or any designated public agencies, or subgrantees, which are receiving CDBG funds.
- Whether undue hardship will result to the State, UGLG 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 HCD or a subgrantee has a parent, affiliate, or subsidiary organization, HCD 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 subgrantee is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

C. Pre solicitation

HCD and subgrantees are 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 prequalified firms.

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

Per 2 CFR part 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. Prequalified Lists.

Per 2 CFR part 200.319(d), HCD “must ensure that all prequalified 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.”

These provisions are covered in the State Contracting Manual under parts 8.20 – 8.22 and parts 5.03, 5.05, *et seq.*, 5.11, 5.15, and 11.05 respectively. HCD does not currently anticipate the use of prequalified lists for procured work under the CDBG NDR grant. If that practice changes, this manual will have future updates to policies.

D. Solicitation Requirements

Per 2 CFR 200.319, HCD and subgrantees have written solicitation procedures for all procurement transactions prior to securing contract services under parts 5.03, 5.05, *et seq.*, 5.11, and 5.15 of the State Contracting Manual. 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 offers’ 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 part 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.

PCC 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

HCD and subgrantees are committed to ensuring that contractor performance is

measured objectively and that unfair competitive advantages are eliminated from the procurement per the requirements of 2 CFR 200.319(a). 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 contractors 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 and subgrantees the best opportunity at finding the right company for the job. Therefore, HCD has committed to following 2 CFR part 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 and subgrantees 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 part 200.319(c)(1) and SCM part 5.35, HCD and subgrantees 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 part 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

To comply with 2 CFR §200.318(d), HCD follows its written procedures in the SCM § 5.85, 7.61, and 7.62 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. Refer also to the SAM procurement guide.

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 intergovernmental agreements for procurement or use of common or shared goods and services in accordance with 2 CFR part 200.318(e).

I. Surplus property

2 CFR 200.318(f) encourages HCD and subgrantees “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 PCC 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 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 inform them of the procedures.

J. Value Engineering

Per 2 CFR part 200.318(g), HCD will not procure construction or engineering services. For subgrantees procuring these services, HCD encourages them to examine the effectiveness of 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) and SCM § 5.40, 10.15, and 11.05, 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 subgrantees 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 \$150,000], 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 analysis must be done after receiving bids but before executing a formal agreement. More detailed information on procurement requirements for CDBG NDR can be found in the [HUD Buying Right Guide](#).

An ICE provides a baseline estimation of what the required expenditures will be and what they should cost based on suppliers and market values. The method and degree of analysis is dependent on the facts surrounding the procurement situation but, as a starting point, HCD and its subgrantees complete independent estimates before receiving bids or proposals.

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.

For the NDR grant, Tuolumne County submits cost estimates related to the CRC and the USFS and SNC submit cost estimates related to the Forest & Watershed Health Pillar for review and approval by the GMR, who acts as the HCD NDR Contract Representative. The GMR is responsible for completing cost and price analysis for BUF procurements.

HCD and its subgrantees use an Independent Cost Estimate form, 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 subgrantees are required to use one of the following methods of procurement for projects using CDBG NDR funds. These methods align with both the State of California's procurement requirements, as well as 2 CFR 200. The USFS follows similar methods that are allowed by the FAR.

1. Micro purchases

2 CFR part 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 \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis Bacon Act). To the extent practicable, the nonfederal entity distributes micro purchases equitably among qualified suppliers. Micro purchases are awarded without soliciting competitive quotations if the nonfederal entity considers the price to be reasonable."

2. Small Purchases

2 CFR part 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 \$150,000 or less or where the competitive field is very limited, 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 \$150,000 and less are considered informal and are conducted in accordance with the State Contracting Manual, Volume II, Purchasing Authority Manual (PAM) requirements for informal competitive non-IT goods procurements.

3. Sealed Bids

2 CFR part 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 part 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 \$150,000 are normally made by sealed bid procedure. Policies are also included in SCM § 5.11, 5.15, 5.80 (A), 5.90, and 11.05. 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 (PCC 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 part 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 service contracts, HCD follows PCC Article 4: Contracts for Services §10335-10381. Competitive proposals are used for purchases over the Simplified Acquisition Threshold. 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.

5. Procurement by Noncompetitive Proposals

- HCD and subgrantees may use procurement by noncompetitive proposals, also known as sole source procurement, when a proposal is solicited only from one source. Noncompetitive procurement

requires approval in writing from an oversight agency and will only be approved for use only when the award of a contract is infeasible under small purchase procedures, sealed bids, or RFP/RFQ proposals. For HCD, the oversight agency is HUD, so HCD's authorized representative must sign a letter explaining the circumstances and requesting a sole source approval from HUD. For subgrantees, HCD is the oversight agency, so they must submit a letter, executed by their authorized representative, to HCD requesting written approval of the sole source/single noncompetitive procurement. This can only be used when one of the following circumstances applies:

- Where the item is available from only a single source. This requires a written request for single source procurement along with justification and documentation to support the request.
- Where a public health issue or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods.
- Where after solicitation of a number of sources (RFP/RFQ), competition is determined to be inadequate (one responsible proposal). This type of request also must include the full procurement file documentation of failed procurements, including:
 - 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 nonresponsive or non-responsible, include the written justifications.
 - Full copies of all bids received, including nonresponsive proposals.
 - Review scoring results for each respondent based on selection criteria indicated in RFP/RFQ, including names of subgrantee's review panel.
 - Proof of no debarment of all proposals received.
 - Complete draft contract (ready to execute); this must include all CDBG federal contract provisions.

N. Pre Award

1. Debarment Check

Per 2 CFR part 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 awarding a contract, HCD's GMR takes the following 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 debarment lists, which includes ensuring they have a current registration number for DUNs.

2. Conducting Cost/Price Reasonable Analysis

2 CFR part 200.323 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 nonfederal entity must make independent estimates before receiving bids or proposals." HCD also applies SCM Chapter 2 Appendix, §2(B)(2).

a. Negotiating Profits

2 CFR 200.323(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."

This applies when there is no price competition in procurement. Profit is to be considered separately from the cost analysis and should be documented as such, however this is not a "cost plus percentage of cost" contract. Refer to HUD's [Quick Guide to Cost and Price Analysis](#) for further detail.

b. Cost Reasonableness Determination

HCD and its subgrantees 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 parts 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 nonfederal 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, subgrantees 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.

b. Cost Plus Contracts

2 CFR 200.323 (d) states that, “the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.” HCD will not enter into cost plus contracts for the NDR grant.

O. Contract Provisions

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

1. Special Conditions

a. Insurance Requirements

HCD and subgrantees will require 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. Construction Bonding Requirements

2 CFR part 200.325 requires that, for construction contracts or construction subcontracts exceeding the Simplified Acquisition Threshold (\$100,000), HCD and subgrantees obtain assurances that their interest is adequately protected.

Therefore, for any NDR activities that involve construction, HCD, subgrantees and contractors must obtain fidelity bonds sufficient to safeguard against fraud and misuse of funds, per federal regulations in 2 CFR part 200.304(b).

For state regulations, in accordance with Government Code section 11007.4, the State of California has elected to be self-insured for construction 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. Construction contractors of the State of California must comply with bond requirements under PCC §7103 according to the amount of the contract award.

HCD subgrantees or contractors that are not state or federal 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 NDR construction 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 GMR, who consults with HCD contract staff and staff at the Department of General Services to determine the best option to proceed. For subgrantees, DR staff will be contacted for guidance.

2. Federal Funding Compliance Provisions

In addition to other provisions required by HUD, all contracts made by HCD and subgrantees under the CDBG NDR 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)

See Section XII. E. Davis Bacon and Labor Standards provides more detailed guidance on this requirement, but here is a quick summary of how labor standards applies to procurement specifically. When required by federal law and regulations, all prime construction contracts more than \$2,000 awarded using federal funds 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. HCD or its subgrantees must place a copy of the current prevailing

wage determination issued by the Department of Labor in each solicitation along with references to corresponding state labor rates.

The decision to award a contract or subcontract must be conditioned upon the contractor acceptance of the higher of two wage determinations, (state or federal). HCD or its subgrantees 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 Copeland Act provides that each contractor or subgrantee 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. HCD 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 HCD or its subgrantees 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 subgrantee 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 subgrantees 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 from a covered procurement over \$25,000 (see 2 CFR §180.220 and 2424) must not be made to parties listed on the government wide 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 nonfederal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to HCD.

i. Solid Waste Disposal Act

A nonfederal 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.”

P. Service Contract Management

Per 2 CFR part 200.318(i), HCD and its subgrantees “must maintain records sufficient to detail the history of procurement. These records 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.” State requirements are also outlined in SCM part 9.09.

Subgrantees procuring service contractors will use their local policies and procedures, which include applicable federal procurement standards in 2 CFR 200.

HCD staff work between different Divisions to get service contracts procured, executed and managed. First the GMR staff identifies a need for a service, product or material, essential for the CWRP. In collaboration with the GMM and any subgrantees who will be involved in the service consultant oversight, a draft Scope of Work (SOW) is developed along with a RFP with all the standard NDR compliance language. The draft RFP with SOW is provided to HCD Contract Analyst for review and approval in accordance with state standards. Upon approval, the GMR conducts research of costs for comparable services, which is used to complete an independent cost estimate (ICE). After ICE is completed the GMR and Contract Analysis release the RFP in accordance with state standards and federal WBE/MBE, Section 3 regulations.

The Contract Analyst receives the proposals, opens them on due date and confirms they all meet threshold compliance. The proposals are then provided to the GMR to conduct the rating and ranking process. After the rating and ranking process is done, the GMR provides the full procurement file back to the Contracts Analyst for review and approval. Once approved, the Contracts Analysis posts the bid award for five day dispute period. After the dispute period is done the contract is awarded and Contract Analysis works with GMR to finalize the SA and route it through HCD Divisions for approval. Once routed and approved, then the Contract Analysis sends out the SA for execution by the consultant. Upon the signing from the consultant, the Contract Analyst procurement packages all required documents and submit to Department of General Services (DGS) for final approval. Once DGS approves the procurement package, they will stamp the contract with the approval date, which becomes the contract start date. After DGS approval, the GMR coordinates consultant work deliverables and processes payments. At the completion of the SA, the deliverables are finalized, and the contract closed.

1. Awarding Agency or Pass through entity review

Per 2 CFR part 200.324, HCD must make available, upon request by HUD or the State of California, procurement records. HCD and its subgrantees must ensure that their procurement policies and procedures are comprehensive regarding the level of documentation to be maintained for the purchase of any goods or services. Whenever contractors or subgrantees conduct a procurement, they will provide HCD with records of contracts, amendments and evidence that the procurement has been reviewed. Contractors and subgrantees may keep original files for their records and provide HCD with copies and make them available and

readily accessible for audit, monitoring or other reviews. Audit and record retention requirements of the state also outline the level of documentation to be maintained under SMC §7.50 and 9.16.

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

Subgrantees 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 subgrantee 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 subgrantee'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 subgrantee

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 it is determined, with consideration of the surrounding circumstances 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.

S. Contract Modifications

1. Amendments

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

Prior to approving an amendment that adjusts project costs, HCD completes cost or price analysis, including an ICE. Once the ICE 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 NDR 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 SCM part 5.15, 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 ICE must be completed by HCD to ensure that the change order is reasonable. Once the ICE 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 NDR funds. Once accepted, the change order becomes a part of the contract record and all record retention policies governing contracts are applicable.

VII. Additional Agreement Requirements

7. Performance Requirements and Penalties

Per the PL 113-2, performance measures and penalty language is required to be incorporated into all procured contracts utilizing CDBG NDR funds. HCD will include these in all SAs and consultant contracts. All SAs will also have HCD language requiring subgrantees to include performance measures and penalty language in all of their NDR agreements with contractors and subrecipients. To disclose procurement compliance, HCD is required to maintain a public website which provides information accounting for how all grant funds are used and administered, including details of all contracts and ongoing procurement policies. To meet this requirement, HCD makes the following items available on its website:

- The Action Plan (including all amendments).
- Each Quarterly Projection Report (QPR) detailing expenditures for each contractor.
- Procurement policies and procedures (GAM and SAM).
- Executed CDBG-NDR subgrantee and contractor SAs.
- Status of services or goods currently being procured by HCD—e.g., phase of the procurement, requirements for proposals, etc.

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.

8. Additional Standards

1. CDBG NDR Green Building and Energy Efficiency Standards

For the purpose of CDBG NDR funds, HCD is not completing any rehabilitation or new construction of residential buildings. Thus, CDBG NDR Green Building and Energy Efficiency Standards are not required for any NDR pillar activities. However, in the HCD NCRC Phase 2 application, the CRC was proposed to meet the highest energy, water and sustainability standards possible. As such, HCD required the county to design the CRC projects to maximize sustainable, green and resilient building standards. The BUF project will not require the meeting of Green standards but will be encouraged to use technology and business practices that reduce environmental impacts on air and water, while conserving energy/produce energy for their business operations.

All new construction of residential buildings or reconstruction of substantially damaged buildings must incorporate the state's green building standards. California Green Buildings Standards Code (CALGreen) is California's first green building code, enacted as mandatory in 2011, and adopted to address five divisions of building construction and improve public health, safety and general welfare. The divisions addressed are as follows: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and environmental quality. CALGreen applies to the planning, design, operation, construction, use, and occupancy of nearly every newly constructed building or structure in the state, as well as additions and alterations to existing buildings that increase the building's conditional area, interior volume, or size.¹

HUD requires all housing 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. Should HCD complete an amendment to its NDR Action Plan to include residential building, this section of the manual will be updated to reflect the required standards.

2. CDBG NDR 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 they 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 requires that all new construction projects funded through CDBG NDR meet the following certification, standards and recommendations, to the fullest extent possible. This will apply to the construction of the Biomass Utilization Facility and the Community Resilience Centers.

- Achieve energy performance 15 percent better than mandated by building code.
- Achieve Zero Net Energy usage (ZNE), if cost can be covered in budget.
- Include evaluation of biomass power, solar panels and/or other low emission heating, cooling, electricity, and hot water technology where applicable.
- Achieve LEED silver certification, or higher, and achieve all LEED water points.
- Use a Monitoring Based Commissioning dashboard.
- Achieve WELL building certification, a standard pertaining to occupant health and minimizing use of toxic materials.
- Achieve SITES certification for landscaping.

¹ California Department of Housing and Community Development, <http://www.hcd.ca.gov/building-standards/calgreen/index.shtml>.

- Include rainwater and greywater capture and reuse for pertinent plumbing systems and landscaping.
- Meet ENERGY STAR and Water Sense program requirements.
- Incorporate all CAL FIRE Wildland Urban Interface (WUI) building codes.

VIII. Records Management

HCD, subgrantees and contractors must maintain records in accordance with 24 CFR part 570.490 to document compliance with HCD program requirements in this GAM, as well as federal, state and local regulations and to facilitate an audit review by HUD. The filing system established to keep records should be easy to use while providing an historical account of activities for examination and review by local staff, state, and federal auditors. The records are subject to the Freedom of Information Act (FOIA) and California Access to Public Records Act (PRA).

For HCD and subgrantee, 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 NDR assistance.
- 6) Documentation of compliance with all applicable HUD cross cutting requirements (such as NEPA, labor standards 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 NDR 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 budgets where 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 request for proposal, cost estimate, evidence of contractor solicitation, scoring, evidence of non-debarment, and selection
- 6) Federal prevailing wage determination (Davis Bacon construction or Service Act)
- 7) State prevailing wage determination
- 8) Weekly HUD payroll certifications and back up documentation
- 9) Payroll deduction authorizations
- 10) Employee field interviews
- 11) Progress and final inspections, including documentation of the subgrantee'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 or service contracts
- 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.
- 15) Section 3 and WBE/MBE compliance.

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

9. Protection of Personal Identifiable Information

In the normal course of grant administration, HCD and its subgrantees may receive personally identifiable information (PII). PII is information that can be used to distinguish or trace an 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 NDR programs. HCD does not anticipate receiving any PII for individuals during CDBG NDR administration. However, there may be PII collected for business owners and representatives participating in the NDR BUF projects. HCD and its subgrantees take the following steps to protect personally identifiable information:

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

Filing cabinet keys are shared with HCD staff only. HCD releases records containing PII upon request, after verification, by the following entities:

- Federal and state auditors.
- Other federal or state agencies for duplication of benefits analyses.

If records containing PII are subject to FOIA 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 so long as necessary, in accordance with record retention requirements at 2 CFR part 200.333 and 24 CFR part 570.502(a)(7).

10. 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 supported by state computer servers. Partners, and subgrantees are responsible for securing their records for storage and limited staff access.

11. Access to Records

Representatives of HUD, the Office of the Inspectors General (OIG), 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 NDR award in order to complete audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to HCD's personnel for the purpose of interview and discussion related to such documents.

HCD shall also provide citizens access to records regarding the use of CDBG NDR funds on HCD's CDBG NDR website. HCD protects PII in the public access of CDBG NDR 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.

12. Retention Policy

HCD maintains program and project related documents, including financial records, supporting documents, statistical records, and other pertinent records. These records are maintained for a minimum period of five years from HCD's closeout of the HUD grant. Exceptions include, but are not limited to:

- For any litigation, claim, or audit, is started before the expiration of the five-year period, the 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 NDR 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.

HCD, subgrantees and contractors must maintain accounting records that adequately identify the sources and application of CDBG NDR funds. For each CDBG NDR 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.

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 570.200, and/or part 570.480. For NDR HCD is allowed to act as an entitlement community to implement programs and use entitlement community regulations. The following list includes the CDBG eligible activities that correspond to planned NDR projects and programs, outlining how each activity, and its related eligible costs, meet the regulations. Each pillar within NDR will involve project efforts eligible under one or more of this list during the development, implementation and construction phases,

Project	Current Eligible Activities
BUF	Economic Development, Public Facilities
CRC	Public Facilities with Acquisition and New Commercial Construction
FWHP	Public Improvement-green infrastructure

Each activity described below will have related costs. This list may be expanded if amendments are made that change or adjust project activities.

13. Acquisition

HCD will not be using NDR funds for real property acquisition. CDBG NDR funds may be used by HCD subgrantees 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. Real property acquired by subgrantees with NDR funds must have a five-year use restriction recorded on title to ensure public benefit from the project. NDR funds may also be used by BUF direct recipients, businesses to purchase real property. In such a case, RCAC will ensure that URA compliance

standards are met. No use restriction is required for BUF ED acquisition activities.

CDBG NDR funds may be used under this category by HCD, its subgrantees, 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 the 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 part 570.207(a)(3) and the acquisition of property to be used for political activities.

14. Relocation

HCD will ensure that subgrantees follow URA, 104d relocation compliance standards. 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 subgrantees to be appropriate under the provisions of §570.606(d).

CDBG NDR 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).

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, HCD and the subgrantee 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 subgrantee 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, see 24 CFR §570.201(i).

15. Public Facilities and Improvements

The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in §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 includes infrastructure owned and operated by a public entity. Examples are streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer systems, flood and drainage improvements (including green infrastructure like maintaining watersheds) public 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 NDR assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. CDBG NDR 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 runaway children, drug offenders or parolees, group homes for handicapped individuals and temporary housing for disaster victims.

In certain cases, nonprofit entities and subgrantees, including those specified in 24 CFR §570.204, may acquire title to public facilities. When such facilities are owned by nonprofit entities or subgrantees, 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).

16. 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. Remediation may include project specific environmental assessment costs not otherwise eligible under 24 CFR part 570.205. For more information, see 24 CFR §570.201(d).

17. Planning and Capacity Building

HCD will not be using NDR funds specifically for local capacity building but does provide GCR with funding to support HCD subgrantees with SA compliance. Planning funds will be used for both the CRC and BUF activities. This category authorizes the use of CDBG NDR funds to conduct studies, analyses, data gathering, the preparation of plans, and the identification of actions that will 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 NDR program. See 24 CFR part 570.208.

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 20 percent of the CDBG NDR

program.

Refer also to Section III, part B, 3 above on documentation waivers for planning or the national objective guidance on planning below in Section X, part A, 2.

18. Economic Development

Economic development project activities meeting the benefit for low to moderate persons standard under 24 CFR

§570.203 are required to document that over half (50%) of the new jobs being created are provided to LMI persons. Due to the nature of the Rim Fire disaster, NDR funding cannot use job retention. Under economic development, project activities may also meet LMA benefit standard, but the BUF recipient must be documented as providing direct services to the local community, have a defined service area and document the service area meets HUD LMA standard, which is 38% LMI for NDR.

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 subgrantee. 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. However, jobs indirectly created from CDBG assistance (construction) are not included.

HUD allows for a number of different methods to document LMI status of new hires. NDR has a special method that consists of documenting that the salary of the new hire is below the HUD published income level for a family of one in the county. Job positions that are documented as meeting that income standard are presumed to be LMI. For income for employees at the time of CDBG 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).

19. General Administration Costs

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

Activities eligible under this category include citizen participation costs, fair housing activities, and staff costs for project delivery. See 24 CFR §570.206(a)(1).

The amount of funds that can be used under this category is subject to the statutory limitation on planning and administrative costs of 20 percent of the CDBG-NDR award.

20. 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 NDR payments have been made for ineligible costs or activities, the total amount of CDBG NDR funds must be repaid in full. This repayment would include all project activity funding as it is defined in the Agreement and DRGR, which consists of activity delivery, planning and/or general administration funds). HCD will return the funds to the SA balance for use for eligible activities if the SA is still in effect. If the SA has expired, HCD will contact HUD to determine the appropriate action.

1. Categorically Ineligible

The following activities may not be assisted with CDBG NDR 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 NDR 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 NDR 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 NDR 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 NDR 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 NDR program.
- **Income payments.** The general rule is that CDBG NDR funds may not be used for income payments. For purposes of the CDBG NDR 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.

3. Other Limitations of the Eligibility of Activities

Certain activities, even if they would otherwise be eligible under the category of Economic Development activities, cannot be assisted with CDBG NDR funds if they are specifically ineligible under the provisions of the Public Benefit standards. Per above, HCD received a waiver of public benefit standard amount, but BUF projects must generate some reasonable public benefit standard.

X. National Objective

All NDR 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 the closeout phase.

HCD's NDR projects meet the following National Objectives:

Project	National Objective
BUF	Benefit to Low and Moderate Income (LMI) persons based on providing Job opportunities
CRC	Benefit to Low and Moderate Income (LMI) persons on an Area Basis
FWHP	Urgent Need, except for fuel break activities that will use benefit to LMI persons on an Area Basis.

HCD has been granted a waiver under the CDBG NDR program for LMI requirements where, as necessary, HUD has permitted the state to use a percentage of no less than 38 percent to qualify activities under the low and moderate income area benefit national objective. See also the [Federal Registrar Notice 36812 for August 7, 2017](#).

21. National Objective Compliance for Eligible Activities

1. Urgent Need

The certification requirements to document urgent need under 24 CFR 570.483(d) have been waived by HUD for the purpose of CDBG NDR until 24 months after the date HUD obligates funds to a grantee. In place of 570.483(d), HCD must document how programs and/or activities funded under the urgent need national objective respond to a disaster related impact (type, scale, and location of the disaster related impacts to be addressed).

Activities identified in the approved Action Plan that meet the urgent need national objective can be utilized through the extended expenditure deadline of September 30, 2022.

2. 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 comprised of at least 51 percent LMI households. 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 subgrantees 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 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 subgrantees 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.

3. Planning

The State of California was granted a waiver by HUD allowing state planning activities to be conducted without having to document meeting a national objective. Like entitlements regulations, NDR state grantees can presume that the planning activity meets a national objective.

4. Relocation

The compliance of relocation activities with the national objectives of the CDBG 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 relocation activity may qualify as meeting the national objective only where the acquisition, demolition or rehabilitation causing the relocation can also qualify under that national objective.

If HCD or its subgrantees acquire property for construction of a public facility that will serve an area that is qualified under LMA national objective, the payment of assistance to those displaced by such activity would qualify under LMA. This is because HCD and its subgrantees 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 for voluntary - temporary relocation, HCD or its subgrantees could qualify these relocation activities either on the basis of the reuse of the property or the income of the recipients of the relocation assistance, at HCD and its subgrantees' 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 objectives determinations, it is critical that HCD and its subgrantees make this distinction in its project files and when identify the displacing project.

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”.

To meet the national objective for urgent need, the project must demonstrate and certify that the public facility or public improvement (FWHP green infrastructure) meets a critical need for the health or welfare of the community.

- The need may have existed previously, but has become a serious and immediate threat, or
- The need is of recent origin or recently became urgent, or
- The grant recipient is unable to finance the activity on its own, and other sources of funds are not available.

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, notwithstanding the exceptions provided in the HUD area benefit waiver noted above.

In order to meet the national objective for benefit to low-moderate income persons in a public facility service area, the public facility must be operational, and documentation of benefits and services received by local residents will be provided by the subgrantee and verified by HCD.

The appropriate service area of the intended benefit is defined by the NDR funding requirements for this project. Under the NDR award, HUD has limited the service area boundaries to within the MID URN. 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.

Public facilities that are vacant after the project is complete or become vacant within the required period of use defined in the Agreement will not be able to meet a national objective.

6. Clearance

Section 105(a)(4) of the HCDA 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 38 percent (based on NDR LMI waiver) 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 designated by HUD to be presumed LMI.
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 percent of which are for LMI persons.
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.

7. Economic Development

Economic development activities can meet any of the three national objectives. The most common national objective met is LMI tied to jobs (LMJ). To meet this national objective, the assisted business must provide over half of all jobs created/retained from investment of CDBG-NDR funding to low and moderate income persons. Under NDR, economic development compliance will be required through BUF projects. Compliance is documented through multiple records maintained by the business receiving assistance and HCD:

- **Written agreement.** The agreement between HCD, and/or the subgrantee, and the business receiving CDBG assistance states the specific number of jobs to be created or retained and the actions the business, and the subgrantee, or HCD, will take to ensure the jobs 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 LMI job position 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.** Per above, due to nature of NDR disaster, HCD is not able to document jobs retained. Therefore, RCAC is not allowed to use job retention for to meet public benefit. In regular CDBG ED activities, projects meeting job retention must have files that 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 part of any workplace, it must be included in

the documentation for economic development compliance. Specifically, files must include:

- Listing of current positions that are created and are projected to be LMI job positions or will be provided to LMI persons. All proposed job positions must be maintained for at least one year after hiring date. Positions vacated must be filled to meeting public benefit standard.
- For LMI national objective compliance, a job position must be documented as meeting LMI standards once. If that job position becomes vacant, the replacement hire is not required to be documented as LMI.

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 (DOB) 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.” The steps and actions described in both the 2011 and 2013 guidance documents are mandatory requirements applicable to the use of CDBG NDR funds.

CDBG NDR funds cannot be used for activities for which funds have been received (or will be received) from FEMA, SBA, National Flood Insurance Program, private insurers, the U. S. Army Corps of Engineers, SBA, or other sources. CDBG NDR funds may be used to provide assistance to the extent that a disaster recovery need has not been met by other sources.

It is HCD’s responsibility to ensure that each CDBG NDR program and subgrantee provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

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.
- Monitoring compliance with the beneficiary agreement for the duration of the grant administration.
- 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 NDR record keeping requirements.

22. DOB Determination and Potential Sources

It is the responsibility of HCD to determine that no DOB exists before paying CDBG NDR funds to a recovery project. CDBG documentation for the determination of the total amount of CDBG NDR assistance, and to ensure that beneficiaries are not receiving a duplication of benefits, includes but is not limited to:

1. **An assessment of the needs of the beneficiary based on the CDBG NDR activity.** HCD determines the amount of assistance needed to complete a CDBG NDR activity. An independent estimate is used to establish the project cost. This assessment must be conducted prior to the receipt of CDBG NDR 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. **Identification of all available and duplicative assistance.** HCD identifies the total assistance available to an applicant for the project or CDBG NDR activity, including funds and assistance received or reasonably anticipated. Potential DOB sources include:
 - Other HUD funding, including CDBG and CDBG DR
 - FEMA Public Assistance or Individual Assistance funds
 - USFS funds
 - U.S. Army Corps of Engineers funding
 - U.S. Department of Transportation (DOT) funding
 - Federal Economic Development Agency funding
 - Small Business Administration (SBA) loans
 - National Flood Insurance Program (NFIP) funds
 - Private insurance funding
 - Local and state funds, including CAL FIRE and CalOES funding
 - Other federal program funds
 - Private and nonprofit organization funding
3. **Exclusion of no duplicative funds.** Identify assistance that is not available for the project or CDBG NDR activity. Potential no duplicative funds include:

- Funds received that are not for the same purpose as the project or CDBG NDR activity (e.g. CDBG DR funding used for housing recovery when the CDBG NDR activity is not funding a housing recovery project).
- Funds for the same purpose as the project or CDBG NDR activity but intended for a different eligible use (e.g. previous USFS funds provided for fuel reduction in a separately impacted area from CDBG NDR projects).
- Funds not available for CDBG NDR projects or activities (e.g. contractor fraud, etc.). Funds are considered “available” when they are received by a subgrantee and the subgrantee has legal control of them, or when a subgrantee 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.

23. DOB Calculation

The maximum CDBG NDR 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 biomass removal and reforestation work:

1)	Identify total need (accomplished through an independent cost estimate of the biomass removal and reforestation work)	\$1,000,000
2)	All potentially duplicative assistance (USFS fuel reduction funding)	\$100,000
3)	Assistance determined duplicative (fuel reduction occurring in the same area as planned CDBG NDR assistance)	\$50,000
4)	Maximum eligible award (1 less 3)	\$950,000
5)	Program Cap (if applicable)	\$1,000,000
6)	Lesser of Maximum Eligible Amount = Final Amount	\$950,000

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 NDR award has been made, and the subgrantee demonstrates a change in circumstances, then the award calculation may be subsequently reevaluated. 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)	\$950,000
Demonstrated additional unmet need (e.g. 6 months later, project costs have increased due to prices increasing based on shortages)	\$10,000
Amount of eligible additional award	\$960,000
Program cap	\$1,000,000
Final adjusted amount (Final amount + Eligible additional amount)	\$960,000

24. DOB Verification

As required by the Stafford Act and prior to providing or awarding CDBG NDR funds, HCD conducts a DOB verification for each project or program to be funded by CDBG NDR 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 subgrantees, or SBA loan documents. DOB source documentation is added to the program or project file and retained in accordance with the CDBG NDR record retention requirements.

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

25. Recapturing Duplicative Assistance

If a duplication is discovered after CDBG NDR 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 OIG, and the Stafford Act, which requires that duplicative assistance shall be collected in accordance with Chapter 37 of Title 31 relating to debt collection.

XII. Other Federal Requirements

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

26. Pre agreement allowances

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

27. Agreement Requirement for Including Performance Measures and Penalty Language

Per Section VII. A. all agreements funded with NDR funding must have performance measures and penalties language. Performance measure language must clearly call out necessary achievements in the agreement's scope of work that, if met, will ensure the work is completed in a timely fashion. To enforce the performance measures for timely completion of work, penalty language is required to incentivize the parties under the agreement to complete their work in a timely fashion. HUD did not provide specific language for performance measures and penalties and leaves it up to HCD to confirm this required language is specific enough for each different agreement and scope of work to be successful in getting the work done in a timely fashion. HCD included required performance measures and penalty language in all subgrantee and consultant agreements. HCD has also included language in SA that requires subgrantees to put this same language in all their third party NDR agreements. Americans with Disabilities Act (ADA)

HCD and subgrantees take 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 subgrantees are required to follow the ADA.

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

California state law requires that all of HCD webpages meeting ADA remediation standards so that all documents posted can be viewed and read by persons with disabilities.

28. Insurance and property management

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

awards.

29. Drug free workplace

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

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

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

1. Drug Free Awareness Program

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

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

2. Employee Drug Violation

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

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

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

3. Known Workplaces

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

4. Violations

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

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

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

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

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

30. Federal Davis Bacon and State Labor Standards

HCD will not enter into any construction or service contracts. HCD will require all subgrantees and BUF project direct beneficiaries who enter into construction contracts to follow Davis Bacon Act² and Related Acts (DBRA). Contractors and subcontractors performing on federally funded or assisted construction contracts in excess of \$2,000 must document compliance with state and federal prevailing wages, paying hourly rates and fringe benefits published by DOL. Entities entering into contracts that trigger labor standards are called labor compliance entities.

Additionally, HCD must require subgrantees to follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This semi-annual reporting requirement is extended to subgrantees and contractors.

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

² 40 U.S.C. 3141 *et seq.*

Federally Financed / Funded Activity	DBRA Applies to Subgrantees?	DBRA Applies to Vendors/ Related Private Construction Covered?
Land Acquisition	No	No
Debris Removal (no construction on site contemplated)	No	No
Demolition (no construction onsite contemplated)	No	No
Demolition (to be followed by onsite construction)	Yes	<p>No, if demolition done by subgrantee or its contractor before transfer of land to developer</p> <p>Yes, if demolition contracted for by same entity doing private construction and will be carried out</p>
Offsite improvements (street work, storm sewers, utility construction, etc.)	Yes	No
Onsite improvements (excavation/grading, storm drainage, utility or sewer work, paving/walking/stripping, site lighting, landscaping, etc.)	Yes	<p>No, if done by subgrantee or its contractor before transfer of land to developer</p> <p>Yes, if improvements are designed and intended to serve building on the site; will be contracted for by the same entity having building constructed; and will be carried out while contracting entity controls the site</p>
Cleaning during construction	Yes	<p>Yes, as provided under the Service Contract Act and 29 CFR part 4</p> <p>No, does not apply for projects under a Standard Agreement</p>
Cleaning after construction to prepare for occupancy (separate from construction contract)	No	Yes, for USFS as provided under the Service Contract Act and 29 CFR part 4
Materials Purchased	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, percent or over purchase)	Yes, if more than incidental (14 percent or over purchase)	Yes, if more than an incidental amount of construction was involved
Legal fees/accounting fees	No	
Architectural and engineering fees	No	
Construction Management	No	
Tenant allowances for non-construction expenses (furniture, business licenses, etc.)	No	
Rehabilitation of residential property designed for fewer than 8 units	No	
Contracts for public utility services including electric light and power, water, steam, and gas		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 (\$10 per day per violation).
- Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD financed projects to lower income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low and very low-income persons residing in the area. Please see the Section 3 topic of this manual (Section XII, part I) for more information.

HCD ensures that all applicable construction projects receiving NDR funds are in compliance with DBRA, and state prevailing wages as published by the CA Department of Industrial Relations (DIR), through its monitoring of certified payroll records and through onsite interviews of prime and subcontractor laborers. HCD may procure an independent contractor to assist with monitoring. HCD has appointed the

GMR as the Labor Standard Compliance Officer. HCD requires all subgrantees and partners to directly manage DBRA compliance if they are implementing a pillar of the CDBG NDR activities on behalf of HCD. For the BUF, HCD serves as the implementing agency and is responsible for DBRA activities.

1. Bidding and Contracting Requirements

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

2. Wage Rate Decisions

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

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

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

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

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

3. Enforcement of Requirements during Construction

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

payroll reviews and worker interviews.

a. Preconstruction Conference

HCD encourages its subgrantees and partners to hold preconstruction conferences prior to the start of work to set performance expectations. During this conference, the subgrantee, partner or contractor reviews contractual requirements including labor and performance schedules. While preconstruction conferences are no longer required in order to comply with federal labor standards, HCD continues to encourage conferences with contractors.

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

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

permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.

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

b. Notice to Proceed

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

c. Payroll Review

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

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

The HUD payroll form (WH-347) does not have to be used but alternative payroll documentation must include the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation). The subgrantee labor standards officer is responsible for ensuring accurate forms are used and completed in a timely fashion. For service contract, the USFS does not do weekly payroll reviews, per the Service Contract Act.

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 requires subgrantees have a qualified labor standards officer to review weekly payroll reports and ensure workers are being paid no less than the prevailing Davis Bacon wages, that there are no unalloyed withholdings, and that there are no other falsifications. Items to be spot checked include:

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

Discrepancies and/or falsification indicators must be reported to HUD and DOL on quarterly reports, along with the steps being taken by subgrantee and HCD to resolve the discrepancies. Where underpayments of wages have occurred, subgrantees are responsible to make sure the correct wages are paid, and that the employer is required to pay wage restitution to the affected employees. HCD will be monitoring the subgrantee work to ensure proper oversight and review of contractor documents is taking place. 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 requires subgrantee labor standards officer to 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. USFS service contracts do not require employee interviews, per the Service Contract Act.

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

<https://files.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/resource/2488/hud-form-11-sp-spanish-version-record-of-employee-interview/>

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, labor standards officer or their designee.
- 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 requires subgrantees to review labor standards documents as part of processing contractor requests for payment during construction and ensures compliance by confirming:

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

Although retainage for labor standards is not a requirement, it is common practice to maintain 10 percent retainage from each payment until all construction work is done and notice of completion is filed for release of liens. Before final payment of 10% retention funds, the subgrantee can justify withholding some or all of these funds to ensure required restitution payments are made.

f. Final Payment

When construction work has been completed, the contractor submits a final request for payment. Before making final payment, subgrantee and 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.

2. 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.

Subgrantees must notify the prime contractor in writing, of any underpayments that are found during payroll or other reviews. The notification will also be sent to HCD. The notice shall 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.

Subgrantees and HCD will 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 can't be located. In these cases, at the end of the project the prime contractor is required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. HCD may require subgrantees to continue to attempt to locate the unfound workers for three years after the completion of the project if feasible. After three years, or at grant closeout any amount remaining in the account for unfound workers is forwarded to HUD.

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

Projects.”

3. Documentation & Reporting Requirements

a. Documentation

The County of Tuolumne, USFS and RCAC assume the role of responsible entity for labor compliance and HCD does not have the responsibility of maintaining the file of record of these projects. For RCAC, HCD acts as responsible entity and is required to maintain documentation to demonstrate compliance with labor standard requirements. Each responsible entity is must have complete records of labor standards compliance 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 and subgrantees will preserve and retain standard compliance documents for a period of five years following the completion of work. HCD and subgrantees follow the guidelines outlined in Labor Relations Letter 2006-02, to minimize risk of improper and/or unnecessary disclosure. Guidelines include:

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

4. Reporting

Subgrantees report to HCD twice per year on all construction and service contracts that trigger labor standards. HCD in turn reports to HUD on all covered

contracts awarded and, on all enforcement, actions taken every six months. HUD collects the semiannual labor reports from HCD and other grantees and compiles a comprehensive report to DOL covering all the Davis Bacon construction activity during that period.

Semiannual labor reports are due to HUD in April and October. HCD coordinates with subgrantees to collect these reports in a reasonable time frame for compiling and submission to HUD. Labor Standards Report forms are provided by HCD to all subgrantees with this reporting requirement. Force account labor

Force account labor occurs when subgrantees use their own workforce to complete construction of a CDBG NDR project funded through HCD. Subgrantees must justify the use of force account labor by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work. If force account work is proposed, then subgrantees must submit a force account checklist to the GMR for review and written approval prior to starting any work.

Reimbursement of force account work is done on staff time and supplies only. No equipment purchase is allowed under force account. Subgrantees that proceed without prior approval risk disallowance of all incurred costs.

31. Equal Employment Opportunity

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

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

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

Subgrantees are required to include applicable equal opportunity provisions and certifications in the bid packages and contracts. These are included in the Sample Bid Package. A list of guidelines for construction contractors regarding equal opportunity

is included as Equal Opportunity Guidelines for Construction Contractors. These guidelines should be discussed with the construction contractor during the preconstruction conference.

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

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

³ 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.

32. Minority and Women Business Enterprise

HCD and subgrantees, except for USFS, must comply with WBE/MBE standards and seek to meet the set goals for hiring these entities. USFS is not required to comply with MBE/WBE requirements because they are a federal entity. Minority Business Enterprises (MBEs) are entities that are at least 51 percent owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

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

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

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

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

- 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 and subgrantees may:

- 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.

33. Section 3

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended, requires that economic opportunities generated by HUD awards of \$250,000 annually to be targeted toward Section 3 residents and businesses. Section 3 eligible residents and businesses are located in the project area, Tuolumne County, and who are qualified as low and very low-income persons and businesses. Section 3 residents are those in the project area who live or reside in public or government assisted housing.

In accordance with Section 3, recipients of HUD funds being used for public construction projects are required, to the greatest extent feasible, to provide outreach to local Section 3 businesses as well as training and employment opportunities to Section 3 residents so that contract opportunities and employment opportunities can be provided to Section 3 businesses and residents in the project area. Section 3 compliance does not apply to private construction contracting.

Although HCD complies with state procurement laws, it also follows Section 3 and

requires Section 3 compliance from all its subgrantees. HCD and subgrantee actions include:

- Prepare, execute and utilize a Section 3 Plan.
- Designate a Section 3 Coordinator in the Plan.
- Take affirmative steps to follow the Section 3 Plan and document those efforts, which may include changing procurement policies to allow for giving priority to Section 3 businesses.
- Include the Section 3 Clause and the Contractor Certification of Efforts to Fully Comply with Employment and Training Provision of Section 3 in all public procurements, especially construction bid packets for contracts on NDR projects. Notify all bidders that adherence to Section 3 Plan will be required for contracts and subcontracts awarded that are in excess of \$100,000.

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

34. Fair Housing

The Fair Housing Act requires HCD, subgrantees, and/or developers funded in whole or in part with HUD financial assistance in support of housing activities 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 does not have any housing activities under CDBG-NDR HUD grant award.

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

1. Affirmative Marketing

HCD does not have any housing activities under CDBG-NDR HUD grant award. For HUD grants that have housing activities, HCD requires subgrantees to adopt affirmative marketing procedures and requirements for all assisted housing with five or more units. Requirements and procedures include:

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

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

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

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

For housing projects and activities, HCD and subgrantees ensure 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 may 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.

35. Civil Rights

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

- Affirmative steps to promote fair and equal access to housing must be taken,

regardless of the type of grant.

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

36. Section 504 requirements

In accordance with Section 504 of the Housing and Rehabilitation Act of 1973 and 24 CFR §8, HCD and its subgrantees ensure that all programs are accessible to and usable by persons with disabilities. In addition, HCD does not discriminate based upon disability in employment. HCD has established policies and procedures within appropriate program manuals that it uses to monitor compliance of all covered programs, activities, or work performed by its subgrantees, or contractors. State law now requires the HCD webpage documents to be remediated for ADA compliance so they can be accessed and understood by all persons with disabilities.

HCD will ensure that all new public facilities constructed by any subgrantee are to be designed and constructed to be readily accessible to and usable by persons with disabilities. This includes compliance with Americans Disability Act and Section 504 compliance, whichever has a higher standard.

37. 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 decision making role or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from State CDBG funded activities. Prohibition ends one year after the decision-making person has left their position.

If HCD or a subgrantee 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 may include:

- Whether the exception would provide a significant cost benefit or essential degree of expertise that would otherwise be missing.
- Whether an opportunity was provided for open competitive bidding.
- Whether the person affected is a member of a group or class of low- or

moderate-income persons intended to be the beneficiaries, and the exception will allow the person to receive the same benefits as other members of the class.

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

38. Anti-lobbying

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

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

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

39. Citizen Participation Requirements

HCD has Citizen Participation processes it uses for annual HUD reports, issuing new federal funding and for making programmatic changes to existing federal programs. HCD requires subgrantees who are implementing NDR activities to also have citizen participation plans or processes for keeping the local residents of the County informed of activity changes. CDBG NDR funds utilize a streamlined process for citizen participation to ensure a timely disbursement for disaster recovery grant funds. The citizen participation requirements found in of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR §570.486, §91.105(b) and (c), and §91.115(b) and (c), are waived for CDBG NDR funds only and replaced by the requirements below:

HCD maintains a NDR public webpage at all times, including:

- The grant application, Phase 1 and Phase 2
- The grant's Quarterly Performance Reports
- The grant's SA and consultant contracts
- The current Action Plan
- The current version of GAM

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

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

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

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

40. Language Access Plan

HCD follows the Safe Harbor rule, contained in HUD's final guidance⁴, 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 five percent of the eligible population, or beneficiaries along with more than 50 people. In cases where more than five percent of the eligible population speaks a specific language but fewer than 50 persons are affected, there should be a translated written notice of the person's right to an oral interpretation.

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

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

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

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

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

HCD subgrantees adopt HCD's Language Access Plan when they execute the Standard Agreement.

41. Website Management

Below is an outline for the maintenance of HCD's NDR webpage located at:

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

1. HCD NDR Webpage

HCD's website contains separate webpages for each disaster recovery funding source. HCD will work to maintain consistency between the different DR Webpages. The NDR webpage is designed to have a clean and uniform appearance while maintaining efficient navigation and maintenance. A uniform look enhances the overall understanding for the user. The webpage must conform to style and navigation standards set forth by the Governor's Office of E-Government. All documents posted on the webpage must meet state ADA standards for accessibility.

1. Roles and Responsibilities

DFA admin staff, GMR, IT, and communications staff are responsible for ensuring that HCD's website is compliant with all guidelines and standards set forth by HUD, the Governor's Office and HCD, developing and monitoring procedures for placing content on the webpage and maintaining security and privacy policies.

a. Content Provider

The Content Provider is the GMR staff. The GMR staff works closely with GMRR staff, who are responsible to ensuring that content is properly posted on the NDR webpage. The GMRR is trained to make content ADA compliant and once ADA remediation is completed, they provide it to Information Technology (IT) staff for posting. The GMRR is trained by IT in the technical aspects and procedures of how to prepare and transmit content to IT staff for posting to the NDR webpage. The GMR and GMRR work closely together to keep the NDR webpage up to date and in compliance with state and federal standards. The GMR Content Provider is responsible for:

- i. Providing content in a technically accurate format so it is clear exactly where the content is to be put on the NDR webpage.
- ii. Providing content to GMRR in a timely manner (48 hours before posting).
- iii. Reviewing the website to ensure that content is posted as instructed
- iv. Meeting regularly with GMRR and GMFM to review upcoming postings and content changes.

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

CDBG NDR documents are posted to the webpage located at:

<https://www.hcd.ca.gov/community-development/disaster-recovery-programs/ndrc.shtml> Documentation and content pertaining to CDBG NDR will be provided by the GMR and NDR Project Manager.

b. Required Posting of Documents and Approving Content

The GMR is responsible for ensuring that the NDR webpage contains all documents required by HUD for viewing by the public, including but not limited to 1) NDRC approved application; 2) all grant agreements and procured contractors; 3) environmental reviews; 4) Quarterly Reports; 5) current version of Action Plan; 6) current version of GAM. GMR will work with GMRR, IT and other staff to ensure that new documents and most current versions of these documents are posted in a timely fashion, after ADA compliance is achieved.

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

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 to IT by the GMRR after ADA remediation is completed. The webpage update package is developed by the GMR and approved by the GMFM. The GMRR prepares the webpage update package for IT. The package includes the information, data, pictures, and/or graphics being requested to be posted or modified, along with a screen shot of where the new or updated package will be posted. The GMRR ensures the packet completes ADA remediation before submitting the final package to IT for posting to the NDR webpage. The minimum time required by IT to post content to the site is 48 hours. The GMR content provider works with GMFM and GMRR to ensure HUD required posting deadlines are met, i.e. QPRs must be posted three days after submission deadline.

GMR 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 webpage. Under certain circumstances, IT may need to place content on the site after business hours. In this case, GMFM, who has already reviewed and approved the package, is available to via phone to answer any questions from IT staff. This allows IT staff the ability to resolve any questions/issues that may arise during the posting process and be able to post the content by the required time.

XIII. Environmental Review

42. 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 the area and the effect the natural and social environment may have on a project. Environmental reviews are done for compliance with federal environmental laws, National Environmental Policy

Act (NEPA) and state environmental laws, California Environmental Quality Act (CEQA). The final product of an environmental review process is an Environmental Review Record (ERR) which is the legal bases of releasing NDR funding for an activity funded by the HUD grant.

An environmental review is necessary for all HUD funded activities, including General Administration, Planning and most importantly project implementation. NEPA considers each activity a “project”. Thus all HUD assisted projects, including projects funded partially or in full by CDBG NDR, and all projects implemented or funded by a California public agency, or that require discretionary approval by a public agency.

Because HCD is the public entity implementing most of the NDR projects, HCD will act as the Responsible Entity (RE) for NEPA ERR and Lead Agency for CEQA ERR. The one exception to this is the CRC projects, which are being implemented by the County of Tuolumne. For the CRC projects, the county will be the RE and Lead Agency for ERRs , The ER entity must complete the environmental review prior to obligating any funds to the project, regardless of the funding source. For NEPA compliance on projects that require Requesting Release of Funds (RROF), the RE must obtain an Authority to Use Grant Funds (AUGF) from the funding authority prior to obligating NDR funds. For HCD, the RROF must be submitted to HUD, who has the authority to issue a AUGF. For the County, The RROF must be submitted to HCD, who has the authority to issue the AUGF. While the subgrantees and third-party environmental consultants will assist Res to follow the proper state or federal environmental review process and help compile and produce the ERR, HCD and the county must certify the ERR contents and proper process as part of requesting authority to use NDR funds on a project.. This requirement also applies to projects funded with CDBG NDR 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. NDR Activity Implementation Waiver for States

Usually, a state distributes CDBG funds to units of local government (city or county) 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 the NDR grant, HUD allows the State of California to carry out activities directly instead of distributing them to other governments. HCD has chosen to pass the CRC funds through to the County of Tuolumne, which allow the county to act are RE and Lead Agency but for all other NDR activities, HCD will be the RE and Lead Agency. 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. Once HCD has submitted the request for release of funds to HUD and it has been approved, HCD has the authority to use grant funds.

2. Environmental Review Record

Documentation of the environmental review is maintained in the NEPA and CEQA ERR by the RE, which is HCD for the FWHP and BUF pillars and the county for the CRC pillar. County ERRs may be prepared by a third-party environmental consultant. HCD ERRs may be prepared by a consultant hired by HCD or by RCAC for BUF projects. HCD will coordinate NEPA/CEQA reviews with the subgrantees who are involved in implementing the NDR activity to allow for a complete ERR to be developed. The ERR, contains an aggregated scope of work (SOW) of all activities that are part of the “project”, including work paid for by other funders. The ERR evaluation of the effects of the project SOW on the human environment and vice versa. The completed ERR is available for public review. The RE is responsible for maintaining the original ERR in the NDR grant files for any legal challenges or future audits or monitorings.

The ERR shall contain:

- A project description or scope that:
 - Provides location specific information and geographic boundaries, as well as a delineation and aggregation of all activities included in the scope of the project which are required for project’s completion. This aggregated project description includes the scopes of all third party funding sources, public or private.
 - 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 RE, which is HCD or the county, 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 different funding sources, 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 scope and impact of the

project, which HUD provides categories for levels of reviews. So based on the HUD categories, the level of NEPA review can be determined from the project's scope and impact. This CEQA levels of review are similar to but not the same as NEPA reviews. For project activities that have a high level of impact, NEPA are the RE to do public noticing and accept public comments and address public concerns and comments before requesting an AUGF.

The highest level of NEPA review is Environmental Impact Statement (EIS). The EIS is not commonly used for CDBG projects because of the small scope and impact of most project activities. However, some of the FWHP activities did require an EIS, which were completed by the USFS. Because the two USFS EIS ERRs included the full scope of work of the NDR funded activities, then HCD was able to adopt the existing two EIS ERR documents for the NDR funding.

Timetable for Reviews

It is recommended that the Environmental Review process begin once the activity for a project is verified to be eligible and is capable of meeting a national objective, as defined by HUD.

HUD's regulations at 24 CFR part 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 nonfederal 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 part 1500-1508) and 24 CFR part 58, the RE 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 part 58 prohibits the commitment or expenditure of CDBG NDR funds until the environmental review process has been completed and the RE receives a HUD issued release of funds, as evidenced by an Authority to Release Grant Funds (ATUGF).

- HCD and its subgrantees may not spend either public or private funds, including CDBG NDR 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 and its subgrantees 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 NDR funds on project activities.
 - Use of non CDBG NDR funds on actions that would have an adverse impact (e.g. demolition, dredging, filling, excavating).
 - Use of non CDBG NDR 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 for subgrantees 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 NDR funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

43. 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 at the same time as NEPA and 24 CFR part 85; however, the requirements and procedures are slightly different.

44. Responsibilities – State and Subgrantees

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

For CDBG NDR funded projects and programs HCD holds two roles with regards to NEPA: 1) as Responsible Entity (RE) where HCD is legally responsible for NEPA compliance; and 2) as provider of Authority to Use Grant Funds for state grant recipients (county) who are acting as RE.

The RE is responsible for the completion of the Federal environmental review process for CDBG NDR funded projects. The Lead Agency (LA) is responsible for completion of the State environmental review process for California. While

subgrantees and their environmental consultants can compile the ERR, the RE must certify that they meet all regulatory requirements.

For CEQA, HCD and the county assumes the role of Lead Agency (LA) when they have the ability to make a “discretionary” action for an activity, such as facilitating direct funding. However, other entities may also act as LA should they assume responsibility for discretionary authority.

The RE/LA’s responsibilities include:

- The designation of two responsible parties:
 - HCD Certifying Officer – The person that has the authority to assume legal responsibility for certifying that all environmental requirements have been followed. State regulations align with NEPA regulations for designating authority to name the CEQA and NEPA Certifying Officers. Thus, both the CEQA the NEPA Certifying Officer is the HCD Director. The HCD Director may designate in writing a Section Chief or Branch Chief to act as the CEQA/NEPA Certifying Officer.
 - County Certifying Officer – The person who, per jurisdictional authority, can assume legal responsibility for certifying NEPA and CEQA ERR compliance.
 - Environmental Officer – The person responsible for conducting the review and facilitating responses to comments and findings. For its NDR projects, this role may be assumed by a third-party environmental consultant.
- 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 RROF

45. Procedures

1. HUD ERR 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 HCD or its subgrantees 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 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
- Multiyear 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
- Nonexempt activities
 - Categorically excluded activities
 - Environmental Assessment activities

b. CEQA Review Categories

- Exempt activities
- Nonexempt 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 part 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 part 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 part 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. Nonexempt Activities

a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5

The following activities, listed at 24 CFR part 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 nonresidential
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
- For nonresidential 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 nonresidential to residential, or from one industrial use to another.
- Individual Actions
 - An individual action on up to four family dwellings where there is a maximum of four 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). 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.
 - 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 part 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. This level of review is most common for larger projects which include construction, like public works-improvement projects or public facility projects.

9. Environmental Impact Statement

The Environmental Impact Statement (EIS) level of review is not very common with CDBG funding because most CDBG projects are not large enough to have such a significant impact. The EIS is required for compliance with NEPA and 24 CFR part 58 and is applicable in accordance with 24 CFR part 58.37, and includes the following circumstances:

- An EA concludes a Finding of Significant Impact
- The complexity and impact 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

Both EA and EIS reviews conducted by another public entity may be adopted. The adoption of the EA or EIS requires the RE to determine that the scope of the project in the EA or EIS is substantially the same as the proposed project that the adoption ERR is being used for. HCD did an adoption of two USFS EIS ERRs for some of the FWHP activities.

10. CEQA nonexempt activities

a. Initial Study

If a project is not exempt, the Lead Agency is to produce an Initial Study (IS), per CEQA Guidelines Article 5. The purpose of the 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 IS 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 IS, 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 IS 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 RE 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 LA must:

- 4) 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.
- 5) Send NOE to Office of Planning and Research (OPR), State Clearing House publication which starts 35 day statute of limitation.

12. Procedures for Nonexempt activities

a. Categorically excluded from NEPA, and NOT subject to 24 CFR 58.5

The RE:

- 1) Creates and records in ERR written documentation that the activity

meets the conditions for categorically exempt from NEPA, not subject to 24 CFR part 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 part 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 RE:

- 4) 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)
 - c) Documentation of total estimated project cost
- 5) Complete NEPA Statutory Checklist
- 6) 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.
- 7) 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 seven days if published and ten days if posted/mailed.
 - 2. All comments based on the public notice must be considered and made a part of the ERR. If these

- 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).

2. Environmental Assessment and Environmental Impact Statement

The RE:

- 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 reevaluated accordingly
 3. After conclusion of public comment period, and incorporation of comments, RE sends RROF and proof of public notice to HUD
 4. A 15day 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 Environmental Impact Statement (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 seven days if published and ten 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 reevaluated 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.

3. CEQA Procedures for Nonexempt Activities

a. *Negative Declaration*

On the basis of the IS, the Negative Declaration should be created and filed with the California State Clearinghouse (SCH). It is the responsibility of the LA to create and assemble the Negative Declaration package.

The declaration should include:

- 1) A brief description and title of the project
- 2) Location of the project
- 3) A proposed finding that the project will not have a significant impact on the environment
- 4) An attached copy of the Initial Study documenting reasons to support the finding
- 5) 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>

- 1) The SCH circulates the Negative Declaration package to selected state agencies for review and comment
- 2) Comments are forwarded to the LA at the end of the 30 day review period
- 3) Initiate 20 to 30 day public review period
- 4) Adopt Negative Declaration. The LA considers the comments received and makes any necessary revisions prior to adopting the Negative Declaration
- 5) 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>

4. Environmental Impact Report

An Environmental Impact Report should be created on the basis of the IS. It is the responsibility of the LA 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 NOP for a 30 day review period. The LA should create and circulate a NOP to the SCH and all Responsible and Trustee Agencies for review and comment.
 - a) The LA circulates the NOP to the SCH and the Responsible and Trustee Agencies.
 - b) Comments are forwarded to the LA 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 LA at the end of the 45 day review period.
- 5) Initiate 30 to 60 day public review period.
- 6) Prepare Final EIR. The LA 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

In executing CDBG-NDR funded projects, subgrantees or other NDR recipients may need to acquire real property to complete specific activities. As the grantee, HCD will not directly acquire any property as part of an NDR project. Therefore, to ensure compliance with local, state, and federal acquisition and relocation requirements, NDR recipients who are purchasing real property or who's projects require relocation of persons, will be provided technical assistance by HCD prior to the actual property purchase or relocation work to ensure full compliance..

46. Federal Acquisition and Relocation Overview

1. Uniform Relocation Act (URA)

Prior to acquiring real property or attempting to undertake a project with relocation activities, a determination must be made as to whether or not the requirements of the Uniform Relocation Act (URA) and Real Property Acquisition Act of 1970 (as amended in 1986) apply. The following sections provide a brief overview of the federal laws and regulations that subgrantees and NDR recipients must adhere to when carrying out projects where real property is acquired and/or persons are displaced.

The URA, like NEPA and labor standards laws, applies to all federal funding sources. URA's objectives are to ensure that property owners and displaced persons (households, businesses, nonprofit organizations, and farms) 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 the required relocation assistance. The URA also seeks to minimize litigation and ensure that federal agencies implement the regulations efficiently and cost effectively.

The URA's implementing regulations, beginning at 49 CFR part 24, include steps that subgrantees must follow when purchasing real property via voluntary or involuntary acquisition transactions. These regulations provide steps for determining any temporary relocation benefits or permanent displacement benefits. URA relocation benefits are provide to all persons regardless of their income level.

2. HUD Section 104(d)

Section 104(d) is not part of URA. Section 104(d) only applies to displacement of low- income persons and removal of low-income housing units that results from the use of HUD funding. Section 104 (d) requires HCD and subgrantees to ensure that permanent displacement benefits to low income residential households and requires replacement of all affordable housing units that are removed from the local housing stock as the result of a HUD- assisted project. If an individual is eligible for both URA and Section 104(d) benefits, HCD and its subgrantees will pay the higher of the two costs to the low-income household. Furthermore, subgrantees must take steps to ensure that any low income housing units that are demolished or converted are replaced within five years. This regulation will ensure that the overall low-income

housing stock does not decrease, see 24 CFR part 570(a) for the implementing regulations.

Finally, Section 104(d) of the Housing and Community Development Act of 1974, as amended, has an administrative requirement that, as a condition of receiving federal assistance, HCD and subgrantees must utilize a Residential Anti-displacement and Relocation Assistance Plan (RARAP). Each year, HCD includes its RARAP in its Annual Plan, submitted to HUD. HCD subgrantees adopt the HCD RARAP when they execute the NDR Standard Agreement. [Waived Requirements](#)

To speed the recovery effort and simplify the administration of projects, HUD has waived requirements of Section 104(d) dealing with one-for-one replacement of lower-income dwelling units demolished or converted in connection with CDBG-assisted development projects for housing units damaged by one or more disasters.

HUD has also waived the relocation assistance requirements contained in Section 104(d) of the HCDA to the extent that they differ from the URA (42 USC 4601 et seq.) and HUD has approved waivers that modify the URA requirements. For specifics related to these waivers, subgrantees should consult the federal register notices pertaining to the NDRC.

3. Technical Assistance Resources

To ensure that subgrantees and NDR recipients follow proper acquisition and relocation procedures, and avoid making ineligible payments, HCD and its TA consultant will provide technical assistance to subgrantees. In addition, subgrantees are encouraged to review the HUD Handbook 1378, which consolidates the basic statutory and regulatory requirements of the URA and Section 104(d), and related implementing regulations. 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

47. Roles and Responsibilities

The following section defines the roles and responsibilities for ensuring compliance with URA and Section 104(d).

1. Subgrantees and NDR Recipients

For the CRC project, Tuolumne County is responsible for the design and construction of up to two CRCs. When the county purchases property to locate a CRC, it is responsible for addressing URA acquisition and relocation activities related to the project's development.

For the BUF projects, HCD will use RCAC as a CDBO to implement the projects. RCAC is in charge of making sure any acquisitions and relocations that occur as a result of NDR recipients use of BUF project funding are conducted in line with all federal, state, and local requirements.

State and local relocation and acquisition laws may also be triggered on activities

implemented by subgrantees. When federal, state, or local laws/regulations are not consistent, HCD will require itself and its subgrantees to comply with the most restrictive.

2. California Department of Housing and Community Development

HCD is responsible for oversight and management of the BUF and CRC. HCD will provide technical assistance to its subgrantees and recipients of NDR funds throughout the acquisition process and will evaluate their compliance with regulatory requirements on an ongoing basis. During annual monitoring reviews and visits, HCD will review records and assess whether they contain all the required documentation.

If relocation is triggered, HCD will require that a professional relocation consultant be hired by the subgrantee or NDR recipient to ensure full compliance prior to release of project funding. The consultant will be required to prepare a project specific relocation plan for the specific relocation action. The plan will include a cost estimate for the relocation costs. This will allow for relocation costs to be budgeted into the project as part of final feasibility analysis and clearing of General Conditions.

48. Federal Acquisition and Relocation Rules

1. Basic Rules of URA Real Property Acquisition

Federal acquisition rules apply to real property sales with federal assistance when subgrantees purchase:

- Title to the property;
- Permanent easements – not temporary easements;
- A life estate to the property; and
- A long-term lease to the property, which allows for an extension of fifty years or more.

Acquisition rules must also be followed when subgrantees:

- Undertake the purchase of property directly;
- Provide a nonprofit or for-profit entity with funds to purchase the property;
- Hire an agent or contractor to act on their behalf; and
- Provide federal assistance to individuals who are acquiring their own home.

2. Involuntary Verses Voluntary Acquisition

Subgrantees must understand the critical difference between acquisition of property when the sale is voluntary versus involuntary. For all NDR projects, HCD only allows subgrantees to make voluntary acquisitions.

Voluntary acquisitions occur when the grantee acquires real property at fair market value from an owner who has submitted a proposal to the community for purchase of their property in response to a public advertisement. The grantee may undertake a voluntary acquisition when a site needed for a Disaster Recovery CDBG project can be satisfied by more than one property. Property owners can then voluntarily, in response to the advertisement, let the grantee know of the availability of their

property and enter into negotiations for the sale of the property. Voluntary acquisition is not subject to the URA.

3. Basic Rules of URA Temporary Verses Permanent Relocation

Temporary relocation rules dictate that tenants can only be relocated for up to 12 months. After 12 months the tenant will be eligible for permanent relocation benefits. Temporary relocation, like a voluntary sale, is the most common type of relocation activity, because it is the simplest, least time consuming, has a lower legal risk, and is much less expensive than permanent relocation.

49. Activities that Trigger Compliance with the URA and other Federal Laws

When subgrantees implement the following activities, paid for with HUD funds, they must determine and document in their records which acquisition and/or relocation compliance procedures must be followed:

- 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);
or
- 6) Permanent easements for water, sewer, or other public facility projects.

50. Project Definition

In deciding which properties to acquire, subgrantees must carefully map out a compliance plan and determine what staff or contractors will be required to facilitate the property purchase and/or relocation efforts. At any time during the process, subgrantees may call on HCD for technical assistance. Furthermore, subgrantees must establish a file for each property that will be acquired and for each displaced person. HCD reserves the right to inspect these records at any time until the grant has been closed out.

1. Project Review

Subgrantee staff must determine what activities and geographic boundaries comprise the project and document that process for the project file. Staff review 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). Project determinations will be reviewed by HCD staff prior to initiating negotiations with any property owner. When necessary, HCD and subgrantee staff may consult with the Relocation Specialist at the HUD Field Office early in the planning phase.

2. Project Documentation

Subgrantee staff must document all project activity in the project file. Documentation includes maps identifying project boundaries with streets, addresses, buildings, all parcel numbers, and the names of all property owners

and tenants for each building. HCD will review documentation as part of its regular monitoring activities and audits.

51. Multiple Funding Sources of Acquisition and Relocation

Some projects may be funded by more than one HUD funding source, other federal programs, tax credits, and/or state or local funds. When combining funding sources, the unique rules for income qualification, deed restrictions, targeted participants, etc. must be considered for each source. When issues arise as to which law to follow, subgrantees shall follow the most restrictive and should contact HCD for technical assistance. If necessary, HCD will reach out to the Relocation Specialist at the HUD Field Office early in the planning phase. In addition, subgrantees may hire a contractor, specializing in acquisition and relocation, to provide technical assistance on its relocations and acquisitions.

52. Miscellaneous Acquisition Procedures

1. Waiver Valuations

For properties whose value is less than \$25,000, HCD requires its subgrantees to follow *49 CFR 24.102(c)* and *HUD Handbook 1378 Section 5-4 E, F, and G*.

2. Donations

For properties being donated, HCD requires its subgrantees to follow procedures outlined in *HUD Handbook 1378, Section 5-5*.

3. Temporary Easements

For temporary easements, HCD requires its subgrantees to follow procedures outlined in *HUD Handbook 1378 Section 5-2 (c)*.

53. Residential Temporary Relocation

HCD will not be conducting any housing activities with NDR funding. If housing activities were being conducted, HCD would want to minimize any project related displacement and the hardships. This includes direct displacement resulting from real property acquisition, rehabilitation, demolition, conversion, and any indirect displacement.

Residential occupants who are temporarily relocated from HUD-funded projects are not eligible for permanent relocation benefits, but they are eligible for out of pocket expenses for temporary relocation. The URA defines temporary relocation as relocation that lasts no longer than 12 months.

1. Initial Tenant Notifications

HCD requires its subgrantees to notify tenants of any potential displacement as soon as is feasible. If sellers refuse to grant subgrantee's staff to tenants, then staff should explain to the seller that tenant notification is to the seller's benefit as well as the buyer, as the notices inform the tenants not to move and to continue to pay rent and that they will forfeit any future HUD relocation assistance if they move prematurely.

If access is still not granted, staff must document in the file their attempts to obtain access and the dates access was denied or approved. For more information on

tenant notifications, see *HUD Handbook 1378 - Section 5-3 (D)*.

54. Procedures for Displaced Individuals

In carrying out temporary relocation, subgrantees should consult *URA regulations at Appendix A 49 CFR §24.2(a)(9)(ii)(D)* and *HUD Handbook Chapter 2 Section 2-7*. At a minimum, HCD requires subgrantees to ensure that:

- Individuals who are displaced or relocated because of a project activity are fairly and fully compensated; and
- LMI dwelling units demolished or converted to non LMI dwelling uses are replaced.

The following steps must be undertaken by the subgrantee to meet this requirement:

- 1) Adoption of the State's Residential Anti-displacement and Relocation Assistance Plan (RARAP) or their own RARAP;
- 2) Certification that the adopted RARAP will be followed by the subgrantee; and
- 3) If required, adoption of the RARAP by the local governing body.

55. Demolition

Any unit occupied by a lower income resident that is demolished with CDBG funds triggers the requirement to provide relocation assistance to the occupant at Section 104(d) levels. See *HUD Handbook, Exhibit 7-1*. Whether or not a demolished unit must be replaced depends upon its condition and how long it has been vacant prior to demolition.

56. Record Keeping for Project Files

HCD requires its subgrantees to ensure that if CDBG NDR funds are used to acquire real property and the property continues to be used for its intended (and approved) purpose, proper records are maintained, steps are taken to protect and maintain it, and that if the property is sold, the subgrantee is reimbursed for the CDBG NDR share of the property's value. HCD will review project files on an ongoing basis to determine that they contain all the necessary information required by regulations.

57. Contracts with Acquisition and Relocation Contractors

Subgrantees may contract directly with acquisition and relocation contractors. If a contractor is used, agency staff consults with HCD (who may consult with HUD's Region IX Office), prior to engaging a contractor for services to provide acquisition and/or relocation services. Contractors hired for HUD projects must have previous experience with HUD programs and knowledge of both the URA and Section 104(d). Staff ensures that files include the selection process for the contractor. Contracts with acquisition and relocation contractors will contain the instruction to follow the procedures in this manual.

Each HUD statutory program has regulations that detail how to implement project activities involving acquisition and relocation. For NDR activities, HCD requires its subgrantees to follow the regulations at 24 CFR 570.606. If one dollar of CDBG funds is invested in a project where acquisition, rehabilitation, demolition, or code enforcement activities are involved, HCD and the subgrantee implementing those activities ensure that proper acquisition and relocation processes are followed.

XV. Reporting Requirements

58. DRGR Reporting Requirements

1. DRGR Overview

HUD requires recipients of CDBG NDR 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). HCD is responsible for all DRGR submissions. Subgrantees, partners, and USFS are responsible for submitting supporting data and information to HCD when required.

HUD collects information from DRGR to comply with congressional reporting requirements with respect to the use of NDR 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.

59. Quarterly Performance Report

HUD requires a Quarterly Performance Report (QPR) to assess the progress of CDBG NDR 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 HCD GMR 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

Due to the unique requirements for NDR grants, the QPR reporting differs slightly from guidance previously made available to CDBG DR grant recipients.

The QPR must relate back to the activities expressed in the NDR 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 NDR 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)

60. NDR Performance Metrics and Outcome Values

In addition to standard performance metrics, HCD is required to report on the unique outcome values which were identified for each NDR approved project.

1. NDR Performance Metrics

HCD is required to report in DRGR on the status of performance metrics for each NDR pillar. These metrics are the unique and different that traditional CDBG and CDBG DR projects. The metrics can be changed based on changes to pillar design or outcomes. Each pillar has performance metrics that are reported to HCD in monthly subgrantee reports. HCD uses this information to update DRGR metrics as part of submittal of QPRs.

2. NDR Outcome Values

NDR awardees were required to provide different performance metrics for the outcome values for the overall NDR effort or for each awarded program or project. Outcome values are defined as resilience, social, environmental, and economic impacts resulting from the NDR projects. The metrics for outcome values can be either quantitative or qualitative measures and represent both outcomes and outputs which were negotiated with HUD. HUD uploaded these outcome values to DRGR for reporting purposes. Projections of these values are included in the DRGR Action Plan and are updated regularly based on percentage completed in the QPR. Many outcome values may not be fully achieved until after grant closeout is completed. Additionally, HCD may need to alter the metrics for outcome values as projects are implemented. All changes are to be included in the QPR narrative.

61. Long Term Commitments (NDR)

Phase I of the application for NDR funding required HCD to demonstrate its commitment to a more resilient future for the State of California by taking measurable actions to significantly improve resilience from the existing status or policy baseline for the state before the Rim Fire. These actions had to be implemented before submission for Phase II of the application or within one year of Phase II grant award announcements. HCD has met all of its Long Term Commitments. The long-term commitments or actions required under the application have been met by HCD. The long-term commitments met by HCD are as follows:

- 1) Recovery work on the Rim including reforestation, erosion control, rehabilitation and timber salvage in the area of the Rim Fire
- 2) A fire prevention and fuel reduction project in the target area, implemented by CALFIRE
- 3) A Forest Climate Action Plan, which outlined strategies to meet greenhouse gas emissions reductions targets, and increase carbon storage in California forests

1. Legislative Action

Executive Order B-30-15, established a 2030 greenhouse gas emission reduction target and multipart resilience program, issued on April 29, 2015.

Senate Bill 246 created the Integrated Climate Adaptation and Resilience Program, signed October 8, 2015.

Senate Bill 350 increased procurement of electricity from renewable resources from 33 to 50 percent, signed October 7, 2015.

Senate Bill 379, requires local governments to address climate change in the safety element of their general plan, signed October 8, 2015.

Assembly Bill 1482 requires the CA Natural Resources Agency to update the *Safeguarding California Plan* every three years and directs the Strategic Growth Council to ensure that funding programs are consistent with *Safeguarding California*, signed October 8, 2015.

2. Raising Standards

Update of the *General Plan Guidelines* to include resources, data, tools and model policies to help cities and counties update their general plans and address climate change goals and adaptation.

3. Plan Updates and Alignment

- Tuolumne County Water Management Plan
- Tuolumne County General Plan Update
- Safeguarding California – Implementation Action Plans
- Assembly Bill (AB) 32 Scoping Plan
- Forest Carbon Plan

Actions were also taken within one year of award announcements. These actions included programs that were awarded Proposition 1 funds, which support the development of a sustainable water system, as well as expanding financing opportunities for local small businesses with workforce opportunities included.

Annual Reporting Requirements:

In its Standard Agreement, HCD requires subgrantees to submit a number of regular reports. These include monthly reports for NDR activity updates, semi-annual reports for labor standards and annual reporting of Section 3, WBE-MBE and relocation beneficiary information. HCD uses these reports to fulfill its federal reporting requirements to HUD and other agencies. These reports include funding awards under the Federal Funding

Accountability and Transparency Act.

XVI. Monitoring and Compliance

HCD will monitor each of the six NDR subgrantees each year during the term of the HUD grant. Each year, prior to monitoring the six subgrantees, HCD will complete an updated Monitoring Plan. The updated monitoring plan will include: 1) a tentative schedule with dates for monitoring each subgrantee; 2) a risk assessment of each subgrantee with different overlay compliance selections, based on work completed over the past fiscal year and proposed work in the next fiscal year; 3) all policies and procedures relating to monitoring of subgrantees. In addition to the monitoring plan, HCD will update monitoring support documents, as needed.

XVII. Closeout Procedures

The HUD NDR agreement close out will take place after the expenditure deadline of September 30, 2022. NDR agreement closeout is the 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 NDR specific guidance on closeout on the grant award has not yet been produced. Final HUD NDR grant closeout may be adjusted to meet the closeout criteria set forth by HUD in a future federal register or through other official means.

62. Closeout of a HCD Consultant Service Agreement

There are two types of NDR agreements, Standard Agreement and Consultant Agreements and each has a different closeout process. In both cases closeout of an agreement is a process through which HCD determines that the scope of work was completed along with all applicable administrative and program requirements. Because consultant service contracts/agreements are overseen by HCD Contracts Office staff, the GMR will work with Contracts staff to follow the state requirements on these contract close-outs. It is the GMR's responsibility to provide Contract staff with the information they need for this closeout. In addition, GMR will follow standard NDR procedures outlined in the agreement are followed for closeout.

When a consultant agreement is ready for closeout, the GMR updates the following in each of the NDR grant reporting systems:

- The total amount of funds drawn down for the activity is the same in each system
- DRGR QPR has an updated narrative stating the consultant agreement is completed closed

- The activity scope of work is fully completed, and deliverables are on file
- The national objective documentation is on file
- The Contract Office receives a consultant evaluation form

Upon request from the consultant, the GMR may send a final closeout letter.

63. Closeout of a HCD Subgrantee Agreement

CDBG NDR subgrantees are required to submit the following 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.”

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

Once these items have been completed, HCD completes the subgrantee 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 91 as well as Federal Financial Report SF-425 or a financial report that meets the criteria in 24 CFR 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 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 agreements cannot be closed out if there are open monitoring reports associated with the contract; all monitoring findings, concerns and requirements must be received and approved by HCD, and HCD must also receive a Clearance Letter stating the monitoring has been complete.