



State of California

Department of Housing and Community Development

**2020 Community Development Block Grant Disaster Recovery (CDBG-DR)**

**Infrastructure Program**

Policies and Procedures Manual

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**Community Development Block Grant - Disaster Recovery  
2020 Infrastructure Program  
Policies and Procedures Manual**

## **1 General**

### **1.1 Purpose and Scope**

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

On February 3, 2022, United States Department of Housing and Urban Development (HUD) published Federal Register Notice Vol. 87, No. 23 (87 FR 6364) allocating \$231,203,000 in CDBG-DR funding to the State of California in response to the Federal Emergency Management Agency (FEMA) major disaster declarations DR-4558 from August 14, 2020 to September 26, 2020; and DR-4569 from September 4, 2020 to November 17, 2020. The California Department of Housing and Community Development (HCD) is the grantee responsible for administering the CDBG-DR funds allocated to the State of California.

Recognizing unmet infrastructure recovery needs, related to DR-4558 and DR-4569, HCD allocated \$7,639,748 in CDBG-DR funding to the 2020 Disaster Recovery Infrastructure Program (2020 DR-Infrastructure Program). Due to limited funding from the 2020 CDBG-DR program, HCD is prioritizing the non-federal cost share for FEMA Public Assistance (PA) projects to assist with building communities back and creating a more equitable and holistic recovery for the 2020 impacted areas.

HUD requires that 70% of the total grant-wide funds are spent on activities that meet the low- and moderate-income (LMI) national objective and 80% of grant funds are expended in the HUD-identified most impacted and distressed (MID) areas. The MID areas for the 2020 DR-Infrastructure Program include the following nine counties:

- Butte County
- Fresno County
- Los Angeles County
- Napa County
- Santa Cruz County
- Shasta County
- Siskiyou County
- Solano County
- Sonoma County

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

environmental review and all other CDBG-DR, cross-cutting, state, and local applicable statutes, rules and regulations.

This document describes program policy and provides guidance for the 2020 DR-Infrastructure Program. Subrecipients should review all applicable federal regulations, disaster-specific Federal Register Notice, HCD's 2020 CDBG-DR Action Plan, and HCD's Grant Administration Manual for HUD and CDBG-DR procedures and requirements.

## 1.2 Terms and Definitions

**Activity Costs:** Direct costs from undertaking a Project, which can be tied to a completed Project, national objective, and eligible activity.

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

**Area Median Income (AMI):** The median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD 8 for the CDBG program at <https://www.hcd.ca.gov/grants-and-funding/income-limits>. For Tribal Entities, if the HUD AMI for the county located within the Tribal Entity's service area is lower than the United States median, the Tribal Entity may use the United States median income limit as AMI.

**Authorization to Use Grant Funds (AUGF):** The written notification from HCD to the Subrecipient, indicating that a specific Project has met HUD's environmental requirements per 24 CFR Part 58. Authorizing the Subrecipient to expend CDBG-DR funds on that specific Project.

**Authorizing Resolution:** Formal resolution of the Subrecipient's highest authority, including but not limited to, the city council or county board of supervisors, board of directors, tribal council or tribal leadership, authorizing the Subrecipient to accept CDBG-DR funding and the responsibilities that attach thereto, in general and authorizing persons performing specific roles to act on its behalf, including, but not limited to, being a signatory of the HCD Agreements and other supporting documents.

**California Environmental Quality Act (CEQA):** Statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. For tribal Applicants where the project is located on trust land, this requirement will not apply.

**Choice-Limiting Action:** HUD defines a choice limiting action as one that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, signing a lease agreement, real property acquisition, rehabilitation, repair, demolition, disposition, or new construction. For the purposes of environmental review, projects are based on the aggregation of all activities that are included in the scope of the environmental review. So even if Program funds are only used to pay for a portion of the overall project, recipients and subrecipients should still be aware of the activities

involved that are considered choice limiting actions. Choice limiting actions performed prior to environmental clearance can result in regulatory or statutory violations that can jeopardize HUD funding of the project. For more information see 24 CFR 58.22 Limitations on activities pending clearance.

**Code of Federal Regulations (CFR):** Acronym used for the Code of Federal Regulations.

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

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

**Cross-Cutting Federal Requirements:** Federal regulations that apply to any project or program funded by federal money, including HUD funding. These federal requirements pertain to financial management, procurement, environmental, labor, acquisition, relocation, fair housing, and non-discrimination.

**Davis-Bacon Wage Requirements:** The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia contracts or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar Projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. Contractors and subcontractors on DBRA prime contracts in excess of \$150,000, or related DBRA contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek. For tribal Applicants where the project is located on trust land, this requirement will not apply if the tribe has formally adopted through its Tribal Law a Tribally Determined Wage (TDW) and has provided HCD with 1) copy of the tribal resolution or ordinance adopting the TDW and 2) the methodology of how it determined the wage, pursuant to 25 U.S.C. § 1000.16 (e).

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

**Eligible Applicant:** means any Jurisdiction or Tribal Entity in the MID that applies for funds pursuant to the Applicant eligibility section.

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

**Federal Emergency Management Agency (FEMA):** An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

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

**Federally Recognized Tribe:** A tribe that meets the definition of Indian tribe under Section 4103(13)(B) of Title 25 of the United States Code or a Tribally Designated Housing Entity (TDHE) under 25 USC 4103(22).

**Grantee:** The term “grantee” refers to HCD.

**Grants Network:** The Department's electronic grant management system and portal.

**HUD Public Facilities Activity and Match Activity:**

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

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

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

**Most Impacted and Distressed (MID) Area:** Cities, counties or other jurisdictions or geography identified by HUD as most impacted and distressed areas based on analysis of FEMA and state data.

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

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

**Project:** Project means any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines pursuant to Per 49 CFR 24.2(a)(22).

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

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

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

**Responsible Entity (RE):** "Responsible Entity" (RE) means the agency receiving CDBG assistance. 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, pursuant to 24 C.F.R. Part 58.

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

**Stafford Act:** The Robert T. Stafford Disaster Assistance and Emergency Relief Act, PL 100-707 as amended by the Disaster Relief Act of 1974, PL 93-288. (Stafford Act).

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



**Subrecipient:** An entity receiving an award from HCD under this MIT-DR Program for an approved project and has an executed agreement with HCD.

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

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

## 2 Program Requirements

### 2.1 Infrastructure Program Activities

The FEMA Public Assistance (FEMA PA) Program is designed to provide immediate assistance to disaster-impacted jurisdictions for permanent work (Sections 406 and 428) on infrastructure and community facilities. HUD allows Grantees to use CDBG-DR funds to address the non-federal cost share, as noted in the authorizing Federal Register Notice, but requires that the funded project meets at least one HUD eligible activity and a HUD National Objective. Infrastructure repair is an eligible activity according to 42 USC 5305(a)(2), which authorizes the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public improvements and facilities (except for buildings for the general conduct of government), and site or other improvements.

#### 2.1.1 Eligible Projects

Proposed projects are assessed by HCD for program eligibility. The 2020 DR-Infrastructure Program project eligibility requires:

- The proposed project must be located in the MID;
- The proposed project must be obligated for FEMA PA funds under Categories C through G only; and
- The scope of the FEMA PA project must match the scope of the project being submitted for the non-federal cost share during the 2020 DR-Infrastructure Program.

A list of eligible FEMA PA projects from DR-4558 and DR-4569 can be found in Appendix A of this document. This list is current as of the publication of the version of this document. HCD will consider the eligibility of any other FEMA PA projects that are not on this list and will review those projects on a case-by-case basis.

#### 2.1.2 Eligible Use of Funds

HCD commits to funding activities eligible under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 87 FR 6364 published February 3, 2022. Required FEMA PA local portion of the non-federal cost share funding for approved projects under the following FEMA PA permanent work categories:

- Category C (Road and bridges)
- Category D (Water control facilities);
- Category E (Public buildings and contents);
- Category F (Public utilities); and

- Category G (Parks, recreational, and other facilities).

### *2.1.3 Ineligible Use of Funds*

Ineligible uses of 2020 DR-Infrastructure Program funds includes:

- FEMA PA Match funding for approved projects under Categories A (Debris Removal) and Category B (Emergency Protective Measures).
- FEMA PA projects not related to the DR-4558 and DR-4569 disaster events.
- Any change in scope or modification of a FEMA PA project that isn't approved by FEMA.

### *2.1.4 Tie-back to the Disasters*

The eligible applicants for Infrastructure Recovery Program funds are municipal and county governments in the MID that received FEMA Public Assistance funds for permanent infrastructure projects (Categories C through G) obligated from the following disaster events:

- DR-4558 California Wildfires (August 14, 2020 – September 26, 2020)
- DR-4569 California Wildfires (September 04, 2020 – November 17, 2020)

The FEMA PA Program requires clear documentation showing a direct disaster-related impact as a prerequisite for entry into the program. Only after an impact threshold has been met does FEMA consider making disaster funds available to applicants. For 2020 DR-Infrastructure Program projects, the tie to the 2020 disasters is documented by FEMA's approval of the Project Worksheet and need not be separately established by HCD for purposes of establishing eligibility for CDBG-DR funding. HCD does not need additional tie-back documentation beyond approval of the FEMA PA project by FEMA.

### *2.1.5 Overall Housing Recovery*

For all projects, HCD reviews how each project supports the overall housing recovery from DR-4558 or DR-4569. Projects that support overall housing recovery are infrastructure projects that enable the recovery of residential areas by meeting transportation needs, restoring essential utilities, and addressing other public infrastructure and facility needs. Examples of infrastructure projects that support overall housing recovery include, but are not limited to public roads, school facilities, stormwater drainage improvements, potable water, sanitary sewer, electric and gas utilities, wastewater treatment facilities, parks, and other public facilities that are important publicly owned assets.

### *2.1.6 Advancing Long-term Resilience*

HUD requires all rehabilitation, reconstruction, and new construction to be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Resilience is defined as a community's ability to minimize damage and recover quickly from extreme events and changing conditions, including natural hazard risks. HCD will coordinate with Cal OES and the local jurisdictions to ensure that the FEMA PA projects meet the following FRN requirements for infrastructure projects:

- How mitigation measures and strategies to reduce natural hazard risks, including climate related risks, will be integrated into rebuilding activities;
- The extent to which CDBG-DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction; and

- How the local jurisdiction will employ adaptable and reliable technologies to prevent premature obsolescence for the project-related infrastructure construction.

For construction activities that include residential or non-residential structures, the subrecipient must establish resilience performance metrics for the activity including:

- An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change.
- Identification of the mitigation measures that will address the projected risks, and
- An assessment of the benefit of the grantee's measures through verifiable data

HCD will assist subrecipients to define appropriate resilience metrics for infrastructure projects with the 2020 DR-Infrastructure Program.

### 2.1.7 Meeting a National Objective

In accordance with 24 CFR 570.208, all CDBG-DR funded activities must satisfy a national objective. For the 2020 DR-Infrastructure Program, all projects will meet the low-and moderate income (LMI) or urgent need (UN) national objective. Infrastructure funding requires a case-by-case analysis of each project for meeting these requirements. It is the responsibility of the local government to substantiate the national objective as part of its proposal to HCD.

*Table 1 – National Objective Categories*

National Objective Category	Subcategory	Required Documentation
LMI Benefit	LMI Area Benefit	1) Boundaries of service area of activity/project 2) Census data including the persons and percentage LMI 3) Evidence area is primarily residential 4) Survey documentation (if applicable)
LMI Benefit	LMI Limited Clientele	Documentation that the beneficiaries are or are presumed to be LMI by category (e.g. senior housing, homeless shelters, etc.).
LMI Benefit	LMI Housing	If applicable, income documented for all household members 18 years of age and older.
Urgent Need	Urgent Need	Resolution from Subrecipient's city council, county board, or similar governing body stating that no other funds are available for the proposed project.

The DR-Infrastructure Program must demonstrate that funded activities meet one the national objectives listed in *Table 1 – National Objective Categories*. The types of records to be maintained for each CDBG-DR funded project depends on the national objective category for which it qualifies. For all DR-Infrastructure Program projects, the final determination of the national objective is completed during the project intake process. If necessary, the national objective will be confirmed at closeout by HCD.

Determining the service area of an activity involves consideration of the nature, location, and accessibility of each activity, and the information contained within the project's description and scope of work. This information can be found in the FEMA Project Worksheets. Service areas

are based on the beneficiaries of recovery activities and/or types of facilities (e.g., work on roads and bridges, repair/replacement of public utilities, etc.); geographic features (e.g., locations of highway, rivers, hillsides, etc.); and local population characteristics (e.g., population size and density). Wherever possible, HCD leverages predefined service areas mapped by a government agency or utility service providers.

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

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

#### *2.1.8 Eligible Applicants*

The eligible applicants for 2020 DR-Infrastructure Program funds are municipal and county governments that received FEMA Public Assistance funds for permanent infrastructure projects (Categories C through G) related to the DR-4558 or DR-4569 disaster events. Only cities and counties in the MID can be Eligible Applicants. If special districts, school districts, and other non-profits want to apply for the program, they must apply through the cities and counties listed as Eligible Applicants.

The following are the nine MID counties:

- Butte County
- Fresno County
- Los Angeles County
- Napa County
- Santa Cruz County
- Shasta County
- Siskiyou County
- Solano County
- Sonoma County

Eligible Applicants that receive an allocation must sign a Standard Agreement with HCD to become a Subrecipient. HCD will solicit project Intake Forms from Subrecipients in accordance with the Intake Form requirements outlined in Section 3.1.1, Project Intake Requirements. Only Subrecipients are eligible to submit projects to HCD.

Subrecipients of HCD may submit projects to HCD with a local government, special district, or other similar entity as a secondary subrecipient for a project that meets the eligibility criteria outlined for FEMA PA Match projects. HCD in its full discretion will determine whether a

proposed entity is an eligible secondary subrecipient. If the Intake Form is approved by HCD, the Subrecipient may enter into an agreement with the secondary subrecipient for implementing the project.

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

- The Subrecipient provides a written monitoring plan of the secondary subrecipient for the proposed project(s). The monitoring plan must demonstrate that the Subrecipient has sufficient understanding of the program requirements, the applicable federal and state regulations, and the capacity to monitor the work of its subrecipients.
- Subrecipient provides the written agreement between the Subrecipient and the secondary subrecipient. If a Subrecipient is a CDBG entitlement community and has a subrecipient agreement in place, they may use the agreement as a template or amend an existing agreement to include CDBG-DR funds.

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

#### *2.1.9 Duplication of Benefits*

In accordance with the Stafford Act requirements, all activities funded with CDBG-DR must undergo a Duplication of Benefits (DOB) review and a calculation must be completed prior to funding awards and again prior to closeout. DOB occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. This includes all benefits available to a person or entity, including cash and other resources such as insurance proceeds, grants, FEMA, other local, state, or Federal programs, and private or nonprofit charity organizations (see Federal Register notice published November 16, 2011 (76 FR 2018 CDBG-DR Infrastructure Program Policies and Procedures 14 71066) and Federal Register notice published June 20, 2019 (84 FR 28848)) to be identified and considered to prevent a duplication of benefit. The amount of the duplication is the amount of assistance provided in excess of the need. It is HCD's responsibility to ensure that the DR-Infrastructure Program provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

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

#### 2.1.10 Recapture Requirements

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

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

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

## 2.2 Determining Non-Federal Share Amount

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

### *Standard FEMA PA Projects*

The DR-Infrastructure Program can pay up to 25% of the non-federal share of FEMA PA projects for standard FEMA PA projects (non-Alternate and Improved Projects), less any other assistance received from other sources. Typically for standard FEMA PA projects, an applicant receives 90% of the total project cost from FEMA, the State of California's Disaster Assistance Act (CDAA) funds 7.5% of the total project cost, and the local entity is left to pay the difference. The DR-Infrastructure Program provides the remaining non-federal share of the project (i.e., typically 2.5% of the total project cost). Because the non-federal share can vary based on the type of project and disaster situation, the DR-Infrastructure Program will calculate the non-federal share need on a case-by-case basis.

### *Improved or Alternate FEMA PA Projects*

The DR-Infrastructure Program can pay the remaining local unmet need of any FEMA PA Alternate Project or Improved Project, where the Federal assistance is capped by FEMA. HCD can pay the unmet need amount of the total project cost, less assistance received from other sources for the same purpose. Because the local unmet need can vary based on the type of project and disaster situation, the DR-Infrastructure Program will calculate the local unmet need on a case-by-case basis.



### *2.2.1 Program Maximum Assistance*

The maximum assistance allowable per project non-federal share amount less any DOB on a project-by-project basis.

## **2.3 CDBG-DR Cross-Cutting Federal Requirements**

HCD and its Subrecipients must comply with all applicable federal regulations and laws, including but not limited to the identified cross-cutting federal requirements below. Further, all 2020 DR-Infrastructure Program projects must comply with any and all applicable State of California, and locally adopted codes, regulations, and ordinances. This section provides a summary of the significant and applicable cross-cutting federal requirements for all DR-Infrastructure Program activities.

### *2.3.1 Benefit-Cost Analysis*

If applicable to the project, HCD will adopt the benefit-cost analysis (BCA) conducted by local jurisdictions to comply with the requirements of the FEMA PA program. The completed BCA is required as part of the Intake Form package submitted to HCD.

### *2.3.2 Americans with Disabilities Act*

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

### *2.3.3 Copelands Anti-Kickback Provisions*

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

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

### *2.3.4 Contract Work Hours and Safety Standards Act*

The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326- 332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they

have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).

#### *2.3.5 Force Account Labor*

Force account labor occurs when a unit of local government is a CDBG-DR subrecipient or PA Match applicant uses their own workforce to complete construction of an infrastructure project. For DR-Infrastructure Program projects, the use of force account labor requires advance review and approval by HCD. This may be documented by approval of a project budget that includes force account labor as a line item. Subrecipients that proceed without prior approval risk disallowance of all incurred costs. The force account labor approval process is used for all DR-Infrastructure Program activities.

#### *2.3.6 Equal Employment Opportunity Act*

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

#### *2.3.7 Minority- and/or Women-Owned Business Enterprises*

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

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

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

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

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



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

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

### *2.3.8 Fair Labor Standards Act of 1938, As Amended*

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

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

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

### *2.3.9 Davis Bacon Labor Standards*

The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal contracts or federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. Prime contractors and subcontractors on Davis-Bacon Act contracts in excess of \$150,000, or

related Act contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek.

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

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

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

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

For FEMA PA projects that were completed prior to September 16, 2022, the date HCD and HUD executed its grant agreement, Davis-Bacon prevailing wage rates are not applicable. For all projects with construction that is on-going or completed after September 16, 2022, Davis-Bacon prevailing wage rates apply retroactively to the beginning of construction and the Subrecipient must collect documentation to ensure that the prevailing wage rate has been provided to laborers since the beginning of the project.

#### **2.3.10 Limited English Proficiency**

HCD follows the Safe Harbor rule, contained in HUD's final guidance, to determine when to provide translation of vital documents. The Safe Harbor rule for written translation of vital documents is based on the number and percentages of the market area-eligible population or current beneficiaries and applicants that are Limited English Proficiency (LEP). HCD ensures that all citizens have equal access to information about the programs, including persons with disabilities (vision and hearing impairments) and Limited English Proficiency persons.

#### **2.3.11 Section 3 of the HUD Act of 1968**

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

In accordance with Section 3, recipients using CDBG-DR funding for housing or other public construction are required, to the greatest extent feasible, to provide training and employment

opportunities to lower income residents and contract opportunities to businesses in the project area.

Projects assisted with DR-Infrastructure funds in excess of \$200,000 trigger Section 3 requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents and business concerns to meet these minimum numeric goals: (1) Twenty-five percent (25%) of the total hours worked on a Section 3 project must be worked by Section 3 workers; and (2) Five percent (5%) of the total hours worked on a Section 3 project must be worked by Targeted Section 3 workers. The Subrecipient and Subrecipient's Contractors shall comply with Section 3 and implementing regulation at 24 CFR Part 75. The responsibilities outlined in 24 CFR Part 75.19 include:

- Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- Notifying potential Contractors for Section 3 covered projects of the requirement of Part 75, Subpart C and incorporating the Section 3 Clause set forth below in all solicitations and contracts.

For FEMA PA construction projects that were completed prior to September 16, 2022, the date HCD and HUD executed its grant agreement, Section 3 compliance is not required. For all projects with construction that is on-going or completed after September 16, 2022, compliance with Section 3 applies retroactively to the beginning of construction and the Subrecipient must collect documentation to ensure that the best efforts to meet Section 3 requirements.

#### *Section 3 Clause:*

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

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

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

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

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

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

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

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

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

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

- Prepare and utilize a Section 3 Plan;

- Designate a Section 3 Coordinator;
- Take affirmative steps to follow the Section 3 Plan and document those efforts; and
- Include the Section 3 Clause and the Contractor Certification of Efforts to Fully Comply with Employment and Training Provision of Section 3 in any bid packets for contracts on DR projects. Notify all bidders that adherence to the Recipient's Section 3 Plan is required for contracts and sub-contracts in excess of \$200,000.

#### *2.3.12 Fair Housing*

The Fair Housing Act requirements are adhered to when applicable, the Fair Housing Act requires all Grantees, Subrecipients, and/or Developers funded in whole or part with HUD financial assistance for housing related activities to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. HCD enforces the Fair Housing Act by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements, provide a marketing plan, and report on compliance in accordance with the Fair Housing Act and the associated forms on HCD's website, where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant affirmatively furthers fair housing throughout applicable HCD disaster recovery programs.

#### *2.3.13 Residential Anti-Displacement*

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

#### *2.3.14 Uniform Relocation Act and Real Property Acquisition*

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

#### *Real Property*

If DR-Infrastructure Program funds are used to acquire real property, HCD is to ensure that the property is acquired voluntarily and continues to be used for its intended (and approved purpose). Proper maintenance records are maintained, and appropriate steps are taken to protect and upkeep the property. If the property is sold, HCD is to be reimbursed for the CDBG-DR share of the property's value.

Ownership, management, use and disposition of property is complex and requires consideration of two separate sets of rules. First, property management and disposition vary slightly depending on whether a grantee is a public-sector grantee, and secondly, the nature of the property. Real property is treated differently than personal property (the rules are generally more explicit for governmental grantees). Depends on the applicant and project type, acquisition

projects must be in compliance with the following regulations: 24 CFR 570.503 for all subrecipients, 24 CFR 85.31 for real property, and 24 CFR 85.32 for equipment.

#### *2.3.15 Financial Management*

HCD ensures that its grant management as well as those administering DR-Infrastructure Program funds demonstrate compliance with financial management requirements as shown in 2 CFR 200 and applicable Federal Registers. These requirements include, but are not limited to, areas covering Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and Single Audit provisions pursuant to 2 CFR 200 Subpart F. HCD's financial management system is consistent with and in compliance with 24 CFR Parts 84, 85, and 570 as applicable, which ensures that 2020 DR-Infrastructure Program funds are managed with high levels of accountability and transparency.

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

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

#### *2.3.16 Insurance and Property Management*

If applicable, all Subrecipients must procure and maintain insurance for the duration of the subrecipient agreement to protect all contract assets from loss due to any cause, such as theft, fraud and physical damage.

All recipients of FEMA PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain adequate insurance to protect the facility against future loss must insure facilities with the types and extent of insurance that are reasonably available, adequate, and necessary to protect against future loss to the property, including excess flood insurance coverage available on the private market.

If CDBG-DR funds are used to acquire real property or personal property, the Subrecipient is responsible for ensuring that:

- The property continues to be used for its intended and approved purpose;
- The Subrecipient manages and maintains the property; and
- If the Subrecipient sells or disposes rights of the property within 5 years after the expiration of the subrecipient agreement or a longer period as HCD deems appropriate, the Subrecipient is to reimburse HCD for the share of the property's value according to the Agreement.

#### *2.3.17 Recordkeeping, Retention, and File Management*

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

HCD adheres to State of California record retention requirements, which require all records to be maintained for a period of five (5) years after the CDBG-DR grant closeout with HUD. This requirement is in line with 24 CFR part 570.490, or as required by applicable laws and regulations under 24 CFR parts 570.487, 570.488 and 570.502(a)(7). Exemptions to the five-year period are provided in the applicable laws and regulations under 24 CFR parts 570.487, 570.488 and 570.502(a)(7). Exceptions include, but are not limited to:

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

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

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

#### *Administrative Records*

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

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

#### *Financial Records*

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

#### *Project Files*



Project files document the activities undertaken with respect to scope of the project, timelines, design and engineering, national objective, environmental review, labor compliance, budget, and other support documentation. All project files are stored in HCD's system of record.

#### *2.3.18 Procurement Policy*

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

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

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

For previously procured contracts that are active that the subrecipient would like to apply towards a 2020 DR-Infrastructure project, the Subrecipient must provide the procurement file to HCD for review. HCD program staff are responsible for identifying any concerns regarding conforming to the minimum procurement requirements found at 2 CFR 200.318 – 326. Compliance with all applicable local, state, and federal regulations will be certified by subrecipients when financial reports are submitted to HCD and reviewed by HCD during subrecipient monitoring visits.

#### *2.3.19 Audit Trail*

All essential records defined by the organization are captured in HCD's three (3) record management systems:

1. HUD's Disaster Recovery Grant Reporting System (DRGR);
2. The State's Financial Information System for California (FI\$Cal); and
3. The system of record, Grants Network.

Together, these three systems are used to account for 2020 DR-Infrastructure Program funds, with Grants Network serving as the primary system of record. Grants Network contains both Subrecipient and project level files including, but not limited to project intake and supporting documentation, Subrecipient expenditure tracking, applicable procurement documentation, available funding, Subrecipient agreements and other agreements, financial management, labor compliance (Section 3 and Davis-Bacon), and citizen participation data. Grants Network



ensures data security and oversight creating a clear audit trail of the 2020 DR-Infrastructure Program.

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

Recordkeeping, including scanning and uploading to Grants Network, and filing of pertinent DR-Infrastructure Program documentation retention policies are to provide both a physical and an electronic record of activities so that documentation is available for audit purposes. To protect personally identifiable information (PII), data security measures are in place. HCD, its Subrecipients, and contractors take the following steps to protect PII:

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

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

#### *2.3.20 Conflict of Interest and Confidentiality*

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

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

#### *2.3.21 Environmental Review*

Prior to federal funds being committed or disbursed by HCD, an environmental review must be performed on all projects. The environmental review shall document compliance with 24 CFR Part 58, NEPA, and all related laws, authorities, and executive orders. Each Subrecipient receiving DR-Infrastructure funds becomes the Responsible Entity for completing environmental reviews of all projects and must submit complete Environmental Review Records, public notice affidavits as applicable, and a Request for Release of Funds to HCD to grant the authority to use grant funds. Pursuant to 83 FRN 40314, HCD may accept another federal agency's environmental review under the Stafford Act. Subrecipients are also responsible for ensuring

compliance with CEQA, including the submission or designation of applicable waivers to the CEQA Clearinghouse with a copy to HCD. No work may start on a proposed project, or proposed site acquisition, if applicable, before both the federal and state environmental review processes are completed, even if that work/acquisition is being done using non-federal funds. The DR-Infrastructure Program does not reimburse projects that have been determined to have a Finding of Significant Impact (FOSI).

Before issuance of environmental clearance documentation there can be no Choice-Limiting Actions on the part of the Subrecipient or other parties involved in the project until environmental clearance is received in the form of an Authority to Use Grant Funds (ATUGF) or environmental clearance letter issued by the Department. Per NEPA (and its implementing regulations in 40 CFR Parts 1500 to 1508) and 24 CFR Part 58, the Responsible Entity (RE) is required to ensure that the environmental review process is complete before decisions are made and actions taken. To achieve this, 24 CFR Part 58 prohibits the commitment or expenditure of Federal and non-Federal funds until the environmental review process has been completed.

Any action in which a Project commits or expends HUD or non-HUD funds on activities for a HUD-assisted project that reduce or eliminate the project's opportunity to choose alternatives is a Choice-Limiting Action. Market studies, environmental studies, plan development, engineering or design costs, and inspections are not considered Choice-Limiting Actions.

Choice-Limiting Actions are defined as any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition by the Subrecipient, construction, demolition of buildings or infrastructure, or rehabilitation or reconstruction of buildings or infrastructure. Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the project, reimbursement by Subrecipient to HCD for the amount expended, or suspension of the disbursement of funds for the affected activity.

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

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

Subrecipients are responsible for ensuring that 2020 DR-Infrastructure Program projects are in compliance with the California Environmental Quality Act (CEQA) and obtain all necessary local and state permits.

### *Flood Insurance and Floodplain Elevation Requirements*

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

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

Subrecipients using CDBG-DR funds as the non-federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section III.F.6 in 87 FR 6364. The Subrecipient shall follow the FEMA-approved flood standard (44 CFR 9.11(d)(3)(i) and (ii)), which prohibits new construction or substantial improvements to a structure unless the lowest floor of the structure is at or above the level of the base flood and, for Critical Actions, at or above the level of the 500-year flood.

FEMA funded projects generally commence well in advance of the availability of CDBG-DR funds and when CDBG-DR funds are used as match for a FEMA project that is underway, the alignment of HUD's elevation standards with any alternative standard allowed by FEMA may not be feasible and may not be cost reasonable.

The alternative requirements apply when:

- CDBG-DR funds are used as the non-federal match for FEMA PA assistance;
- The FEMA-assisted activity, for which CDBG-DR funds will be used as match, commenced before HUD's obligation of CDBG-DR funds to the grantee; and
- The grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.

## **3 Implementation Policies**

### **3.1 Project Selection**

#### *3.1.1 Project Intake Requirements*

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

#### **FEMA PA Information:**

- FEMA PA Project Number
- FEMA PW Number

- FEMA PA Category
  - Category C: Roads and Bridges
  - Category D: Water Control Facilities
  - Category E: Public Buildings and Equipment
  - Category F: Public Utilities
  - Category G: Parks, Recreational, and Other Facilities
- FEMA PA Project Worksheet (as an attachment)

### **Project Information:**

- Project Scope of Work
- National Objective Documentation
- Project Timeline
- Alternate or Improved Project
- Service Area Map (if applicable)
- Project Location Map
- Justification of the Service Area
- MID Area (dropdown of counties and zip codes)
- Total Project Cost (\$ amount)
  - The Total Project Cost (\$ amount) is the total amount of the cost of the project. This includes any matching funds, the unmet need, Activity Delivery Costs and/or administrative costs, and the amount being requested from the 2020 DR-Infrastructure program.
- Federal Share of the Total Project Cost (\$ amount)
- State Matching Funds (\$ amount)
- Non-Federal Share/Local Match (\$ amount)
- Anticipated CDBG-DR funding request (\$ amount)
  - This is the total amount of unmet need funding being requested from HCD for the non-federal share and activity delivery costs for management of the projects.
  - Anticipated Activity Delivery Costs

### **Cross-cutting Requirements:**

- Upload FEMA Record of Environmental Consideration (REC)
- Upload affirmation and documentation of project compliance from the start of construction with Davis-Bacon Act and Section 3 if the FEMA PA is in-progress or completed after September 16, 2022
  - If project is complete, enter the date of the completion
- Upload Duplication of Benefits form

### *Project Eligibility*

HCD reviews projects to determine evidence of eligible disaster tie-back to DR-4558 or DR-4569. Disaster tie-back for FEMA PA Match are assumed to have a tie-back due to the eligibility requirements of the FEMA PA program.

### *National Objective*

HCD staff evaluates all projects for meeting a national objective (see Section 2.1.4). Projects must either benefit Low- and Moderate-Income (LMI) persons or meet a need with a particular

urgency (urgent need). The information provided by the Eligible Applicant will be used to determine the project's national objective type.

### **3.1.2 Project Intake Form Process**

The FEMA PA Match Project Intake Form is open to Eligible Applicants through the Grants Network Portal. Eligible Applicants enter projects details in the form and submit the form once all required information is entered. HCD reviews the intake form for completeness and program eligibility. The Eligible Applicant receives feedback if the intake form is incorrectly filled out. If approved by HCD, the Eligible Applicant will be recommended for award and will move on to the Standard Agreement process.

### **3.1.3 Project Award Methodology**

HCD evaluates projects based on the eligibility requirements as outlined in Section 2 and the required project information detailed in Section 4.1.

## **3.2 Subrecipient Due Diligence**

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

## **3.3 Technical Assistance to Subrecipients**

HCD provides various types of technical assistance (TA) to Subrecipients and vendors throughout the program from Intake Form to Standard agreement closeout. The objectives of technical assistance are to initially aid the Subrecipient and vendors to clearly understand the program requirements and appropriately submit the project Intake Form. Also, HCD, through the provision of TA, supports Subrecipients to maintain their day-to-day compliance with federal and state regulations and program requirements. In addition, HCD performs a risk assessment to determine a Subrecipient's capacity and to identify deficiencies in complying with applicable grant and program requirements. According to the risk assessment results, HCD provides technical assistance and guidance to Subrecipients to improve their performance, develop or increase capacity, and augment management and technical skills. Some examples of technical assistance include: verbal or written advice, formal training and workshops, and documentation and guidance.

## **3.4 Activity Delivery Costs**

### **3.4.1 Allowable Costs**

ADCs are allowable costs incurred for implementing and carrying out eligible CDBG activities. ADCs cover the costs of staff directly carrying out the activity in addition to engineering, design, architecture, and environmental services that are necessary for successful completion of the activity.

Subrecipients may begin to perform project related activities and to incur Activity Delivery Costs (ADCs) once its Standard Agreement is executed. ADCs must be allocable to a CDBG-assisted activity or an activity that is CDBG-eligible, meet a national objective, and meet all other CDBG

program requirements. There is no maximum cap on ADCs, but Subrecipients must show that ADCs are reasonable for the CDBG-eligible activity being carried out, as authorized under 24 CFR 570.201-570.204. If the proposed ADCs exceed 20% of the total project cost, additional justification and documentation are required to justify the need for ADCs that exceed 20% of the total project cost.

#### *3.4.2 Subrecipient ADCs with Incomplete Projects*

If it is shown that the project failed due to egregious behavior or actions, including but not limited to conflicts of interest, fraud, waste, abuse, Choice-Limiting Actions, and similar types of issues or actions, on the part of the Subrecipient, then any ADC funding payments made toward the project are required to be repaid to HCD. Additional details of the terms are described in the Standard Agreement between HCD and the Subrecipient.

## 4 Program Operations

### 4.1 Authorizing Resolution and Standard Agreement

The Authorizing Resolution is necessary for completion of an executed Standard Agreement. Subrecipients must submit an executed Authorizing Resolution on the template provided by HCD with Project Intake Forms via Grants Network Portal or where applicable, another acceptable format as approved by HCD. Any deviation from the HCD Authorizing Resolution Template language may delay implementation of the Eligible Applicant's Project(s). The Authorizing Resolution documents each Applicant's authority to submit Intake Forms and enter into an agreement between the Eligible Applicant and HCD. No Standard Agreement between HCD and a Subrecipient will be valid until the respective Jurisdiction's Authorizing Resolution is submitted and accepted by HCD.

The Standard Agreement is the contractual agreement between HCD and the Subrecipient which sets forth the terms and conditions by which CDBG-DR funds must be utilized with regards to Approved Projects. Following the approval of Project Intake Forms by HCD and an executed Authorizing Resolution, HCD shall route the Subrecipient's Standard Agreement(s) for approval. When ready, the Standard Agreement(s) will be delivered to the Subrecipient via Grants Network for execution.

### 4.2 Agreements with Contractors and Other Parties

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

The term "other party" is defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive Grant Funds from a Subrecipient to undertake eligible projects. Requirements of an agreement between the Subrecipient and any Contractor, or other party shall contain, but not be limited to the following:

- Compliance with all State and federal requirements including those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace Act
- Maintenance of at least the minimum State-required Workers' Compensation Insurance

- Maintenance of unemployment insurance, disability insurance and liability insurance which is reasonable to compensate any person, firm or corporation who may be injured or damaged during the performance of project activities
- Contractors shall:
  - Comply with the applicable provisions of the California Labor Code;
  - Perform the project activities in accordance with federal, state and local housing and building codes, as applicable; and
  - Provide security to assure completion of the project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual project are required.

### 4.3 Document Retrieval Process

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

### 4.4 Disbursement of Funds

Payments are made directly to Subrecipients as reimbursements based on the documented completion of agreed upon project milestones, as outlined in the Standard agreement. Reimbursement-based means that Activity Delivery and project costs must be incurred by the Subrecipient and documented as required by the terms of the agreement for payment of invoices. For FEMA PA Match projects, HCD may not require the 5% retention of the overall project cost until the project is fully closed out. Please see the state's CDBG-DR Grant Administration Manual, Section V for additional financial management procedures and requirements.

### 4.5 Reporting Requirements

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

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

At any time during the term of the agreement, HCD may perform or cause to be performed an independent financial audit of any and all phases of the Subrecipient's project(s). At HCD's request, the Subrecipient shall provide, at its own expense, a financial audit prepared by a



certified public accountant. As stated in the State of California's CDBG-DR Grant Administration Manual, Section V.J. on audit requirements, all non-federal entities that expend \$750,000 or more in federal awards in a fiscal year are required to have a single audit for that year in accordance with the Single Audit Act of 1984, Single Audit Act Amendments of 1996, and 2 CFR §200 Subpart F-Audit Requirements.

#### 4.6 Monitoring and Compliance

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

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

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

##### 4.6.1 HCD's Monitoring of Subrecipients

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

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

- HCD sends notification letter the Subrecipient;
- Document collection and pre-monitoring work begins for the next 30 days after issuance of the notification letter;
- Entrance Conference via teleconference for desk monitoring and in person for onsite monitoring;



- Review of documents, interview of Subrecipients, and requests for additional documents;
- Exit conference via teleconference for desk monitoring and in person for on-site monitoring. Review of findings and concerns including next step discussion; and
- Monitoring is concluded with a Monitoring Report which is issued to the subrecipient within 30 days of the exit conference.

#### *4.6.2 Desk Monitoring*

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

#### *4.6.3 Onsite Monitoring*

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

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

#### *4.6.4 Subrecipient Monitoring Responsibilities*

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

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

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

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

#### 4.7 Record Keeping

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

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

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

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

## 4.8 Grant Closeout

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

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

### 4.8.1 Closeout of an Individual Activity

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

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

- The total amount of funds drawn down for the activity;
- Compliance with Davis-Bacon and Section 3 labor requirements;
- A final check for DOB;
- The activity type;
- The national objective; and
- Other documentation determined by HCD.

The grant activity accomplishments Individual activity completion should also be reflected in the QPR.

#### *4.8.2 Closeout of an Agreement*

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

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

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

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

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

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

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

HCD may satisfy this requirement by:

- Using fiscal and administrative requirements applicable to the use of its own funds;
- Adopting new fiscal and administrative requirements; and/or
- Applying the provisions in 2 CFR part 200.

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

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

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

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

## Appendix A: FEMA PA Match Project List

Applicant	FEMA PW #	Project	FEMA PA Category	County	Best Available Total Cost	Best Available Federal Cost Share	Estimated Local Cost Share
Berry Creek Community Services District	28	Water Storage Tank	F - Utilities	Butte County	\$118,685.30	\$106,816.77	\$11,868.53
Berry Creek Community Services District	12	Three (3) Damaged Structures at Water Storage Tank Site	E - Buildings and Equipment	Butte County	\$140,678.88	\$126,610.99	\$14,067.89
Berry Creek Community Services District	77	Water Distribution System	F - Utilities	Butte County	\$478,349.57	\$430,514.61	\$47,834.96
Bracken Brae Country Club	438	System-Wide Permanent Work	F - Utilities	Santa Cruz County	\$1,406,560.64	\$1,265,904.58	\$140,656.06
Butte County	189	Burned signs and guardrails	C - Roads and Bridges	Butte County	\$166,981.43	\$150,283.29	\$16,698.14
Butte County	184	Damaged Fire Stations 61 - to include hazard mitigation. Equipment destroyed in fire includes public works equipment (front loader) and fire fighting equipment (engine and water tender)	E - Buildings and Equipment	Butte County	\$100,000.00	\$90,000.00	\$10,000.00

Butte County	494	Roads damaged by fire and fire fighting operations	C - Roads and Bridges	Butte County	\$720,926.76	\$648,834.08	\$72,092.68
Butte County	275	Replace damaged culverts	C - Roads and Bridges	Butte County	\$488,324.58	\$439,492.12	\$48,832.46
Cal Poly Corporation	156	Replace - Equipment, Educational - Ranch	E - Buildings and Equipment	Santa Cruz County	\$133,092.15	\$119,782.94	\$13,309.21
Cal Poly Corporation	564	Restore Locomotive Rolling Stock	E - Buildings and Equipment	Santa Cruz County	\$10,639,950.00	\$9,575,955.00	\$1,063,995.00
Cal Poly Corporation	572	Building Contents - Ranch Wide	E - Buildings and Equipment	Santa Cruz County	\$666,084.85	\$599,476.37	\$66,608.48
Cal Poly Corporation	578	Structures - Ranch Wide	E - Buildings and Equipment	Santa Cruz County	\$7,056,638.31	\$6,350,974.48	\$705,663.83
Cal Poly Corporation	205	Replace - Culverts (Multiple Locations) - Ranch Wide	C - Roads and Bridges	Santa Cruz County	\$101,261.52	\$91,135.37	\$10,126.15
Cal Poly Corporation		Repair Railroad Bridges and Critical Road Bridges	C - Roads and Bridges	Santa Cruz County	\$316,547.52	\$284,892.77	\$31,654.75
Camping Unlimited for the Developmentally Disabled	224	Bathroom / Shower Blocks (Men's & Women's)	E - Buildings and Equipment	Santa Cruz County	\$175,668.00	\$158,101.20	\$17,566.80
Camping Unlimited for the Developmentally Disabled	262	Camper Lodging	E - Buildings and Equipment	Santa Cruz County	\$595,606.00	\$536,045.40	\$59,560.60
Camping Unlimited for the Developmentally Disabled	230	Health Center / Director's Home	E - Buildings and Equipment	Santa Cruz County	\$98,284.93	\$88,456.44	\$9,828.49

Camping Unlimited for the Developmentally Disabled	237	JLC Multipurpose Building	E - Buildings and Equipment	Santa Cruz County	\$1,690,039.08	\$1,521,035.17	\$169,003.91
Camping Unlimited for the Developmentally Disabled	227	Staff Lodging	E - Buildings and Equipment	Santa Cruz County	\$279,004.00	\$251,103.60	\$27,900.40
Camping Unlimited for the Developmentally Disabled	397	General Program Grounds and Facilities	E - Buildings and Equipment	Santa Cruz County	\$790,860.52	\$711,774.47	\$79,086.05
Camping Unlimited for the Developmentally Disabled	226	Arts and Crafts Building & Cabin J	E - Buildings and Equipment	Santa Cruz County	\$110,708.34	\$99,637.51	\$11,070.83
Camping Unlimited for the Developmentally Disabled	530	Potable water system with (6), 5000 Gallon Water Tanks	F - Utilities	Santa Cruz County	\$528,956.87	\$476,061.18	\$52,895.69
Camping Unlimited for the Developmentally Disabled	391	Infrastructure (Electricity, Solar, Potable Water, Telephones/Internet)	F - Utilities	Santa Cruz County	\$260,388.63	\$234,349.77	\$26,038.86
Camping Unlimited for the Developmentally Disabled	526	Building Contents	E - Buildings and Equipment	Santa Cruz County	\$650,805.19	\$585,724.67	\$65,080.52
Camping Unlimited for the Developmentally Disabled	238	Footbridges	C - Roads and Bridges	Santa Cruz County	\$234,623.00	\$211,160.70	\$23,462.30



Fresno County	215	Shaver Lake Wastewater Treatment Facility	F - Utilities	Fresno County	\$140,790.59	\$126,711.53	\$14,079.06
Fresno County	113	Sierra Cedars	C - Roads and Bridges	Fresno County	\$369,265.50	\$332,338.95	\$36,926.55
Fresno County	223	Destroyed or Damaged Signage	C - Roads and Bridges	Fresno County	\$302,529.00	\$272,276.10	\$30,252.90
Fresno County	213	Auberry Rd and Meadow Lakes	C - Roads and Bridges	Fresno County	\$570,595.00	\$513,535.50	\$57,059.50
Fresno County	174	Granite Ridge	C - Roads and Bridges	Fresno County	\$141,077.00	\$126,969.30	\$14,107.70
Fresno County	212	County Wide Utility Damages	F - Utilities	Fresno County	\$94,257.89	\$84,832.10	\$9,425.79
Howell Mountain Mutual Water Company, Inc.	153	Piping Work To Be Completed	F - Utilities	Napa County	\$911,150.00	\$820,035.00	\$91,115.00
Napa County	167	Steele Canyon Road, Mile Post Marker 2.0 - Culvert	C - Roads and Bridges	Napa County	\$138,423.66	\$124,581.29	\$13,842.37
Napa County	127	Guardrail Damage	C - Roads and Bridges	Napa County	\$654,982.00	\$589,483.80	\$65,498.20
Napa County	63	Guardrails Damaged by Fires	C - Roads and Bridges	Napa County	\$796,446.14	\$716,801.53	\$79,644.61

Napa County	138	Diamond 1.1 - Lagging Wall	C - Roads and Bridges	Napa County	\$87,017.53	\$78,315.78	\$8,701.75
Napa County	121	Steel Canyon Road, Mile Post Marker 2.25 - Lagging Wall	C - Roads and Bridges	Napa County	\$135,356.01	\$121,820.41	\$13,535.60
Oroville City Elementary School District	30	Loss of building structures (Feather Falls Elementary School)	E - Buildings and Equipment	Butte County	\$2,380,000.00	\$2,142,000.00	\$238,000.00
Oroville City Elementary School District	24	Restore Parks and Playground	G - Parks, Recreational Facilities, and Other Items	Butte County	\$86,453.99	\$77,808.59	\$8,645.40
Pine Ridge Volunteer Fire Department	150	Destroyed Fire Fighting Equipment	E - Buildings and Equipment	Fresno County	\$512,926.83	\$230,817.08	\$282,109.75
Pioneer Union Elementary School District	208	Pioneer Union School Buildings and Equipment	E - Buildings and Equipment	Butte County	\$150,000.00	\$135,000.00	\$15,000.00
San Lorenzo Valley Water District		Water System Repairs (potable) - Permanent Work	F - Utilities	Santa Cruz County	\$9,601,152.67	\$8,641,037.41	\$960,115.27
Santa Cruz County	217	Swanton 4.36 Mill Creek Bridge Replacement - WTBC	C - Roads and Bridges	Santa Cruz County	\$1,357,909.00	\$1,222,118.10	\$135,790.90
Santa Cruz County Service Areas	456	Boulder Creek Sanitation - Outbound Effluent Pump Station	F - Utilities	Santa Cruz County	\$3,014,129.95	\$2,712,716.96	\$301,412.99
Santa Cruz County Service Areas	150	Pine Crest Road CSA 46 - Guardrail and Retaining Walls	C - Roads and Bridges	Santa Cruz County	\$369,460.01	\$332,514.01	\$36,946.00

Shasta County		Archer and South Fork Road Bridges Zogg Fire	C - Roads and Bridges	Shasta County	\$130,480.64	\$117,432.58	\$13,048.06
Solano County		Guardrails & Road Signs Completed	C - Roads and Bridges	Solano County	\$243,376.92	\$219,039.23	\$24,337.69
Sonoma County		Culverts	C - Roads and Bridges	Sonoma County	\$323,309.75	\$290,978.78	\$32,330.97
Sonoma County		Ditch Re-establishment	C - Roads and Bridges	Sonoma County	\$243,094.11	\$218,784.70	\$24,309.41
Sonoma County		Guardrails	C - Roads and Bridges	Sonoma County	\$461,657.00	\$415,491.30	\$46,165.70
St. Helena, City of		Replace Police Department Shooting Range	E - Buildings and Equipment	Napa County	\$139,801.90	\$125,821.71	\$13,980.19
St. Helena, City of		Replace Water Treatment Plant Ancillary Building (Permanganate Storage)	E - Buildings and Equipment	Napa County	\$96,924.54	\$87,232.09	\$9,692.45
St. Helena, City of		Replace Meadowood Water Tanks	F - Utilities	Napa County	\$593,777.47	\$534,399.72	\$59,377.75

University of California, Santa Cruz		Restroom & Grounds - Lick Observatory	G - Parks, Recreational Facilities, and Other Items	Santa Cruz County	\$147,556.05	\$132,800.45	\$14,755.60
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