

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Version 5



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

# Version History

This section describes changes made in the document.

Version Number	Date Revised	Description of Key Revisions
5	September 2025	Made changes throughout the manual

## List of Chapters

- Chapter 1 Administration
- Chapter 2 Grant Implementation Checklist
- Chapter 3 Records Management
- Chapter 4 Procurement Methods and Contractual Requirements
- Chapter 5 Financial Management
- Chapter 6 Environmental Review
- Chapter 7 Civil Rights
- Chapter 8 Labor Regulations
- Chapter 9 Acquisition and Relocation
- Chapter 10 Lead-Based Paint, Asbestos, and Mold
- Chapter 11 Monitoring
- Chapter 12 Property Management
- Chapter 13 Closeout

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 1: Administration



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

The Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) programs are critical federal resources administered by the U.S. Department of Housing and Urban Development (HUD). These programs help communities recover from presidentially declared disasters and reduce risks from future hazards. They support long-term recovery, housing development and rehabilitation, infrastructure repair, economic revitalization, and mitigation strategies that enhance resilience against future disasters.

The Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) is responsible for overseeing the administration of CDBG-DR and CDBG-MIT funds in the state. LOCD-DR is committed to supporting subrecipients in delivering efficient, transparent, and impactful recovery and mitigation programs. This Grant Implementation Manual (Manual) is intended to promote consistency, accountability, and compliance—ensuring that all activities funded through CDBG-DR and CDBG-MIT meet HUD and state requirements while addressing the unique needs of Louisiana communities affected by disaster.

This manual is designed to guide subrecipients—including parishes, municipalities, and other eligible entities—in the effective and compliant administration of CDBG-DR and CDBG-MIT funds. It outlines the core requirements, procedures, and best practices that must be followed throughout the grant lifecycle—from project planning and environmental review to procurement, financial management, construction, and closeout. The Manual reflects federal regulations, including 2 CFR Part 200 (Uniform Administrative Requirements), program-specific HUD guidance, and applicable state laws and policies.

Each subrecipient is responsible for understanding and complying with all federal and state requirements that apply to these funds. Subrecipients must thoroughly review this Manual, along with referenced regulations, Federal Registers, Action Plans, and guidance documents, before implementing any program or project. Proper and efficient administrative practices are essential to the success of every funded activity.

Each subrecipient that receives funding for a project will be assigned an LOCD-DR Grant Manager. The Grant Manager will conduct regular meetings and serve as the primary point of contact for the subrecipient throughout the grant lifecycle. All questions regarding specific programs or projects should be directed to the assigned LOCD-DR Grant Manager.

## 2. Definitions and Acronyms

Refer to these definitions of terms used within this chapter:

1. **2 CFR Part 200:** Regulations for federal financial assistance programs that cover application requirements, cost principles, audit requirements, property standards, procurement standards, and remedies for noncompliance.
2. **Action Plan:** A document prepared by HUD CDBG-DR and CDBG-MIT grantees, outlining the goals, activities, and funding of a grant program. It must be approved by HUD.
3. **Closeout:** The final steps in managing a project or grant, including completing reports, settling costs, and ensuring all terms have been met.
4. **Community Development Block Grant Disaster Recovery (CDBG-DR):** A federal grant that provides funding to help communities recover from disasters and integrate mitigation measures and resilience strategies to reduce natural hazard risks.
5. **Community Development Block Grant Mitigation (CDBG-MIT):** A federal grant that offers funding to help communities prepare for future disasters and reduce risks.
6. **Community Development Block Grant National Disaster Resilience (CDBG-NDR):** A federal grant that provides funding to help communities recover from disasters, prepare for future disasters, and reduce risks.
7. **Federal Register:** A daily publication of the federal government that documents government agency rules, proposed rules, and public notices, including changes to laws and regulations.
8. **Grant award:** The official document that specifies the terms, conditions, and funding amount for a grant project.

9. Louisiana Office of Community Development – Disaster Recovery (LOCD-DR): HUD’s grantee for CDBG-DR and CDBG-MIT funds.
10. **Low- to moderate-income (LMI):** A family or household's yearly income must be below the Section 8 Low Income Limit, which is usually 80 percent of the area's median income set by HUD. These limits are updated every year by HUD, so subrecipients should get the latest table to find the current limits. [HUD Income Limits](#)
11. **Monitoring:** The process of reviewing and assessing how grant funds are being used and whether projects are meeting their objectives.
12. **Office of Management and Budget (OMB):** A government office that oversees the performance of federal agencies, evaluates the effectiveness of federal programs, and administers the federal budget.
13. **Subrecipient:** A unit of general local government, quasi-governmental agency, state agency, non-federal, public or private nonprofit agency, authority, or organization, or a for-profit entity receiving CDBG-DR or CDBG-MIT funds from LOCD-DR or another subrecipient to undertake eligible activities.

### 3. Background

CDBG-DR programs are authorized under Title I of the Housing and Community Development Act of 1974. CDBG-DR and CDBG-MIT grants are authorized by the United States Congress and the President of the United States under supplemental appropriation laws (“Supplemental Appropriations Acts”). These laws allow for CDBG-DR and CDBG-MIT grants to be awarded to presidentially declared disaster-impacted areas. Specific requirements are typically included in the appropriation law adopted to cover a specific disaster. These requirements may modify, or authorize the U.S. Department of Housing and Urban Development’s (HUD) Secretary to modify, various statutes and regulations that could impede the prompt implementation of disaster recovery and associated community development programs.

HUD manages CDBG-DR and CDBG-MIT grants appropriated by Congress and publishes requirements of the funding in Federal Register Notices (FRN) applicable to specific disasters.

[CDBG-DR Laws,  
Regulations, and Federal  
Register Notices](#)

HUD's role is to:

- Review and approve action plans and amendments that describe how grantees will use the funds for disaster recovery and mitigation;
- Grant waivers of existing statutory requirements and the associated implementation regulations;
- Define alternate requirements, when necessary; and,
- Monitor implementation activities of approved programs.

HUD's grantees submit action plans and amendments detailing programs to be implemented as part of the disaster recovery effort. The action plans and amendments are submitted for acceptance by HUD, thus assuring the proposed actions are within the intent and spirit of existing statutes.

The action plans, as amended, define the scope of and allocate the funds appropriated to the programs described. Upon acceptance by HUD, grantees implement each program or delegate the responsibility to subrecipients. The delegation of responsibility is accomplished via Interagency Agreements (IAs), Cooperative Endeavor Agreements (CEAs), or conditions of grant awards associated with the program.

## **4. LOCD-DR's Role**

LOCD-DR creates Louisiana's disaster recovery and mitigation programs by following federal guidelines and submitting action plans to HUD. These plans explain how the programs will work and how the money will be used.

Once HUD approves an action plan, LOCD-DR either implements the program or selects local governments, state agencies, quasi-governmental agencies, and/or non-profit organizations as subrecipients to manage it.

As the state grantee for HUD, LOCD-DR monitors subrecipients that receive CDBG-DR, CDBG-MIT, or National Disaster Resilience (NDR) funds. LOCD-DR works with subrecipients through grant agreements, which establish the rules and conditions of the grant, to help subrecipients succeed in the program.

## 5. Subrecipient’s Role

In the Action Plan, LOCD-DR describes the method of distribution (MOD) to which the disaster recovery and mitigation funds will be provided to subrecipients. The MOD could be a direct allocation to subrecipients or a competitive process. Through the competitive process, subrecipients can apply for project grants after LOCD-DR publishes the Notice of Funding Availability (NOFA) for CDBG-DR and CDBG-MIT programs. Subrecipients may also be selected through partnerships with other subrecipients.

Subrecipients must follow the guidelines for each program, which dictate what projects can do, how much money subrecipients can spend, and the regulations subrecipients must follow. It is important to read and understand the CEA, applicable FRN, the Action Plan, policies and procedures of the program, and any special rules or regulations that might apply. After LOCD-DR awards subrecipients, they are required to adhere to the guidelines and procedures outlined in this manual in order to initiate and complete the project aimed at disaster recovery or preparedness in their community.

## 6. Federal Register Notices

Each HUD CDBG-DR and CDBG-MIT allocation has its own rules, waivers, and alternative requirements published in Federal Register Notices. The chart below shows the notices for each disaster.

Disaster	Year	FEMA Storm #	Federal Register Notices	Date
<b>6.1 Hurricanes Katrina, Rita, Wilma – 2005</b>				
Katrina	2005	1603-DR	<a href="#">FR-5051-N-01</a>	02/13/06
Rita	2005	1607-DR	<a href="#">FR-5089-N-01</a>	10/30/06
			<a href="#">FR-5051-N-04</a>	06/14/06
			<a href="#">FR-5089-N-03</a>	03/06/07

Disaster	Year	FEMA Storm #	Federal Register Notices	Date
			<a href="#">FR-5183-N-01</a>	12/11/07
			<a href="#">FR-5254-N-1</a>	10/15/08
<b>6.2 Multiple Disasters – 2008</b>				
Gustav	2008	1794-DR	<a href="#">FR-5256-N-01</a>	02/13/09
Ike	2008	1791-DR	<a href="#">FR-5337-N-01</a>	08/14/09
<b>6.3 Hurricane Sandy – Other Disasters 2011 – 2013</b>				
Isaac	2012	4084-DR	<a href="#">FR-5696-N-01</a>	03/05/13
			<a href="#">FR-5696-N-03</a>	05/29/13
			<a href="#">FR-5696-N-07</a>	12/16/13
<b>6.4 National Disaster Resilience Grant</b>				
NDR	2016	N/A	<a href="#">FR-5936-N-01</a>	06/07/16
			<a href="#">FR-6039-N-01</a>	08/07/17
			<a href="#">FR-6136-N-01</a>	02/19/19
			<a href="#">FR-6412-N-01</a>	01/22/24
<b>6.5 Louisiana and Other 2016 Disaster Events</b>				
Great Floods	2016	4277-DR, 4263-DR	<a href="#">FR-5989-N-01</a>	11/21/16
			<a href="#">FR-6012-N-01</a>	01/18/17
			<a href="#">FR-6039-N-01</a>	08/07/17
<b>6.6 2019 Disaster Events</b>				
Mitigation	2018	4263-DR 4277-DR 4272-DR	<a href="#">FR-6109-N-02</a>	08/30/19
<b>6.7 2020 &amp; 2021 Disaster Events</b>				
Laura	2020	4559-DR	<a href="#">FR-6303-N-01</a>	02/03/22
Delta	2020	DR-4570-LA	<a href="#">FR-6326-N-01</a>	05/24/22
Ida	2021	4611-DR-LA	<a href="#">FR-6368-N-01</a>	01/18/23
May Floods	2021	4606-DR-LA		
<b>6.8 2023 and 2024 Disaster Events</b>				
Francine	2024	DR-4817-LA	<a href="#">FR-6512-N-01</a>	01/16/25
			<a href="#">Universal Notice</a> – CPD Memo 25-02*	03/19/25
			<a href="#">Universal Notice</a> - CPD Memo 25-03*	03/31/25

**NOTE: HUD published Memorandum 25-02 and 25-03 to revise the Universal Notice to align requirements with the President’s executive orders and clarified that the funds announced in the January 2025 Notice are subject to the requirements in the Universal Notice, as may be amended. Universal Notice Covered Grantees | HUD.gov/U.S. Department of Housing and Urban Development (HUD)**

## 7. General Federal Register Notices

These notices apply to all grants. They are ordered by publish date from earliest to most recent.

Federal Register Notice	Description
<a href="#">FR-5582-N-01</a>	Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees (FR-5582-N-01, November 16, 2011)
<a href="#">FR-6169-N-01 Main DOB Notice</a>	Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees (FR-6169-N-01, June 20, 2019)
<a href="#">FR-6169-N-02 Implementation Notice</a>	Applicability of Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees (FR-6169-N-02, June 20, 2019)
<a href="#">FR-7062-N-02 Matching Program</a>	Initial HUD and FEMA Data Matching Program - Privacy Act of 1974; Matching Program (FR-7062-N-02, February 10, 2022)
<a href="#">FR-7707-N-06 Matching Program</a>	First Batch - Privacy Act of 1974; Matching Program (FR-7707-N-06, March 10, 2023)
<a href="#">FR-7902-N-18 Matching Program</a>	New HUD and FEMA Data Matching Program - Privacy Act of 1974; Matching Program (FR-7902-N-18, February 8, 2024)

## **8. Administration of CDBG-DR and CDBG-MIT Activities**

Guidance in the Grant Implementation Manual begins after selecting the subrecipient and approving the grant. The focus is on the implementation and amendment of subrecipient programs and projects. In taking this approach the LOCD-DR notes that initial determinations of national objective, citizen participation requirements, and compliance with regulatory eligible activity limitations have previously been addressed and do not warrant extended discussion here. The continuing nature of the requirement to maintain compliance with a national objective warrants a discussion of that topic, which is included in Section 10.0 below. The requirements for citizen participation and eligible activities will have been provided to the subrecipient in conjunction with its program or project application process. An overview of the waivers and alternate requirements related to the citizen participation associated with catastrophic disasters is given in Section 15.0 below. The subrecipient should contact its LOCD-DR Grant Manager in the event that further guidance is required in these areas.

Note that subrecipients may also access certain programs currently administered by the LOCD-DR under specific CDBG-DR and CDBG-MIT Action Plans. These programs may include activities not discussed in this manual. Contact the LOCD-DR for guidance related to administration of those programs. An example would be a subrecipient administered multi-unit housing loan program. This program would involve tenant eligibility (including tenant income verification), loan servicing, and asset management requirements that are not addressed in this manual.

## **9. General Administration**

Subrecipients are responsible for:

1. Day-to-day program management
2. Subrecipient monitoring
3. Contractor management
4. Beneficiary data collection
5. Subrecipient's internal audit function

6. Recordkeeping
  - a. Document day-to-day management
  - b. Retain for three years (see Chapter 3 for exceptions) after closeout of the LOCD-DR's Disaster Recovery or Mitigation grant by HUD
7. Privacy
8. [Freedom of Information Act \(FOIA\) Requests](#)

HUD provides the following general guidance for program administration:

1. Put all procedures in writing. Follow them or document why they are not followed.
2. Build performance targets into contracts. Hone the scopes of work.
3. Make the files tell the story.
4. Build compliance into day-to-day management. Project completion can be undone by non-compliance.
5. Review and approve the work performed.
6. Catch problems early and take action.
7. Communicate with LOCD-DR, contractors, and administrators.

The LOCD-DR, and perhaps HUD or other federal and state auditors, will monitor the subrecipient's program activities for compliance with program requirements, approved Action Plans and amendments, and applicable statutes and regulations. See Chapter 11 - Monitoring for an overview of the monitoring activities. Implementing the HUD guidance above will ensure efficient program operation and less disruptive monitoring sessions for the subrecipient. HUD provides guidebooks for subrecipients in the CDBG Program on their website (Link included within Section 19.0).

## **10. Meeting a National Objective**

Before any activity can be funded in whole or in part with CDBG-DR or CDBG-MIT funds, a determination must be made as to whether the activity is eligible under [Title I of the Housing and Community Development Act \(HCDA\)](#), as amended. Activities must also meet one of the three national objectives. All projects funded under CDBG must address at least one of the following three national objectives of the CDBG Program:

1. Benefit low- and moderate-income (LMI) persons
2. Aid in the prevention or elimination of slums or blight
3. Meet other community development needs having a particular urgency

The LMI national objective is often referred to as the “primary” national objective because the regulations require that the LOCD-DR expend at least 70 percent of CDBG-DR funds to meet this particular objective. HUD has made changes to this requirement in the past and will include them in each specific Federal Register Notice issued by disaster. Applicants must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons.

**NOTE: Under the CDBG-Mitigation Allocation (84 FR 45838), at least 50 percent of CDBG-MIT funds must be spent on LMI persons.**

A determination of the eligibility of an activity is made as part of the LOCD-DR Project Application review process. However, under the CDBG regulations, a project is not considered to meet a national objective until it is complete. Subrecipients must be aware of the national objective category and document compliance throughout the life of the project or program.

See Subsection 10.1.

Except as may have been waived by HUD, the requirements of [24 CFR 570.483](#)<sup>1</sup> relate to the national objectives. See the applicable Federal Register Notice for waivers applied to the grant award.

Federal Regulations:

<sup>1</sup> [24 CFR 570.483](#)

[HUD's CDBG Guide to National Objectives and Eligible Activities](#)

## 10.1 National Objective Documentation and Records

Subrecipients must maintain records to demonstrate that funded activities meet one of the national objectives. Depending on the national objective, the files must contain, at a minimum, the specific documentation listed below. This specified documentation may also be used in reporting performance measures information.

For some national objectives, subrecipients can document compliance immediately. Some activities that benefit LMI people, eliminate slums or blight, or address urgent needs can be documented upfront.

However, some national objectives require ongoing record collection. For example, subrecipients cannot immediately determine the future occupants of a rental housing rehabilitation project. Therefore, subrecipients must collect occupancy records to show that at least 51 percent of the tenants are LMI households during the lease-up period until the goal is met. Similarly, subrecipients cannot identify future job hires in a business helped by the grant right away, so subrecipients will need to monitor hires over time to ensure compliance.

Documentation required to demonstrate the project’s national objective has been met is listed below.

National Objective	Required Records
<b>LMI Area Benefit</b>	<ul style="list-style-type: none"> <li>• Map showing service area boundaries and LMI block groups</li> <li>• Documentation that ≥51% of area population is LMI</li> <li>• HUD data used to determine LMI percentage</li> <li>• Survey documentation (if applicable)</li> </ul>
<b>LMI Limited Clientele</b>	<ul style="list-style-type: none"> <li>• Proof activity benefits HUD-defined LMI group</li> <li>• Information showing project location and purpose benefits LMI persons</li> <li>• Family size/income data for each assisted person</li> <li>• Records of accessibility improvements (if applicable)</li> <li>• Documentation of special job service conditions (if &lt;51% LMI benefit)</li> </ul>
<b>LMI Housing</b>	<ul style="list-style-type: none"> <li>• Written agreement with landlord/developer:               <ul style="list-style-type: none"> <li>○ Total units per building</li> <li>○ LMI-occupied units</li> </ul> </li> <li>• Total project cost (all fund sources)</li> <li>• LMI household size/income data</li> <li>• Rental housing records:               <ul style="list-style-type: none"> <li>○ Rents after assistance</li> <li>○ Proof rents are affordable</li> </ul> </li> </ul>

National Objective	Required Records
<b>LMI Job Creation/ Retention</b>	<ul style="list-style-type: none"> <li>● If &lt;51% LMI: <ul style="list-style-type: none"> <li>○ Number of affordable units</li> <li>○ Total construction cost</li> <li>○ Amount of CDBG funds used</li> </ul> </li> <li>● Records for scattered sites (if treated as one structure)</li> <li>● Initial occupancy records by LMI households</li> <li>● Occupancy documentation post-construction</li> <li>● Written agreement with business: <ul style="list-style-type: none"> <li>○ Hiring/retention commitment (≥51% LMI)</li> <li>○ Job titles (FT/PT)</li> <li>○ Hiring steps and training</li> </ul> </li> <li>● Records showing: <ul style="list-style-type: none"> <li>○ Created/retained jobs</li> <li>○ Jobs offered to LMI persons</li> <li>○ FTE status</li> </ul> </li> <li>● For jobs filled by LMI persons:</li> <li>● Job titles, family size/income</li> <li>● For jobs offered but not accepted: <ul style="list-style-type: none"> <li>○ Job descriptions, FTE status, skills/training offered</li> <li>○ Interview documentation</li> </ul> </li> <li>● For retained jobs: <ul style="list-style-type: none"> <li>○ Evidence jobs would be lost without CDBG</li> <li>○ Jobs held by LMI persons, FTE status</li> <li>○ Family size/income</li> </ul> </li> <li>● For turnover jobs: <ul style="list-style-type: none"> <li>○ Anticipated openings, turnover date</li> <li>○ New hire name/income</li> <li>○ If not LMI, interview records</li> </ul> </li> <li>● Acceptable LMI documentation methods: <ul style="list-style-type: none"> <li>○ Agency referral</li> <li>○ Self-certification</li> <li>○ Program qualification</li> <li>○ Homeless status</li> <li>○ Presumed LMI via address</li> </ul> </li> <li>● Record income status at time of assistance</li> </ul>
<b>LMI Buyouts (post-2013)</b>	<ul style="list-style-type: none"> <li>● Property is in high-risk area</li> <li>● Owned by LMI household</li> <li>● Award exceeds fair market value</li> </ul>
<b>LMI Housing Incentives (post-2013)</b>	<ul style="list-style-type: none"> <li>● Owned by LMI household</li> <li>● Incentive supports move to safer area</li> <li>● If for improvements: proof of LMI occupancy post-rehab</li> </ul>

National Objective	Required Records
<b>Elimination of Slums and Blight - Area Basis</b>	<ul style="list-style-type: none"> <li>• Area boundaries &amp; designation date</li> <li>• Documentation of blighted conditions (photos, surveys, plans)</li> <li>• For residential rehab: <ul style="list-style-type: none"> <li>○ Local definition of substandard</li> <li>○ Inspection &amp; work plan</li> <li>○ Repair list (prioritize serious issues)</li> <li>○ Proof repairs improve area</li> </ul> </li> </ul>
<b>Elimination of Slums &amp; Blight - Spot Basis</b>	<ul style="list-style-type: none"> <li>• Problem description</li> <li>• Evidence activity fits spot blight</li> <li>• Specific safety/health issues for each building</li> </ul>
<b>Elimination of Slum &amp; Blight - Urban Renewal Area</b>	<ul style="list-style-type: none"> <li>• Copy of Urban Renewal Plan</li> <li>• Records showing support of plan goals</li> </ul>
<b>Urgent Need</b>	<ul style="list-style-type: none"> <li>• Proof of urgency and planning</li> <li>• Recipient certification of urgent need</li> <li>• Documentation that no other funds were available</li> </ul>
<b>Urgent Need Mitigation (FR-6109-N-02)</b>	<ul style="list-style-type: none"> <li>• Activity addresses risks identified in LOCD-DR Mitigation Needs Assessment</li> <li>• Proof of measurable reduction in risk to life/property</li> </ul>

## 11. Duplication of Benefits

Many federal and state agencies provide assistance in response to Presidentially declared major disasters under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974](#) (the “Stafford Act”). Subrecipients must be aware that the Supplemental Appropriations Act authorizing CDBG funding or the Stafford Act may prohibit the use of program funds for activities that have already been fully or partially funded by insurance, or by other federal or state sources.

**NOTE: See Exhibit 1-4 for LOCD-DR Duplication of Benefits (DOB) policy and Exhibit 1-5 for a sample DOB policy for adoption by subrecipients.**

Certain Supplemental Appropriations Acts also prohibit the use of CDBG funds as a match, share, or contribution for other federal programs. However, some CDBG appropriations do permit the use of funds for local match requirements. Refer to the applicable Federal Register notice and Action Plan to determine which activities are eligible.

The Stafford Act also contains eligibility requirements on subrecipients who have received prior disaster funding. These requirements include ongoing compliance with conditions tied to the original assistance (e.g., maintaining federal flood insurance). Failure to meet these conditions may result in denial of additional funding.

**Noncompliance with duplication of benefits requirements may result in the repayment of funds.**

## **12. Complaints**

Subrecipients are responsible for resolving local complaints. Subrecipients are required by federal regulations to establish a procedure for handling complaints that deal with local program administration, management, or operational procedures. The LOCD-DR is responsible for monitoring to ensure that a procedure for handling local complaints is in place and is used when necessary. Subrecipients may provide HUD's contact information to complainants as needed.

Complaints about fraud, waste, and abuse related to grant programs that represent criminal wrongdoing or HUD standards of ethics and conduct may be submitted to the Office of Inspector General (1-800-347-3735). Refer to Chapter 7 Civil Rights for additional complaint resources to include in your procedures.

## **13. Project Amendment Procedure**

Subrecipients must request an amendment from LOCD-DR to change any aspect of a project from the original agreement. Project amendment procedures vary by program. Subrecipients should reference program NOFA and/or program policies and procedures for further guidance.

## 14. Reporting

Subrecipients must fully document compliance with applicable program and statutory requirements and associated regulations for the CDBG-DR and CDBG-MIT programs. This can be accomplished through careful attention to maintaining adequate records (see Chapter 3 – Records Management for more information) and submitting required reports. Subrecipients are required to submit reports on a monthly or quarterly basis using the procedures developed by the LOCD-DR. Review the applicable program guidelines, contact the LOCD-DR, or send an email to [ocd@la.gov](mailto:ocd@la.gov) for reporting requirements and processes.

## 15. Citizen Participation

The requirements with respect to citizen participation<sup>1,2,3,4,5,6</sup> have been waived for disaster assistance and replaced with alternate requirements. Refer to the relevant Federal Register Notice for information about the applicable waivers, as 24 CFR 1003.604, 24 CFR 91.105(d), and 24 CFR 91.115 (d) are in effect beginning with events starting in 2020 and 2021.

The citizen participation waiver and alternative requirements permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR and CDBG-MIT project funds. The LOCD-DR will determine applicable citizen participation requirements for programs and/or projects. Subrecipients should reference the program NOFA and/or program policies and procedures for further guidance. See the sample Citizen Participation Plan that is included as Exhibit 1-1.

### Federal Regulations:

<sup>1</sup>[42 U.S.C. 5304\(a\)\(2\) and \(3\)](#)

<sup>2</sup>[42 U.S.C. 12707](#)

<sup>3</sup>[24 CFR 570.486](#)

<sup>4</sup>[24 CFR 1003.604](#)

<sup>5</sup>[24 CFR 91.105\(b\),\(c\) and \(d\)](#)

<sup>6</sup>[24 CFR 91.115\(b\),\(c\) and \(d\)](#)

## 16. Management of Subrecipients

The information contained in this Grant Implementation Manual is provided to assist both LOCD-DR and its subrecipients with the implementation of disaster recovery and mitigation grants. However, subrecipients are responsible for ensuring that they properly manage their subrecipients who carry out activities with CDBG-DR and CDBG-MIT funds. Subrecipient management should be conducted in accordance with [HUD's Managing CDBG: A Guidebook for](#)

## **16.1 General Contract Administration Requirements**

Managing subrecipient and vendor contracts is essential for ensuring project completion within specified timelines and compliance with local, state, and federal laws and regulations, as well as program policies.

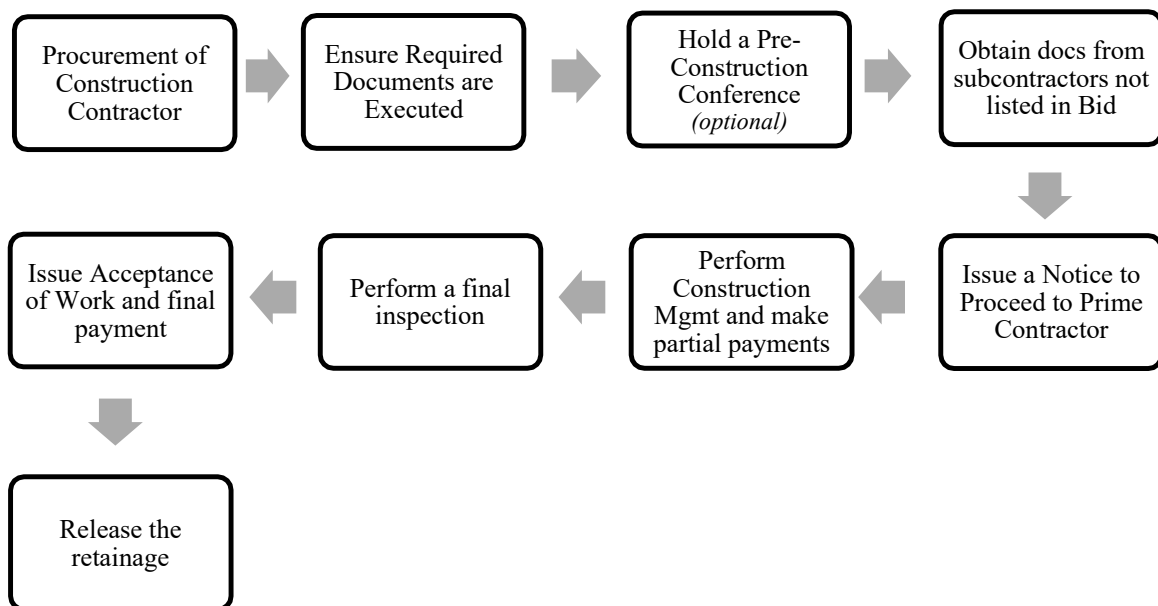
Key contract management principles to practice include the following:

- Appoint contract manager(s)
  - Provide training and development for contract managers
- Define clear and relevant performance measures with subrecipients and vendors
  - Set spending and performance benchmarks
- Create standardized checklists, forms, and templates for subrecipient and vendor use
- Establish consistent and effective communication methods (e.g., regularly scheduled meetings)
- Provide ongoing oversight
- Create a reporting schedule for status updates
- Conduct regular audits and reviews
- Ensure proper documentation and record-keeping
- Develop ways to address poor performance
- Implement risk management strategies
- Ensure compliance with laws and regulations

## 16.2 Additional Construction Contract Administration Requirements

Due to the complexity of construction projects, subrecipients must take additional steps for each construction contract/project to ensure quality of work and compliance with required laws, rules, and regulations. This includes meeting local codes and applying quality standards. This section highlights additional steps and requirements specific to construction contracts.

An overview of the additional steps required for construction contracts is shown in the diagram below.



## 16.3 Procurement Process

The State and federal governments require a specific process for procuring contractors to ensure costs are reasonable and contracts are awarded fairly. More information about procurement requirements can be found in Chapter 4 – Procurement Methods and Contractual Requirements of this manual. The following section summarizes important steps after construction contractors are awarded.

## 16.4 Pre-Construction Conference

After the contract is signed, hold a pre-construction meeting to explain contractual requirements and performance schedules. This meeting should include the prime contractor,

foreman or construction supervisor, staff handling payroll, and a representative of all listed subcontractors. Primary responsibilities of the prime contractor(s) include:

Responsibility	Description
Environmental Review	<ul style="list-style-type: none"> <li>Follow environmental review requirements</li> <li>See Chapter 6 for more information</li> </ul>
Payrolls and Statements of Compliance	<ul style="list-style-type: none"> <li>Ensure compliance is signed by an officer of the company</li> <li>Secure, check, and review payrolls and Statements of Compliance from all subcontractors</li> </ul>
Copeland Anti-Kickback Act Provisions	<ul style="list-style-type: none"> <li>Payroll deductions can be made that are not specifically listed in the <a href="#">Copeland Anti-Kickback Act</a></li> <li>Some permissible deductions require written permission from the employee</li> </ul>
Labor Standards	<ul style="list-style-type: none"> <li>Follow labor standards</li> <li>See Chapter 8 for more information</li> </ul>
State and Local Rules	<ul style="list-style-type: none"> <li>Follow all relevant state and local regulations</li> </ul>
Technical Job Requirements	<ul style="list-style-type: none"> <li>Meet all technical job requirements</li> </ul>
Equal Opportunity Rules	<ul style="list-style-type: none"> <li>Follow equal opportunity rules</li> <li>See Chapter 7 for more information</li> <li>Submit any missing documents</li> <li>Explain equal opportunity responsibilities using common questions as a guide. See Exhibit 1-2.</li> <li>Explain how equal opportunity will be monitored during site visits</li> </ul>
Debarment Proceedings	<ul style="list-style-type: none"> <li>Obtain any outstanding documents, including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension, and Other Responsibilities</li> </ul>
Compliance Monitoring	<ul style="list-style-type: none"> <li>Resolve discrepancies and underpayments discovered during compliance monitoring prior to making further payments to the contractor</li> <li>Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved</li> </ul>

## 16.5 Subcontractor Documentation

Any subcontractors not named in the bid must prove they are eligible, sign required certifications, and prepare a written plan to ensure compliance with [Section 3 of the HUD Act of 1968](#), etc. All of these contractor/subcontractor responsibilities should be completed prior to the start of construction.

## 16.6 Notice to Proceed

After the contract is signed and the pre-construction conference is held, issue a Notice to Proceed to each prime contractor. Establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice to Proceed must include the name of the contractor and the amount of the contract.

## 16.7 Monitoring Contractor Progress and Making Progress Payments

The goal of this task is to monitor construction contracts to ensure compliance with technical specifications and state and federal requirements, maintain adequate cost and budget controls, and process necessary contract changes to bring the contract to completion.

## 16.8 Cost Breakdown

Upon receiving the Notice to Proceed, the contractor must submit a cost breakdown showing how much money is allocated to each task of the project. If the contract is paid by unit prices, this breakdown is not required. Subrecipients and the architect or engineer must review this breakdown and use it for payment requests. The contractor must provide the breakdown within five to 10 days of receiving the NTP.

### 16.8.1 Monitoring and Construction Management

During construction, subrecipients must monitor labor standards and equal opportunity requirements as described in Chapter 7 – Civil Rights and Chapter 8 – Labor Regulations.

Subrecipients are also responsible for construction management. Construction management must include inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications and quantity and quality standards.

Subtasks that are a part of construction management include:

#### 16.8.1.1. General supervision

- Watch the construction to see if any design changes are needed based on field conditions.
- If there are any changes to the plans, subrecipients must provide updated drawings and modify the contract, if applicable, submitted to LOCD-DR for review and approval.
- Conduct job site interviews once during each phase of construction on each project to verify wage data and ensure compliance with labor standards.

#### 16.8.1.2. Quality control

- Conduct quality tests as needed to verify conformance with technical specifications concerning minimum quality requirements.

#### 16.8.1.3. Quantity control

- Verify that in-place quantities and other records reflect an as-built facility.

#### 16.8.1.4. Certification of pay estimates

- Add inspection reports and notes about the field measurements.
- Attach test results that prove the contractor's periodic pay estimates for partial payments.

#### 16.8.1.5. General responsibilities

- Construction management might also include tasks like setting up measurement points, checking design documents, and organizing the project.
- If an architect or engineer is in charge of the construction, this should be included in the scope of services of the professional services contract.

Exhibit 1-3 includes a detailed checklist for the construction contract.

### 16.8.2. Partial Payments

When requests for partial payment are received, subrecipients must check equal opportunity and labor standards compliance files to ensure that all payrolls have been received and

checked, any restitution paid, employee interviews have been conducted, and all discrepancies corrected.

### **16.8.3 Change Orders**

All change orders must be in writing and submitted to LOCD-DR for review and approval.

[Public Bid Law](#)

[Public Bid Law FAQs](#)

The following steps must be taken for all change orders:

1. The architect or engineer must prepare and recommend the change order.
2. Review the costs to make sure they are reasonable.
3. Include a statement explaining why the change is needed.
4. Get signatures from the architect, contractor, and subrecipient.
5. Keep a signed copy of the change order in the project file.

## **16.9 Inspecting and Accepting the Work and Making Final Payment**

This section provides guidance to ensure construction projects are properly inspected prior to closing out the project and the final payment is made.

### **16.9.1 Inspecting and Accepting the Work**

When construction work is complete, follow these steps:

1. Subrecipient or the architect/engineer makes the final inspection and prepares a written report of the inspection.
2. The contractor must confirm the work is complete and send a final payment request to the subrecipient.
3. Subrecipient must set up a final inspection.
4. Subrecipient or the architect/engineer attends the inspection and writes a report before the final payment certificate is issued.
5. If the project involved a building, the State Fire Marshal's Office must issue a Certificate of Occupancy.

Before making the final payment (minus retainage), subrecipients must ensure that:

- All weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved;
- All discrepancies identified via on-site interviews have been resolved;
- All other required equal opportunity and labor standards provisions have been satisfied;
- All contract submissions have been received;
- All claims and disputes involving the contractor have been resolved and all files are complete;
- As-built information has been provided to the engineer; and,
- A Final Wage Compliance Report (within Exhibit 13-1 Project Completion Report) is completed and placed in the Labor Standards Compliance file.

### **16.9.2 Final Payment**

Once the final work is inspected and all documents are properly executed and submitted, subrecipients can issue acceptance of work and final payment, minus the retainage. The contractor should file the subrecipient's acceptance of work at the designated location.

### **16.10 Retainage**

Subrecipients can withhold up to 10 percent of the payment for construction contracts under \$500,000 and up to 5 percent for contracts of \$500,000 or more.

Forty-five days after accepting the work and once the contractor provides a clear lien certificate, subrecipients can release the retainage to the contractor. If there are any claims or liens after the 45 days, subrecipients must follow state law for disposition with the retainage and any claims against the bonds.<sup>1</sup>

State Law

<sup>1</sup>[LA Rev Stat § 38.2248](#)

### **16.11 Website**

For certain disaster recovery allocations, both the LOCD-DR and subrecipients must post all contracts paid with CDBG-DR and CDBG-MIT funds on their respective websites. This includes a summary that describes and updates the status of the services or goods being procured (like

the phase of procurement and proposal requirements). Contracts and procurement actions that are below the micro-purchase threshold do not need to be posted online. Refer to the applicable CDBG-DR or CDBG-MIT allocation notice in the Federal Register for complete information.

## **17. Mitigation**

For certain disaster recovery allocations, the LOCD-DR is required to set aside 15% of disaster recovery grants for disaster mitigation activities. These activities are defined as those that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and human suffering and hardship by lessening the impact of future disasters. If a project meets HUD's mitigation requirements, subrecipients will work with the state to document how the project will meet HUD's definition of mitigation and address specific hazard risks. This documentation should include a narrative description and identification of one or more specified mitigation performance measures. Subrecipients must report progress on these measures to LOCD-DR on a monthly or quarterly basis.

In addition, when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential buildings with CDBG-DR funds, subrecipients must incorporate mitigation measures as a construction standard.

## **18. Green Building Standards**

Subrecipients carrying out activities to construct, reconstruct, or rehabilitate residential buildings are required to adhere to certain building standards that promote energy efficiency and reduce hazard risks. If a project falls into one of the following categories and uses CDBG-DR or CDBG-MIT funds, it must meet a certified Green and Resilient Building Standard and at least one energy efficiency standard.

1. All new construction and reconstruction (demolishing and rebuilding a home on the same lot in a similar way) of residential buildings.
2. All major repairs (rehabilitation) of substantially damaged homes, including changes to structural parts like floors, columns, or load-bearing walls.

See Section 19 Resources for additional information and resources on green building requirements.

## 18.1 Exceptions

There are circumstances under which a subrecipient is not required to meet the Green Building Standards. They include, but are not limited to, the following:

- A. For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the subrecipient is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required.
- B. If the subrecipient is required to replace specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

HUD encourages subrecipients to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's water website, Indoor AirPlus website, Healthy Indoor Environment Protocols for Home Energy Upgrades website, and ENERGY STAR website:

<https://www.epa.gov/smartgrowth/green-building>.

## 19. Administration Resources

- HUD Federal Register Notices  
<https://www.hud.gov/hud-partners/community-cdbg-dr-regulations>
- LOCD-DR Action Plans  
<https://www.doa.la.gov/doa/ocd/policy-and-reports/apa/>
- HUD CPD Notices  
<https://www.hudexchange.info/programs/cpd-notices/#2021>
- HUD Exchange: Community Development Block Grant Disaster Recovery Funds  
<https://www.hudexchange.info/programs/cdbg-dr/>

- HUD Exchange: Managing CDBG: Guidebook for CDBG Grantees on Subrecipient Oversight  
<https://www.hudexchange.info/resource/6577/managing-cdbg-guidebook-for-cdbg-grantees-on-subrecipient-oversight/>
- HUD Exchange: CDBG and CDBG-DR Income Limits  
<https://www.hudexchange.info/resource/5334/cdbg-income-limits/>
- HUD CPD-19-02  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/19-02cpdn.pdf>
- HUD Exchange: Guide to National Objectives and Eligible Activities for State CDBG Programs  
<https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>
- HUD Exchange: Green Building Standards  
<https://files.hudexchange.info/course-content/2018-cdbg-dr-problem-solving-clinic/CDBG-DR-Green-Building-Standards-Slides-2018.pdf>
- Minimum Energy Standards or Requirements [New Construction]  
<https://www.hud.gov/sites/dfiles/CPD/documents/HUD-Minimum-Energy-Standards-3-20-21.pdf>
- HUD Exchange: Disaster Recovery Green Housing Development Guide  
<https://www.hudexchange.info/resource/4091/disaster-recovery-green-housing-development-guide/>
- HUD Exchange: Green Building Retrofit Checklist and Guidance  
<https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>

## 20. LOCD-DR Exhibits

Exhibit	Description
Exhibit 1-1	Sample Citizen Participation
Exhibit 1-2	FAQs Concerning Equal Opportunity – A Preconstruction Conference Handout
Exhibit 1-3	Sample Construction Contract Checklist
Exhibit 1-4	LOCD-DR Duplication of Benefits Policy
Exhibit 1-5	Sample Duplication of Benefits Policy
Exhibit 1-6	Duplication of Benefits Assurance Form

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 2: Grant Implementation Checklist



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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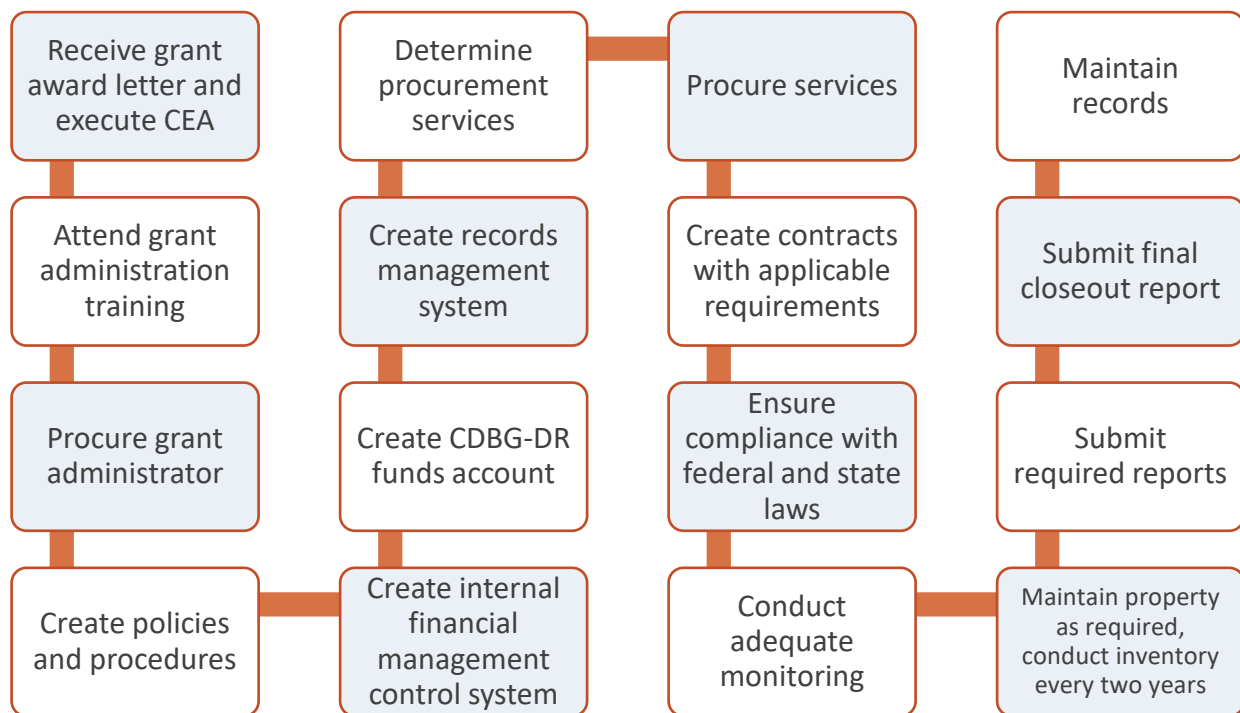
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# 1. Introduction

The Grant Implementation Checklist (Exhibit 2-1) is provided as an overall guide for the implementation of approved Community Development Block Grant – Disaster Recovery and Mitigation activities. The checklist includes references to relevant chapters of the Grant Implementation Manual for guidance on completing each action. The checklist is general, which means that some items may not apply depending on the type of grant awarded.

# 2. Grant Implementation Process Flow

The process flow below depicts a high-level overview of the grant implementation process. The detailed implementation steps are outlined within the checklist (Exhibit 2-1). Note that this checklist is not all inclusive. Be sure to review the Grant Implementation Manual for all actions required to implement the project/program.



### 3. Grant Implementation Checklist

The Grant Implementation Checklist below includes implementation steps for various CDBG-DR and CDBG-MIT programs. An interactive version of this checklist can be found in Exhibit 2-1. The interactive version allows subrecipients to filter the checklist based on the program. Subrecipients should use this checklist to confirm that required actions have been taken at various stages of the grant implementation process by updating the status column with the appropriate note. For specific questions about the grant implementation process, please contact LOCD-DR.

### 4. LOCD-DR Exhibits

Exhibit	Description
Exhibit 2-1	Grant Implementation Checklist

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 3: Records Management



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# 1. Introduction

Effective recordkeeping is a cornerstone of compliance and accountability in the administration of Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) funds. Subrecipients are required to establish and maintain accurate, complete, and organized records that clearly document program eligibility, expenditures, compliance with federal and state requirements, contracts, and performance outcomes. This chapter outlines the minimum documentation standards, retention requirements, and best practices to ensure transparency, facilitate monitoring and audits, and support successful program closeout.

Records must be retained for a period of three years after closeout of the State’s CDBG-DR or CDBG-MIT grant by HUD. The record retention period for subrecipients does NOT begin when the Subrecipient Agreement between the subrecipient and the state is closed. LOCD-DR will notify subrecipients when a grant has been closed by HUD, including the specific date of the grant closeout and the retention period.

**NOTE:** There are exceptions that potentially require maintaining records longer than the three-year period.

- Relocation files must be maintained for three years after final project closeout or after the relocation payments, whichever is later per 49 CFR 24.9. If this time is after the State’s closeout of their grant with HUD, records must be maintained through the compliance period. (See Chapter 9)
- Property management files and national objective compliance files for real property acquired or improved with CDBG-DR or CDBG-MIT funds over \$25,000 must be maintained at least five years after the expiration of the CEA per 24 CFR 570.503(b)(7). If the intended use of real property changes within the five-year compliance period, citizen participation files must be maintained showing their agreement per 24 CFR 570.489(j).
- Files for property and equipment acquired with CDBG-DR or CDBG-MIT funds must be retained for three years after final disposition per 2 CFR 200.334(c). If this time is after the State’s closeout of their grant with HUD, records must be maintained through the compliance period.
- Files for loan repayments or affordability compliance periods are required to be maintained per the applicable program policy.
- If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been resolved.

## 2. Project File Availability

Subrecipient files must be easy to use while providing a historical account of activities for examination and review by the LOCD-DR, auditors, and subrecipient staff. The CDBG-DR and CDBG-MIT records are subject to the Freedom of Information Act and relevant state laws regarding public availability.

## 3. Logistics

Establish the filing system on a project basis. Files should, to the extent possible, be maintained in a central location. Files can be maintained electronically. While a consultant may keep a set of files in their office, subrecipients are required to maintain the original files at their own location.

## 4. Establishing Project Files

Exhibit 3-1 is the Subrecipient File Checklist that outlines the major file categories, including the required documentation and materials that should be kept in each file. This list is not all inclusive. Review the program policy for any additional documentation that may be required.

## 5. LOCD-DR Exhibits

Exhibit	Description
Exhibit 3-1	Subrecipient File Checklist

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 4: Procurement Methods and Contractual  
Requirements



Louisiana Division of Administration

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# 1. Introduction

This section outlines the standards and guidelines for procuring materials and services within the Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) programs. The objective is to ensure that these resources are procured efficiently, economically, and in accordance with applicable federal and state laws and executive orders. The goal is to maintain proper management and accountability in the use of federal funds while ensuring transparency and fairness throughout the procurement process.

*Key Points and Best Practices:*

## Compliance with Federal and State Laws

All procurement activities must comply with the provisions of the Uniform Guidance,<sup>1</sup> which outlines procurement standards, as well as specific state regulations, such as Louisiana’s Public Bid Law.<sup>2</sup>

Federal Regulations  
and State Laws:

<sup>1</sup> [2 CFR 200.318](#)

<sup>2</sup> [LRS 38:2211-2296](#)

## Subrecipient Responsibilities

The subrecipient is fully responsible for managing and resolving any issues that arise from procurement, including evaluations, disputes, and claims. This responsibility does not exempt the subrecipient from their contractual obligations with contractors or vendors.

## Efficiency and Economy

All procurement efforts should focus on obtaining supplies, equipment, and services in the most cost-effective manner. This promotes competition and helps avoid unnecessary or duplicate items.

## Contract Administration

Subrecipients must adopt sound administrative practices and good business judgment when handling contractual matters. This includes managing all phases of contract execution, from selection and evaluation to dispute resolution.

These standards aim to enhance compliance, accountability, and efficiency in the procurement process within the framework of CDBG-DR and CDBG-MIT programs, ensuring adherence to federal and state regulations while securing the best value for the services and materials obtained.

**NOTE: Per [CPD-25-01](#), CDBG-DR is exempt from Build America, Buy America Act CDBG-DR requirements.**

## 2. Definitions

Refer to these definitions of terms and phrases used within this chapter:

1. **Acquisition:** The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
2. **Architect-Engineer Services:** As defined in 40 United States Code (U.S.C.) 1102, refers to (a) professional services of an architectural or engineering nature, as defined by state law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide those services; (b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; or (c) those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs,

plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

3. **Arm's Length Bargaining:** When two parties negotiate a deal fairly and independently, without any special relationship or influence that could affect the outcome. This ensures that both sides are acting in their own best interests.
4. **Bid or Sealed Bid:** An offer in response to invitations for bids (sealed bidding).
5. **Change Order:** An official change of any kind in the original scope of work or terms of a construction contract agreed to by the owner, contractor and project designer.
6. **Cognizant Federal Agency:** The federal agency that, on behalf of all federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.
7. **Conflict of Interest:** A situation that occurs when an employee, officer, agent, or board member involved in the selection, award, or administration of a contract has a financial or other interest in, or a tangible personal benefit from, an entity considered for a contract.
8. **Contract:** A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

9. **Contracting:** Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.
10. **Cost Analysis:** The process of reviewing all the costs involved in making a product or providing a service, such as labor, materials, and overhead, to determine a fair and reasonable price.
11. **Cost Reimbursement Contract:** Provides for payment of allowable incurred costs to the extent prescribed in the contract.
12. **Fixed Price Contract:** Agreement type with a set price determined by lump sum (one set price for the entire project or specific parts) or unit price (prices are based on units of work).
13. **Offer:** A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called bids or sealed bids; responses to requests for proposals (negotiation) are offers called proposals. However, responses to requests for quotations (simplified acquisition) are quotations, not offers.
14. **Offeror:** Bidder.
15. **Micro-Purchase:** The acquisition of supplies or services using simplified acquisition procedures that do not exceed \$10,000 or \$2,000 for construction-related purchases.
16. **Price Analysis:** The process of comparing the total prices from different sellers to find the best deal for a product or service. It looks at the overall cost without breaking down the individual expenses.
17. **Pro Rata:** Dividing something, such as money or resources, proportionally based on each person's share or part. For example, if a cost is shared pro rata, each person pays an amount based on how much they use or own.

18. **Requests for Proposals (RFPs):** Solicitations under negotiated procedures that are used in negotiated acquisitions to communicate government requirements to prospective contractors and to solicit proposals.
19. **Requests for Qualifications (RFQs):** Solicitations under negotiated procedures that are used in negotiated acquisitions to procure the services of an engineering or architectural firm.
20. **Responsible and Responsive Bidder:** A responsible and responsive bidder, according to R.S. 38:2212(A)(1), is one whose bid meets the requirements set out in the advertised bidding documents and who provides the required documentation within 10 days of the opening of bids. These documents may be required by statute, the Administrative Code, or the bidding documents.
21. **Sealed Bidding:** A method of contracting that employs competitive bids, a public opening of bids, and awards.
22. **Sole Source Acquisition:** A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.
23. **Solicitation:** Any request to submit offers or quotations to the government. Solicitations under sealed bid procedures are called invitations for bids. Solicitations under negotiated procedures are called requests for proposals. Solicitations under simplified acquisition procedures may require the submission of either a quotation or an offer.
24. **Subcontract:** Any contract, as defined above, entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
25. **Subcontractor:** A subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

26. **Time and Materials Contract:** An agreement that pays for work based on hourly rates and the cost of materials and includes a maximum price limit. This type of contract should be used only as a last resort when no other contract type fits the situation.

### 3. Procurement Policy

A procurement policy is essential for subrecipients intending to use CDBG-DR and CDBG-MIT funds for contract services. This policy must be in writing and adopted prior to securing contract services and must align with federal procurement standards and competition.<sup>1</sup> Review and amend the policy on an as-needed basis to ensure compliance. The primary elements to include in the procurement policy are as follows:

Federal Regulations:

<sup>1</sup> [2 CFR 200.318-200.327](#)

#### Code of Conduct

The policy must enforce a code of conduct that prevents elected officials, staff, or agents from benefiting personally from procurement actions involving CDBG-DR and CDBG-MIT funds. It should prohibit accepting gifts or favors from contractors and outline sanctions for violations by both subrecipient officials and contractors.

#### Avoiding Unnecessary Purchases

Staff should review all proposed procurements to avoid unnecessary or duplicative purchases and to ensure cost reasonableness.

#### Affirmative Outreach Efforts

The policy must include efforts to consider women-owned business enterprises, minority-owned firms, and labor surplus firms in the procurement process when possible.

#### Acceptable Contract Types

The procurement policy should specify acceptable contract types, such as fixed price, cost reimbursement, or purchase orders, and must prohibit cost-plus-percentage contracts when CDBG-DR and CDBG-MIT funds are used.

## Dispute Resolution Procedures

There should be established procedures for handling and resolving disputes related to procurement actions.

## Ensuring Open and Free Competition

**All procurement transactions must support open and free competition.** The policy should address potentially restrictive practices, such as the following:

- The imposition of unreasonable requirements for qualification
- Noncompetitive pricing between firms or affiliated companies
- Awards to consultants on retainer contracts without open competition
- Conflicts of interest
- Specifying only brand name products without allowing equivalents
- Any arbitrary action during the procurement process

## Methods of Procurement

The policy must outline the permissible procurement methods to be followed.<sup>1</sup>

Federal Regulations:

<sup>1</sup> [2 CFR 200.320](#)

**NOTE: A sample procurement policy template is provided in Exhibit 4-1, which can guide subrecipients in developing or revising their policies to meet federal standards effectively.**

## 4. Pre-Solicitation Planning

### 4.1 Cost Reasonableness Methods

Subrecipients should plan and document how much or how many products (or services) will be required prior to executing a procurement strategy. Subrecipients must perform a pre-bid cost or price analysis in conjunction with every procurement action, including contract modifications. The method and degree of analysis is dependent upon the facts surrounding

each particular procurement situation; however, as a starting point, subrecipients must make independent estimates before receiving bids or proposals.<sup>1</sup>

Federal Regulations:

<sup>1</sup> [2 CFR 200.324](#)

## 4.2 Price Analysis

Micro-purchases and small purchases at or below the simplified acquisition threshold can use procurement methods that are considered to be informal and require a price analysis when selecting vendors and suppliers. This means that the subrecipient must request several bids, proposals, or quotes for the materials, supplies, or services being procured. The solicitation does not have to be formally advertised. The winning vendor must be the firm that offers the most competitive price for the requested materials, supplies, and/or services. Exhibit 4-5 provides additional guidance in performing a price analysis.

## 4.3 Cost Analysis

Procurements estimated to be above the simplified acquisition threshold must also have a cost analysis. The simplified acquisition threshold is currently set at \$250,000. A cost analysis involves reviewing and evaluating the individual cost elements and profit in a vendor's or contractor's proposal. This process ensures that the proposed costs are reasonable and necessary for the contract, assuming reasonable economy and efficiency. It includes verifying the cost data, projections, and specific cost and profit elements for each proposal.

The method and degree of analysis conducted depend on the facts surrounding the procurement transaction. Factors such as the complexity of the procurement, the amount of competition, and the specifics of the vendors' proposals will influence the level of detail required. Planning and analysis are important to ensure that procurement activities are carried out in a fair, transparent, and cost-effective manner.

## 4.4 Purpose of the Cost Analysis

The main goal of a cost analysis is to review and assess the individual cost components in a vendor's or contractor's proposal, ensuring that each proposed cost is reasonable and justified.

#### 4.4.1. When a Cost Analysis Is Required

- **Proposal Costs Exceed the Simplified Acquisition Threshold (i.e., \$250,000):**  
The method or degree of analysis conducted depends on the facts surrounding the particular procurement transaction.
- **Noncompetitive Proposal Procurement:** This is necessary when there is insufficient competition in the market (e.g., sole source procurements).
- **Contract Modifications or Change Orders:** If price reasonableness is not otherwise demonstrated.

#### 4.4.2. Cost Categories

##### Direct Costs

- Include expenses directly related to the contract, such as labor, equipment, supplies, travel, per diem, subcontractor fees, and other direct expenses.

##### Indirect Costs<sup>1</sup>

- These costs cover general administrative expenses, overhead, and profit. Each of these should be analyzed based on the project's complexity, the contractor's risk, required investments, and standard industry profit margins. Indirect cost rates must be negotiated between the recipient and the federal agency providing the funds.

Federal Regulations:

<sup>1</sup> [2 CFR 200.414](#)

#### 4.4.3. Criteria for Eligible Costs

For a cost to be eligible under federal guidelines, it must be:

##### Allowable<sup>2</sup>

- Necessary and justified for the project.
- Compliant with federal award requirements.
- Properly documented.
- Not already covered or counted as a matching share on another federal project.

Federal Regulations:

<sup>2</sup> [2 CFR 200.403](#)

### Reasonable<sup>1</sup>

- Reflects fair market rates in a competitive market.
- Considers applicable restrictions such as fair negotiation practices, regulations, and competitive pricing.

### Allocable<sup>2</sup>

- Directly benefits the project or can be proportionately assigned to the CDBG-DR and CDBG-MIT grants and other funding sources.
- In line with the approved indirect cost plan if indirect costs are involved.

#### Federal Regulations:

<sup>1</sup> [2 CFR 200.404](#)

<sup>2</sup> [2 CFR 200.405](#)

#### Additional Resources:

For further assistance, **Exhibit 4-4** provides a sample form to guide cost analysis, while **Exhibit 4-5** offers more information on conducting cost analyses.

## 5. Conflict of Interest

An organizational conflict of interest occurs when an individual or organization cannot be impartial during a procurement process due to a relationship with a parent company, affiliate, or subsidiary. It is important to avoid conflicts of interest when awarding or managing contracts. No employee of the subrecipient should be involved in selecting, awarding, or managing a contract funded by federal money if a conflict of interest, whether real or perceived, exists.

Key conflict of interest guidelines under [2 Code of Federal Regulations \(CFR\) 200.318](#)<sup>3</sup> state that no subrecipient employee may participate in contract selection, award, or administration if a real or apparent conflict exists. This includes situations where an employee or their immediate family member or partner holds a financial or other interest in the firm awarded the contract. Other federal regulations addressing conflicts of interest include [2 CFR](#)

#### Federal Regulations :

<sup>3</sup> [2 CFR 200.318](#)

[200.112](#)<sup>1</sup> and [24 CFR 570.489\(h\)](#)<sup>2</sup>

(see Exhibit 4-3 for details).

Subrecipients must also comply with any state and local laws governing conflicts of interest.

In Louisiana, specific conflict of interest rules and gift limitations are provided by the Louisiana Board of Ethics in their [memorandum on gift regulations](#).<sup>3</sup>

By adhering to these standards, subrecipients ensure transparency and prevent personal or organizational biases from influencing procurement decisions.

### Example of a Real or Perceived Conflict of Interest

*The subrecipient decides to hire a contractor to perform grant administration activities and engineering services for the subrecipient’s CDBG-DR and CDBG-MIT projects. The subrecipient conducts separate procurements for each of these services. After evaluating proposals for each service, the subrecipient decides to award both the grant administration and engineering services to the same company.*

*This situation may or may not be a conflict of interest. However, the subrecipient must determine whether it is a conflict of interest before signing the contracts. Consider what responsibilities the contract gives the grant administrator over the engineering services. Then follow the procedures in [24 CFR 570.489\(h\)](#) and request the Louisiana Office of Community Development – Disaster Recovery’s (LOCD-DR) permission before continuing.*

## 6. Selection Procedures

Selection procedures for procurement transactions must be written prior to securing contract services.<sup>4</sup> These procedures must ensure that all solicitations incorporate the following:

Federal Regulations  
and State Laws:

<sup>1</sup> [2 CFR 200.112](#)

<sup>2</sup> [24 CFR 570.489\(h\)](#)

<sup>3</sup> [LRS 42:1115](#)

Federal Regulations:

<sup>4</sup> [2 CFR 200.319](#)

1. A clear and accurate description of the technical requirements for the materials, products, or services to be procured,
2. All requirements that the offerors must fulfill, and
3. All other factors used in evaluating bids or proposals.

Check the [Louisiana Office of State Procurement's training resources webpage](#) for more information.

## 7. Equal Opportunity Contract Considerations

To comply with equal opportunity considerations<sup>1</sup> in CDBG-DR and CDBG-MIT funded projects, recipients may include specific equal opportunity language in bid specifications and contract documents, ensure contractor eligibility, secure the necessary documentation, and actively monitor compliance. The following guidelines promote participation by minority- and women-owned firms:

Federal Regulations:

<sup>1</sup> [2 CFR 200.321](#)

- **Inclusion on the Solicitation List:** Ensure that qualified minority- and women-owned firms are placed on solicitation lists and that the lists are up to date.
- **Task Division:** Where feasible, divide larger projects into smaller tasks to enable broader participation.
- **Flexible Delivery Schedules:** Establish delivery schedules that encourage and support the participation of smaller firms.
- **Utilize Small Business Administration (SBA) and Minority Business Development Agency (MBDA) Resources:** Engage with the SBA and MBDA to identify and connect with qualified firms.
- **Prime Contractor Requirements:** Require that prime contractors implement the same affirmative steps to promote inclusion in their subcontracting processes.

### Additional Resources:

- **Exhibit 4-2:** Contains sample bid documents and contract provisions to guide compliance with these standards.
- **Civil Rights Compliance:** For a full description of applicable equal opportunity provisions, refer to Chapter 7 (Civil Rights).

## 8. Contract Administration and Records

Subrecipients are required to maintain comprehensive records for each procurement action that must detail the entire procurement process.<sup>1</sup> These records ensure transparency and accountability by documenting the key steps and decisions made during the procurement process. The following are the required elements:

### Federal Regulations:

<sup>1</sup> [2 CFR 200.318\(i\)](#)

### 1. Rationale for the Procurement Method

The documentation should explain the choice of procurement method (e.g., sealed bids, competitive proposals) used to ensure compliance with both federal and state regulations.

### 2. Selection of the Contract Type

Records must include the type of contract chosen (e.g., fixed price, cost reimbursement) and why it was selected based on the nature and scope of the goods or services.

### 3. Contractor Selection or Rejection

There should be detailed notes on why specific contractors were chosen or rejected based on the competitive bidding results, evaluation criteria, and/or qualifications.

### 4. Basis for the Contract Price

The procurement records must show how the final contract price was determined, including any cost or price analysis conducted to validate its reasonableness.

## 8.1 Contract Administration System

Subrecipients must also establish a contract administration system to monitor contractor performance against the contract terms and specifications. This system ensures that contractors meet quality standards and contractual obligations.

### Documentation Standards

The procurement records should allow an auditor or other parties to:

- Track the goods or services purchased with public funds.
- Understand the steps of the procurement process.
- Verify that high-quality goods and services were procured at the best possible price through a fair, open, and competitive process.

**For a detailed list of required documents, refer to the Records Management section in Chapter 3.**

## 8.2 Contract Types

For CDBG-DR and CDBG-MIT programs, a contract is required for any services to be performed, and these contracts must adhere to the provisions outlined in [Appendix II of 2 CFR 200](#).<sup>1</sup> This appendix specifies various required contract provisions to ensure compliance with federal procurement standards, especially when federal funds are involved.

Federal Regulations:

<sup>1</sup> [Appendix II of 2 CFR 200](#)

### Key Contract Provisions from Appendix II of 2 CFR 200

#### 1. Legal Remedies

Contracts must include provisions for administrative, contractual, or legal remedies in cases where contractors violate or breach the contract's terms.

#### 2. Termination for Cause and Convenience

Contracts over \$10,000 must provide conditions for termination by the subrecipient for both cause and convenience, including steps for completing unfinished work.

### **3. Equal Employment Opportunity**

For construction contracts paid for in whole or in part with federal funds, adherence to Equal Employment Opportunity requirements must be documented.

### **4. Compliance with the Davis-Bacon Act**

For construction contracts over \$2,000, contractors must comply with the Davis-Bacon Act and Labor Standards.

### **5. Other Required Provisions**

Other Acts that are in this provision include, but are not limited to, Rights to Inventions Made Under a Contract, compliance with the Clean Air Act and Federal Water Pollution Control Act, Debarment and Suspension, and the CDBG Compliance Provisions.

#### **8.2.1. Purchase Order**

The subrecipient must have a purchase order for all supplies, single-task services, and produced items procured through the small purchase method. The provisions listed above must also be included with a purchase order because a purchase order can also be considered a contract.

#### **8.2.2. Fixed Price**

A fixed price contract sets a firm price for a good or service that cannot be changed.

The contractor takes on all the risks and is fully responsible for the costs and any profit or loss.

This type of contract motivates the contractor to keep costs down and perform efficiently.

Use fixed price contracts when the subrecipient's scope of work is complete, adequate, and realistic. This is the preferred contract type for construction procurement.

#### **8.2.3. Cost Reimbursement**

A cost reimbursement contract pays for the costs listed in the contract. It includes an estimated total cost and the contractor cannot exceed that amount without approval. Use this type of contract when costs are difficult to predict with sufficient accuracy to utilize a fixed price contract.

#### **8.2.4. Time and Materials**

A time and materials contract pays for work based on hourly rates and the cost of materials. This type of contract should be used only as a last resort when no other contract type will suffice. It includes a maximum price limit that the contractor exceeds at its own risk. The subrecipient must document why this type of contract was chosen and keep that documentation in the project files.

### **8.3 Solicitation Methods**

#### **8.3.1. Quotations**

The subrecipient should obtain at least three price quotes from qualified vendors when purchasing items, supplies, or services using the small purchase method. If a vendor does not respond or says that they are “not interested,” it does not count as a quote.

#### **8.3.2. Submitted Bids**

When employing the sealed bids procurement method, the subrecipient must issue a publicly advertised invitation for bids that includes a complete, adequate, and realistic specification or purchase description. This specification must clearly define the product or service being procured, enabling bidders to submit competitive, responsive bids.

#### **8.3.3. Submitted Proposals**

Submitted proposals are the responses to a subrecipient’s request for proposal (RFP) or request for qualifications (RFQ). This type of solicitation method is used when the competitive proposal or noncompetitive proposal procurement method is used.

## 9. Procurement Methods

The subrecipient’s procurement process must follow the federal requirements.<sup>1,2,3</sup> Table 1 explains the five procurement methods that the subrecipient must use to procure materials, supplies, construction, and services.

**Federal Regulations and State Laws:**

<sup>1</sup> [40 CFR 35.6565](#)

<sup>2</sup> [2 CFR 200.320](#)

<sup>3</sup> [LRS 38:2211-2296](#)

**Table 1: Procurement methods ([2 CFR 200.320](#))**

Procurement Method	Cost Reasonableness Method	Contract Type	Solicitation Method	Applications	Dollar Thresholds
<b>Micro-Purchase</b> (informal method)	Price analysis	Fixed order or fixed price	No solicitation required	Supplies, produced items, and single-task services	Under \$2,000 for construction. Under \$10,000 for all other purchases.
<b>Small Purchase</b> (informal method)	Price analysis	Purchase order or fixed price	Quotations or submitted bids	Supplies, produced items, and single-task services	\$250,000 or less for produced items and non-construction services.

Cost					
Procurement Method	Reasonableness Method	Contract Type	Solicitation Method	Applications	Dollar Thresholds
<b>Sealed Bid</b> (formal advertising)	Price or cost analysis	Fixed price	Submitted bids	Construction items or produced or designed items	All construction contracts, including less than \$250,000. Produced or designed items over \$250,000.
<b>Competitive Proposals</b> (formal advertising)	Price or cost analysis	Cost reimbursement, fixed price, or time and materials	Submitted proposals	Professional services, multi-task services, or designed items	Professional services or multi-task services over \$250,000. Designed items over \$250,000 when sealed bid is not appropriate.
<b>Noncompetitive Proposals/Sole Source</b>	Cost analysis	Cost reimbursement, fixed price, or time and materials	Submitted proposals	Produced items, single-task services, professional services, multi-task services, or designed items	No particular threshold but may only be used when other methods are not feasible.

## 9.1 Informal Procurement Methods

### 9.1.1. Micro-Purchases

Procurement by micro-purchase refers to the acquisition of supplies or services in which the aggregate dollar amount does not exceed \$10,000 (as established by [Executive Order JBE 20-21, November 12, 2020](#)), or \$2,000 for acquisitions related to construction. This method is an informal type of procurement and allows for a streamlined process.

When conducting micro-purchases, the following guidelines must be adhered to:

- **Equitable Distribution**

To the extent practicable, the non-federal entity must make efforts to distribute micro-purchases equitably among qualified suppliers. This ensures that no single supplier is unduly favored, thus promoting fairness and encouraging a competitive environment, even for small purchases.

- **Competitive Quotations Not Required**

Micro-purchases may be awarded without the need to solicit competitive quotations. However, the non-federal entity must determine that the price being paid is reasonable. This determination should be based on a price analysis or other appropriate methods of price comparison, and that analysis should be documented in the project files.

### 9.1.2. Small Purchase (also called Simplified Acquisition)

Small purchase procedures refer to a simple and informal method for acquiring services and supplies that will not exceed the federal simplified acquisition threshold of \$250,000. Purchases under \$250,000 can be conducted using simplified procurement methods, which do not require formal advertising or sealed bidding, but still need to involve soliciting price or rate quotes from an adequate number of qualified sources. This method allows for a more efficient process while still ensuring that the subrecipient receives the best value for the expenditure.

When using small purchase procedures, the following steps must be followed:

1. **Obtaining Quotes**

The subrecipient must obtain price or rate quotes from at least three qualified sources to ensure a competitive process. Quotes may be requested through various reasonable

methods, including but not limited to telephone, fax, email, mail, or any other appropriate means of communication.

## **2. Documenting the Process**

The subrecipient must maintain written documentation of the process used to identify and contact potential bidders. This should include the following:

- The names of the businesses or vendors contacted
- The method of contact (e.g., telephone, email)
- The prices or rates quoted by each business or vendor
- The justification for selecting one vendor over the others, based on factors such as price, quality, delivery schedule, or other relevant criteria

## **3. Retaining Records**

All documentation related to the simplified acquisition process, including quotations and the rationale for the selection, must be retained in the procurement file for auditing and compliance purposes.

## **9.2 Formal Procurement Methods**

### **9.2.1. Sealed Bids**

Sealed bid procurement is a method by which bids are publicly solicited and a firm fixed price contract (either lump sum or unit price) is awarded to the responsible bidder whose bid conforms to all material terms and conditions of the invitation for bids and is the lowest in price. This method is preferred for procuring construction services, provided the following conditions are met:

#### **Conditions for Sealed Bidding**

Sealed bidding is considered feasible if the following conditions are satisfied:

- **Complete and Adequate Specifications**  
A complete, adequate, and realistic specification or purchase description is available, allowing potential bidders to prepare accurate and competitive bids.

- **Competitive Environment**

Two or more responsible bidders must be willing and able to compete effectively for the contract.

- **Firm Fixed Price Contract**

The procurement lends itself to a firm fixed price contract, where the selection of the successful bidder can be made principally on the basis of price.

### **Requirements for Sealed Bids**

When using the sealed bid method, the following requirements must be observed:

- **Public Advertisement**

The invitation for bids must be publicly advertised, and bids shall be solicited from an adequate number of known suppliers. Suppliers should be given sufficient time to prepare and submit their bids before the opening date.

- **Clear and Comprehensive Bid Invitation**

The invitation, including any relevant specifications and attachments, must clearly define the items or services required to enable bidders to respond appropriately. This ensures that bids can be evaluated based on consistent and defined criteria.

- **Public Opening of Bids**

All bids must be publicly opened at the time and place specified in the invitation.

### **Awarded to the Lowest Responsible Bidder**

A firm fixed price contract will be awarded in writing to the lowest responsive and responsible bidder. In determining the lowest bid, factors such as discounts, transportation costs, and life cycle costs may be considered if specified in the bidding documents. Payment discounts will only be factored into the evaluation if there is a reasonable expectation that such discounts will be utilized based on past experience.

### **Rejection of Bids**

Any or all bids may be rejected if there is a sound, documented reason for doing so. The reasons for rejection must be clearly documented in the procurement file.

### **9.2.2. The Bid Process**

To ensure compliance with the Louisiana Revised Statutes, Title 38: Public Contracts, Works and Improvements, the subrecipient must adhere to the following steps before advertising for bids. As these statutes are frequently updated, the subrecipient is responsible for complying with the most current regulations.

#### **Steps Prior to Advertising for Bids**

##### **1. Submission for Review**

For infrastructure projects, the subrecipient must submit the final plans, specifications, and cost estimate to LOCD-DR for review.

##### **2. Authorization to Advertise**

The subrecipient will be notified by LOCD-DR when they have approval to proceed with advertising for bids.

#### **Creating, Advertising, and Opening Bids**

Louisiana's Public Bid Law ([LRS 38:2211-2296](#)) and [2 CFR 200.320](#) establish specific requirements for creating and advertising bid packages, as well as conducting bid openings. These regulations must be followed during the procurement process to ensure compliance with federal and state laws.

### **9.2.3. Creating the Bid Package**

#### **Writing Technical Bid Specifications**

- The technical specifications for the bid are typically prepared by the subrecipient's architect or engineer based on detailed plans or working drawings.
- The specifications must provide a clear and accurate description of the technical requirements for the materials, products, and/or services needed for the project.
- All specifications must be stamped and sealed by an architect or engineer licensed in the State of Louisiana.

- If the project falls under the jurisdiction of another state agency (e.g., the Department of Health and Hospitals for sewer and water projects), the plans and specifications must receive approval from the appropriate state agency before construction begins.
- For projects involving public buildings, such as fire stations or garages, or buildings that are accessible to the public, the architect or engineer must certify that all applicable accessibility standards for individuals with disabilities have been or will be met. If the project is exempt, the basis for the exemption must be specified. This certification must be co-signed by a city official, filed in the contract documents file, and a copy sent to the state.
- The base bid must include all components of the approved project. Items that were not included in the approved application or have not received subsequent approval from LOCD-DR should not be included in the base bid.

### **Obtaining Land, Right-of-Way, and Easements in Compliance with the Uniform Relocation Act (URA)**

- All necessary land, right-of-way, and easements required for the completion of the project must be acquired before beginning construction.
- If the construction project involves the acquisition of real property, the subrecipient must ensure that all acquisitions are carried out in compliance with the URA. Refer to the Acquisition and Relocation chapter of this manual (Chapter 9) for additional guidance on URA requirements.

### **Locating Underground Utilities**

- Before construction begins, the subrecipient must contact the regional notification center and any owners of underground utilities or facilities that are not members of the regional notification center to verify the existence and location of all underground utilities and facilities within the project area.<sup>1</sup>

Federal Regulations  
and State Laws:

<sup>1</sup> [LRS 38.2223](#)

## Service Connection Line and Hookup Fees

When preparing the bid package, the subrecipient must consider service connection line and hookup fees in accordance with the following:

- Under [24 CFR 570.202\(b\)\(6\)](#)<sup>1</sup> and the Housing and Community Development Act of 1974 (as amended), the financing of costs related to connecting residential structures to water distribution lines or local sewer collection lines is an eligible cost. These costs are eligible as rehabilitation expenses and must be considered an integral part of the overall sewer or water project.
- Develop clear cost and pricing formats.
- **Unit Price Contracts:** Typically used for street, water, sewer, utility, and landscaping projects. Unit prices are established for specific items, with payments based on the actual quantity used.
- **Lump Sum Contracts:** Usually applied to building type contracts where a single, fixed price covers the entirety of the project.
- Bid specifications should clearly define each item type, the estimated quantity of each, the unit price, and the total cost.

Federal Regulations:

<sup>1</sup>24 CFR 570.202(b)(6)

### 9.2.4. Advertising for Bids

For projects involving the development of plans and specifications, bids must be solicited through public advertisement, following approval from LOCD-DR. This ensures transparency and compliance with state and federal regulations.

#### 1. Public Advertising Requirements for Construction Projects

- **Approval to Advertise:** Bids for projects involving detailed plans and specifications must be advertised once LOCD-DR has given approval.
- **Publication Requirements:** In accordance with the Louisiana Public Bid Law, advertisements for public works contracts must be published once a week for three

different weeks in a local newspaper. The first advertisement must appear at least 25 days before the scheduled bid opening date.

## **2. Public Advertising Requirements for Material Purchases**

- **Publication Requirements:** For contracts involving the purchase of materials, the advertisement must be published twice in a local newspaper. The first advertisement must appear at least 15 days before the bid opening date. The first publication cannot occur on a Saturday, Sunday, or legal holiday.

## **3. The Availability of Plans and Specifications**

- Prospective bidders can access plans and specifications for the project, which must be made available to bidders starting on the day of the first advertisement. These documents must remain accessible until 24 hours before the scheduled bid opening.

## **4. Compliance with the Conditions of Employment and Non-Discrimination Regulations**

- The advertisement must direct the bidders' attention to the applicable conditions of employment, non-discrimination requirements, and the following federal standards:
  - Federal Prevailing Wage Rates
  - Segregated Facility Requirements
  - Section 3 of the U.S. Department of Housing and Urban Development (HUD) Act of 1968
  - Section 109 (Non-Discrimination in Programs Receiving Federal Assistance)
  - Equal Opportunity Requirements

## **5. Amendments to Bid Documents (Addenda)**

- If the subrecipient or LOCD-DR issues any amendments (addenda) to the bid documents during the advertisement period, these addenda must be distributed to all prospective bidders who have received the original bid documents.

- **Timing of the Addenda:** Public entities are prohibited from issuing any addenda modifying plans or specifications within 72 hours of the advertised time for bid opening (excluding weekends and legal holidays). If it becomes necessary to issue an addendum within this period, the bid opening must be extended by at least 7 days, but no more than 21 days. If these criteria are met, the project does not need to be re-advertised. The addendum must clearly state the new bid opening time and date.
- A copy of all addenda, including those solely related to Davis-Bacon wage rate determination, must be submitted to LOCD-DR at the time of issuance.

#### **6. Handling and Security of Sealed Bids**

- All bids received prior to the official bid opening must remain sealed and stored in a secure location until the designated opening time.

#### **7. Documentation Submission to LOCD-DR**

- After all three advertisements have been published, the subrecipient must submit a copy of the publicized bid advertisement (including publication dates) to the LOCD-DR program management staff person assigned to the grant.

After the bid opening, the subrecipient must act within 45 calendar days to either award a contract to the lowest responsible bidder or formally reject all bids. This timeline is crucial to ensure compliance with the Louisiana Public Bid Law ([LRS 38:2215](#)) and the project's procurement requirements:

##### **1. Action Within 45 Days**

The subrecipient has 45 days from the bid opening date to make a decision on awarding the contract. During this period, the subrecipient must review all bids and determine the lowest responsible and responsive bidder.

## 2. Extension of the Deadline

If more time is needed to finalize the award, the subrecipient and the lowest responsible bidder may mutually agree in writing to extend the award deadline. Extensions must be in 30-day increments and can be extended as necessary through mutual consent.

## 3. Bid Rejection

The subrecipient has the right to reject any or all bids for just cause.<sup>1</sup> Just cause may include issues such as bids exceeding budgetary constraints, failure to meet specifications, or evidence of collusion among bidders.

State Laws:

<sup>1</sup> [LRS 38:2214.B](#)

<sup>2</sup> [LRS 38:2215](#)

## 4. Correct Federal Wage Decision

A contract should be awarded with the proper federal wage decision. The subrecipient must verify that the correct federal wage decision has been included before the award. The verification process is described in detail in Chapter 8 of this manual, which addresses labor standards and compliance with federal prevailing wage requirements.

## 5. Exceptions to the 45-Day Rule

For any exceptions to the 45-day rule for awarding a contract, refer to [LRS 38:2215](#),<sup>2</sup> which outlines specific circumstances where this rule may not apply.

### 9.2.5 Conducting Bid Openings

#### 1. Bid Opening Process

- Bids must be read aloud during the opening.
- The apparent low bidder should be identified at this stage.

#### 2. Bid Review

- Bids must be reviewed for both technical and legal responsiveness.
- Evaluation should ensure that bidders have the capacity to deliver the required products or services.

### **3. Recordkeeping**

- Minutes of the bid opening, along with a tabulation of the bids, must be documented and included in the contract file.

## **9.3 Procurement by Competitive Proposals**

The competitive proposal method is typically used when sealed bids are not appropriate and it involves multiple sources submitting offers. Contracts awarded under this method can be either fixed price or cost reimbursement. When using this method, the following requirements must be met:

### **1. Advertisement of Requests for Proposals**

- RFPs must be advertised, including in the jurisdiction's newspaper of record.
- The advertisement must identify all evaluation factors and their relative importance (i.e., scoring criteria).
- Responses to publicized RFPs must be honored to the maximum extent practical.

### **2. Soliciting Proposals**

- Proposals must be solicited from multiple qualified sources.

### **3. Evaluation and Selection**

- Subrecipients must have a method for conducting technical evaluations of the proposals received.
- The evaluation process should also include a method for selecting the awardee.

### **4. Awarding the Contract**

- The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, considering both price and other factors.

### **5. Procurement of Architectural/Engineering (A/E) Professional Services (RFQs)**

- Subrecipients may use a qualifications-based procurement process for A/E services.
- This method evaluates competitors' qualifications and selects the most qualified firm, subject to the negotiation of fair and reasonable compensation.

- This approach, where price is not used as a selection factor, can only be used for procuring A/E professional services.

#### **6. Single Proposal or Bid**

- If only one bid or proposal is received, the subrecipient must provide the LOCD-DR with a complete history of all efforts made to ensure full and open competition.
- LOCD-DR will review all relevant documentation and advise the subrecipient on how to proceed.

### **9.4 Requests for Proposals**

RFPs are used to procure professional services, excluding A/E services, which are handled through a separate qualifications-based process (see [Subsection 9.5: Requests for Qualifications](#)). RFPs for competitive acquisitions should, at a minimum, provide the following details:

#### **1. Description of the Subrecipient's Requirements**

- Clearly outline the scope and nature of the services that the subrecipient is seeking to procure.

#### **2. Anticipated Terms and Conditions**

- Detail the expected terms and conditions that will apply to the contract.
- The solicitation may allow offerors to propose alternative terms and conditions.
- If alternative terms are permitted, the evaluation approach should account for the potential impact on other contract elements (e.g., place of performance, payment, funding requirements).

#### **3. Proposal Requirements**

- Specify what information the offeror must include in their proposal to ensure compliance and accurate evaluation.

#### 4. Evaluation Factors and Subfactors

- List the factors and any significant subfactors that will be used to evaluate the proposals.
- Clearly state the relative importance of each factor to guide the selection process.

#### Additional Resources:

- **Exhibit 4-6:** Sample advertisement of an RFP for an administrative consultant
- **Exhibit 4-7:** Sample scope of services for a Housing Rehabilitation Program to help develop housing-specific RFPs
- **Exhibit 4-8:** Sample RFP for an administrative consultant

### 9.5 Requests for Qualifications

RFQs are used to procure professional design services from A/E firms through the competitive negotiation method. This process is specific to design services and cannot be used to procure any other services, such as project management or construction management, which must be obtained through an RFP (see [Subsection 9.4: Requests for Proposals](#)).

#### Key Requirements for Using RFQs:

##### 1. Procurement Process

RFQs are used to identify and select the most qualified firm for A/E services. Selection is based purely on qualifications, not cost.

##### 2. Evaluation of Qualifications

The qualification statements submitted by firms must be evaluated using the selection criteria specified in the RFQ. These criteria should be clearly defined and relevant to the project's needs.

### 3. Negotiation of Compensation

After selecting the top-ranked firm based on their qualifications, the subrecipient should negotiate fair and reasonable compensation for the services.

#### Additional Resources:

- **Exhibit 4-9:** A sample RFQ for procuring architectural/engineering services is available for reference.

## 9.6 Review of Responses

One of two procedures can be used to review responses to an RFP or an RFQ. The procedure chosen must be identified in the advertisement, and the procedure cannot be changed once the procurement process is initiated.

1. Establish a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer.” The proposals would be re-evaluated and the highest scoring firm would be chosen.
2. Evaluate the proposal(s) according to the selection criteria and award the contract to the highest scoring firm.

## 9.7 Noncompetitive Procurement/Sole Source

This method is used only when it is confirmed that the required goods or services are available from only one provider (sole source), or when competitive methods are unsuccessful in attracting adequate responses. Sole source procurement is strictly regulated and only allowed when all three of the following conditions are met:

### 9.7.1. Conditions for Noncompetitive Procurement (Including Sole Source)

#### 1. Determination of Competitive Procurement Infeasibility

- It must be established that the contract cannot be awarded through competitive methods (e.g., small purchase, sealed bids, competitive proposals).
- When goods or services are available from only one provider.

- The subrecipient must demonstrate that multiple attempts to solicit competition have been inadequate and maintain supporting documentation in the procurement file to justify why competition was not feasible.

## **2. Pre-Bid Cost Analysis**

- A cost analysis must be conducted to verify that the proposed costs are reasonable and justified, covering cost data and specific elements such as profit. Documentation of this analysis must be retained in compliance with [Subsection 4.3: Cost Analysis](#).

## **3. Written Approval from LOCD-DR**

- Subrecipients must obtain prior written approval from LOCD-DR, submitting evidence of efforts to secure competition and a clear justification for the sole source request.
- LOCD-DR will review and provide guidance, including any conditions needed to maintain compliance with CDBG-DR and CDBG-MIT regulations.

### **9.7.2. Supporting Documentation and Compliance**

All records supporting the sole source justification, cost analysis, and LOCD-DR's written approval must be maintained for auditing and transparency purposes.

### **9.8 Exceeding Pre-Bid Estimates or Analyses**

In situations where the lowest bid received exceeds the pre-bid price or cost analysis by more than 15% for the project, the following procedures should be developed in consultation with LOCD-DR program management to determine the best course of action:

#### **Reject All Bids and Rework the Specifications**

- All bids received may be rejected.
- The bid specifications can then be revised, with input from LOCD-DR, to bring costs within the available budget.
- The project would be re-bid with the updated specifications.

## Reallocation of Funds

- After consulting with LOCD-DR, the difference between the available funds and the lowest bid can be covered through a reallocation of existing funds.
- This option allows the project to move forward without altering the scope or specifications.

## Use of Other Funding Sources

- The subrecipient may consult with LOCD-DR to cover the shortfall by utilizing other funding sources, such as local funds.
- This approach ensures that the project can proceed with the existing bid and specifications by supplementing the budget with additional financial resources.

These options ensure that when the bids exceed the estimates, the subrecipient can adjust their approach to stay within budget while adhering to procurement guidelines and LOCD-DR program requirements.

# 10. Contractor Eligibility Verification

The subrecipient must ensure that all contractors, vendors, recipients, and subrecipients receiving CDBG-DR or CDBG-MIT funds meet all eligibility requirements. Take the following steps to verify and document contractor eligibility for all procured services.

## 10.1 Prime Contractor Clearance

The subrecipient must get contractor clearance before awarding a contract to a prime contractor or vendor, regardless of the field or specialty. To get clearance, the subrecipient must (1) search the [System for Award Management \(SAM.gov\)](https://www.sam.gov) to find the contractor's debarment status and (2) keep a copy of the results in the subrecipient procurement files. This website only tells the subrecipient if the contractor is debarred. Other performance information is not gathered and the subrecipient may choose to investigate further before working with a prime contractor.

## 10.2 Subcontractor Clearance

LOCD-DR does not clear subcontractors. The subrecipients must make prime contractors aware that it is their responsibility to verify subcontractor eligibility based on factors such as past performance, a yellow page listing, proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may use the website at <https://www.sam.gov> to determine whether a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, LOCD-DR urges prime contractors to closely scrutinize their subcontractor selection. If a contractor or subcontractor is found to be ineligible after the awarding of a contract, the contract must be immediately terminated and the matter reported to LOCD-DR.

## 10.3 Contract Award Notice

Once a contractor has been selected using the appropriate solicitation method, the subrecipient must submit a completed Notice of Contract Award form to LOCD-DR for all prime contracts. This form must be received by LOCD-DR within 30 days after the award. This form, along with the instructions, is provided as Exhibit 4-14. Along with the Notice of Contract Award, the subrecipient must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project, as well as the Verification of Wage Decision form (Exhibit 8-6).

# 11. Contract Requirements

The procurement process and contract requirements for federally funded projects, such as those under CDBG-DR and CDBG-MIT, are strict to ensure accountability and adherence to federal standards. Here is a breakdown of the key contract requirements:

- Contract Type Based on the Procurement Method
  - The contract type will depend on the procurement method chosen by the subrecipient; however, specific stipulations apply across all contracts.
- Construction Contracts

- **Prohibition of Cost-Plus or Incentive Savings Provisions:** Construction contracts must not include provisions that allow for “cost-plus” pricing (where the contractor’s profit is a percentage of the project’s costs) or incentive-based savings where the contractor earns more if costs are reduced.
- **No Percentage-Based Fees:** Contracts cannot include fees based on a percentage of the project’s cost. For example, a “handling fee” of 15% on top of project expenses is not allowed.
- Special Rules for Hurricane Isaac-Funded Projects
  - **Performance Requirements and Penalties:** Contracts funded through the Hurricane Isaac allocation must include specific performance benchmarks and associated penalties for non-performance. This ensures that contractors are held accountable to performance standards.
  - **Adherence to 2 CFR 200.320:** Contracts with contractors need to align with the procurement standards specified in [2 CFR 200.320](#), which outlines federal procurement requirements. However, this rule does not apply to agreements with subrecipients.
- Clarity in Contract Language
  - Every contract and agreement must clearly define performance expectations and requirements, ensuring that all parties understand their obligations and the standards they must meet.
  - By implementing these rules, the subrecipient ensures that each contract is transparent, fair, and aligned with federal compliance standards. This approach mitigates financial and performance risks, enhancing accountability in federally funded projects.
  - Clear performance period or date of completion.

The specific rules in a contract depend on the type of services provided. The following sections explain the rules for consulting, appraisal, architectural and engineering, and construction

services. Regardless of the service or template used, all contractors must sign the CDBG-DR Compliance Provisions Rider (Exhibit 4-16), which applies to all contracts between the subrecipient and the contractor.

### **11.1 Consulting, Professional Services, and Appraisal Contract Requirements**

The subrecipient must follow specific project rules when signing contracts. Sample contracts for the subrecipient to use are included; make changes to fit the services needed. For example, use the sample contract in Exhibit 4-10 for consulting services. If the subrecipient needs appraisal services, use the contract in Exhibit 4-15. For more details about procuring appraisal services, see Chapter 9: Acquisition and Relocation. Also, the contractor must sign the CDBG-DR Compliance Provisions Rider in Exhibit 4-16 and have it on file at the time of contract execution.

### **11.2 Architectural and Engineering Contract Requirements**

When hiring architectural and engineering (A&E) firms for design services under the CDBG-DR and CDBG-MIT programs, the subrecipient can use standard contract templates, such as from the American Institute of Architects (AIA) or Engineers Joint Contract Documents Committee (EJCDS), but must follow specific guidelines to ensure compliance and cost-effectiveness. Here is a breakdown of the requirements:

#### **Contracting Guidelines for A&E Services**

##### **1. Use of Standard Templates**

The subrecipient may use AIA or EJCDS standard contracts; however, adherence to CDBG-DR and CDBG-MIT specific provisions is essential.

##### **2. Fee Justification**

Fees must be subject to negotiation, be fair and justifiable, and comply with CDBG-DR and CDBG-MIT requirements, whether using a fixed price or cost reimbursement contract.

A statement that fees meet an allowable amount is insufficient. Detailed justification is required to prove that the fees are reasonable based on the project scope and market rates.

### 3. Funding and Payment Conditions

The funds allocated for A&E services depend on the amount of CDBG-DR and CDBG-MIT funding approved. If the project does not receive funding, the A&E firm will not be paid from the CDBG-DR and CDBG-MIT programs.

Any substantial changes in the project scope after funding approval will require the subrecipient to provide a justification for additional services. Approval for extra funds is contingent on a review of the justification by the funding authority.

### 4. Submission and Compliance Requirements

Before advertising for bids, the subrecipient must submit final plans, specifications, and cost estimates for review. The contractor must sign the CDBG-DR Compliance Provisions Rider (see Exhibit 4-16) and retain it on file before contract finalization.

## 11.3 Construction Services Contract Requirements

For projects funded under the CDBG-DR and CDBG-MIT programs, the subrecipient has the option to use a generic construction contract as long as they include specific compliance provisions and follow established pricing guidelines. Here are the requirements and preferences:

### CDBG-DR Compliance Provisions

- **Compliance Provisions Rider:** Before contract execution, the subrecipient must have a signed CDBG-DR and CDBG-MIT Compliance Provisions Rider in place and on file. This ensures that the contract aligns with CDBG standards and regulations.
- **References:** See Exhibit 4-16 for details on the CDBG-DR Compliance Provisions Rider and Exhibit 4-2 for the generic construction contract template.

### Pricing Options for Firm Fixed Price Contracts

When using firm fixed price contracts for construction, pricing can be structured in one of two ways:

- **Lump Sum Basis:** A single price is paid for the total work or defined parts of the project.

This is the preferred method.

- **Unit Price Basis:** Pricing is based on units of work, applicable in specific cases outlined below.

### Situations Where Unit Pricing Is Preferred Over Lump Sum

Unit pricing should be used instead of lump sum pricing in the following cases:

- **Large Quantities of Work:** Tasks such as grading, paving, or site preparation are involved.
- **Uncertain Quantities:** When quantities, such as excavation, cannot be reliably estimated.
- **Potential Changes in Work Quantities:** If work quantities may significantly change during construction, unit pricing allows for adjustments without contract renegotiation.
- **Complex Estimation Needs:** When contractors would need to invest considerable effort to generate reliable lump sum estimates.

## 11.4 Bonding

For construction or facility improvement contracts exceeding the simplified acquisition threshold of \$250,000, subrecipients must ensure appropriate bonding requirements to protect the awarding agency's interests. Here are the key requirements and steps:

### 11.4.1. Bonding Requirements

#### Bid Guarantee

- **Requirement:** Each bidder must provide a bid guarantee equal to 5% of the bid price.
- **Purpose:** This guarantee ensures that the bidder will sign all necessary contractual documents in a specified timeframe if awarded the contract.
- **Types:** Acceptable forms of a bid guarantee include a bid bond, certified check, or other negotiable instruments accompanying the bid.

## Performance Bond

- **Requirement:** The contractor must provide a performance bond for 100% of the contract price.
- **Purpose:** This bond secures the contractor's full performance and compliance with all contractual obligations.
- **Reference:** A sample performance bond is available in Exhibit 4-2f.

## Payment Bond

- **Requirement:** The contractor must also provide a payment bond for 100% of the contract price.
- **Purpose:** This bond guarantees payment to all individuals providing labor and materials for the project as required by law.
- **Reference:** A sample payment bond is available in Exhibit 4-2g.

## Verification Process

- **Bonding Verification:** The subrecipient can use Exhibit 4-11 to confirm the contractor's bonding arrangements.

## Alternative: Accepting Subrecipient Bonding Policies

The awarding agency may, in some cases, accept the subrecipient's own bonding policies if it determines that these adequately protect its interests. If the agency does not make this determination, the subrecipient must adhere to the minimum requirements above.

These bonding requirements ensure financial protection for the awarding agency, securing the project against the potential risks associated with contractor non-performance or non-payment.

## 12. Section 3 Contract Requirements

Under [Section 3 of the HUD Act of 1968](#), there are specific compliance requirements aimed at promoting economic opportunities for low- and very-low-income individuals. Here is what subrecipients need to know:

### 12.1 When Section 3 Requirements Apply

**Subrecipient Compliance:** If the subrecipient receives more than \$200,000 in HUD funding for construction projects, they must comply with Section 3 requirements.

**Contractor Compliance:** Any contractor or subcontractor engaged by the subrecipient with a contract over \$100,000 for construction contracts must also comply with Section 3.

### 12.2 Key Requirements Under Section 3

Section 3 compliance focuses on hiring, training, and contracting preferences for low- and very-low-income residents, especially those who are assisted by HUD, and on engaging the businesses that employ them. Compliance includes the following:

- **Hiring Prioritization:** Prioritize hiring Section 3 residents, such as local public housing residents and other low-income individuals in the project area.
- **Contracting Opportunities:** Direct business opportunities for Section 3 businesses, including those owned by or that significantly employ Section 3 residents.

#### Additional Guidance:

For more detailed information, refer to Chapter 7: Civil Rights, which provides insights into implementing civil rights and Section 3 provisions effectively.

## 13. Procurement Resources

- Guidelines for Effective Procurement at the HUD Exchange

<https://files.hudexchange.info/resources/documents/CDBG-DR-Procurement-Guidelines-for-Effective-Procurement.pdf>

- CDBG-DR Procurement Solicitation Review Checklist

<https://www.hudexchange.info/resource/7222/cdbg-dr-procurement-solicitation-review-checklist/>

## 14. LOCD-DR Exhibits

Exhibit	Description
Exhibit 4-1	Sample Procurement Policy
Exhibit 4-2	Sample Contracts Document Guide
Exhibit 4-3	Conflict of Interest
Exhibit 4-4	Cost Price Detail
Exhibit 4-5	Quick Guide to Cost Price Analysis
Exhibit 4-6	Sample Advertisement Request for Proposals for Administrative Consulting Services
Exhibit 4-7	Sample Housing Scope of Services
Exhibit 4-8	Instructions for RFP for an Administrative Consultant
Exhibit 4-9	Sample Request for Qualification Statements for Engineering Services
Exhibit 4-10	Sample Contract for Professional Services
Exhibit 4-11	Bonding Verification
Exhibit 4-12	Verification of Prime Contractor Eligibility
Exhibit 4-13	Verification of Professional Services Eligibility <b>(Removed)</b>
Exhibit 4-14	Sample Notice of Contract Award
Exhibit 4-15	Sample Agreement for Appraisal Services (Acquisition)
Exhibit 4-16	Compliance Provisions Rider for CDBG-DR Contract

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 5: Financial Management



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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## 1. Introduction

The purpose of effective financial management is to ensure the proper, efficient, timely, and transparent use of funds. To achieve this, it is essential to implement the following practices:

1. **Establish Robust Internal Controls**

Develop and maintain a system of checks and balances that safeguards assets, ensures accuracy in reporting, and prevents unauthorized transactions.

2. **Maintain Comprehensive Documentation**

Keep detailed and organized records to support all accounting entries, providing a clear audit trail that validates financial data.

3. **Ensure Complete, Current, and Regularly Reviewed Financial Reports**

Financial statements and reports should reflect all relevant transactions, be frequently updated, and undergo regular review for accuracy and completeness.

4. **Conduct Timely Audits in Accordance with Standards**

Schedule and execute audits promptly, adhering to established standards and best practices to verify compliance and financial integrity.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Activity Delivery Cost (ADC):** Allowable costs incurred for implementing and carrying out eligible CDBG-DR and CDBG-MIT activities. All ADCs must be allocable to CDBG-DR and CDBG-MIT activities. ADCs include direct costs integral to the delivery of the final CDBG-DR and CDBG-MIT assisted activities. Under some circumstances, ADCs may include indirect costs.
2. **Administrative Costs:** The cost of activities that are required to meet federal regulations, which include such items as grants management, monitoring, financials, reporting, and so forth. A general guideline is that if it crosses multiple projects, it is probably an administrative cost. Contact the Louisiana Office of Community

Development – Disaster Recovery (LOCD-DR) for additional guidance and specific examples of activities and under which categories, by program area, these activities should be budgeted and/or invoiced.

3. **Advance Payment:** A payment that a federal agency or pass-through entity makes by any appropriate payment mechanism and payment method before the recipient or subrecipient disburses the funds for program purposes.
4. **Allowable Cost:** Costs that are in line with [2 Code of Federal Regulations \(CFR\) 200, Subpart E – Cost Principles](#).
5. **Direct Cost:** Any project cost/project delivery cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are the direct costs of that contract. All costs identified specifically with the other final cost objectives of the contractor are the direct costs of those cost objectives.
6. **Federal Deposit Insurance Corporation (FDIC):** An agency that protects depositors against the loss of their insured deposits if an FDIC-insured bank or savings association fails.
7. **Indirect Cost:** Any cost not directly identified with a single final cost objective but identified with two or more final cost objectives or with at least one intermediate cost objective.
8. **Program Income:** Gross income received by the subrecipient directly generated from the use of CDBG-DR and CDBG-MIT funds or matching contributions.
9. **Project Cost:** The total of Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) funds, local or other matching funds, and total business investment in the project.

11. **Real Property:** Land, including all of the natural resources and permanent buildings on it.
12. **Taxpayer Identification Number (TIN):** The number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns.  
The TIN may be either a Social Security Number or an Employer Identification Number.

### 3. Requirements

The Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) regulations include, but are not limited to, the following:

1. **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards** ([2 CFR 200](#)<sup>1</sup>)

Outlines the basic rules for federal awards.

2. **Community Development Block Grant Program** ([24 CFR 570](#)<sup>2</sup>)

Governs the state CDBG program. Subpart I focuses on the state CDBG program and [Section 570.489](#)<sup>3</sup> details program administrative requirements. Keep in mind that the U.S. Department of Housing and Urban Development (HUD) may have granted waivers to certain requirements.

3. **Louisiana Travel Guide, Policy and Procedure Memorandum 49**

Louisiana travel regulations that provide guidelines and establish procedures for individuals incurring business travel and other expenses.

(<https://www.doa.la.gov/oa/ost/ppm-49-travel-guide/>)

Both 2 CFR 200 and 24 CFR 570 govern CDBG-DR and CDBG-MIT subrecipient financial management systems. In addition, the use and accounting for CDBG-DR and CDBG-MIT funds are governed by the Louisiana Office of Community Development – Disaster Recovery (LOCD-

#### Federal Regulations:

<sup>1</sup> [2 CFR 200](#)

<sup>2</sup> [24 CFR 570](#)

<sup>3</sup> [Section 570.489](#)

<sup>4</sup> [31 CFR 205](#)

DR) requirements and [31 CFR 205](#).<sup>4</sup> Failure to account for and manage CDBG-DR and CDBG-MIT funds accordingly may result in sanctions imposed by LOCD-DR and/or HUD.

### **3.1 Core Financial Management Requirements (per the Common Rule)**

The financial management system must provide the following:

- 1. Complete and Accurate Financial Disclosures**

Reports should reflect accurate, up-to-date financial information on grant-funded activities.

- 2. Grant Fund Tracking**

Records must identify both the sources and the applications of grant funds to ensure traceability.

- 3. Budget Comparisons**

Track actual outlays against the approved budget to monitor alignment with financial plans.

- 4. Efficient Funds Disbursement**

Minimize the delay between fund transfers from the U.S. Department of the Treasury and disbursement by implementing efficient procedures.

- 5. Reasonable and Allowable Costs**

Ensure that expenses comply with reasonableness and allowability standards.

- 6. Source Documentation**

Maintain detailed documentation to support all financial records.

- 7. Audit Resolution Mechanism**

Establish procedures for timely resolution of audit findings and recommendations.

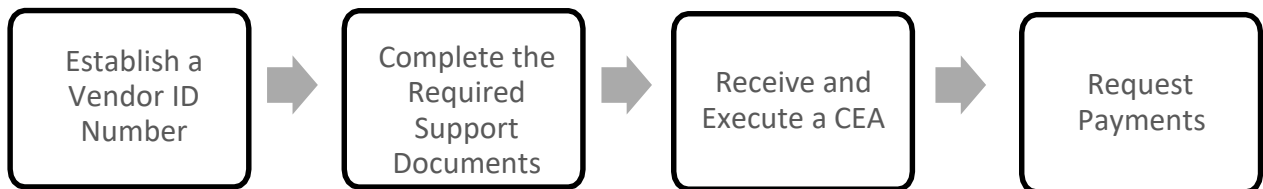
The three basic functions that must be served by the financial management system are as follows:

1. The financial management system must have an identified procedure for recording all financial transactions.

2. All expenditures should be related to allowable activities in the Cooperative Endeavor Agreement (CEA), approved by LOCD-DR.
3. All expenditures of CDBG-DR and CDBG-MIT funds must be in compliance with applicable laws, rules, and regulations.

## 4. Establishing the CDBG-DR and CDBG-MIT Funds Account

The process for establishing a CDBG-DR and CDBG-MIT funds account is illustrated in the diagram below:



### 4.1 Establish a Vendor ID Number

In order to receive payments from LOCD-DR, the subrecipient must have a vendor number from the Office of State Procurement. If the subrecipient does not already have a vendor number, they should follow the steps below to set up a vendor account.

1. Register for a LaGov Vendor ID at the Office of Statewide Reporting and Accounting Policy (OSRAP) website. (For a detailed walkthrough of this process, review this [Vendor Registration Document](#).)
2. Complete and return the LaGov Electronic Funds Transfer (EFT) Enrollment form directly to OSRAP; see Exhibit 5-4 for detailed instructions.

### 4.2 Complete the Required Support Documents

The following forms must be completed and returned before LOCD-DR will issue a CEA, for signature, to the subrecipient:

1. CEA Contact Information Form (Exhibit 5-1)
2. Internal Revenue Service (IRS) Form W-9 (if applicable) (Exhibit 5-2)

3. LOCD-DR Authorized Signature Form (Exhibit 5-3) (See Subsection 4.2.1 for more information on completing this form.)
4. Board resolution on letterhead indicating the authorized signatory of the contract
5. HUD Form 2880 (Exhibit 5-5)
6. Proof of required insurance coverages (via an ACORD form or the declaration page(s) of the insurance policy)
7. System of Awards management printout showing proof of active registration status on [www.sam.gov](http://www.sam.gov)

#### **4.2.1 Authorized Signature Form**

To establish an account with LOCD-DR, an Authorized Signature Form (Exhibit 5-3) must be carefully completed and meet the following requirements:

1. Signatures must match the typed or printed names.
2. The certifying officer must apply a date to the form by his or her signature.

The form designates who is authorized to sign the community's Requests for Payment. One form with signatures must be submitted to LOCD-DR. Detailed line-by-line instructions are included on the back of the form. If a change is needed to the names of the persons authorized to sign Requests for Payment at any time during the project, a new Authorized Signature Form must be submitted to LOCD-DR.

#### **4.2.2 Process to Change Forms**

If updates to any forms are necessary during the project, subrecipients must follow these steps:

1. **Submit Revised Forms to LOCD-DR**

Any changes to the forms should be documented and submitted as revised forms to the LOCD-DR for proper updates in the system.

## 2. **Contact OSRAP for Changes to the EFT Information or Vendor ID**

For updates specifically regarding EFT information or the LaGov Vendor ID, subrecipients should reach out directly to OSRAP.

## 3. **Allow for Processing Time**

The processing time for any changes is approximately 14 days. Subrecipients should allow at least this period before submitting a new request for payment to ensure that all updates are processed and recorded.

### **4.3 Receive and Execute the CEA**

A copy of the CDBG-DR and CDBG-MIT CEA will be provided that identifies the following:

1. Activities funded
2. CEA amount
3. General terms and conditions

Subrecipients should read the CEA carefully before signing it. The subrecipient will receive a signed copy of the contract for their records after the CEA has been signed by all parties and approved in the state's procurement system. The CEA is fully executed only after all LOCD-DR signatures have been obtained.

### **4.4 Establish an Account for Receiving Funds and Requesting Payments**

LOCD-DR will deposit the subrecipient's project fund payments into the account referenced on the EFT form. The subrecipient should follow these steps to keep the funds secure:

1. Balance the account every month to ensure accuracy.
2. When making payments, LOCD-DR recommends using pre-printed, pre-numbered checks rather than counter checks.
3. If the subrecipient uses computer-generated checks, appropriate safeguards must be in place such as passwords and limited access to prevent unauthorized use.
4. After the project is closed, the same account can be used for subsequent grants by voiding three or four checks.

#### **4.4.1 Interest Earned on Advance Payments**

Subrecipients must manage interest earned on federal advance payments in accordance with federal regulations. Specifically, interest earned on advance payments must be:

- Deposited and maintained in interest-bearing accounts, unless:
  - The recipient or subrecipient receives less than \$250,000 in federal funding per year,
  - The best available interest-bearing account would not reasonably be expected to earn interest in excess of \$500 per year on federal cash balances,
  - The depository would require an average or minimum balance so high that it would not be feasible with the expected federal and non-federal cash resources,
  - A foreign government or banking system prohibits or precludes interest-bearing accounts, or
  - An interest-bearing account is not readily accessible (e.g., due to public or political unrest in a foreign country).
- Interest earned on federal funds must be tracked by award and calculated on at least a quarterly basis.
- The subrecipient is allowed to retain up to \$500 per year, per account, of earned interest to offset administrative expenses.
- Any interest in excess of \$500 per year must be remitted annually to the U.S. Department of Health and Human Services (HHS) Payment Management System (PMS).

#### **4.4.2 Central Bank Account or Clearing Account**

If a general bank account is used, the following steps are required:

1. Separate financial statements for the CDBG-DR and CDBG-MIT grants must be produced.
2. All invoices for which payment is requested must be paid in advance, and the checks must be cleared before reimbursement by LOCD-DR.

3. Interest accrued on CDBG-DR and CDBG-MIT funds in excess of \$500 in a calendar year must be returned annually to HHS PMS.

#### **4.4.3 Insured Account**

Funds for the project must be deposited into an account that is Federal Deposit Insurance Corporation (FDIC) insured. The bank must provide collateral to secure those funds that are in excess of the FDIC coverage (currently at \$250,000). Bank accounts must be secured by FDIC insurance or bank pledged collateral for the full amount of CDBG-DR and CDBG-MIT funds held in the account.

## **5. When Funds Can Be Drawn**

Funds can be drawn once:

1. The CEA is executed and approved by the Office of State Procurement
2. All required forms are submitted
3. An account is set up
4. The funds have been released by the appropriate environmental review documents

## **6. Requesting Payment**

The process for requesting payment varies by disaster, with different procedures possibly designated for:

- Administrative Costs
- Activity Delivery Costs
- Direct Project Costs

LOCD-DR is expected to use an electronic system for payment requests and fund disbursements. LOCD-DR will provide grantees with instructions and technical assistance on how to request payments, disburse funds, and maintain the required records.

Requests for payments must be authorized according to the subrecipient’s internal control process and signed by the person designated on the Authorized Signature Form. For additional guidelines on establishing appropriate internal controls, see Section 8 below.

## 7. Procedures for Financial Administration

Accounting procedures must be followed to comply with state and federal requirements under the CDBG-DR and CDBG-MIT programs. The following is an overview of these accounting procedures.

### 7.1 Documenting the Use of Funds

All funds must be documented appropriately to establish that such funds are in compliance with applicable statutes ([2 CFR 200.300<sup>1</sup>](#)). The subrecipient must certify to this on each request for payment submitted to LOCD-DR using the following language:

Federal Regulations:

<sup>1</sup> [2 CFR 200.300](#)

*I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provisions of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Section 3729–3730 and 3801–3812.*

### 7.2 Fidelity Bond

A copy of the subrecipient’s bonding certificate or fidelity policy and proof of payment or renewal will be required. This should accompany the subrecipient’s audit.

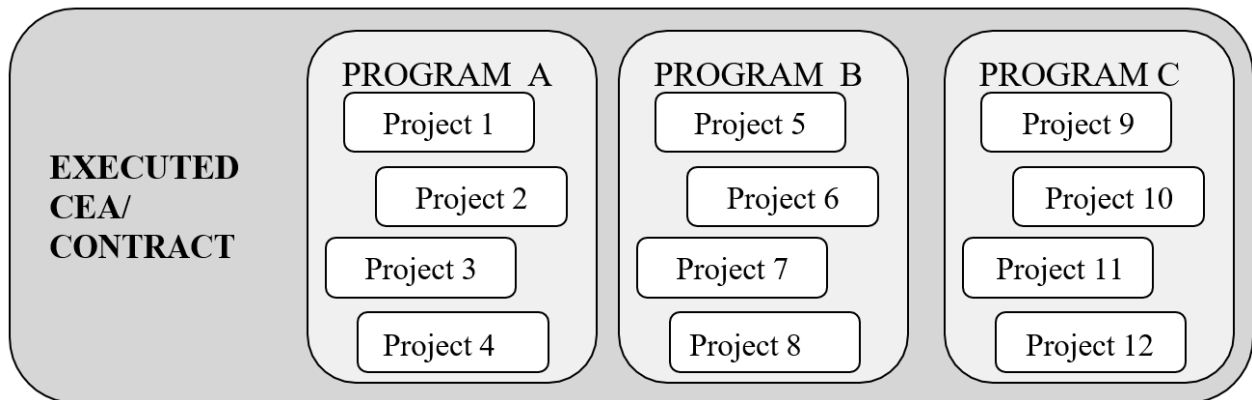
### 7.3 Accounting Records

The accounting system used for CDBG-DR and CDBG-MIT funds must have:

1. **Source and Application Tracking:** Maintain records that clearly identify the sources and the applications of funds for grant-assisted activities.
2. **Modified Accrual Basis:** Disaster Recovery CDBG program funds must be accounted for on a modified accrual basis.

3. **System Functionality:** The accounting system must track receipts and expenditures and generate general purpose financial statements on request (Exhibit 5-6 offers examples). For assistance, contact the LOCD-DR staff.
4. **Project-Level Reporting:** Grantees must report on each project separately, even if multiple projects are within a single CEA.

In the example below, the subrecipient has implemented 12 different projects within their one CEA. The projects are within three different programs. The subrecipient must be able to report on each of the 12 projects separately.



## 7.4 Support Documents

Accounting records must be supported by such source documentation as cancelled checks, paid bills, invoices, purchase vouchers, payrolls, deposit slips, time and attendance records, CEA and subgrant award documents, and so forth ([2 CFR 200.300](#)). Do not make a payment without invoices and vouchers physically in hand. All vouchers/invoices should be on the vendors' letterhead.

Source documentation should explain the basis of the costs incurred and the actual dates of the expenditure. For example, source documentation on payments to contractors would include a request for payment, proof of inspection to verify work and materials, and cancelled checks.

LOCD-DR encourages the use of purchase orders when preparing expenditures for payment of any cost associated with the project. These documents are prepared in accordance with local policies and procedures, as well as those required by federal regulations.

## 7.5 Record Keeping

Financial records are to be retained for a period of three years after final close-out of the state's Disaster Recovery grant by HUD, with access guaranteed to state officials, their representatives, or HUD representatives. Audit requirements are discussed later in this chapter.

See Chapter 3: Records Management for additional record-keeping requirements and a comprehensive list of all financial documents required to be maintained.

## 8. System of Internal Controls

Internal controls refer to the combination of policies, procedures, defined job responsibilities, personnel, and records that allow an organization or agency to maintain adequate oversight and control of its cash, property, and other assets. The soundness of any subrecipient's financial management structure is determined by its system of internal controls.

Specifically, internal controls refer to the following:

1. Effectiveness and efficiency of operations
2. Reliability of financial reporting
3. Compliance with applicable laws and regulations

With a sound internal control system, a subrecipient can ensure that:

1. Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies
2. Resources are protected against waste, mismanagement, or loss
3. Information on the source, amount, and use of funds is reliable, secure, and up-to-date, and this information is disclosed in appropriate reports and records

As part of an effective internal control system, one person should be designated as responsible for the financial management of a CDBG-DR and CDBG-MIT project. This person should be familiar with the subrecipient's present accounting system. The accounting of CDBG-DR and CDBG-MIT funds can be integrated into the subrecipient's existing system.

## 8.1 Basic Elements

The basic elements of an internal control system for financial management include the following:

1. **Organizational chart** showing lines of authority for all individuals involved in approving or recording financial transactions
2. **Written position descriptions** describing the responsibilities of all employees with a relationship to financial and accounting records
3. **Written policy manual** specifying approval authority for financial transactions and guidelines for controlling expenditures
4. **Written procedures** for the recording of financial transactions, as well as an **accounting manual** and a **chart of accounts**
5. **Adequate separation of duties** to ensure that no one individual has authority over an entire fiscal transaction
6. **Hiring policies** that ensure the qualifications of financial staff are equal to job responsibilities and that individuals hired are competent to do the job
7. **Controlled access** to accounting records, assets, blank forms, and confidential records are adequately controlled, such that only authorized persons can get access to them
8. **Procedures for regular reconciliation** of financial records, comparing a subrecipient's records with the actual assets and liabilities of the organization

## 8.2 State Requirements

LOCD-DR requires that each subrecipient establish a system of internal controls that meet the following six minimum requirements:

### 1. Separation of Duties

No single individual should control all phases of a significant transaction, such as authorizing payments, recording transactions, and signing checks.

## 2. Segregation of Record Keeping

Record keeping functions must be separate from operational tasks and the handling or custody of assets.

## 3. Independent Reconciliation

Monthly reconciliation of cash balances against bank statements must be performed by employees who do not handle cash, record transactions, or sign checks.

## 4. Defined Responsibility

Lines of responsibility should be clearly established and strictly followed.

## 5. Payroll Preparation and Handling

The individual responsible for preparing payroll should not handle resulting paychecks.

## 6. Bonding of Financial Handlers

All personnel involved in financial transactions must be bonded according to state law, with a current bond or fidelity policy in place for those handling CDBG-DR/MIT funds.

# 9. Rules of Expenditure (Other Program-Related Expenditures)

## 9.1 Office Equipment and Other Capital Expenditures

When purchasing or leasing equipment, subrecipients must take care to act in compliance with [2 CFR 200.320](#)<sup>1</sup> and [2 CFR 200.316](#).<sup>2</sup>

See Chapter 4: Procurement Methods and Contractual

Requirements of this manual for guidelines for meeting the

procurement requirements. The following rules per [2 CFR 200.439](#)<sup>3</sup>

apply to purchases of capital expenditures:

1. Capital expenditures for general purpose equipment, buildings, and land are allowable as direct costs, but only with the prior written approval of the Federal agency or pass-through entity.
2. Capital expenditures for special purpose equipment are allowable as direct costs,

### Federal Regulations:

<sup>1</sup> [2 CFR 200.320](#)

<sup>2</sup> [2 CFR 200.316](#)

<sup>3</sup> [2 CFR 200.439](#)

provided that items with a unit cost of \$10,000 or more have the prior written approval.

3. Capital expenditures for improvements to land, building, or equipment that materially increase their value or useful life are allowable as a direct cost, but only with the prior written approval. See 2 CFR 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See 2 CFR 200.465 on the allowability of real property and equipment rental costs.
4. Cost of equipment disposal. If the State instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer is allowable.
5. Equipment and other capital expenditures are unallowable as indirect costs.

**Federal Regulations:**

<sup>1</sup> [2 CFR 200.400](#)

Prior to the lease or purchase of any equipment with CDBG-DR and CDBG-MIT funds, subrecipients should carry out an analysis of lease versus purchase alternatives and any other appropriate analysis to determine which approach would be the most economical. This analysis must be fully documented in the project file and accompany any request for written approval.

## **9.2 Employees Paid from CDBG-DR and CDBG-MIT Funds**

### **Timesheet Requirements**

1. All employees funded wholly or partially by CDBG-DR and CDBG-MIT funds must prepare timesheets for each pay period.
2. Timesheets should indicate the hours worked and detailed duties performed specifically for CDBG-DR and CDBG-MIT projects.

### **Activity Accounting**

1. Grantees must account for the entirety of each employee's activities per [2 CFR 200.400](#).<sup>1</sup>
2. A contemporaneous journal entry should be made in the General (or relevant) Fund,

labeled “Due from CDBG-DR or CDBG-MIT,” for the portion of the employee’s payroll to be reimbursed.

### **Request for Payment**

Each time a request for payment is submitted, all “Due from CDBG-DR or CDBG-MIT” amounts accrued to date should be included in the request.

### **Timesheet Format**

The grant recipient may use their own timesheet format if it includes the following:

- Equivalent information on hours worked and payroll distribution
- Signatures from both the employee and a knowledgeable supervisor

### **Additional Payroll Requirements**

A sample timesheet is shown in Exhibit 5-7. The subrecipient may use their own timesheet provided that it contains the equivalent information, including the distribution of payroll costs, and is signed by a knowledgeable supervisor and the employee.

See Chapter 8: Labor Regulations for additional payroll requirements and labor compliance.

## **9.3 Real Property versus Rent**

Real property or trailers cannot be purchased with CDBG-DR and CDBG-MIT funds to accommodate administrative staff. Office space may be leased or rented if necessary.

1. Rent paid shall not exceed the average office rental costs in the community.
2. The rental of administrative space for three years should be substantially less expensive than the purchase of property. It is more cost-effective and ensures that the maximum amount of CDBG-DR and CDBG-MIT funds is spent for activities that benefit low- to moderate-income residents.

See Chapter 12: Property Management for guidelines on managing property purchased with CDBG-DR and CDBG-MIT funds.

## 9.4 Allowable Costs

Costs incurred must be in line with [2 CFR 200](#)<sup>1</sup> and [2 CFR 200.400](#).<sup>2</sup>

It is a subrecipient's responsibility to ensure that CDBG-DR and CDBG-MIT funds are spent only on the reasonable and necessary costs associated with project activities.

The subrecipient must establish policies and procedures for determining cost reasonableness, allowability, and the allocability of costs.

Federal Regulations:

<sup>1</sup> [2 CFR 200](#)

<sup>2</sup> [2 CFR 200.400](#)

## 9.5 Indirect Costs

Subrecipients may only charge indirect costs to the grant if one of the following criteria is met:

1. If the subrecipient has a federally approved Negotiated Indirect Cost Rate Agreement, a copy must be provided to LOCD-DR.
2. If the subrecipient elects to charge a de minimis rate:
  - a. Projects awarded prior to October 1, 2024: Up to 10% of modified total direct costs
  - b. Projects awarded after October 1, 2024: Up to 15% of modified total direct costs
3. The subrecipient may submit a Cost Allocation Plan to LOCD-DR for approval. Upon approval, the subrecipient may submit an Indirect Cost Proposal for approval.

Subrecipients should review [2 CFR 200.414](#)<sup>1</sup> for additional guidelines regarding indirect costs.

Federal Regulations:

<sup>1</sup> [2 CFR 200.414](#)

## 9.6 Direct Costs

Direct costs are expenses that can be clearly linked to a particular activity, relatively easily and with a degree of accuracy. Examples of direct costs include the following:

1. **Program Staff Salaries:** Wages paid to staff working directly on the project
2. **Space Occupied by Direct Staff:** Rental or occupancy costs for office space used exclusively by project staff
3. **Supplies Used by Direct Staff:** Office supplies and materials specifically consumed by project personnel

4. **Communications Used by Direct Staff:** Costs of phone, internet, or other communication services utilized exclusively by project staff

For more information on direct costs, subrecipients should review

[2 CFR 200.413](#).<sup>1</sup>

Federal Regulations:

<sup>1</sup>[2 CFR 200.413](#)

## 9.7 Direct Project Costs/Activity Delivery Costs

Costs that are directly linked to a project can fall into two categories: Direct project costs and activity delivery costs. These activities will need to be properly categorized when subrecipients submit request for payment forms for reimbursement from the CDBG-DR and CDBG-MIT programs. **Note:** Activity delivery costs will be monitored for reasonableness and generally fall within 15% of the total project cost. See applicable Program Policies for specific ADC budget requirements.

### Direct Project Costs

These are the costs directly tied to the project's implementation, such as the following:

- The amount of the actual loan or grant provided
- Construction or renovation costs

### Activity Delivery Costs

These costs are similar to administrative expenses but specifically address the requirements needed to complete a project and meet CDBG standards. Examples include the following:

- Eligibility verification
- Environmental clearance
- Project monitoring
- Application development

## 9.8 Administrative Costs

Cost activities that are required to meet federal regulations include items such as grants management, monitoring, financials, reporting, and so forth. A general guideline is that if it

crosses multiple projects, it is probably an administrative cost.

Note that subrecipients should get approval from LOCD-DR prior to incurring or invoicing any administrative costs. Contact LOCD-DR for additional clarification.

## 9.9 Program Income

Program income means gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG-DR and CDBG-MIT funds ([24 CFR 570.489\(e\)](#)<sup>1</sup>). Examples of program income include the following:

Federal Regulations:

<sup>1</sup> [24 CFR 570.489\(e\)](#)

1. Proceeds from the sale or long-term lease of real property purchased or improved with CDBG-DR and CDBG-MIT funds.
2. Proceeds from the disposition of equipment purchased with CDBG-DR and CDBG-MIT funds.
3. Gross income from the use or rental of property acquired by the subrecipient with CDBG-DR and CDBG-MIT funds, less the costs incidental to the generation of such income.
4. Gross income from the use or rental of property owned by the subrecipient that was constructed or improved with CDBG-DR and CDBG-MIT funds, less any costs incidental to the generation of such income.
5. Payments of principal and interest on loans made using CDBG-DR and CDBG-MIT funds
6. Proceeds from the sale of loans made with CDBG-DR and CDBG-MIT funds.
7. Proceeds from the sale of obligations secured by loans made with CDBG-DR and CDBG-MIT funds.
8. Interest earned on program income, pending the disposition of such program income.
9. Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where such assessments are used to recover part or the entire CDBG portion of a public improvement.

Program income received by a subrecipient **must be returned to LOCD-DR unless the subrecipient CEA specifies otherwise.**

Program income **DOES NOT** include the following:

1. Amounts generated by activities carried out by non-profit entities under Section [105\(a\)\(15\)](#)<sup>1</sup> of the Housing and Community Development Act of 1974.
2. Funds generated by certain [Section 108 Loan activities](#) (reference [24 CFR 570.500\(a\)\(4\)\(ii\)](#)<sup>2</sup>).

Federal Regulations:

<sup>1</sup>[105\(a\)\(15\)](#)

<sup>2</sup>[24 CFR 570.500\(a\)\(4\)\(ii\)](#)

For more information on program income, see the applicable Federal Register Notice for your grant.

## 10. Changes in the Grant

LOCD-DR approved the application based on the specific purpose of and the items included in the project description and cost estimate. Deviations from these items require written approval from LOCD-DR; failure to receive that approval could result in disallowed costs. This approval must be obtained prior to putting the project out for bid. See the specific program policy for additional guidance on requesting amendments or changes to the grant.

### 10.1 Residual Funds

If all of the activities and items in the approved cost estimate have been completed and funds are remaining due to cost underruns, the use of those funds are subject to prior approval from LOCD-DR. See the specific program policy regarding requesting a program amendment. Amendments to the approved program can neither be requested nor approved through the submittal of engineering change orders.

## 11. Audit Process

One of the primary financial management requirements implicit with the use of federal funds pertains to audits. Audits are a critical component of any financial management system.

An audit is a series of selective tests that give the auditor a basis for judging whether financial records can be relied on. Audits are an important part of effective financial systems because they produce useful financial reports and verify the reliability of those reports. There are both

federal and state requirements for audits. Title [2 CFR 200.500](#)<sup>1</sup> provides the federal requirements for audits of governmental entities and non-profit organizations. Louisiana Revised Statute (RS) 24:513 provides state requirements. Failure to comply with the audit requirements can jeopardize the subrecipient’s ability to draw grant funds and receive future grants.

### 11.1 Federal Requirements

For fiscal years beginning on or after October 1, 2024, non-federal entities that expend \$1 million or more in federal awards within a fiscal year are required to have a single audit conducted. A single audit is a comprehensive examination of an organization’s financial statements and compliance with federal award requirements.

The single audit will meet federal accountability requirements under [2 CFR 200.500](#)<sup>1</sup> and will also be sufficient to meet state accountability requirements.

Federal Regulations:  
<sup>1</sup>[2 CFR 200.500](#)

**Note:** On October 1, 2024, the Office of Management and Budget published an update to 2 CFR 200. As a result, the threshold for non-federal entities to perform a single audit was increased from \$750,000 to \$1 million in federal awards expended for fiscal years beginning on or after October 1, 2024. To ensure the consistent application of the requirements of 2 CFR 200, Subpart F (Audit Requirements), audits for non-federal entities that have fiscal years beginning before October 1, 2024, should apply the \$750,000 threshold.

If an organization expends less than \$1 million a year in federal awards, it is exempt from the federal audit requirements for that year; however, financial records must be made available if needed (see Subsection 11.2.1).

### 11.2 State Requirements

An audit or financial report is required from each subrecipient annually within six months (180 days) after the subrecipient’s fiscal year end. Audits that are not received within this six-month period will be placed by the Legislative Auditor on a Non-Compliance List. Once placed on this

list, the entity will be barred from receiving state funds, including CDBG-DR and CDBG-MIT funds. This list is posted on the Legislative Auditor website ([www.la.la.gov/reports/non-compliance-reports](http://www.la.la.gov/reports/non-compliance-reports)) and is updated daily as audits are sent in.

### 11.2.1 Other Types of Financial Reports

If an entity spends less than \$1 million in federal awards in a fiscal year, a single audit is not required; however, other requirements called for by state law and LOCD-DR policies must be met.

If a subrecipient determines that a single audit is not required, state law [RS 24:513](#) and the CDBG-DR and CDBG-MIT CEA require the submission of one of the following types of reports based on the revenues received from all sources during a fiscal year:

**Table 1: Types of Required Financial Reports**

Federal Revenue Amount	Financial Report
\$75,000 or less	Annual Sworn Financial Statement
Over \$75,000 and under \$200,000	Annual Compilation of Financial Statements (with or without footnotes)
Between \$200,000 and \$500,000	Annual Review of Financial Statements accompanied by an attestation report
Over \$500,000	Annual Audit

The above guidelines are a summary of the state’s audit requirements; refer to [RS 24:513](#) for the complete requirements.

### 11.2.2 Audit Timelines

State law requires that the audit be completed and submitted to the Louisiana Legislative Auditor within six months of the end of the fiscal year (see [RS 24:513](#)). Note that this is sooner than the federal requirement, which under [2 CFR 200.500](#) requires audits to be completed within nine months of the end of the fiscal year.

Subrecipients that meet the requirements for a single audit must submit the audit, data collection form, and reporting package to the Federal Audit Clearinghouse (FAC) in accordance

with [2 CFR 200.500](#). This means that all items must be submitted within 30 calendar days after the auditee receives the auditor's report or nine months after the end of the audit period (whichever is earlier).

In addition to submitting reports to the Louisiana Legislative Auditor and the FAC, the subrecipient should also provide a copy of their audit to LOCD-DR.

### **11.3 Audit Costs**

The only costs allowable under the CDBG-DR and CDBG-MIT programs for financial report preparation are single audit costs. If single audit costs are to be charged to the CDBG-DR and CDBG-MIT programs, the subrecipient must follow the Procurement guidelines established under the Common Rule. A written procurement policy must be prepared and adopted by the governing body. Such a policy should clearly prohibit elected officials, staff, or their agents from obtaining any benefit from procurement contracts. Specific guidance is presented in Chapter 4: Procurement Methods and Contractual Requirements. However, due to the importance of the audit process, subrecipients are reminded that not all certified public accountants are qualified to perform audits of governmental entities and, in particular, under the Single Audit Act. Care should be exercised to select an experienced, qualified firm rather than simply selecting the firm offering to perform the audit at the lowest price.

The portion of the total single audit cost that can be charged to the CDBG-DR and CDBG-MIT programs may be determined by multiplying the total single audit cost times a fraction, the numerator of which is the CDBG-DR and CDBG-MIT program expenditures for the period, and the denominator of which is the governmental entity's total expenditures for the period, including the CDBG-DR and CDBG-MIT program expenditures. A calculation of the allowable portion of the single audit cost should be included in the supporting documentation presented with the request for payment.

Under the latest revisions to [2 CFR 200.500](#), if appropriate documentation of the single audit costs provides a higher amount than the formula, the higher single audit costs may be charged to the program. Supporting documentation should be available for review by the CDBG-DR and CDBG-MIT staff.

## 12. Financial Management Resources

- Federal Audit Clearinghouse

<https://www.fac.gov/>

## 13. LOCD-DR Exhibits

Exhibit	Description
Exhibit 5-1	CEA Contact Information Form
Exhibit 5-2	IRS Form W-9: Request for Taxpayer Identification Number and Certification
Exhibit 5-3	LOCD-DR Authorized Signature Form
Exhibit 5-4	LaGov Vendor Registration and Electronic Funds Transfer Information
Exhibit 5-5	HUD Form 2880: Applicant/Recipient Disclosure/Update Report
Exhibit 5-6	Sample Financial Statements
Exhibit 5-7	Sample Time Sheet

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 6: Environmental Review



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

Every project funded by Community Development Block Grant – Disaster Recovery (CDBG-DR) or Community Development Block Grant – Mitigation (CDBG-MIT) funds, and all activities related to those projects, are subject to the provisions of the [National Environmental Policy Act of 1969 \(NEPA\)](#), as well as to U.S. Department of Urban Development (HUD) environmental review regulations.<sup>1</sup> NEPA was created to ensure that federal agencies consider the environmental impacts of their actions.

Federal Regulations:

<sup>1</sup> [24 CFR 58](#)

Environmental effects must be assessed prior to making decisions.

The Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) is committed to ensuring that the State of Louisiana complies with all applicable federal, state, and local laws. Subject to any amendments to applicable Federal Register notices and/or HUD regulations, CDBG-DR subrecipients must comply with environmental law and regulations, including floodplain standards. The NEPA analysis considers the impact of the project on the surrounding environment and the impact of the surrounding environment on the end user of the project. HUD implements NEPA through its environmental regulations codified at [24 Code of Federal Regulations \(CFR\) 58](#) for subrecipients acting as the responsible party for their environmental decision making.

**The HUD environmental review process must be completed before any funds can be committed for program-eligible activities. No work can start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds.** In other words, you need to obtain environmental clearance for each project before you can commit any federal or non-federal funds to expenses or contracts related to the project. If you do not follow this rule, your project will become ineligible for federal funding and all costs incurred before the environmental review is completed could be disallowed.

## **Responsible Entity and Certifying Officer**

HUD regulations use the term *responsible entity* (RE) to refer to the unit of local government (city or parish), state, or federally recognized Tribe responsible for meeting environmental review requirements. A subrecipient that is a city or parish may assume the role of RE for the

CDBG-DR and/or CDBG-MIT funds and is responsible for completing the environmental review, with or without assistance from a third party.

The RE must designate a *certifying officer* under the terms of the certification.<sup>1</sup> The certifying officer<sup>3</sup> is the “responsible Federal official” as that term is used in [Section 102 of NEPA](#).<sup>2</sup> This person is the chief elected official (e.g., Parish President or city mayor), chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all federal, state, and local environmental requirements have been followed. This function may not be taken by administering agencies or consultants. The certifying officer is therefore responsible for all of the requirements of [Section 102 of NEPA](#)<sup>2</sup> and [24 CFR 58](#),<sup>4</sup> including the related federal authorities listed in [Section 58.5](#).<sup>5</sup> The certifying officer must also represent the RE and be subject to the jurisdiction of the federal courts. The certifying officer will not be represented by the Department of Justice in court.

**Federal Regulations:**

<sup>1</sup> [24 CFR 58.71](#)

<sup>2</sup> [Sec. 102 of NEPA](#)

<sup>3</sup> [24 CFR 58.2](#)

<sup>4</sup> [24 CFR 58](#)

<sup>5</sup> [24 CFR 58.5](#)

All CDBG-DR and CDBG-MIT funded projects and activities must have a complete Environmental Review Record (ERR) to document that they comply with NEPA and all other environmental requirements. This section highlights components of the HUD Environmental review process; however, it is not exhaustive. It is the responsibility of the RE to understand and adhere to all environmental requirements provided in [24 CFR 58](#).<sup>4</sup> CDBG-DR and/or CDBG-MIT subrecipients, and personnel/consultants completing the environmental review, should be familiar with all federal and state environmental requirements, along with the resources and forms found on the [HUD Exchange’s Environmental Review website](#). They should contact LOCD-DR environmental staff to request any additional technical assistance (TA) after reviewing the resources provided here and on the HUD Exchange.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Authority to Use Grant Funds (AUGF):** HUD [Form 7015.16](#) or firm approval letter authorizing the use of grant funds for a specified project and scope of work.
2. **Environmental Review Record (ERR):** The complete environmental file as discussed in Section 6.
3. **Finding of No Significant Impact (FONSI):** A document that briefly presents the reasons that the proposed action will not have a significant impact on the human environment.
4. **Limited Notice to Proceed (LIMITED NTP):** Issuance of a letter to proceed with ONLY specific listed project activities pending specific conditions of the grant. A Notice to Proceed with all activities will be issued once pending conditions are met.
5. **National Environmental Policy Act of 1969 (NEPA):** The basic national charter that provides policies, goals, and tools for the protection of the environment.
6. **Notice to Proceed (NTP):** Issuance of a letter to proceed with work in the project or an activities agreement.
7. **Notice of Intent (NOI):** A request for the environmental release of funds for Categorically Excluded projects or for projects for which a FONSI was previously issued.
8. **Request for Release of Funds (RROF):** HUD [Form 7015.15](#), which must be certified by the certifying officer of the responsible entity.
9. **Tiering:** A specialized form of conducting environmental reviews when very similar activities are repeated within a local geographic area and timeframe, but specific sites and activities are not yet known, such as a single-family homeowner rehabilitation program.

### 3. Timetable for Reviews

The time it takes to complete an ERR for a project can vary, with many factors contributing to the timetable. For example, a project that is not eligible for the National Register and takes place outside the floodplain requires a shorter amount of time to complete the ERR. A project located in a wetland or in an area of noise concern will require a longer amount of time to complete the ERR. Additionally, environmental reviews to clear professional services, studies, equipment purchases, or down payment assistance may take only days to complete, but new construction of an apartment complex or the rehabilitation of single-family housing may take several months to complete. An environmental review requires consultation with regulating authorities such as the following:

- State Historic Preservation Office (SHPO)
- Tribal Historic Preservation Offices
- United States Army Corps of Engineers (USACE)
- Floodplain Administrators
- United States Fish and Wildlife Services (USFWS)

These consultations can become lengthy, depending upon the project’s complexity and its proximity to sensitive environmental areas.

### 4. The State of Louisiana’s Responsibilities

The State of Louisiana has five primary responsibilities related to the environmental review process:

1. LOCD-DR provides guidance and TA to the subrecipient for its environmental review of a project.<sup>1</sup>

Federal Regulations:

<sup>1</sup>[24 CFR 58.75](#)

**NOTE: The release of funds does not constitute program approval but is an acceptance that all environmental requirements have been satisfied for that specified scope of work.**

2. LOCD-DR releases CDBG-DR or CDBG-MIT funds only after receiving the proper environmental certification, verifying that the required comment period has expired without a permissible objection and ensuring that all basic grant requirements have been met.
3. LOCD-DR withholds project funding if new information reveals that the certification or procedures were improper. The subrecipient may need to revise its environmental review, conduct a second public comment period based on the additional findings, and recertify the review with LOCD-DR.
4. LOCD-DR monitors compliance with the environmental conditions stipulated in the Notice to Proceed.

## 5. Subrecipient Responsibilities

Subrecipients have six basic environmental responsibilities related to the environmental review process:

1. Subrecipients must determine the level of environmental review required for their specific projects/activities. Projects/activities may be one of the following:

Environmental Review Category	Federal Regulation
Exempt Activities	<a href="#">24 CFR 58.34</a>
Categorically Excluded Not Subject to 24 CFR 58.5 (CENST)	<a href="#">24 CFR 58.35(b)</a>
Categorically Excluded Subject to 24 CFR 58.5 (CEST)	<a href="#">24 CFR 58.35(a)</a>

Any activity that does not fit into one of these three categories will require an [Environmental Assessment \(EA\)](#) in order to assess potential environmental impacts.

2. Subrecipients must comply with NEPA and other related federal laws and authorities.
3. Subrecipients must establish and maintain an Environmental Review Record. This ERR must contain all documentation related to determinations, findings, public notices, consultation and coordination, certifications, and approvals involved in the environmental review process.

4. Subrecipients must provide for a period of public comment related to the environmental findings and the intent to request CDBG-DR or CDBG-MIT funding.
5. The certifying officer must properly certify their environmental findings and records to LOCD-DR before the environmental review process is considered to be completed. This certification process also serves as a request for the release of CDBG-DR or CDBG-MIT activity funds (RROF).
6. Subrecipients must ensure that all mitigations, conditions, and stipulations are properly executed and documented within their ERR for the project.

## 6. Environmental Review – Getting Started

**Every dollar of CDBG-DR and CDBG-MIT funds must be cleared at some level of review, including Activity Delivery Costs and Planning Costs.** Subrecipients should start the

environmental review process as soon as possible because many reviews are complex and may require more than one year to complete. Because of the complexity and effort required to complete an environmental review compliant with [24 CFR 58](#), LOCD-DR recommends procuring an environmental consultant experienced in [24 CFR 58](#) and NEPA requirements to help avoid mistakes and time delays. (See Chapter 4 of the Manual for Procurement Guidelines.)

Subrecipients must create and maintain an Environmental Review Record. The ERR must be prepared and approved before actions are taken. The ERR should tell the story of the project with a detailed project description, maps, photos, studies, consultation records, support documentation, and public notices. Subrecipients can contract with an environmental consulting firm to do the work and create the record. However, the subrecipient is responsible for all material in the ERR. Documentation includes, but is not limited to, the following:

- Maps, including the location and coordinates of the project
- All consultation correspondence with agencies and Tribes
- 5-Step/8-Step Process for floodplain and wetlands management, corresponding Early and Final Floodplain Notices, and proof of publication

- Pictures of the site and future renderings
- Required permits
- Environmental Site Assessment (ESA) Phase I and Phase II reports
- Cultural resource survey
- Executed Exempt/CENST for soft costs
- Finding of No Significant Impact (FONSI) publication
- RROF
- Authority to Use Grant Funds (AUGF)

Use HUD forms, public notice templates, and regulatory guidance as provided on the HUD Exchange website at <https://www.hudexchange.info/programs/environmental-review/>.

## 6.1 Project Description and Aggregation

A complete and clear project description is essential for the environmental review process. The RE should take adequate time to clearly establish the scope of work and project description prior to initiating the environmental review. The project description should include location-specific information and geographic boundaries, proposed funding sources, and define all activities included in the overall scope of the project. Once the scope of the project is known, you can determine the appropriate level of environmental review. Accurate scoping of the project description and project aggregation are critical success factors.

The term *project* means an activity or a group of integrally related activities designed to accomplish, in whole or in part, a specific goal. The term *activity* means an action that a subrecipient takes on as part of an assisted project, regardless of whether its costs are covered by CDBG-DR or CDBG-MIT assistance or are eligible expenses under the program. Activities make up the project. Regardless of its level of federal funding—full, partial, or none—an activity remains part of the project scope and must be included in the environmental review.

Aggregating (grouping) activities allows the subrecipient to consider the combined environmental effect of a project. Aggregation will reduce the number of ERRs that a subrecipient must complete. A subrecipient must group together and evaluate as a single project all individual activities that are related on either a geographic or a functional basis, or are logical parts of a composite of contemplated actions.<sup>1</sup>

For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street paving, and construction of a water line, would be grouped together as one project.

Federal Regulations:

<sup>1</sup> [24 CFR 58.32](#)

## 6.2 Limitations on Activities Pending Clearance

**Neither the subrecipient nor any participant (including public or private non-profits or for-profit entities, or any of their contractors) may commit CDBG-DR or CDBG-MIT funds on any activity nor any project until LOCD-DR has approved the subrecipient's RROF.** In addition, neither the subrecipient nor any participant may commit non-CDBG funds for any activity or any project that would have an adverse environmental impact or limit the choice of reasonable alternatives until LOCD-DR has approved the subrecipient's RROF.

Choice-limiting action regulations prohibit physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions prior to receiving an environmental clearance.

A subrecipient may, in good faith, begin a project as locally funded and later decide to apply for federal assistance. If the choice-limiting action was undertaken prior to the intent to use CDBG-DR or CDBG-MIT funds, the action is allowable. However, once a subrecipient has demonstrated an intent to utilize CDBG-DR or CDBG-MIT funds, it must cease further choice-limiting actions (including additional commitment of funds) on the project until the environmental review process is completed.

### 6.2.1. Option Contracts for Purchase of Property

A contract to purchase property for a CDBG-DR or CDBG-MIT project before the environmental review is completed is considered to be a "choice-limiting action" and must be avoided.

However, an option contract is a useful tool for a subrecipient to obtain site control while

allowing time to complete the environmental review. Option contracts may be used to gain site control of any type of property, including commercial, industrial, or residential for any proposed activity or reuse, including demolition, new construction, and conversion of use, so long as it specifically is contingent upon environmental clearance.

A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property.

HUD's regulations<sup>1</sup> allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:

**Federal Regulations:**

<sup>1</sup> [24 CFR 58.22\(d\)](#)

1. The option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR 58, and
2. The cost of the option is a nominal portion of the purchase price.

The provision allows flexibility regarding the term *nominal* and any reasonable interpretation is acceptable. For example, it is reasonable to conclude that the nominal amount for option contracts will vary depending on the local real estate market and the purchase price. Refer to the HUD guidance memo, [Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58](#), for additional information.

### 6.3 Public Notices

Instead of publishing in a local news media, you can post floodplain/wetland public notices<sup>2</sup> and Notice of Intent (NOI)/FONSI<sup>3</sup> on “an appropriate government website.” An appropriate government website must:

**Federal Regulations:**

<sup>2</sup> [24 CFR 55](#)

<sup>3</sup> [24 CFR 58](#)

- Be accessible to individuals with disabilities, and
- Provide meaningful access to individuals with Limited English Proficiency.

Proof of publication or posting is required to be submitted with the RROF and maintained in the ERR.

Sample Notices	Webpage Link
Notice of Intent to Request Release of Funds for Tiered Review	<a href="#">Sample-Notice-of-Intent-to-Request-Release-of-Funds-for-Tiered-Reviews.docx</a>
NOI-RROF – English and Spanish	<a href="#">SampleNoticeNOI-RROF.docx</a> (English) <a href="#">Notice-of-NOI-RROF-Spanish.docx</a> (Spanish)
Combined Notice (FONSI/RROF) – English and Spanish	<a href="#">Sample-FONSI-and-RROF.docx</a> (English) <a href="#">Combined-Notice-of-FONSI-and-NOI-RROF-Spanish.docx</a> (Spanish)
Notices for Activities in FFRMS (Federal Flood Risk Management Standard) Floodplain and Wetland – English and Spanish	<a href="#">Notice-and-Public-Review-of-a-Proposed-Activity-Floodplain.doc</a> (English) <a href="#">Notice-and-Public-Review-of-a-Proposed-Activity-in-a-Floodplain-or-Wetland-Spanish.docx</a> (Spanish)

## 7. Determining the Level of the Environmental Review

Subrecipients should initially determine the most appropriate level of environmental review, which will be confirmed or adjusted as the environmental review process is completed. Project activities will fall into one of five types of environmental review categories:

Environmental Review Category	Federal Regulation
Exempt Activities	<a href="#">24 CFR 58.34</a>
Categorically Excluded Not Subject to 24 CFR 58.5 (CENST)	<a href="#">24 CFR 58.35(b)</a>
Categorically Excluded Subject to 24 CFR 58.5 (CEST)	<a href="#">24 CFR 58.35(a)</a>
Environmental Assessment (EA)	<a href="#">24 CFR 58.36</a>
Environmental Impact Statement (EIS)	<a href="#">24 CFR 58.37</a>

Each of these categories involves a progressively more detailed and more complex process of requirements and procedures. You should determine the appropriate level of review at the beginning of the project/activity.

[HUD Environmental Review Process Flowchart](#)

Any project/activity that is exempt or categorically excluded does not need to address the requirements of NEPA. However, subrecipients remain responsible for addressing the requirements of [24 CFR 58.6](#)<sup>1</sup> in the ERR and meeting those requirements where applicable, regardless of whether the activity is exempt under [24 CFR 58.34](#)<sup>2</sup> or categorically excluded under [24 CFR 58.35\(a\) or \(b\)](#).<sup>3</sup>

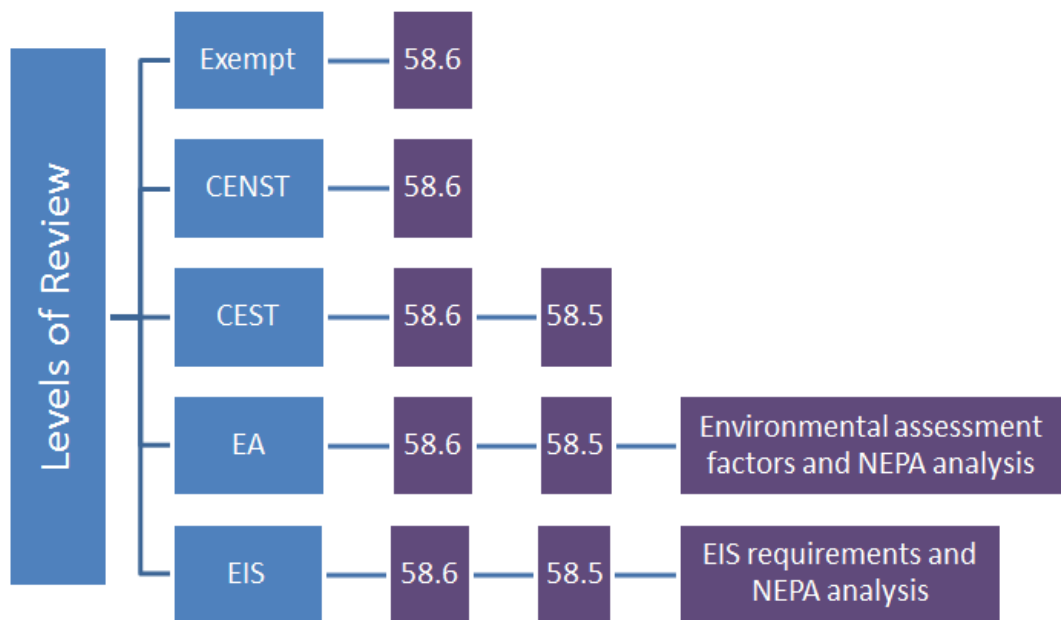
Federal Regulations:  
<sup>1</sup> [24 CFR 58.6](#)  
<sup>2</sup> [24 CFR 58.34](#)  
<sup>3</sup> [24 CFR 58.35\(a\) or \(b\)](#)  
<sup>4</sup> [24 CFR 58.5](#)

Environmental reviews under CEST, EA, or EIS, in addition to [24 CFR 58.6](#),<sup>1</sup> are also subject to the requirements of [24 CFR 58.5](#).<sup>4</sup>

EA reviews require a review of environmental assessment factors and NEPA analysis.

Additional compliance requirements apply to EIS reviews. See Figure 1 below for a breakdown of which components are required for each type of review.

**Figure 1: Components required for each type of review**



Subrecipients must address [24 CFR 58.6](#) compliance requirements for **all** levels of review, which include the following:

- Airport clear zones
- Coastal barrier resources
- Flood insurance

Compliance with [24 CFR 58.5](#) is required for CEST, EA, and EIS levels of review. [24 CFR 58.5](#) requires compliance with the following related federal laws and authorities:

- Air Quality
- Coastal Zone Management
- Contamination and Toxic Substances
- Endangered Species
- Explosive and Flammable Hazards
- Farmlands Protection
- Floodplain Management
- Historic Preservation
- Noise Abatement and Control
- Sole Source Aquifers
- Wetlands Protection
- Wild and Scenic Rivers
- Environmental Justice

For extensive resources related to each of the compliance requirements at [24 CFR 58.5](#) and [58.6](#), visit the HUD Exchange – [Environmental Review Federal Related Laws and Authorities](#).

## 7.1 Exempt Activities (24 CFR 58.34(a))

Certain activities are, by their nature, unlikely to have any direct impact on the environment. Accordingly, these activities are considered exempt and not subject to NEPA laws and regulations. These types of activities are considered “soft costs.”

However, you must complete an environmental review and submit it to LOCD-DR for all exempt activities using the [HUD Environmental Review Form - Exempt or CENST](#). This form must include a clear description of the exempted activities; the location of the proposed associated project, if applicable; the amount of funds to be exempted; and be signed by the certifying officer. Complete the [24 CFR 58.6](#) Compliance Determinations using the proposed associated project, if applicable.

Exempt activities are as follows:

1. Environmental and other studies, resource identification, and the development of plans and strategies. Examples include appraisals, archaeological surveys, and wetland delineation.
2. Information and financial services.
3. Administration and management activities, such as salaries and consultant costs.
4. Public services that do not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare, or recreational needs.
5. Inspections and testing of properties for hazards or defects, such as lead-based paint or asbestos.
6. Purchase of insurance, such as flood insurance.
7. Purchase of tools. Examples include the payment of reasonable and eligible tool purchases. However, this does not include equipment purchases.
8. Engineering and/or design costs. Examples include architectural design.
9. Technical assistance and training.

10. Assistance for temporary or permanent improvement that does not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disaster, imminent threats, or physical deterioration. This category has a very narrow window of use and can only be used immediately after a disaster.
11. Principal and interest payments. This category is for loans made or obligations guaranteed by HUD.
12. Any of the categorically excluded activities subject to [24 CFR 58.5](#) (as listed in [24 CFR 58.35\(a\)](#)) provided that there are no circumstances which require formal compliance with any other federal laws and authorities listed at Part 58.5 of the regulations.

## **7.2 Categorically Excluded Activities Not Subject to 24 CFR 58.5 (CENST) (24 CFR 58.35(b))**

HUD has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the federal laws and authorities. When the following kinds of activities are undertaken, the subrecipient does not have to publish a NOI/RROF or execute a certification, and the subrecipient does not have to submit a RROF to LOCD-DR except in extraordinary circumstances.<sup>1</sup>

Federal Regulations:

<sup>1</sup> [24 CFR 58.35\(c\)](#)

An environmental review must be completed and submitted to LOCD-DR for all categorically excluded activities using the [HUD Environmental Review Form - Exempt or CENST](#). This CENST form must include a clear description of the activities; the location of the proposed associated project, if applicable; the amount of funds to be environmentally cleared; and be signed by the certifying officer. Complete the 58.6 Compliance Determinations using the proposed associated project, if applicable.

The following activities are Categorically Excluded under NEPA:

1. Tenant-based rental assistance.
2. Support services, including, but not limited to, health care; housing services; permanent housing placement; day care; nutritional services; short-term payments

for rent/mortgage/utility costs; and assistance in gaining access to local, state, and federal government benefits and services.

3. Operating costs, including maintenance, security, operations, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs.
4. Economic development activities, including, but not limited to, equipment purchase, inventory financing, interest subsidy, and operating expenses and similar costs not associated with construction or expansion of existing operations.
5. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.
6. Affordable housing predevelopment costs, including legal, consulting, developer, and other costs related to obtaining site options; project financing; administrative costs and fees for loan commitments; zoning approvals; and other related activities that do not have a physical impact.
7. Approval of supplemental assistance (including insurance or a guarantee) to a project/activity previously approved under this part if the approval is made by the same responsible entity that conducted the environmental review on the original project, and re-evaluation of the environmental findings is not required.<sup>1</sup>
8. HUD's guarantee of loans for one- to -four- family dwellings on trust land and on fee land within an Indian Reservation, and on fee land owned by the Indian Tribe outside the Tribe's Indian Reservation boundaries, under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program without any review or approval of the application for the loan guarantee by HUD or the responsible entity or approval of the loan guarantee by HUD before the execution of the contract for construction or rehabilitation and the loan closing.

**Federal Regulations:**

<sup>1</sup> [24 CFR 58.47](#)

<sup>2</sup> [24 CFR 58.35\(b\)](#)

A more extensive review may be required if a subrecipient determines that a project/activity identified above may have a significant environmental effect or if there are extraordinary circumstances or conditions. There may also need to be a re-evaluation or amendment of the categorical exclusion assessment if the subrecipient substantially changes its project/activity in nature, magnitude, or extent, including new activities not anticipated in the original project scope and/or cost estimates. Additionally, new circumstances and environmental conditions that may affect the project would necessitate a re-evaluation of the ERR, especially if these conditions have a bearing on its impact, such as concealed or unexpected conditions discovered before or during the project.

### 7.2.1. Supplemental Funding

Supplemental funding to a project/activity previously environmentally cleared may use the [CENST form](#) to clear the additional funds as long as the scope of work has not changed and the RE for the additional funds is the same RE of the original environmental review.<sup>2</sup>

## 7.3 Categorically Excluded Activities Subject to 24 CFR 58.5 (CEST) (24 CFR 58.35(a))

Categorical exclusion refers to a category of activities for which no EIS or EA and finding of no significant impact under NEPA is required, except in extraordinary circumstances,<sup>1</sup> in which a normally excluded activity may have a significant impact. Compliance with the applicable federal environmental laws and authorities<sup>2,3</sup> is required for any categorical exclusion:<sup>4</sup>

#### Federal Regulations:

<sup>1</sup> [24 CFR 58.2\(a\)\(3\)](#)

<sup>2</sup> [24 CFR 58.5](#)

<sup>3</sup> [24 CFR 58.6](#)

<sup>4</sup> [24 CFR 58.35\(a\)](#)

- Requires consultation with applicable agencies and federally recognized Tribes.
- Requires [NOI/RROF](#) to request a release of funds in the local newspaper and the State Journal of Record for the area, such as *The Advocate*, or posted on an appropriate government website (see [Section 6.3, Public Notices](#)).
- Comment period (seven days) prior to [RROF](#).
- RROF must be certified by the RE certifying officer and submitted to LOCD-DR.

- 15-day comment period prior to executing the [AUGF](#).

The following activities are categorically excluded under NEPA but subject to review under the authorities listed in [24 CFR 58.5](#):

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20% (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility for elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when the following conditions are met:
  - i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed.
  - ii. In the case of multifamily residential buildings:
    - A. Unit density will not change more than 20%,
    - B. The project does not involve changes in land use from residential to non-residential, and
    - C. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.
  - iii. In the case of non-residential structures, including commercial, industrial, and public buildings:
    - A. The facilities and improvements are in place and will not be changed in size or capacity by more than 20%, and
    - B. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

4. i. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building, or any combination in between, or
  - ii. An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
  - iii. [Paragraphs \(a\)\(4\)\(i\) and \(ii\)](#)<sup>1</sup> of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see [paragraph \(a\)\(3\)\(i\)](#)<sup>2</sup> of this section).
5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
6. Combinations of the above activities.

**Federal Regulations:**

<sup>1</sup> [24 CFR 58.35 \(a\)\(4\)\(i\) and \(ii\)](#)

<sup>2</sup> [24 CFR 58.35 \(a\)\(4\)\(iii\)](#)

Basic Guidelines for Environmental Clearance of CEST Activities:

1. Prepare and submit the executed [Environmental Review for Activity/Project That Is Categorically Excluded Subject to Section 58.5 \(CEST\)](#) determination form.  
This determination form must include a clear description of the activity, the location of the activity, and the amount of funding to be categorically excluded. The determination form must be signed by the subrecipient's certifying officer, such as the Parish President or mayor.
2. In completing the CEST determination form, the subrecipient must consult with the appropriate local, state, and federal agencies, as well as federally recognized Tribes (see [Section 7.3.1, Historic Preservation](#)), which have or might have an environmental interest in the project/activity. The subrecipient must show consultation through letters or other forms of communication. All letters and responses become part of the ERR and must be available for public review.

3. HUD provides worksheets that subrecipients can use to document the project’s compliance with federal environmental laws and authorities. The worksheets are available at the HUD Exchange, [Environmental Review Record Related Federal Laws and Authorities Worksheets](#).
4. If a determination is made that the categorically excluded activity/project “converts” to Exempt<sup>1</sup> because there are no circumstances that require formal compliance with any of the federal laws or authorities cited at [24 CFR 58.5](#), the environmental review process has been completed. Subrecipients should submit the completed ERR to LOCD-DR for review and issuance of a Notice to Proceed prior to committing any choice-limiting actions. If the project does not convert to Exempt, continue with Steps 5 through 10.
5. If the subrecipient learns through this consultation process that it must comply with environmental provisions of other federal environmental laws or regulations, the activity/project cannot convert to Exempt. The subrecipient must document the project/activity that is affected, the nature of required compliance, how the subrecipient has or will meet such compliance requirements, publish an NOI/RROF, and obtain an AUGF before committing or expending any funds.
6. Once the subrecipient considers the environmental review document to be completed, LOCD-DR strongly recommends subrecipients submit the ERR to the LOCD-DR Environmental Officer for review prior to publishing any notices.
7. After LOCD-DR review, the subrecipient must then prepare a [Notice of Intent to Request a Release of Funds \(NOI/RROF\)](#).
8. Publish the notice in a state newspaper, such as *The Advocate*, as well as the local newspaper for the parish/municipality where the project/activity is located. Alternatively, all notices can be posted on local government websites if all accessibility requirements are met (see [Section 6.3, Public Notices](#)).

**Federal Regulations:**

<sup>1</sup> [24 CFR 58.34\(a\)\(12\)](#)

9. If published in a newspaper, the notice should be published once and must allow public review and comment to the ERR for at least seven days. All comments based on the public notice process must be considered and made a part of the ERR. If these comments require a revision to the NOI/RROF, then the project/activity must be re-evaluated accordingly.
10. If there are no adverse comments during this public comment period, the subrecipient must submit a completed [RROF – HUD Form 7015.15](#), signed by the certifying officer, the ERR, and the proof of publication of the NOI/RROF that shows the date of publication to LOCD-DR.

LOCD-DR will hold this request for a minimum of 15 days to allow for further public comment. If there are no adverse public comments, LOCD-DR will execute the [AUGF](#) and issue a Notice to Proceed related to environmental clearance to the subrecipient.

**NOTE: If the subrecipient has an owner-occupied rehabilitation program, a buyout program, or other similar program where individual properties have not yet been identified, a Tiered Review may be appropriate. See [Section 8.3](#) for additional information on Tiered Reviews.**

The following subsections contain compliance factors that require additional attention:

### **7.3.1. Historic Preservation**

Subrecipients should use HUD guidance provided for Tribal Consultation, including the Tribal Directory Assessment Tool (TDAT) and the draft Tribal letter templates.

Subrecipients must contact both the Louisiana State Historic Preservation Officer and all federally listed Native American Tribes identified by HUD as having an interest in the project's location. To determine which, if any, Native American Tribes should be consulted, subrecipients must use HUD's Tribal Directory Assessment Tool.

[HUD Tribal Directory  
Assessment Tool](#)

[HUD Section 106 Tribal  
Consultation Letter Template](#)

The consultation process with the federally recognized Tribes must be from government-to-government and must:

- Use government letterhead.
- Be signed by a senior official for the government entity.
- Include a location map with Lat/Long coordinates in Decimal Degrees (DD) and in Degrees-Minutes-Seconds (DMS).
- Include the direct email of the ERR preparer to receive any responses/questions.

The SHPO and Tribes have 30 days to respond to consultation. SHPO and/or Tribes may request additional information and/or request a Cultural Resource Survey (see [Section 8.5, Phase I Cultural Resources Survey](#)), which will extend the Section 106 consultation timeline.

**NOTE: For projects where the state is the RE, you should provide the LOCD-DR Environmental Officer via email or drop box (if needed due to size) the draft Tribal letters addressed to the Tribal Historic Preservation Office and Chief, as identified by the Tribal Directory Assessment Tool. LOCD-DR will send these out on state letterhead. You should include the location map and the Lat/Long coordinates in DD and in DMS within the Tribal letter.**

### **7.3.2. Floodplain Management**

Projects located within a floodplain are subject to Executive Order 11988, which requires federal activities to avoid impacts on floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. HUD has revised its floodplain management regulations in [24 CFR 55](#) to incorporate the Federal Flood Risk Management Standard (FFRMS), which will better protect communities and taxpayer-funded investments from flooding.

The updated rule amends HUD’s existing floodplain regulations to require a greater level of flood protection for new construction and substantially improved projects. FFRMS expands the floodplain of concern from the 100-year floodplain to a newly defined “FFRMS floodplain.”

The FFRMS floodplain is an expanded area, both horizontally and vertically, from the 100-year

floodplain, which is based on future flood risk. The rule requires that newly constructed or substantially improved structures within this newly defined floodplain be elevated or floodproofed to this higher FFRMS floodplain elevation for protection. Building to this standard will increase the Nation’s resilience to flooding, reduce the risk of flood loss with regard to human life and property, and minimize the direct impact of floods.

[Identifying the FFRMS Floodplain](#)

**NOTE: FFRMS requirements are subject to any amendments to applicable Federal Register notices and/or HUD regulations.**

- The FFRMS floodplain area is determined by using a tiered approach: (1) Climate Informed Science Approach (CISA), (2) 0.2% Annual Chance Flood Approach (0.2PFA), or (3) Freeboard Value Approach (FVA), and in that order based on available data for the area (CISA > 0.2PFA > FVA).
- If the project location is within the FFRMS floodplain, the **8-Step Decision-Making Process** is required unless [24 CFR 55](#) is not applicable.<sup>1,2</sup> Steps 2 and 7 require public notices.
- New construction or substantial improvement actions within the FFRMS floodplain must be elevated (or floodproofed<sup>3</sup>) at or above the elevation of the FFRMS floodplain.
- **HUD financial assistance is prohibited in floodways unless an exception applies at 24 CFR 55.12,**<sup>1</sup> the project is a functionally dependent use (e.g., dams, marinas, bridges), or the project is a floodplain function restoration activity such as the State MIT Buyout Program.<sup>4</sup>
- HUD prohibits critical actions and new construction in V Zones unless an exception applies, or the project is a functionally dependent use. Noncritical actions are limited to existing structures or improvements and must be designed for location in a Coastal High Hazard Area.<sup>5</sup>

**Federal Regulations:**

<sup>1</sup> [24 CFR 55.12](#)

<sup>2</sup> [24 CFR 55.13](#)

<sup>3</sup> [24 CFR 55.20\(e\)](#)

<sup>4</sup> [24 CFR 55.12\(c\)](#)

<sup>5</sup> [24 CFR 55.8](#)

Floodplain Management Resources	Webpage URL
HUD Exchange: Floodplain Management	<a href="https://www.hudexchange.info/programs/environmental-review/floodplain-management/">https://www.hudexchange.info/programs/environmental-review/floodplain-management/</a>
FEMA Flood Maps	<a href="https://msc.fema.gov">https://msc.fema.gov</a> <a href="http://maps.lsuagcenter.com/floodmaps/">http://maps.lsuagcenter.com/floodmaps/</a>
HUD Exchange: Floodplain Management 8-Step Decision-Making Process	<a href="https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/">https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/</a>

### 7.3.3. Wetlands Protection

Projects located within a designated wetland are subject to [Executive Order 11990: Protection of Wetlands](#). HUD regulations describe measures for protecting wetlands where practicable.

As a primary screening, subrecipients must verify whether the project is located within wetlands identified on the [National Wetlands Inventory \(NWI\)](#) and assess the site for visual indication of the presence of wetlands, such as hydrology (water), hydric soils, or wetland vegetation. Where the primary screening is inconclusive, potential wetlands should be further evaluated by a qualified wetlands scientist to delineate the wetland boundaries on-site or else consult directly with the U.S. Department of the Interior, Fish and Wildlife Service staff. **If the project is determined to be within a wetland, consultation with the USACE will be required. Additionally, the 8-Step Decision-Making Process will be required.**

Wetland Protections Resources	Webpage URL
HUD Exchange: Wetlands Protection	<a href="https://www.hudexchange.info/programs/environmental-review/wetlands-protection/">https://www.hudexchange.info/programs/environmental-review/wetlands-protection/</a>
NWI Wetlands Mapper	<a href="https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper">https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper</a>

**NOTE: If the proposed site is located within a FFRMS Floodplain and a Wetland, the 8-Step Notices can be published together.**

### 7.3.4. Endangered Species

The environmental review must consider the potential impacts of the project on endangered and threatened species and critical habitats. The review must evaluate potential impacts not only on any listed species but also on any proposed endangered or threatened species and critical habitats. This responsibility is cited in environmental procedures at [24 CFR 58.5\(e\)](#).<sup>1</sup> The identification of listed species and critical habitats must be completed using the [IPaC online tool](#). Additional consultation with Louisiana Wildlife and Fisheries and USFWS may be required.

#### Federal Regulations:

<sup>1</sup> [24 CFR 58.5\(e\)](#)

Endangered Species Resources	Webpage URL
HUD Exchange: Endangered Species	<a href="https://www.hudexchange.info/programs/environmental-review/endangered-species/">https://www.hudexchange.info/programs/environmental-review/endangered-species/</a>

### 7.4 Environmental Assessment (24 CFR 58.36)

If the project/activity does not fall in either the “exempt” or “categorically excluded” categories, the subrecipient will have to undertake an Environmental Assessment (EA). An EA enables the subrecipient to determine the degree of significant impact that an activity (by itself or in combination with other activities) may have on the environment. This level of review under NEPA is typically required when a proposed project has activities such as new construction, capacity change greater than 20%, or a change in land use. The EA level of review:

- Requires consultation with applicable agencies and federally recognized Tribes.
- Considers other potential impacts of the project, including land development, socioeconomic factors, community facilities and services, and natural features, in addition to compliance with [24 CFR 58.5](#) and [24 CFR 58.6](#).
- Requires analysis of alternatives.
- Requires a determination of significant impact.

- Requires Public [Notice of Finding of No Significant Impact \(FONSI\) and Notice of Intent to Request Release of Funds \(RROF\)](#) in a local newspaper and the State Journal of Record for the area, such as *The Advocate*, or posted on an appropriate government website (see [Section 6.3, Public Notices](#)).
- Requires a 15-day comment period prior to [RROF](#).
- Requires the RROF be certified by the RE certifying officer and submitted to LOCD-DR.
- Requires a 15-day comment period prior to executing the [AUGF](#).

Comprehensive guidance for completing this level of review can be found on the [Environmental Assessment – HUD Exchange](#) website.

#### **7.4.1. Basic Guidelines for Completing the Environmental Assessment**

The Environmental Assessment Determinations and Compliance Findings for HUD-assisted Projects [24 CFR 58 form](#) is the primary document that must be completed by the subrecipient or its consultant. Subrecipients must coordinate and document all efforts with all appropriate local, state, and federal agencies that may have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project/activity. Subrecipients must document in the ERR all supporting data for analyses and findings, such as maps, surveys, agency/tribal correspondence, studies, reports, site pictures, calculations, charts, tables, and technical opinions.

Using the EA form, subrecipients must:

1. Determine existing conditions and describe the character, features, and resources of the project area and its surroundings, and identify the trends that are likely to continue in the absence of the project.
2. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change because of the project.

3. Identify, analyze, and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in 24 CFR [58.5](#) and [58.6](#). The subrecipient must consult with the appropriate local, state, and federal agencies, as well as federally recognized Tribes (see [Section 7.3.1, Historic Preservation](#)), which have or might have an environmental interest in the project/activity.
4. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified to eliminate or minimize adverse environmental impacts.
5. Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

### **Determination of Impact**

Based on Steps 1 through 5 shown above, subrecipients must make one of the following determinations:

1. A Finding of No Significant Impact (FONSI), which means that the project will not significantly affect the quality of the human environment.
2. A Finding of Significant Impact (FOSI), which means that the project may significantly affect the quality of the human environment. The subrecipient must then proceed with the preparation of an Environmental Impact Statement. It is unlikely that a funded activity will trigger an EIS. In the event that a subrecipient finds itself involved with this level of review, contact the LOCD-DR Environmental Officer.

If a subrecipient's EA results in a FONSI determination, then the subrecipient is ready to publish the FONSI/RROF Public Notice and open the comment period.

**NOTE: Once the subrecipient considers the environmental review document to be completed, LOCD-DR strongly recommends that subrecipients submit the ERR to the LOCD-DR Environmental Officer for review prior to publishing any notices.**

### **Public Notice, Comment Period, and RROF Process**

1. Prepare a Combined [Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds \(FONSI/RROF\)](#).
2. Publish a notice in the state newspaper, such as *The Advocate*, as well as the local newspaper for the parish where the project/activity is located. Alternatively, all notices can be posted on a local government website if all accessibility requirements are met (see [Section 6.3, Public Notices](#)).
3. If published in a newspaper, the notice should be published once and must allow public review and comment to the ERR for at least 15 days. All comments based on the public notice process must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the project/activity must be re-evaluated accordingly.
4. If there are no adverse comments during this public comment period, the subrecipient must submit a completed [RROF](#) signed by the certifying officer, the ERR, and proof of publication of the FONSI/RROF that shows the date of publication to LOCD-DR.

LOCD-DR will hold this request for a minimum of 15 days to allow for further public comment. If there are no adverse public comments, LOCD-DR will execute the [AUGF](#) and issue a Notice to Proceed related to environmental clearance to the subrecipient.

### **7.5 Environmental Impact Statement (24 CFR 58.37)**

An Environmental Impact Statement (EIS) is required when the subrecipient's EA results in a Finding of Significant Impact, indicating that the proposed project or activity will significantly impact the human environment.

It is unlikely that a CDBG-DR and CDBG-MIT funded activity will trigger an EIS. In the event that a subrecipient finds itself involved with this level of review, the subrecipient should contact the LOCD-DR Environmental Officer immediately for further instructions.

- An EIS is required under any of the following circumstances, except as provided in [24 CFR 58.37\(c\)](#):
  - The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
  - The project would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under 24 CFR 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
  - The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use, nor does it have to be a totally new construction. If the project is designed to provide upgraded services to existing development, as well as to serve new development, only that portion of the increased capacity, which is intended to serve new development, should be counted.

## 8. Other Types of Environmental Reviews and Reports

### 8.1 Adoption of Another Agency's Environmental Review

When CDBG-DR or CDBG-MIT funds are used to supplement other federal assistance, subrecipients may adopt any environmental review, approval, or permit performed by a federal agency without review or public comment. This is allowed if the actions covered by the existing environmental review, approval, or permit and the actions proposed for the CDBG-DR or CDBG-MIT supplemental funds are substantially the same.

The subrecipient is only required to supplement the other federal agency's environmental review to comply with HUD regulations (e.g., publication or posting requirements for Notice of Finding of No Significant Impact (FONSI), Notice of Intent to Request Release of Funds

(NOI/RROF), concurrent or combined notices, HUD approval period for objections) if the activity is modified so the other agency's environmental review no longer covers the activity. The subrecipient's environmental review obligations are considered to be completed when adopting another agency's environmental review. To be adequate, the subrecipient must:

1. Obtain a completed electronic or paper copy of the federal agency's review and retain a copy of the full file in its ERR.
2. Review the scope of work completed by the federal agency's review and verify that the scope of work is substantially the same with a memo to file in its ERR.
3. Notify LOCD-DR on the RROF that another agency review is being used. Include the name of the other federal agency, the name of the project, and the date of the project's review as prepared by the other federal agency. When permitted by the applicable appropriations acts, and notwithstanding [42 United States Code \(U.S.C.\) 5304\(g\)\(2\)](#),<sup>1</sup> LOCD-DR may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds if the subrecipient has adopted an environmental review, approval, or permit under this process, or if the activity or project is categorically excluded from review under NEPA.
4. Additional information on the adoption of another agency's environmental review can be found in the Universal Notice.

Federal Regulations:

<sup>1</sup> [42 U.S.C. 5304\(g\)\(2\)](#)

[HUD Universal Notice](#)

[Memorandum 2025-02](#)

**NOTE: Subrecipients should consult with the LOCD-DR Environmental Officer if they intend to adopt another federal agency's environmental review.**

## 8.2 Project Re-Evaluation (24 CFR 58.47)

HUD considers an environmental review for a specific project to be valid for up to five years as long as there are no changes to the project scope or environmental conditions. Sometimes projects are revised, delayed, or otherwise changed, such that a re-evaluation of the environmental review is necessary. The purpose of the re-evaluation is to determine whether the original findings are still valid.

A subrecipient must re-evaluate its environmental findings to determine whether the original findings are still valid when the following occurs:

1. The subrecipient proposes substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original project scope,
2. There are new circumstances and environmental conditions that may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity, which is proposed to be continued, or
3. The subrecipient proposes the selection of an alternative not in the original finding.

If the original findings are still valid but the data or conditions upon which they were based have changed, the subrecipient must affirm the original findings and update the ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

If the subrecipient determines that the original findings are no longer valid, a new EA must be prepared.

## 8.3 Tiered Environmental Reviews

Tiering<sup>1</sup> is a means of making the environmental review process more efficient by allowing subrecipients to eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ready at each level

Federal Regulations:

<sup>1</sup> [24 CFR 58.15](#)

of environmental review. Tiering is appropriate when a subrecipient is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or parish over the course of one to five years) but where the specific sites and activities are not yet known.

A tiered review consists of two stages: (1) a broad-level review and (2) subsequent site-specific reviews. Public notice and the RROF are processed at a broad level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved.

- The broad-level review should identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project.
- As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review.
- Together, the broad-level review and all site-specific reviews will collectively comprise a completed environmental review addressing all required elements.

Maintaining an organized ERR is especially important regarding tiered reviews because tiered ERRs have not been completed without both the broad-level and site-specific tiered reviews. All site-specific reviews must identify the corresponding broad-level review and should be filed together. Failure to maintain documentation of both broad-level and site-specific reviews for each project may result in penalties and sanctions, including the repayment of funds.

HUD provides tiered review resources, including a tiered CEST sample format and a sample Notice of Intent to Request Release of Funds for Tiered Review.

Tiered Environmental Review Resources	Webpage URL
HUD Exchange: Tiered Environmental Reviews	<a href="https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/">https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/</a>

**NOTE: Subrecipients should consult with the LOCD-DR Environmental Officer for technical assistance prior to initiating a tiered review.**

#### **8.4 ASTM Phase I and Phase II Environmental Site Assessments**

Some projects may require additional environmental review of the current and historical uses of a property when there is potential contamination of the soil or groundwater at the project site. Typically, these assessments are incorporated in the ERR and may result in specific mitigation actions that must take place prior to the purchase of the property or the construction of an improvement. A Phase II ESA may be required depending on the findings of the Phase I report. A valid Phase I ESA is required as part of the environmental review process for multifamily housing projects and property acquisitions. A Phase I ESA may also be required for other types of projects as deemed necessary by LOCD-DR.

#### **8.5 Phase I Cultural Resources Survey**

As part of [Section 106 of the National Historic Preservation Act](#),<sup>1</sup> consultation with the SHPO and/or Tribal Historic Preservation Office may require a Phase I Cultural Resources Survey.

Federal Regulations:

<sup>1</sup> [36 CFR 800.1](#)

The purpose of a Phase I Cultural Resources Survey is to locate and define the boundaries of every archaeological site within the project area. For Phase I surveys, the survey area must be examined by systematic shovel testing whenever possible, in combination with a systematic pedestrian survey, and/or additional techniques, such as auguring, coring, soil probes, or mechanically excavated trenching, depending upon the surface conditions and the potential for deeply buried archaeological sites.

Field standards for a Phase I Cultural Resources Surveys can be found at the Louisiana Office of Cultural Development, Division of Archaeology webpage via [Phase 1 Surveys | Field Standards | Division of Archaeology](#).

## 9. Best Practices for a Thorough and Efficient Review

- Follow the guidance from this document and complete the requirements for the level of environmental review corresponding to your project.
- Preliminary consultation with USACE should begin as soon as possible for any projects that potentially contain wetlands or for any projects that may contain jurisdictional waters.
- Consultation with Tribes and all communication, including the responses, if any, must be included in the ERR.
- If a project requires acquisition or multifamily housing, an ASTM certified Phase I ESA must be completed by a certified professional.
- Required notices must have proof of publication included in the ERR.
- Consultation with all agencies, entities, and individuals with an interest in the project area must be done properly and documented in the ERR.
- All supporting documentation and findings must be included in the ERR file.

## 10. Environmental Resources

- HUD Environmental website at the HUD Exchange:  
<https://www.hudexchange.info/programs/environmental-review/>
- CDBG-DR website at the HUD Exchange:  
<https://www.hudexchange.info/programs/cdbg-dr/>
- Disaster Recovery and Environment website at the HUD Exchange:  
<https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment/>
- HUD Environmental Review Worksheets:  
<https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal-laws-and-authorities-worksheets/>

- Code of Federal Regulations:
  - [eCFR :: 24 CFR 58 -- Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities](#)
  - [eCFR :: 24 CFR 55 -- Floodplain Management and Protection of Wetlands](#)
- Tribal Consultation website at the HUD Exchange:
  - <https://www.hudexchange.info/programs/environmental-review/historic-preservation/tribal-consultation/>
- National Wetlands Inventory Map:
  - <https://www.fws.gov/wetlands/Data/Mapper.html>
- Floodplain Management:
  - <https://msc.fema.gov/>
  - <http://maps.lsuagcenter.com/floodmaps/>
  - [https://www.hud.gov/sites/dfiles/CPD/documents/Defining the FFRMS Floodplain Instructions and Resources.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/Defining%20the%20FFRMS%20Floodplain%20Instructions%20and%20Resources.pdf)
- Day/Night Noise Level (DNL) Electronic Assessment Tool:
  - <https://www.hudexchange.info/programs/environmental-review/dnl-calculator/>
- Sound Transmission Classification Assessment Tool (STraCAT):
  - <https://www.hudexchange.info/stracat/>
- Acceptable Separation Distance (ASD) Electronic Assessment Tool:
  - <https://www.hudexchange.info/programs/environmental-review/asd-calculator/>
- Department of Energy and Natural Resources, Office of Coastal Management:
  - <https://www.dnr.louisiana.gov/page/office-of-coastal-management-home-page>

## 11. HUD CPD Notices

CPD Notice	Webpage Link
<b>Notice CPD-23-103: Radon</b>	<a href="#"><u>Notice CPD-23-103: Departmental Policy for Addressing Radon in the Environmental Review Process – HUD Exchange</u></a>
<b>Notice CPD-16-02: Categorizing an Activity as Maintenance</b>	<a href="#"><u>Notice CPD-16-02: Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58 – HUD Exchange</u></a>
<b>Notice CPD-17-13: Notice for Interpreting the Limits of the Floodway for Linear Infrastructure Projects</b>	<a href="#"><u>Notice CPD-17-13: Notice for Interpreting the Limits of the Floodway for Linear Infrastructure Projects Complying with HUD Floodplain Management Regulations, 24 CFR Part 55 – HUD Exchange</u></a>

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 7: Civil Rights



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

This section presents summaries of the key regulations and requirements of civil rights, fair housing, equal opportunity, and equal employment opportunity (EEO) laws applicable to the administration of Louisiana Office of Community Development – Disaster Recovery (LOCD-DR), Community Development Block Grant – Disaster Recovery (CDBG-DR), and Community Development Block Grant – Mitigation (MIT) funds.

The administration of CDBG-DR and CDBG-MIT funds is governed by key civil rights, fair housing, equal opportunity, and EEO laws to ensure that all programs and activities are conducted without bias or discrimination. These laws, include, but are not limited to, the following: [Title VI of the Civil Rights Act of 1964](#), the [Fair Housing Act](#), [Section 504 of the Rehabilitation Act of 1973](#), and the [Age Discrimination Act of 1975](#), which protect individuals from discrimination.

The civil rights laws and related laws and regulations are designed to protect individuals from discrimination on the basis of the following:

- Race
- National Origin
- Religion
- Color
- Sex
- Age
- Disability
- Familial Status
- Sexual Orientation
- Gender
- Gender Identity

- Pregnancy
- Sexual Harassment
- Victims of Domestic Violence
- Veteran Status
- Political Affiliation
- Genetic Information

As they apply to the LOCD-DR, CDBG-DR, and CDBG-MIT programs, these laws protect individuals from discrimination in the following categories:

1. Housing
2. Benefits created by CDBG-DR and CDBG-MIT projects
3. Employment
4. Business opportunities
5. Public accommodations
6. Education

Population groups specifically protected by the provisions of these laws include the following:

1. Minorities (specifically Blacks, Hispanics, Asians and Pacific Islanders, and American Indians and Alaska Natives)
2. Women
3. Groups distinguished by age
4. Persons with disabilities
5. Families with children
6. Veterans

The applicable laws and regulations ensure equal participation, fair housing, equal employment and economic opportunities, equal access to public services and facilities, and protection from discrimination.

## 2. Definitions

Refer to these definitions of the terms used within this chapter:

1. **Affirmatively Furthering Fair Housing:** Required in Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act. It mandates that recipients of federal funds take meaningful actions to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunities (24 Code of Federal Regulations [CFR] [5.151](#) and [5.152](#)).
2. **Applicant:** A state or unit of general local government that submits an application pursuant to the provisions of Subpart E, F, G, or M.
3. **Contractor:** An entity selected in accordance with the procurement requirements at [2 CFR 200.318](#). In accordance with [2 CFR 200.319](#), such procurement actions must be conducted in a manner that provides for free and open competition. With specific regard to the context of Section 3 ([24 CFR 75.5](#)), a *Contractor* is an entity entering into a contract with either (1) a subrecipient to perform work in connection with public housing financial assistance, or a Section 3 project, or (2) a subrecipient for work in connection with a Section 3 project ([24 CFR 75.5](#)).
4. **Extremely Low-Income Person:** Persons or families whose total household incomes do not exceed 30% of the median income for the area (per the U.S. Consolidated Appropriations Act of 2014).
5. **Final Rule – Section 3:** The regulations collectively codified within [24 CFR Part 75](#).
6. **Labor Hours:** The number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance ([24 CFR 75.5](#)).

7. **Low-Income Person:** Persons or families whose total household incomes do not exceed 80% of the median income for the area (per Section 3(b)(2) of the U.S. Housing Act of 1937) ([24 CFR 135.5](#), [24 CFR 75.5](#)).
8. **Materials Supply Contracts:** Contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies ([24 CFR 75.5](#)).
9. **Minority Business Enterprise (MBE):** An MBE is a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such a disadvantage may arise from cultural, racial, chronic economic circumstances, or other similar causes.
10. **Mixed-Finance Development:** The development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing, wherein the public housing units are owned, in whole or in part, by an entity other than a Public Housing Agency ([24 CFR 905.604](#)).
11. **Moderate Income Person:** Persons or families whose total income is between 80% and 140% of the median income for the area ([24 CFR 570.3\(r\)](#)).
12. **Neighborhood of the Project:** Defined as either (1) the area within 1 mile of the Section 3 project, or (2) if fewer than 5,000 people live within 1 mile of a Section 3 project, the area within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census (same as “Service Area”) ([24 CFR 75.5](#)).
13. **Office of Small and Disadvantaged Business Utilization:** The U.S. Department of Housing and Urban Development (HUD) office that is responsible for ensuring that small businesses are treated fairly and that they have an opportunity to compete and be selected for a fair amount of HUD’s prime and subcontracting opportunities.
14. **Old Rule – Section 3:** The regulations collectively codified within [24 CFR 135.5](#).

15. **Professional Services:** Non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services (per [24 CFR 75.5](#)).
16. **Public Housing Agency:** Any state, parish, municipality, or governmental entity (or public body or agency or instrumentality of these entities) that is authorized to engage or assist in the development or operation of public housing ([24 CFR 905.108](#)).
17. **Public Housing Financial Assistance:** (1) Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act; (3) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and (4) the entirety of a Mixed-Finance Development project, regardless of whether the project is fully or partially assisted with public housing financial assistance ([24 CFR 75.3\(a\)\(1\)](#)).
18. **Section 3 Business Concern:** As related to Section 3 of the HUD Act of 1968 (per [24 CFR 75.5](#)), a business concern meeting at least one of the following three criteria, documented within the previous six-month period:
- The business is at least 51% owned and controlled by low- or very low-income persons,
  - Over 75% of the labor hours performed for the business over the previous three-month period are performed by Section 3 workers, or
  - The business is at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing.
19. **Section 3 Coordinator:** The individual tasked with overseeing all Section 3 responsibilities for the subrecipient.
20. **Section 3 Covered Activity:** As related to Section 3 of the HUD Act of 1968, any activity that is funded by Section 3 covered assistance ([24 CFR 135.5](#)).

21. **Section 3 Covered Assistance:** As related to Section 3 of the HUD Act of 1968, assistance provided under any CDBG-DR or CDBG-MIT program that is expended for work arising in connection with housing rehabilitation, housing construction, or other public construction projects ([24 CFR 135.5](#)).
22. **Section 3 Covered Contract:** As related to Section 3 of the HUD Act of 1968, a contract or subcontract awarded by a subrecipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 project. This does not include contracts for the purchase of materials and supplies unless the contract includes the purchasing of materials and installation of these materials and supplies. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3 ([24 CFR 135.5](#)).
23. **Section 3 Project:** The housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes Programs. The *project* is the site, or sites together with any building(s) and improvements located on the site(s), that are under common ownership, management, and financing ([24 CFR 75.3\(2\)](#)).
24. **Section 3 Resident:** A public housing resident or an individual who resides in the metropolitan area or non-metropolitan county/parish in which the Section 3 covered assistance is expended, and who meets the definition of low-income or very low-income person ([24 CFR 135.5](#)).

25. **Section 3 Worker:** Per [24 CFR 75.5](#), any worker who currently fits, or when hired in the past five years, fits at least one of the following categories, as documented:
- The worker’s income for the previous or annualized calendar year is below the income limit established by HUD,
  - The worker is employed by a Section 3 business concern, or
  - The worker is a YouthBuild participant.
26. **Section 504:** Protects people with disabilities from discrimination in services, benefits and opportunities in any program that receives federal assistance ([24 CFR 8](#)).
27. **Section 8 Assisted Housing:** Housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 ([24 CFR 75.5](#)).
28. **Service Area:** Defined as either (1) the area within 1 mile of the Section 3 project, or (2) if fewer than 5,000 people live within 1 mile of a Section 3 project, the area within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census (same as “Neighborhood of the Project”) ([24 CFR 75.5](#)).
29. **Small Business:** A business that meets the criteria set forth in Section 3(a) of the Small Business Act ([15 United State Code \[U.S.C.\] 631, 636, 637](#)).
30. **Small Public Housing Authority (PHA):** A PHA that manages or operates fewer than 250 housing units ([24 CFR 75.5](#)).
31. **Subcontractor:** Any entity that has a contract with a contractor to undertake a portion of the contractor’s obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project ([24 CFR 75.5](#)).
32. **Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is

a beneficiary of such a program ([2 CFR 200.93](#)).

**33. Targeted Section 3 Worker:**\* Per [24 CFR 75.21](#), a Targeted Section 3 worker for housing and community development financial assistance is defined as a Section 3 worker who is also:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits (or when hired, will fit) at least one of the following categories:
  - Living within the service area or the neighborhood of the project, or
  - A YouthBuild participant

\* Per [24 CFR 75.11](#), as it relates to public housing financial assistance, the Targeted Section 3 worker definition also includes considerations for residents of public housing or Section 8 housing.

**34. Very Low-Income Person:** Persons or families whose total household incomes do not exceed 50% of the median income for the area (per [Section 3\(b\)\(2\) of the U.S. Housing Act of 1937](#)) ([24 CFR 135.5](#), [24 CFR 75.5](#)).

**35. Women’s Business Enterprise (WBE):** A WBE is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S. citizens or legal resident aliens, whose business formation and principal place of business are in the United States or its territories, and whose management and daily operations are controlled by a woman with industry expertise.

**36. YouthBuild Program/Participant:** YouthBuild programs are those receiving assistance from the U.S. Department of Labor under the Workforce Innovation and Opportunity Act of 2013. They are community based pre-apprenticeship programs that provide job training and educational opportunities for at-risk youth ([24 CFR 75.5](#)).

### 3. Civil Rights Requirements – Laws and Statutes

Several federal and state statutes, portions of the CDBG-DR and CDBG-MIT regulations, and presidential Executive Orders contain civil rights and affirmative action provisions that apply to all programs funded with federal monies. Civil rights laws applicable to LOCD-DR, CDBG-DR, and CDBG-MIT programs include, but are not limited to, the following statutes, regulations, and Executive Orders:

Title	Date	Summary
<b>Statutes</b>		
<a href="#"><u>Equal Pay Act</u></a>	1963	Prohibits employers from paying different wages to men and women for performing substantially the same skill, effort, and responsibility under similar working conditions.
<a href="#"><u>Civil Rights Act of 1964</u></a>	1964	Broad range of legislation that includes 11 specific titles to prohibit discrimination in a variety of contexts.
<a href="#"><u>Title VI of the Civil Rights Act</u></a>	1964	Prohibits discrimination in federally assisted programs.
<a href="#"><u>Title VII of the Civil Rights Act</u></a>	1964	Prohibits discrimination on the basis of race, color, religion, sex, and national origin for various aspects of employment, including hiring, firing, promotions, and compensation.  Established the Equal Employment Opportunity Commission (EEOC) for the enforcement of protections.
<a href="#"><u>Title VIII of the Civil Rights Acts of 1968 (Fair Housing Act)</u></a>	1968	Prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin.  Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.
<a href="#"><u>Architectural Barriers Act</u></a>	1968	Requires buildings designed with federal funds to be accessible to persons with disabilities.
<a href="#"><u>Equal Opportunity Act</u></a>	1972	Strengthened the Civil Rights Act of 1964 by extending Title VII’s protections to include state and

Title	Date	Summary
		<p>local governments, educational institutions, and employers with more than 15 employees.</p> <p>Expanded the EEOC's authority to file lawsuits against individuals, employers, and labor unions that violated discrimination laws.</p>
<a href="#"><u>Section 504 of the Rehabilitation Act</u></a>	1973	Prohibits discrimination based on disability in any program or activity receiving federal assistance.
<a href="#"><u>Section 508 of the Rehabilitation Act</u></a>	1973	Requires technology to be used to provide access to individuals with disabilities so that data and information are available that are comparable to people without disabilities.
<a href="#"><u>Section 109 of the Housing and Urban Development Act</u></a>	1974	Under any program or activity funded, in whole or in part, under Title I or Title II of the Act (regardless of the contract's dollar value), no person shall be excluded from participation (including employment); denied program benefits; or subjected to discrimination on the basis of race, color, national origin, sex (including sexual orientation and sexual harassment), and religion.
<a href="#"><u>Vietnam Era Veteran's Readjustment Assistance Act</u></a>	1974	<p>Protects Vietnam veterans from employment discrimination. Requires federal contractors to take affirmative action to employ and advance employment opportunities to qualified Vietnam era veterans, special disabled veterans, recently separated veterans, and other protected veterans.</p> <p>Administered by the Office of Federal Contract Compliance Programs.</p>
<a href="#"><u>Title IX of the Education Amendment Act</u></a>	1972	Title IX prohibits discrimination on the basis of sex (including gender, sexual orientation, and sexual harassment) in any educational programs and activities that receive federal financial assistance. HUD enforces Title IX when it relates to housing affiliated with an educational institution.

Title	Date	Summary
<a href="#"><u>The Age Discrimination Act</u></a>	1975	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age.
<a href="#"><u>Pregnancy Discrimination Act</u></a>	1978	Amended Title VII of the Civil Rights Act to explicitly prohibit employment discrimination on the basis of pregnancy, childbirth, or a related medical conditions.
<a href="#"><u>Title II of the Americans with Disabilities Act (ADA)</u></a>	1990	Prohibits discrimination based on disability in programs or activities provided by public entities, including public housing, housing assistance, and housing referrals.
<a href="#"><u>Violence Against Women Act (VAWA)</u></a>	1994	VAWA provides housing protections for victims of domestic violence, dating violence, sexual assault, and stalking in many of HUD's housing programs. VAWA also requires the establishment of emergency transfer plans for facilitating the emergency relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault, or stalking.
<a href="#"><u>Uniformed Services Employment and Reemployment Rights Act</u></a>	1994	Prohibits federal, state, and local governments and private employers from discriminating against individuals based on past, present, or future military service.  Guarantees that service members are promptly reemployed in their civilian jobs upon returning from duty.
<a href="#"><u>Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996</u></a>	1996	PRWORA primarily focused on welfare reform and did not explicitly address civil rights protection.  The U.S. Commission on Civil Rights has highlighted concerns about disparities in access to and utilization of services, and discrimination in the delivery of welfare benefits.
<a href="#"><u>Genetic Information Nondiscrimination Act</u></a>	2008	Prohibits discrimination based on genetic information, both in health insurance decisions regarding coverage, rates, or underwriting and

Title	Date	Summary
		employment decisions, including hiring, firing, promotion, or other employment terms.
<b>Executive Orders</b>		
<a href="#"><u>Executive Order 11063: Equal Opportunity in Housing</u></a>	1962	Prohibits discrimination in the sale, leasing, renting, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.
<a href="#"><u>Executive Order 11246: Equal Employment Opportunity &amp; Nondiscrimination by Government Contractors and Subcontractors</u></a>	1965	Prohibits discrimination by federal contractors and subcontractors on the basis of race, color, religion, sex, and national origin and requires them to take affirmative action to prevent such discrimination.
<a href="#"><u>Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing</u></a>	1994	Requires the Secretary of HUD to coordinate affirmatively further fair housing efforts.
<a href="#"><u>Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</u></a>	1994	Directs federal agencies to promote environmental justice by identifying and addressing the disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations, and established an Interagency Working Group on Environmental Justice.
<a href="#"><u>Executive Order 13217: Community-Based Alternatives</u></a>	2001	Requires federal agencies to evaluate their policies and programs to determine whether any of them can be revised or modified to improve the

Title	Date	Summary
<a href="#"><u>for Individuals With Disabilities</u></a>		availability of community-based living arrangements for persons with disabilities.
<a href="#"><u>Executive Order 13672: Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors</u></a>	2014	Added sexual orientation and gender identity to the prohibited bases of discrimination in Executive Order 11246 for contractors and subcontractors.
<a href="#"><u>Executive Order 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity</u></a>	2025	This order revokes Executive Order 11246 and eliminates the requirement for federal contractors to maintain affirmative action programs for women and minorities. Executive Order 14173 requires contractors to maintain affirmative action programs for people with disabilities and veterans.

## Regulations

<b>Accessibility Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures</b>	<a href="#"><u>24 CFR 40</u></a>
<b>Affirmative Fair Housing Marketing</b>	<a href="#"><u>24 CFR 108</u></a> <a href="#"><u>24 CFR 110</u></a> <a href="#"><u>24 CFR 200, Subpart M</u></a> <a href="#"><u>24 CFR 203.12(b)(3)</u></a>
<b>Affirmatively Furthering Fair Housing</b>	<a href="#"><u>24 CFR 5.150 – 5.168</u></a>

Title	Date	Summary
Certification and Funding of State and Local Fair Housing Enforcement Agencies		<a href="#">24 CFR 115</a>
Collection of Data		<a href="#">24 CFR 121</a>
Discriminatory Conduct Under the Fair Housing Act		<a href="#">24 CFR 100</a>
Equal Access Rule		<a href="#">24 CFR 5.105</a> <a href="#">24 CFR 5.106</a>
Fair Housing Act Complaint Processing		<a href="#">24 CFR 103</a>
Fair Housing Poster		<a href="#">24 CFR 110</a>
Fair Housing Initiatives Program		<a href="#">24 CFR 125</a>
Information and Communication Technology Standards and Guidelines		<a href="#">36 CFR 1194</a>
Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063		<a href="#">24 CFR 107</a>
Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the U.S. Department of		<a href="#">24 CFR 8</a>

Title	Date	Summary
<b>Housing and Urban Development</b>		
<b>Nondiscrimination in Federally Assisted Programs of the U.S. Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964</b>	<a href="#">24 CFR 1</a>	
<b>Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974</b>	<a href="#">24 CFR 6</a>	
<b>Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance</b>	<a href="#">24 CFR 146</a>	
<b>Nondiscrimination on the Basis of Disability in State and Local Government Services</b>	<a href="#">28 CFR 35</a>	
<b>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance</b>	<a href="#">24 CFR 3</a>	

Title	Date	Summary
<b>Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking</b>	<a href="#">24 CFR 5.2001 – 5.2011</a>	

## 4. Strategies and Procedures

This section presents strategies and procedures for complying with the various civil rights, equal opportunity and affirmative action laws, regulations, and requirements outlined above. As a CDBG-DR or CDBG-MIT grant subrecipient, subrecipients must ensure that all CDBG-DR or CDBG-MIT funded activities undertaken as part of a program are conducted in a manner that will not cause discrimination on the basis of race, national origin, religion, color, sex, age, disability, familial status, sexual orientation, gender, gender identity, pregnancy, status as a victim of sexual harassment, status as a victim of domestic violence, veteran status, political affiliation, or genetic information.

The information that follows can be used, in whole or in applicable part, to ensure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

### 4.1 Nondiscrimination, Equal Opportunity, and Affirmative Action in Employment

1. Maintain employment data that indicates staff composition by age, race, sex, disabled status, veteran status, and national origin.
2. Develop or review existing personnel policies to ensure compliance with nondiscrimination and equal opportunity requirements.
3. Advertise as an equal opportunity employer.
4. Publish an annual statement of nondiscrimination and/or include such a statement in any publicity on CDBG-DR and CDBG-MIT programs.
5. Develop a network of information points that facilitate access to groups that are

historically underrepresented, underserved, and have difficulty accessing similar programs, in addition to newspaper/public service channels.

6. Utilize information points throughout the community to advertise employment opportunities.
7. Develop or implement an affirmative action plan.
8. Develop a Section 3 compliance plan.
9. Display equal opportunity posters prominently.
10. Take affirmative action to overcome the effect of past discrimination.

#### **4.2 Nondiscrimination, EEO, and Affirmative Action in Contracting**

1. Advertise as an equal opportunity employer in bid solicitations.
2. Solicit bids from disabled, veteran-owned, and locally owned businesses.
3. Maintain a list of locally owned businesses that were awarded contracts.
4. Require a Section 3 clause in all contracts.
5. Inform contractors of equal opportunity requirements at pre-construction conferences or through other means of notification.
6. Require contractors to submit monthly utilization reports.
7. Monitor contractor compliance at the work site.

#### **4.3 Nondiscrimination, Equal Opportunity, and Affirmative Action in Housing**

1. Information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups.
2. Contract documents used by subrecipients and lending institutions participating in local programs should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

3. Criteria for selecting the recipients of housing assistance should be evaluated for any discriminatory effect.
4. Acceptable fair housing activities.
5. Publicize that the subrecipient will assist persons experiencing discrimination in housing.
6. Development and adoption of a fair housing policy with the identification of methods of enforcement.
7. Provision of housing counseling services, which assist groups that are historically underrepresented, underserved, and have difficulty accessing similar programs, to seek housing outside areas of concentration.
8. Work with local real estate brokers to formulate a Voluntary Areawide Marketing Agreement.
9. Work with local banks to post “equal lending opportunity” advertisements.
10. Use the “equal housing opportunity” slogan and logo on city letterhead.
11. Sponsor fair housing seminars and campaigns.
12. Work with community leaders in the area to promote housing development and increase the number of groups that are historically underrepresented, underserved, and have difficulty accessing similar program participation.
13. Assist local housing developers in developing outreach programs to attract groups that are historically underrepresented, underserved, and have difficulty accessing similar programs.
14. Review zoning ordinances and comprehensive plans to ensure that they promote special de-concentration of assisted housing units.
15. Create a local housing authority.
16. Publicly advertise the city as a “fair housing city.”

17. Adopt a code enforcement ordinance that will compel landlords to keep their units in a safe and sanitary condition.

#### **4.4 Complaints**

A complaint may not always refer to the violation of a particular civil rights law or laws.

A complaint should be reviewed as a civil rights complaint when the complainant:

1. Indicates the belief that he or she has been denied opportunities, treated differently, and so forth.
2. States that his or her race, national origin, religion, color, sex, age, disability, familial status, sexual orientation, gender, gender identity, pregnancy, status as a victim of sexual harassment, status as a victim of domestic violence, veteran status, political affiliation, or genetic information was the basis of his or her discrimination.

Any person, or any specific class of persons, who believes that he or she has been subject to discrimination may file a complaint. A complaint may be filed by the complainant or a representative. A Section 3 of the HUD Act of 1968 Complaint Register is included as Exhibit 7-1. The form contains all of the necessary components of the complaint process. The information provided on this form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine whether the allegations of non-compliance are valid.

Civil rights complaints must be referred directly to HUD, Office of Fair Housing and Equal Opportunity (FHEO) (1-800-669-9777). Section 3 of the HUD Act of 1968 complaints are required to be filed at the appropriate HUD FHEO Regional Office where the violation occurred within 180 days from the date of the action or omission upon which the complaint is based.

The U.S. Department of Labor handles civil rights complaints against federal contractors through its Office of Federal Contract Compliance Programs (OFCCP). The OFCCP enforces several equal employment opportunity laws that apply to federal contractors and subcontractors, including the following:

**Section 503 of the Rehabilitation Act of 1973:** Prohibits discrimination against qualified individuals with disabilities and requires affirmative action to ensure equal employment opportunity in all employment practices.

**Vietnam Era Veterans' Readjustment Assistance Act of 1974:** Prohibits discrimination against qualified covered veterans and requires affirmative action to ensure equal employment opportunity in all employment practices.

If you believe a federal contractor has violated these laws, you can file a complaint with the OFCCP. The OFCCP will investigate the complaint and, if necessary, take enforcement actions to ensure compliance with the laws.

Contract-related complaints must be referred to the regional [Office of Contract Compliance Programs, U.S. Department of Labor](#). Confidentiality is mandatory. The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than HUD. However, LOCD-DR should be notified that a complaint has been registered. See also Chapter 1: Administration.

## 5. Developing and Implementing a Fair Housing Program

CDBG-DR and CDBG-MIT subrecipients must comply with the Fair Housing Act<sup>1,2,3</sup> by developing and implementing a fair housing program. This involves promoting fair housing by identifying and addressing barriers to fair housing and raising awareness to promote fair housing practices. A fair housing program should include the following:

### Federal Regulations:

<sup>1</sup> [42 U.S.C. 3608\(e\)\(5\)](#)

<sup>2</sup> [E.O. 12259\(1-202\)](#)

<sup>3</sup> [24 CFR 570.601](#)

- **Affirmatively Furthering Fair Housing:** Subrecipients must conduct an analysis of impediments to fair housing choice and take actions to overcome these impediments.
- **Fair Housing Action Plans:** Subrecipients are required to create and implement action plans that address the fair housing issues identified in their analysis.
- **Public Participation:** Engage the community and ensure that all voices, especially those of protected classes, are heard in the planning and implementation process.

- **Monitoring and Reporting:** Regularly monitoring fair housing activities and reporting progress to HUD to ensure compliance with fair housing laws.

Each year during the Cooperative Endeavor Agreement period, subrecipients need to carry out at least one fair housing activity and keep records of it. This documentation should be ready for review when LOCD-DR conducts on-site monitoring. The records should include details such as the type of activity (e.g., community seminar, brochure distribution), the target audience (e.g., general public, real estate brokers), and the category of fair housing information provided.

For ideas on activities that promote fair housing, see Exhibit 7-2, which includes examples such as a utility bill stuffer and a fair housing flyer. Before starting any fair housing activities, it is important for subrecipients to understand the different types of discriminatory conduct as defined by federal law. A list of these regulations is available to help you identify and avoid discriminatory practices.

### **Compliance Language**

[Chapter 45](#), enacted as part of the Civil Rights Act of 1968, aims to eliminate discrimination in housing based on race, color, religion, sex, disability, family status, or national origin. Key provisions include the following:

- **Section 3604:** No discrimination in selling, renting, or financing homes.
- **Section 3605:** No discrimination in real estate transactions.
- **Section 3606:** No discrimination in brokerage services.
- **Sections 3610 – 3614:** Explains how the law is enforced by HUD and through private actions.

**NOTE: Fair Housing requirements are subject to any amendments to applicable Federal Register notices and/or HUD regulations.**

## 6. Section 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended,<sup>1</sup> requires that subrecipients shall operate each program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

Federal Regulations:

[<sup>1</sup> 29 U.S.C. 754](#)

Section 504 provides that “No otherwise qualified individual with disabilities in the United State shall, solely by reason of his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The subrecipient is responsible for compliance with Section 504 by the developer in economic development programs.

### 6.1 Minimum Section 504 Requirements for All Subrecipients

In order to comply with Section 504, the following actions must be initiated:

1. **Assurance:** Each subrecipient shall submit assurance to LOCD-DR that the CDBG-DR and CDBG-MIT programs will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the subrecipient for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with LOCD-DR. A sample Section 504 assurance is attached as Exhibit 7-3.
2. **Self-Evaluation:** Each subrecipient shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed within six months of receipt of any grant award after July 1988.

3. **Building Designation and Status:** The self-evaluation shall designate all buildings and structures as “new” or “existing,” depending on whether the building was constructed or altered after July 1988.<sup>1</sup> The self-evaluation shall determine whether buildings and structures that house programs and services for the public can be approached, entered, and used by persons with disabilities. At a minimum, the following items should be addressed in the self-evaluation: Parking – Spaces, Curbs, Ramps; Routes and Pathways – Slopes, Levels, Ramps, Notices; Entrance Ways – Widths and Heights; Interiors – Door Grasp, Pressure, Pathways, Elevators; Service – Counter Heights, Notices; and Auxiliary Services – Telephones, Restrooms, Drinking Fountains.

**Federal Regulations:**  
<sup>1</sup>[24 CFR 8.51\(a\)](#)
4. **Policy Modifications versus Structural Changes:** Each subrecipient shall modify any policies and practices that do not meet the requirements for program accessibility. Because compliance with Section 504 does not necessarily require a subrecipient to make each of its existing facilities accessible to and usable by individuals with disabilities or require a subrecipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a subrecipient may comply with the requirements of this section in its programs and activities receiving federal financial assistance through such means as the relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with disabilities. A subrecipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.<sup>2</sup>

**Federal Regulations:**  
<sup>2</sup>[24 CFR 8.21\(c\)\(2\)\(i\)](#)
5. **Visually or Hearing Impaired:** Each subrecipient must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program, who have visual or hearing impairments, are provided with the information

necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

6. **Benefit to Those with Disabilities:** Each subrecipient must maintain data for LOCD-DR showing the extent to which individuals with disabilities are the beneficiaries of federally assisted programs.

## 6.2 Other Section 504 Requirements, as Applicable

If structural changes to non-housing facilities will be undertaken to achieve program accessibility (see notes below), a subrecipient shall develop a transition plan with the assistance of interested persons, including individuals with disabilities or organizations representing individuals with disabilities, for those areas which cannot be made accessible administratively.<sup>1</sup>

### Federal Regulations:

<sup>1</sup> [24 CFR 8.21 \(c\)\(4\)](#)

<sup>2</sup> [24 CFR 8.21\(c\)\(3\)](#)

The construction activities identified in the transition plan must have been/must be completed within three years of completion of the self-evaluation that was done within six months of the first grant award made after July 1988<sup>2</sup> (see 2, Self-Evaluation, above). The transition plan must be made available for public inspection and, at a minimum, it shall:

1. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities.
2. Describe in detail the method to be used in making the facility accessible.
3. Set forth a schedule for completion of the modifications. If the schedule exceeds one year, then you must identify the actions to be taken during each year of the transition period.
4. Identify the individual responsible for implementation of the plan.

5. Identify the persons or groups with whose assistance the plan was prepared.

**NOTE: Unless the grant subrecipient has recently acquired a facility that was constructed prior to 1988, which will house programs and services available to the public, and intends to make physical alterations to this facility, the three-year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.**

**NOTE: New non-housing facilities (designed, constructed, or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with disabilities.<sup>1</sup>**

If the subrecipient employs 15 or more persons:

Federal Regulations:

[<sup>1</sup>24 CFR 8.32](#)

1. **Designated 504 Coordinator:** A responsible employee must be designated to coordinate the community's efforts to comply with Section 504.
2. **Grievance Procedures:** The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.
3. **Statement of Compliance:** The subrecipient shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the subrecipient that it does not discriminate on the basis of disabilities in violation of this part. The notification shall state, where appropriate, that the subrecipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include identification of the responsible employee designated above.

4. A subrecipient shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with LOCD-DR. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in subrecipients' publications, and the distribution of memoranda or other written communications.
5. **Records Maintenance and Disclosure:** The subrecipient must maintain a file that includes the following items, make it available for public inspection, and provide it to the responsible civil rights official upon request: (1) a list of the interested persons consulted, (2) a description of areas examined in the self-evaluation and any problems identified, and (3) a description of any modifications made and of any remedial steps taken.

**In order to assist you with Section 504 compliance, a separate handbook was developed and is included as Exhibit 7-5.**

The regulation requires that you must have available a telecommunications device for the deaf (TDD) or equally effective method for communicating with hearing-impaired persons. Louisiana has an approved relay service which may be utilized. To utilize the relay system, the subrecipient must have a policy indicating the use of the relay system by the subrecipient and publish the telephone numbers in the newspaper. The numbers are (1) TDD Users: 1-800-846-5277, and (2) Voice Users: 1-800-947-5277. This service is free of charge. Recently the number "711" has been approved by the Federal Communications Commission for use in contacting the relay service. This number works from both TDD and voice telephones and, while it is applicable in most states, you are still required to list the "800" numbers presented above. More information regarding relay services can be found through Louisiana Relay at <http://larab.org/>.

If you have been the recipient of prior CDBG-DR and CDBG-MIT funds; have a completed self-evaluation; and, if applicable, a transition plan, as mentioned above, the three-year period for completing the construction activities specified in a transition plan for most subrecipients has expired. For "existing" buildings and facilities that house programs and

services for the public and are not accessible, you must have adopted policies and/or modified practices to achieve accessibility. Prior subrecipients should prepare a summary of their past compliance activities. A sample summary of actions taken to achieve compliance with Section 504 can be found in Exhibit 7-4 of this manual.

**NOTE: The “Summary of Actions Taken to Achieve Compliance with Section 504” (Exhibit 7-4) must contain three sections: physical accessibility, communications, and employment. Also, you must resubmit the required assurance previously disclosed to LOCD-DR.**

## 7. Compliance with Section 3 of the HUD Act of 1968

This subsection outlines the requirements and procedures to be followed to ensure that the objectives of Section 3 of the Housing and Urban Development Act of 1968<sup>1</sup> (colloquially “Section 3”) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing or are residents of the community in which the federal assistance is spent.

Federal Regulations:

<sup>1</sup> [12 U.S.C. 1701u](#)

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income persons and Section 3 business concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

This subsection addresses the requirements outlined in [24 CFR 75](#) (the “New Rule”),<sup>2</sup> and subrecipients seeking any further guidance, clarification, or context regarding any topics covered in this subsection should refer to that specific regulation. Any contracts or agreements executed, or projects for which assistance or funds were committed, prior to the New Rule effective date of November 30, 2020, are still required to adhere to all requirements

Federal Regulations:

<sup>2</sup> [24 CFR Part 75](#)

<sup>3</sup> [24 CFR Part 135](#)

outlined in [24 CFR 135](#) (the “Old Rule”).<sup>3</sup> For a summary of key changes from the Old Rule to the New Rule, see Exhibit 7-6.

## 7.1 Applicability of Section 3

A **Section 3 project** is any project that involves housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of **\$200,000**. (The threshold is \$100,000 when the assistance is from the Lead Hazard Control and Healthy Homes Programs.) The “project” is the site or sites, together with any building(s) and improvements located on the site(s), that are under common ownership, management, and financing. Applicability is determined at the **project level**.

Additional considerations for public housing financial assistance regarding Section 3 applicability are provided in [24 CFR 75.3](#).<sup>1</sup> Section 3 requirements **do not** apply to (1) materials supply contracts ([24 CFR 75.3\(b\)](#)) or (2) Indian and tribal preferences ([24 CFR 75.3\(c\)](#)).

Federal Regulations:

<sup>1</sup>[24 CFR 75.3](#)

## 7.2 Overall Requirements

To the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, recipients must ensure that, within the metropolitan area (or non-metropolitan county/parish) in which the project is located, (1) *employment and training opportunities* arising in connection with Section 3 projects are provided to Section 3 workers, and (2) *contracts for work* awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers.

To help subrecipients comply with the Section 3 requirements and achieve Section 3 goals, a sample **Section 3 plan** is included as Exhibit 7-7. This plan is intended to be a tool to guide subrecipients through all of the Section 3 requirements outlined in this section. While [24 CFR 75](#) does not specifically require subrecipients to have Section 3 plans or policies in place, HUD views having them as a best practice that will aid subrecipients in complying with Section 3

requirements and achieving Section 3 goals. To this end, subrecipients are encouraged to utilize the sample plan as a template and adapt it to fit the resources within their individual communities, and to meet the respective needs of their specific programs and activities. Once their respective plan has been fully developed, it is recommended that subrecipients formally adopt the resulting Section 3 plan and maintain a signed copy within the project files.

### **7.2.1 Requirements for Employment and Training**

Where feasible, priority for *opportunities and training* should be given in the following order to:

1. Section 3 workers residing within the service area or neighborhood of the project and employed by a Section 3 business concern, and
2. Participants in YouthBuild programs.

### **7.2.2 Requirements for Contracting**

Where feasible, priority for *contracting opportunities* should be given in the following order to:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or neighborhood of the project, and
2. YouthBuild programs.

## **7.3 Labor Hours and Worker Categorizations**

One of the principal features that was rolled out as part of the Section 3 New Rule was that tracking and reporting would now be focused on labor hours rather than new hires.

This change was designed to prioritize local employment and promote employee retention.

As a result, subrecipients are expected to track and report on the total number of **labor hours worked** by (1) Section 3 workers, (2) Targeted Section 3 workers, and (3) all workers overall. (For a summary of key changes from the Old Rule to the New Rule, see Exhibit 7-6.)

A **Section 3 worker** is an individual who currently fits (or when hired within the past five years, fits) at least one of the following criteria:

1. Low- or very low-income as established by HUD's income limits,
2. Employed by a Section 3 business concern, or
3. Is a YouthBuild participant.

A **Targeted Section 3 worker** is a Section 3 worker who meets any of the three aforementioned criteria and, *in addition*, also meets one of the two following criteria:

1. Employed by a Section 3 business concern, or
2. Currently fits (or when hired, fits) at least one of the following categories:
  - 1.1. Lives within the service area or the neighborhood of the project, or
  - 1.2. Is a YouthBuild participant.

To this end, the above definitions provide for the following Venn diagram:



### 7.4 Section 3 Measurement Ratios and Benchmarks

Recipients and subrecipients must attempt to reach the Section 3 benchmarks and targets as established by [24 CFR 75.23\(b\)\(3\)](#)<sup>1</sup> and Federal Register Notice 2020-19183:

Federal Regulations:  
<sup>1</sup>24 CFR 75.23(b)(3)

Twenty-five percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers:

$$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} \geq 25\%$$

Five percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined by [24 CFR 75.21\(a\)](#):<sup>1</sup>

$$\frac{\textit{Targeted Section 3 Worker Labor}}{\textit{Total Labor Hours}} \geq 5\%$$

In the absence of evidence to the contrary, subrecipients of covered funding will be considered in compliance with Section 3 Safe Harbor ([24 CFR 75.23](#))<sup>2</sup> if the established benchmarks regarding the above ratios are met. Subrecipients that fail to meet the minimum numerical goals outlined above must also report on the specific qualitative efforts that they have employed in pursuit of the numerical goals, which are outlined in Subsection 7.5.2 below.

Federal Regulations:  
<sup>1</sup> [24 CFR 75.21\(a\)](#)  
<sup>2</sup> [24 CFR 75.23](#)

## 7.5 Section 3 Reporting

### 7.5.1 Reporting of Labor Hours

Per [24 CFR 75.25\(a\)](#),<sup>3</sup> for Section 3 projects, recipients must report the following in a manner prescribed by HUD:

Federal Regulations:  
<sup>3</sup> [24 CFR 75.25\(a\)](#)

- The total number of labor hours worked
- The total number of labor hours worked by Section 3 workers
- The total number of labor hours worked by Targeted Section 3 workers

**Eligibility of Labor Hours Reported:** Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established, pursuant to Subsection 7.6 below ([24 CFR 75.25\(a\)\(2\)](#)).

**Inclusion of Hours Reported:** The labor hours reported must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors, and subcontractors that the recipient is required, or elects pursuant to any considerations for professional services (see below) ([24 CFR 75.25\(a\)\(3\)](#)).

**Basis of Hours Reported:** Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting ([24 CFR 75.25\(a\)\(5\)](#)).

**Frequency of Reporting:** Unless otherwise provided, reporting must be carried out annually to HUD on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program ([24 CFR 75.25\(c\)](#)). LOCD-DR requires subrecipients to report Section 3 activities on a quarterly basis along with the quarterly Disaster Recovery Grant Reporting Performance Report.

**Professional Services:** Professional services contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as part of total Section 3 labor hours.

However, subrecipients, contractors, and subcontractors may report labor hours from Section 3 workers and Targeted Section 3 workers (the numerators in the outcome ratios in Subsection 7.4) from professional services without including professional services in the total labor hours worked (the denominator in both of the outcome ratios in Subsection 7.4). The effect of this reporting structure is to give the recipient a bonus if they are able to report Section 3 hours in the professional services context.

It should also be noted that if a contract covers both professional services and other work and the subrecipient/contractor/subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported ([24 CFR 75.25\(a\)\(4\)](#)).

## **7.5.2 Additional Reporting Requirements/Qualitative Efforts**

If the subrecipient's reporting indicates that the Section 3 benchmarks outlined in Section 7.4 above are not met, the subrecipient must report on the qualitative nature of its activities and those that its contractors and subcontractors pursued. Examples of such qualitative efforts include, but are not limited to, the following:

- **Applicant Outreach:** Engaging in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- **Training and Apprenticeship:** Providing training or apprenticeship opportunities.
- **Employment Assistance:** Providing technical assistance (TA) to help Section 3 workers compete for jobs (e.g., resume assistance, coaching) or providing or connecting Section 3 workers with assistance in seeking employment, including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- **Job Fairs:** Holding one or more job fairs or sponsoring a job informational meeting in the service area/neighborhood of the project.
- **Work Readiness and Retention:** Providing or referring Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- **Educational Assistance:** Providing assistance to apply for or attend community college, a four-year educational institution, or vocational/technical training.
- **Financial Literacy:** Assisting Section 3 workers to obtain financial literacy training and/or coaching.
- **Business Concern Outreach:** Engaging in outreach efforts to identify and secure bids from Section 3 business concerns.
- **Competition Assistance:** Providing TA to help Section 3 business concerns understand and bid on contracts.
- **Contract Sizing:** Sizing, splitting, or dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns, particularly where economies of scale or efficiency of delivery are not factors ([2 CFR 200.321\(b\)\(3\)](#)).<sup>1</sup>

**Federal Regulations:**

<sup>1</sup> [2 CFR 200.321\(b\)\(3\)](#)

- **Bidder Viability Support:** Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- **Business Registries:** Promoting the use of business registries designed to create opportunities for disadvantaged and small businesses.
- **One-Stop Outreach:** Providing outreach, engagement, or referrals with the state One-Stop System as defined in [Section 121\(e\)\(2\) of the Workforce Innovation and Opportunity Act of 2013](#).

The above listing is not intended to be all inclusive. Subrecipients are encouraged to develop and tailor their specific qualitative efforts with the end goal of Section 3 benchmark achievement in mind, as outlined in Subsection 7.4 above. Clear, affirmative steps to achieve the established numerical goals must be taken, and documentation to adequately corroborate all efforts and attempts must be retained. **To this end, subrecipients that are unable to meet the minimum numerical goals outlined in Subsection 7.4 above must demonstrate why it was not possible to do so, and retain supporting documentation to sufficiently substantiate this determination.** Such justifications should describe the efforts that were taken; any barriers, roadblocks, or impediments encountered; and any other relevant information that will enable LOCD-DR to make the most accurate, informed compliance determination.

## 7.6 Record Keeping to Support Section 3 Worker Categorizations and Certifications

### 7.6.1 Record Keeping for Workers

Recipients must maintain documentation—or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation—to ensure that workers meet the definition of a Section 3 worker or a Targeted Section 3 worker at the time of hire or the first reporting period, as follows:

**Section 3 Worker:** For a worker to qualify as a Section 3 worker, one of the following must be maintained:

1. **Self-Certification of Income:** A worker’s self-certification that their income is below the income limit from the prior calendar year,

2. **Self-Certification of Program Participation:** A worker's self-certification of participation in a means-tested program, such as public housing or Section 8 assisted housing,
3. **Program Management Certification of Program Participation:** Certification from a Public Housing Agency, or the owner or property manager of project-based Section 8 assisted housing, or the administrator of tenant-based Section 8 assisted housing that the worker is a participant in one of their programs,
4. **Employer Certification of Income:** An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis, or
5. **Employer Certification of Section 3 Business Concern Employment:** An employer's certification that the worker is employed by a Section 3 business concern.

**Targeted Section 3 Worker:** For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

1. **Employer Confirmation of Worker Residence:** An employer's confirmation that a worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census,
2. **Employer Certification of Section 3 Business Concern Employment:** An employer's certification that the worker is employed by a Section 3 business concern, or
3. **Self-Certification of YouthBuild Participation:** A worker's self-certification that the worker is a YouthBuild participant.

Recipients and subrecipients may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

Subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate an individual's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements include, but are not limited to, evidence of receipt of federal housing assistance; evidence of receipt of other federal subsidies or participation in federal assistance programs; federal tax returns; or proof of residence in a neighborhood, ZIP code, census tract, or other area that has officially been identified by HUD. To help subrecipients certify Section 3 workers and Targeted Section 3 workers and provide the appropriate documentation to support the workers' Section 3 status claims, a sample **Section 3 Worker Self-Certification Form** and **Section 3 Employer Certification Form for Worker** are provided as Exhibits 7-8 and 7-9, respectively.

#### **7.6.2 Record Keeping for Business Concerns**

A **Section 3 business concern** is defined as a business concern that meets at least one of the following criteria, documented within the last six-month period:

1. It is at least 51% owned and controlled by low- or very low-income persons,
2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers, or
3. It is a business that is at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing.

Subrecipients, contractors, and subcontractors have the express right to request any necessary evidence that would help substantiate a business concern's claim to Section 3 status or certification. Examples of evidence to satisfy the above documentation requirements may include federal tax returns for workers, owners, or businesses; payroll data; employee statements of self-certification; articles of business organization, ownership, or incorporation; partnership or operating agreements; or evidence that owners or employees received housing or other federal subsidies.

To help subrecipients certify and track Section 3 business concerns seeking a preference in contracting, a sample **Section 3 Business Concern Certification Form** has been provided as Exhibit 7-10.

Section 3 standards are both race and gender neutral. A WBE and/or MBE must provide evidence that it meets at least one criterion of a Section 3 business concern as outlined above in order to receive preference under Section 3. More information regarding WBE or MBE programs can be found through HUD's Office of Small and Disadvantaged Business Utilization at [https://www.hud.gov/program\\_offices/sdb](https://www.hud.gov/program_offices/sdb).

The documentation outlined in this subsection must be maintained for the time period required for records retention in accordance with applicable program regulations and [2 CFR 200](#). For further guidance regarding Section 3 record keeping, including additional considerations specific to public housing agencies, see [24 CFR 75.31](#).

## **7.7 Contracting Requirements**

### **7.7.1 Contract Provisions**

Per [24 CFR 75.27](#), subrecipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project. Additionally, subrecipients of Section 3 funding must also require their subrecipients, contractors, and subcontractors to meet the overall requirements as outlined in subsection 7.2 above, regardless of whether Section 3 language is included in subrecipient agreements, program regulatory agreements, or contracts.

### **7.7.2 Contracting and Subcontracting Strategies**

The following examples are provided to help subrecipients ensure that the contracting objectives of Section 3 are met, and that the established Section 3 benchmarks are ultimately achieved. These methods and strategies can be undertaken to assist in reaching Section 3 workers and Section 3 business concerns for contracting opportunities, and when utilized effectively, can supplement some of the qualitative efforts outlined in Subsection 7.5.2 above. This list should not be considered all inclusive. For additional information regarding contracting, see Chapter 4: Procurement Methods and Contractual Requirements:

1. **Small Purchase Procurement:** The use of small purchase procedures (contract may not exceed the simplified acquisition threshold), such as soliciting quotations from a minimum of three qualified sources. At the time of solicitation, inform the parties of the Section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain at least three quotes from qualified sources must be made and documented.
2. **Section 3 Compliance History:** In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract. (See Exhibit 7-7 for a sample Section 3 plan.)
3. **Contractors' Associations and Community Organizations:** Utilize minority contractors' associations and community organizations to assist in identifying Section 3 business concerns that may be potential bidders.
4. **Housing Development Publicity:** Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. **Formalized Notices:** Provide written notice to all known Section 3 business concerns of the contracting opportunities.
6. **Maintain Contact:** Follow up with Section 3 business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7. **Pre-Bid Meetings:** Coordinate pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.
8. **Section 3 Workshops:** Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.

9. **Assisting with Barriers to Entry:** Advise Section 3 business concerns as to where they may seek assistance to overcome limitations, such as an inability to obtain bonding, lines of credit, financing, or insurance.
10. **Bidding Facilitation:** Arrange solicitations and times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
11. **Contract Sizing:** As noted in Subsection 7.5.2 above, where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns.
12. **YouthBuild Programs:** Contact agencies administering HUD YouthBuild programs and notify these agencies of the contracting opportunities.
13. **Advertisement/Publication:** Advertise the contracting opportunities through trade association papers and local media, such as television, newspapers, radio, and websites.
14. **Business Concern Listing:** Developing and maintaining a list of eligible Section 3 business concerns.
15. **Advance Goal Setting:** Establish concrete numerical goals (dollar amounts and the number of awards) for contracts to Section 3 business concerns.

## 7.8 Additional Section 3 Resources

All subrecipients are highly encouraged to ensure that contractors, residents, and businesses in their community are aware of the available tools and resources that will assist with employment and training opportunities. More information regarding Section 3 training, sample tools and brochures, and frequently asked questions for Section 3 can be found at the HUD Exchange at <https://www.hudexchange.info/programs/section-3/>.

## 8. Overall Record Keeping

All subrecipients are required to maintain equal opportunity records. The content of these records should include the following information:

1. **Population Data:** This includes population data by census tract or smaller geographic areas, which include prevailing population characteristics related to race, ethnic groups, sex, age, head of household, and individuals with disabilities.
2. **Employment Data:** For communities with 10 or more employees, EEO Form 4; Personnel Policies; Affirmative Action and/or Section 3 plans (if applicable); copies of any advertisements for employment; and documentation of special efforts to identify, train, involve, and/or hire minority and lower income residents.
3. **Minority Business Participation:** Documentation of efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses.
4. **Section 3 Business Concern Participation:** Documentation of efforts to solicit locally owned businesses and maintain data concerning the number and dollar amount of contracts awarded to locally owned businesses.
5. **Fair Housing:** Documentation of efforts to affirmatively further fair housing; copy of the fair housing policy.
6. **Contractor Compliance:** Records of any monitoring trips to the project site and any findings; copies of contractors' monthly utilization report.
7. **Project Beneficiaries:** Records of applicants and direct and indirect beneficiaries by race, color, sex, national origin, age, and disability.
8. **Displacement and/or Relocation:** Data on race, head of household, age, and the income of persons affected.
9. **Records Management:** See Chapter 3: Records Management for full records management requirements.

## 9. LOCD-DR Exhibits

Exhibit	Description
Exhibit 7-1	HUD Complaint Register
Exhibit 7-2	Suggested Activities to Affirmatively Further Fair Housing
Exhibit 7-3	Sample Section 504 Assurance
Exhibit 7-4	Sample Summary of Actions Taken to Achieve Compliance with Section 504
Exhibit 7-5	LOCD-DR Section 504/ADA Technical Assistance Handbook
Exhibit 7-6	Key Changes of Section 3 New Rule
Exhibit 7-7	Sample Section 3 Plan
Exhibit 7-8	Sample Self-Certification Form for Section 3 Workers and Targeted Section 3 Workers
Exhibit 7-9	Sample Employer Certification Form for Worker
Exhibit 7-10	Sample Certification Form for Section 3 Business Concerns

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 8: Labor Regulations



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

Subrecipients implementing projects involving construction contracts are required to comply with applicable labor-related laws and regulations. The responsibilities, applicable statutes, and steps to ensure compliance are included within this chapter.

## 1.1 Subrecipient Responsibilities

Each subrecipient is responsible for ensuring compliance with labor standards as outlined in this section. The subrecipient's designated Labor Compliance Officer (LCO) oversees compliance. However, the ultimate responsibility still lies with the subrecipient.

The subrecipient must set up and maintain labor standards file(s) as specified in Chapter 3: Records Management.

Subrecipients should contact the Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) Labor Specialist assigned to its program(s) or project(s) to discuss any questions about applying labor standards, their interpretation, or the associated record keeping requirements.

## 1.2 LOCD-DR Responsibilities

The LOCD-DR division will set up labor standards procedures, provide technical assistance about labor questions, conduct compliance reviews, and specify corrective actions.

## 1.3 Applicable Statutes

Communities implementing projects involving construction contracts of more than \$2,000 must follow these laws and regulations:

1. Federal Fair Labor Standards Act
2. Davis-Bacon and Related Acts
3. Copeland Anti-Kickback Act
4. Contract Work Hours and Safety Standards Act
5. Louisiana Labor Standards and local laws and regulations

Exceptions to the Davis-Bacon and Related Acts (DBRA) and the Copeland Anti-Kickback Act:

1. Construction contracts at or below \$2,000. Note that arbitrarily separating a project into individual contracts below \$2,000 in order to circumvent the Davis-Bacon and Copeland Act requirements is not permitted.
2. Rehabilitation or construction of residential structures having fewer than eight units.
3. Simple water and sewer line extensions without pumps, tanks, and so forth may also be exempt.
4. Separate and distinct projects. Contact LOCD-DR for guidance.
5. Contracts solely for demolition, when no federally funded construction is expected on the site.
6. Work that is purely administrative, managerial, or clerical where the workers are not laborers or mechanics.

All construction contractors (including construction contracts paid with special assessments using Community Development Block Grant – Disaster Recovery [CDBG-DR] and Community Development Block Grant – Mitigation [CDBG-MIT] funds) are required to comply with these labor standards provisions.

The U.S. Department of Housing and Urban Development (HUD) published a contractor’s guide to prevailing wage requirements for federally assisted construction projects. Subrecipients may use the *Davis-Bacon and Labor Standards: Contractor Guide Addendum* to obtain a better understanding of Davis-Bacon laws and regulations and to decide how to follow these laws and regulations.

[Davis-Bacon and Labor Standards: Contractor Guide Addendum](#)

Additional requirements for DBRA are described in HUD Handbook 1344.1: Federal Labor Standards Requirements in Housing and Urban Development Programs.

[HUD Handbook 1344.1: Federal Labor Standards Requirements in HUD Programs](#)

## 2. Summary of Applicable Laws

### 2.1 Federal Fair Labor Standards Act

The [Fair Labor Standards Act \(FLSA\) \(29 United States Code \[U.S.C.\] § 201 et seq.\)](#) establishes standards for employment and employee pay by business organizations. The FLSA is relevant to the construction industry. The FLSA governs federal minimum wage rates and overtime.

To be subject to the FLSA, a business in the construction industry must have two or more employees and have an annual gross sales volume of \$500,000 or more. Individual coverage applies to employees whose work regularly involves commerce between the states (*interstate commerce*). The FLSA protects individuals who work moving goods through interstate commerce or on the expansion of existing facilities of commerce. It ensures that they receive the current minimum wage and overtime pay requirements, regardless of the employer's sales volume.

If an employer performs work on a federally financed project or a project that receives federal financing assistance, a different and stricter set of labor standards applies. Typically, this requires that employees on such contracts receive a "prevailing wage rate." These standards, such as the Davis-Bacon prevailing wage requirements and Contract Work Hours and Safety Standards Act, include provisions that are more stringent than state or local laws. The U.S. Department of Labor (DOL) has sole authority to administer and enforce Fair Labor Standards Act provisions.

### 2.2 Section 110 of the HCDA of 1974

Section 110 of the Housing and Community Development Act (HCDA) of 1974, as amended and as implemented in [24 Code of Federal Regulations \(CFR\) § 570.603](#),<sup>1</sup> extends coverage of DBRA to construction programs and projects financed by CDBG-DR and CDBG-MIT funds, including new construction.

Federal Regulations:

<sup>1</sup> [24 CFR 570.603](#)

## 2.3 Davis-Bacon Act, Davis-Bacon and Related Acts, and Final Rule

The Davis-Bacon Act ([40 U.S.C. § 3141](#),<sup>1</sup> et seq., 276a to 276a-7, as implemented in [29 CFR 5](#)<sup>2</sup>), enacted by the United States Congress, covers contracts that are directly federally funded. After the Davis-Bacon Act was enacted, Congress extended the reach of the Davis-Bacon Act provisions by passing DBRA. This covers contracts that are indirectly federally financed (or assisted) in whole or in part. LOCD-DR and its programs are funded through HUD. Thus, most of LOCD-DR's programs consist of construction contracts that are indirectly federally funded and subject to DBRA. DBRA states that all laborers and mechanics hired by contractors or subcontractors for construction work funded, in whole or in part, with grants received under this title (in this case, the CDBG-DR or CDBG-MIT programs) must receive wages that are at least equal to the prevailing rates for similar construction in the area, as decided by the Secretary of Labor.

### Federal Regulations:

<sup>1</sup> [40 U.S.C. 3141](#)

<sup>2</sup> [29 CFR 5](#)

**Construction contracts of more than \$2,000 awarded by recipients under the CDBG-DR and CDBG-MIT programs must include written contract provisions for compliance with Davis-Bacon and associated DOL regulations.** The principal requirements are as follows:

1. The subrecipient must include a copy of the current prevailing wage rate decision in each Invitation for bids, requests for proposal, and purchase orders, when applicable.
2. The subrecipient may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis, and who will follow other labor standards.
3. Contractors must pay laborers the wage rate determined by DOL as the prevailing rate in that labor market.
4. Contractors must submit weekly payrolls.
5. Subrecipients must report all suspected, reported, or confirmed violations to LOCD-DR, which may investigate these alleged violations.

Three special classes of employees may be hired or work on projects subject to Davis-Bacon wage rates and may be compensated at less than the Davis-Bacon prevailing wages. These classes are as follows:

1. **Apprentices**, provided that they are individually registered in a bona fide apprenticeship program in which the contractor participates and are approved by the DOL. Apprentices must also satisfy other conditions as specified in the labor standards contract provisions.
2. **Trainees**, provided that they are in a DOL-approved training program and they satisfy other conditions as specified in the labor standards contract provisions.
3. **Volunteers**: The use of volunteers on a CDBG-DR or CDBG-MIT project must meet the criteria found in 24 CFR 70. Contact LOCD-DR for further guidance about using volunteers.

When any of these employee classes appear on the contractor's weekly payrolls, it is the contractor's responsibility to provide the documentation necessary to permit the grantee to determine that there is compliance with the Davis-Bacon wage rate determination.

### **2.3.1 Final Rule**

DOL published a Final Rule amending the regulations issued under the Davis-Bacon Act and the Davis-Bacon and Related Acts (collectively, DBRA) for the administration and enforcement of the Davis-Bacon labor standards. DBRA applies to federal and federally assisted construction projects. The revised regulations address issues in the administration and enforcement of DBRA. They offer greater regulatory clarity about Davis-Bacon requirements, making the regulations useful in the modern economy. The Final Rule applies to any contract awarded after October 23, 2023.

Most of the Final Rule changes should not have a direct effect on the majority of LOCD-DR projects; however, some projects may be affected. Some of the more prominent changes to requirements for DBRA-covered projects revised by the Final Rule include the following:

- If there is a project that involves more than one type of construction, the solicitation must incorporate the applicable wage determination for each type of construction if the type of construction is considered “substantial” in nature. Contact LOCD-DR for further guidance.
- Demolition alone is still not covered by Davis-Bacon; however, if the demolition itself constitutes construction, alteration, or repair, or when future construction that will be subject to Davis-Bacon is contemplated on a demolition site, the demolition may be covered under Davis-Bacon.
- Codifies that materials suppliers who solely deliver or pick up materials are not subject to wage rates under Davis-Bacon unless they also perform construction work on the site. If a truck driver or assistant truck driver, in addition to performing off-site delivery work, performs other construction work on the site of the work (*non-delivery construction work*), the worker’s time spent on the non-delivery construction work is covered by the Davis-Bacon wage rate for the appropriate worker classification.
- Codifies that prime contractors (and upper tier subcontractors) are responsible for DBRA compliance on behalf of their lower tier subcontractors, including being financially liable for payment of back wages of subcontractors, as well as being subject to possible debarment due to lower tier subcontractor violations.
- A common theme in the Final Rule is that long-standing practices were not written in the regulations but are now properly codified.

### **2.3.2 Additional Final Rule Resources**

- DOL published a comparison chart from the existing DBRA regulation to the Final Rules, which can be accessed online at <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>.

- *Frequently Asked Questions: Updating the DBRA Regulations Final Rule* can be accessed online at <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/faqs>.

## 2.4 Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act ([18 U.S.C. § 874](#)<sup>1</sup> as implemented in [29 CFR 3](#)<sup>2</sup>) prohibits inducing employees on federally funded construction projects to give up any part of their wages. The Act also requires the submission of weekly certified payroll reports and a Statement of Compliance by all contractors and subcontractors. All contracts for construction, reconstruction, or repair (over \$2,000) must include the following prohibition:

### Federal Regulations:

<sup>1</sup> [18 U.S.C. § 874](#)

<sup>2</sup> [29 CFR 3](#)

<sup>3</sup> [40 U.S.C. § 327](#)

*No contractor or subcontractor shall induce, by any means, any person employed in such publicly funded construction, reconstruction, or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions.*

Recipients should conduct confidential interviews with employees to ensure compliance with the terms of this law. The contractor is required to maintain payroll records and to submit weekly certified payrolls documenting compliance.

## 2.5 Contract Work Hours and Safety Standards Act

Contract Work Hours and Safety Standards Act ([40 U.S.C. § 327](#),<sup>3</sup> et seq.) and the FLSA provide that no contract work, which may require or permit any laborer or mechanic, in any work week in which they are employed on such work, to work in excess of 40 hours in such a work week (on the CDBG-related project) unless such a laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate pay for all hours worked in such a work week, whichever is greater. In the event of violations, the contractor or subcontract shall be liable to any affected employee for his unpaid wages, as well as to the United States for liquidated damages.

All construction contracts over \$2,000 and other contracts over \$2,500 involving the employment of mechanics or laborers must follow the provisions of this law:

1. Contractors must compute the wages of each laborer and mechanic on the basis of a standard 40-hour work week.
2. Work in excess of this standard is allowed, provided that compensation for each hour over 40 worked on the CDBG-DR or CDBG-MIT project is calculated at a rate at least equal to one and one-half times the basic rate of pay.
3. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety as decided under construction safety or health standards issued by DOL.

## 2.6 State Laws and Local Laws and Regulations

State requirements on the use of apprentices and trainees, licensing, procurement requirements, and wage standards must be researched and followed. Local code and regulations will also apply.

## 3. Terminology and Associated Davis-Bacon Requirements

1. **Prevailing Wages:** Total minimum compensation, including the base rate and fringe benefits amount required under Davis-Bacon for a given classification of worker as decided by DOL in a document called a wage decision. See Subsection 4.2 for further discussion on wage decisions.
2. **Laborers and Mechanics:** Workers whose duties are manual or physical rather than managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, while laborers perform tasks such as cleaning and shoveling that are not normally thought of as a recognized trade. On a wage decision, a classification that is not *Laborer* is automatically considered as a *Mechanic* classification.

3. **Contractor's Guide to Davis-Bacon:** The HUD guidebook, *A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects*, is a recommended (but not a required) publication, which the subrecipient can distribute to contractors. The preconstruction conference is a good time for such distribution. The guide is recommended reading for grant recipients, construction contractors, and those who prepare contractor payrolls. It gives a brief explanation of the issues associated with labor standards and Davis-Bacon. Download the guide from HUD's website at [www.hud.gov](http://www.hud.gov).
4. **Site of Work (Davis-Bacon):** Limited to the physical place or places where construction called for in the contract will remain when work has been completed and to adjacent or nearby property used by the contractor, which can reasonably be included because of proximity.
5. **Cleaning:** Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.
6. **Demolition:** Demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed for the construction of a new building, the demolition requires prevailing wages.
7. **Family Members (contractor payrolls):** There are no exceptions to labor requirements on the basis of family relationships. Relatives who perform work for the contractor must be paid the required wage for the job classification performed and must be included on payrolls.
8. **Supply and Installation:** The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. For construction work involving the installation of equipment, if the cost of installation is 13% or less of the total cost of the CDBG-DR or CDBG-MIT financed equipment, this is considered to be an incidental cost

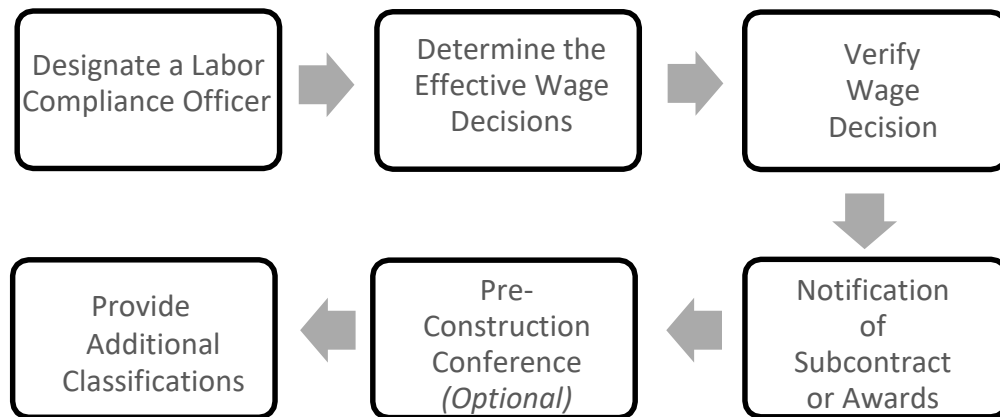
(de minimus) and the installation is not subject to Davis-Bacon wage rates (HUD Office of Labor Relations notice, dated November 15, 1988).

9. **Precutting and Prefabrication:** Precutting or prefabrication of parts for the construction ONLY requires prevailing wages if conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply the needs of a particular Davis-Bacon covered construction project.
10. **Items to be Posted at the Job Site:** The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily seen by all employees for the construction period. The Project Wage Rate Sheet should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as Exhibit 8-1.
11. **Debarment:** An action taken by a debarring official under Federal Acquisition Regulation 9.406 to exclude a contractor from government contracting and government-approved subcontracting for a reasonable, specified period. A contractor that is excluded is *debarred*.

Additionally, the subrecipient must have the posters *Your Rights Under the Fair Labor Standards Act*, *Notice to All Employees*, and *Equal Opportunity is the Law* posted at the job site. To verify posting, the Sample Verification of Project Wage Rate Sheet and Project Sign (Exhibit 8-2) may be used. Sample posters are available as Exhibit 8-3 or may be downloaded from the internet at <https://www.dol.gov/general/topics/posters#contractors>.

## 4. Subrecipient Administration of Labor Standards Requirements

The subrecipient should take the following steps to ensure compliance with required labor standards:



### 4.1 Designate a Labor Compliance Officer

The subrecipient is to choose a staff person to act as a labor officer to ensure compliance with all requirements and to be the primary contact person for LOCD-DR. The form used to appoint the subrecipient’s LCO is provided in Exhibit 8-4 and must be kept in the subrecipient’s files.

### 4.2 Determine the Effective Wage Decisions

A wage decision is a document listing a minimum wage rate and fringe benefits for each classification of laborers and mechanics decided by DOL as prevailing in an area for a type of construction (see Exhibit 8-5).

DOL does not want contract estimators to take into consideration the constantly changing rates when preparing bids. DOL allows the wage decision in effect 10 days before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be *locked-in* and is also called the *effective* wage decision. If more than 90 days passes between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the effective wage decision.

#### 4.2.1 Construction Categories

Federal wage determinations are issued for four construction categories—Building, Residential, Heavy Construction, and Highway—by location and include special characteristics.

To determine which rate category to choose, it is important to understand the differences to avoid paying wages from the wrong category. It is possible that more than one wage

determination may apply. Use of the wrong category may leave the subrecipient responsible for restitution and penalties. The construction categories are described in the following table.

**Table 1: Construction categories**

Category	Description
<b>Building</b>	Construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. This includes all construction within and including the exterior walls, both above and below grade.
<b>Residential</b>	Projects involving the construction, alteration, or repair of single-family houses or apartment buildings no more than four stories tall. (Remember the exemption for residential structures containing not fewer than eight units.)
<b>Heavy Construction</b>	All construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy Construction.
<b>Highway</b>	Projects for the construction, alteration, or repair of roads.

If more than one construction category is issued in a project, all applicable wage determinations must be included in the procurement documents for any bidder to be aware of the prevailing wages applicable to the project.

#### **4.2.2 The Process of Updating Wage Decisions**

DOL gathers information year-round regarding wage decisions and will often issue an update on a particular wage decision. An update of a wage decision is referred to as a *modification* or *mod*. Wage determinations are normally updated either as the result of a new survey, or to update changes to collectively bargained union wage and fringe benefit rates (escalators) for classifications determined to be prevailing in the geographic area.

“Supersedes wage decisions” replace the prior general wage decisions and carry wage decision numbers that reflect the new year. Supersedes decisions have a modification number of “0” followed by the date of issuance.

Modifications are listed numerically on the wage determination modification record for that year’s edition. The date of issuance of the modification follows the modification number. A modification to a general wage determination replaces the entire general wage determination that it modifies.

#### **4.2.3 Ten-Day Responsibility**

**The subrecipient is responsible for checking that the wage decision(s) included in the original bid package was in effect 10 days before the bid opening date.** If a change becomes effective, the revised wage determination must be updated by addendum and must be sent to all who obtained a bid package. The bidders must be provided with an opportunity to change their bids prior to bid opening, based on the updated wage decision(s).

The subrecipient may search the System for Award Management (SAM) website at [www.sam.gov](http://www.sam.gov) to determine whether there are any updates. Visit the website no more than 10 days before the bid opening date. Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening.

The Davis-Bacon requirement to “lock-in” a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening. After the bid opening, if the award of the contract is delayed by more than 90 days, the subrecipient must check the SAM website to determine whether the wage decision has been updated. If so, the low bidder must agree in writing to abide by the wage decision in effect on the date of the contract award and the updated wage determination must become part of the construction contract. State law requires the contracts to be awarded within 45 days of bid opening unless an extension of 30 days is agreed upon in writing by both parties.

#### **4.2.4 Calling Requirement When Using the Small Purchase Method**

On rare occasions, the prime contractor may be procured utilizing the Small Purchase method, provided that the low bid is expected to be under \$250,000 and the contract award is less than

\$250,000. See Chapter 4: Procurement Methods and Contractual Requirements for additional information regarding the Small Purchase method.

The Small Purchase method does not have a bid opening date. A special procedure to ensure compliance with Davis-Bacon was developed by LOCD-DR for the Small Purchase method:

1. A bid tabulation date must be established in advance.
2. Bidders must be informed of the day on which bids will be tabulated and of the possibility of a wage decision update.
3. A search must be made 10 days before the bid tabulation date.
4. If there is a wage decision update, all bidders must be notified in a timely manner and documentation of notification must be maintained in project records.
5. Notification when the Small Purchase method is used may be done by addendum, telephone call, in person, email, fax, or U.S. Postal Service.
6. The wage decision authorized at the 10-day search remains effective for the duration of the construction project provided that the contract is awarded within 90 days of the bid tabulation date.
7. The effective wage decision(s) must also become part of the construction contract when the Small Purchase method of procurement is used.

#### **4.2.5 Document Wage Decision**

Prior to the award of a construction contract to any prime contractor, the subrecipient must obtain verification of the wage decision choice. The CDBG-DR and CDBG-MIT programs require that the wage decision verification be obtained after the bid opening and before the award of the construction contract. The subrecipient remains responsible for ensuring the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

The subrecipient must ensure that the wage decision in effect on the date of the contract award is made a part of the contract between the low bidder and the subrecipient. LOCD-DR requires that the wage decision verification be documented using the Verification of Wage Decision (Exhibit 8-6). The Verification of Wage Decision, the wage decision, and evidence that

the effective wage decision was used must be kept within the project file. The Verification of Wage Decision must be submitted, along with the Notice of Contract Award, within 30 days of the contract award.

#### **4.2.6 Failure to Include, or Use of, the Incorrect Wage Decision**

Failure to include the effective wage decision in bid documents or contracts does not relieve subrecipients or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the subrecipient must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract. This makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement:

1. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation, especially if the wage rate changes are minor.
2. The contractor will require that a change order be made to compensate for an increase in wages due to the effective wage decision. Such a change order would be eligible CDBG-DR and CDBG-MIT costs; however, it is subject to available grant funds. If grant funds are not available, local funding may be necessary.

### **4.3 Notification of Subcontractor Awards**

The subrecipient's LCO should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the subrecipient's LCO to be knowledgeable of the timeframe in which to expect the submission of subcontractor payrolls.

### **4.4 Hold a Preconstruction Conference**

LOCD-DR recommends, but does not require, that the subrecipient hold a preconstruction conference with the prime contractor and all available subcontractors before the start of construction. Here they would be advised of their responsibilities and obligations concerning labor standards. If the subrecipient should not have a preconstruction conference, then the

subrecipient must use some other method to inform contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The preconstruction conference is a good time to start the added classification process as discussed in the following paragraphs.

#### 4.5 Provide Additional Classifications

A wage decision states the minimum hourly pay and fringe benefits that must be paid to workers such as carpenters, electricians, and backhoe operators. If a classification of laborers or mechanics not listed in the wage decision will be employed on the project, the contractor must request an additional classification.

The prime contractor will request an additional classification if they or a subcontractor needs it. The contractor (or sub) is immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received.

***Example:*** A prime contractor installing sewer lines finds that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. The prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator.

Steps to obtain an additional classification include the following:

1.	<b>Contractor</b>	Requests an additional classification and rate by notifying the subrecipient.
2.	<b>Subrecipient (or LCO)</b>	Prepares and sends a Request for Authorization of Additional Classification and Rate (Standard Form SF-1444; Exhibit 8-9) and relevant supporting documentation to LOCD-DR.
3.	<b>LOCD-DR</b>	Reviews and completes the form and submits it (along with any supporting documentation) to DOL for review.
4.	<b>DOL</b>	Responds by either approving the requested rate or specifying a higher rate to be used and forwards official response to LOCD-DR.

5.	<b>LOCD-DR</b>	Forwards DOL’s response to the subrecipient (or LCO).
6.	<b>Subrecipient (or LCO)</b>	Notifies prime contractor of the results of the DOL response and ensures that all documentation is kept in grant files.
7.	<b>Contractor</b>	Uses the newly approved wage rate going forward (including any restitution that may have been triggered by a higher rate being approved). If the request was on behalf of a subcontractor, the prime will pass the DOL response to the subcontractor.

If the DOL response rejects the request and specifies a higher rate, then the higher rate must be paid to all workers at the particular classification, retroactive to the first day of work (Restitution).

Restitution is to be paid at the contractor’s expense. Subrecipients, as well as contractors, should aware that 60 days is allowed between the request and DOL’s response.

#### **4.5.1 Additional Classifications Prior to Hiring or Mobilization**

After a contract is awarded, a construction contractor will often know at once whether additional classifications are needed. In order to speed up the process, it is permissible for a contractor to request additional classifications before mobilization or hiring workers.

Contractors and subcontractors must know that a request for additional work classifications can be made only after the effective wage decision “lock-in” date ([29 CFR 5.5\(a\)\(1\)\(ii\)](#)). The preconstruction conference often is a good time for contractors to request additional classifications and to provide information helpful to the subrecipient in the completion of the Report of Additional Classification and Rate (Form SF-1444 or a similar form; see Exhibit 8-9).

The request should be submitted by email to the LOCD-DR LCO. Supporting documents include Form SF-1444 and the applicable wage decision for the requested work classification.

The wage rate and fringe benefits proposed for any classification must follow the guidance available in All Agency Memorandum No. 213. The proposed wage rate and fringe benefits should be reasonable with regard to all of the rates within the relevant category. There are four basic categories: skilled crafts, laborers, truck drivers, and power equipment operators.

Additional classifications proposed for power equipment operators must identify the type(s) of power equipment involved.

Contact the LOCD-DR LCO for assistance with questions concerning the conformance process or assistance when completing Form SF-1444.

A list of DOL Wage and Hour Division analysts and their states can be found at <http://www.dol.gov/whd/govcontracts/stateassignments.htm>.

#### **4.5.2 Metal Building Erector as an Additional Classification**

Building wage decisions that cover the State of Louisiana do not have the classification of *Metal Building Erector*. This classification is often needed in the construction of fire stations because the *Ironworker* classification is more expensive as it was designed for work at much higher elevations.

In such cases, *Metal Building Erector* may be requested as an additional classification. The bid documents for fire stations may call attention to bidders about the availability of the additional classification of *Metal Building Erector*. The rates normally requested for Metal Building Erector are more than the Laborer rate and less than the Ironworker rate.

## **5. Field Inspections**

The subrecipient should understand that the enforcement of labor standards is as important as other requirements of the contract specifications and that failure to follow the labor standards must be corrected by the contractors and subcontractors. Failure to comply may result in serious sanctions and penalties.

Periodic field inspections by the project administrator at the job site should be completed in compliance with labor requirements to identify violations and for the following purposes:

1. Ensure that the wage decision is posted in a prominent place.
2. Ensure that the required postings are displayed prominently, informing employees of their rights.
3. Conduct employee interviews in order to determine that the wages they are receiving are the same as reported on the weekly payroll report.

## 5.1 Employee Interviews

During the course of construction, the subrecipient must conduct worker interviews to ensure payroll accuracy and compliance with Davis-Bacon. Interviews should be recorded on the Employee Interview Form (Exhibit 8-10).

### 5.1.1 Minimum Interview Requirements

Employees of the following contractors must be interviewed:

1. All prime contractors
2. Subcontractors whose contract award is \$100,000 or more
3. Any subcontractor where there are a large number of payroll problems
4. Any subcontractor on the job site the day of the interview(s)

One interview session may be sufficient to meet the minimum interview requirements for those contractors listed above.

Interviews must be conducted for at least 50% of the laborers and at least one worker of each of the remaining classifications or trades present on the job site. The subrecipient may conduct additional interviews, if necessary, to ensure compliance with Davis-Bacon.

**Example:** A job has three prime contractors and four subcontractors. Three of the four subcontracts are for less than \$100,000. A fence contractor with a contract for less than \$100,000 may be a fifth sub as the project nears completion. Employees of all three primes and employees of the subcontractor with a \$100,000 plus contract must be interviewed. An additional trip must be rescheduled if all four contractors are not on the premises at the same time. Additionally, if subcontractors are present on the job site on any day that interviews are being conducted, these workers must also be interviewed at that time.

Unless there are payroll problems, a subcontractor with less than a \$100,000 contract does not need to be interviewed (unless it is on-site during a day of interviews).

The interviewer should observe the work being done to ensure that it matches the wage classification of the worker reflected on the payroll.

**Example:** An on-site worker performs work under an *Electrician* classification. This should be reflected on the payroll of the employee. However, if the payroll reflects electrical work and the worker is performing carpentry, than this must be investigated by the interviewee.

### **5.1.2 Place of Interview**

These guidelines should be followed when deciding on where and how to conduct the interview:

1. The session should be at a time convenient to the employer and employees.
2. Interviews may be allowed during working hours, privately conducted on the premises.
3. Interviews can be conducted at other public places.
4. Employees and former employees can be interviewed by mail:
  - An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview.
  - The remaining items on the Record of Employee Interview Form should be completed by the subrecipient. Items 1 and 2 should be completed before the first mailing and items 13 through 17 should be completed after the employee returns the document by mail.
5. In off-site interviews or interviews by mail, the number of interviews needed must be close to the estimated number during an on-site session.

### **5.1.3 Initiating the Person-to-Person Interview**

The interviewer must confirm their identity to the worker. The interviewer must explain that the construction project uses federal assistance, which requires that workers be properly paid and that the purpose of the interview is to ensure that the required wages are being paid. If a worker does not want to give particular information, the interviewer should not insist.

#### **5.1.4 Using the Interview Information**

After the interviews, the information obtained should be compared to the wage decision and payrolls to determine whether the workers are classified and compensated correctly. If necessary, corrective action should be taken.

## **6. Helpers, Apprentices, and Trainees**

### **6.1 Helpers**

*Helpers* as a classification listed on a payroll may not be used on CDBG-DR and CDBG-MIT projects because this classification is not found on any Louisiana wage decisions. An apprentice or trainee should use tools to assist mechanics, not helpers paid below the minimum rates for mechanics. Davis-Bacon requires that any person using tools of a trade be classified as a *Mechanic* and be paid the amount of a mechanic's wages retroactive to the first day of work. Davis-Bacon also requires anyone working as a laborer and listed as a helper be classified as a *Laborer* and paid at least the minimum for the classification of *Laborer*.

### **6.2 Apprentices**

Apprentices are allowed to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with the DOL Bureau of Apprenticeship and Training. The contractor must submit a copy of the apprenticeship papers with the first payroll on which that worker appears. The apprenticeship papers should include the proper wage rate and fringe benefits applicable to the worker.

Any worker listed on a payroll at an apprentice wage rate who is not a trainee (defined below) or is not registered as an apprentice must be paid the wage rate decided by the Secretary of Labor for the classification of the work performed.

The wages paid to apprentices cannot be less than the rate in the program for their level. Based up the achievement level, wages are paid as a percentage of a journeyman's rate in the applicable wage decision.

### **6.3 Trainees**

Trainees are allowed to work at less than the rate for their craft if they are employed and individually registered in a program that has approval and certification by DOL. A copy of a

trainee's papers must be sent by the contractor with the first payroll on which the trainee appears.

Every trainee must be paid at not less than the rate specified in the approved program for the level of progress or a percentage of the associated mechanic's rate as listed on the wage decision. The contractor or subcontractor may have to give written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates set by that program to DOL, HUD, LOCD-DR, and/or the subrecipient.

## **7. Force Account Labor**

Force account labor refers to the use of laborers or mechanics employed by the subrecipient serving as a contractor for the CDBG-DR and CDBG-MIT construction project. The subrecipient/contractor does not have to pay the Davis-Bacon wage rates and is allowed to pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the CDBG-DR and CDBG-MIT programs.

### **7.1 Use of Force Account Labor**

Exhibit 8-11 explains the required record keeping for force account work. If the subrecipient wishes to use force account labor, prior LOCD-DR approval must be obtained. The following paragraphs briefly discuss force account labor.

### **7.2 Prerequisites for the Use of Force Account Labor**

In order to use force account labor for a project, three criteria must be met:

1. There is reasonable evidence that construction will cost substantially less using in-house resources, or there are insufficient competitive bids;
2. The subrecipient must have equipment, supervisory skills, a substantial number of the required work force, and a record keeping system; and
3. Legal counsel finds that the project is permitted under Louisiana laws and does not constitute a major project, including building construction.

### 7.3 Labor and Equipment Requirements for Force Account Labor

The subrecipient may hire some employees to work on a specific project to complement the existing workforce. The cost of utilizing the equipment, including the cost of maintenance, operations, and minor field repairs, is allowed.

**Example:** The cost to replace a radiator that was punctured accidentally would be an allowable CDBG-DR and CDBG-MIT cost. However, the cost to replace the engine of a diesel bulldozer on a short-term street project would not be an allowable CDBG-DR and CDBG-MIT cost. Equipment **may not** be bought with CDBG-DR and CDBG-MIT funds.

The equipment cost to be allocated can be determined by use allowance or depreciation value, subject to LOCD-DR approval. In rare instances, such as the breakdown of equipment during a street project, the cost of renting equipment to complete the project may be allowed with special written approval from LOCD-DR.

### 7.4 Materials Cost for Force Account Labor Projects

The costs of materials, including transportation and storage, are eligible under the CDBG-DR and CDBG-MIT programs. When the cost exceeds \$20,000, the purchase of materials must be by competitive bid (see Section 4: Procurement Methods and Contractual Requirements).

## 8. Section 3 of the HUD Act of 1968 Compliance

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3) and [12 U.S.C. § 1701](#)<sup>1</sup> ensures the following:

*... [E]mployment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing.*

The regulations are found at [24 CFR 75](#).<sup>2</sup> In order to identify eligible Section 3 workers, all employees of the prime contractor and all subcontractors must certify whether they are an eligible Section 3 worker, as outlined in [24 CFR 75.31](#).<sup>3</sup> Additionally, a construction

#### Federal Regulations:

<sup>1</sup> [12 U.S.C. § 1701](#)

<sup>2</sup> [24 CFR 75](#)

<sup>3</sup> [24 CFR 75.31](#)

contractor(s) must provide labor hour information for employees working on the CDBG-DR project. See Exhibit 8-12 for more information.

Exhibit 8-13 is included for monitoring the existing workforce of the prime contractor and all subcontractors. This form is optional; however, when used, it must be submitted with the first payroll on which the employee appears.

**Example:** Joe Brown works for XYZ, Inc. For five years, he worked on street projects all over south Louisiana. XYZ, Inc. transfers Joe to the CDBG-DR project in its third week. Joe is an existing employee, and if the optional existing Employee Information Form is used, it is sent for review along with Payroll #3. Additionally, if Joe qualifies as a Section 3 Worker, XYZ, Inc. should fill out Exhibit 8-12 and submit it with the first payroll on which Joe Brown appears.

A sample of a Section 3 Worker Self-Certification form is provided as Exhibit 8-8.

## **9. Payroll Terminology, Requirements, and Review Procedures**

A sample Payroll Report and comments regarding payrolls are provided in Exhibit 8-14. The DOL Certified Payroll Form (WH-347: DBRA), along with instructions, is located at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>.

A payroll review flowchart is provided as Exhibit 8-15.

### **9.1 Responsibility of Prime Contractor Regarding Subcontractors**

The prime contractor is responsible for ensuring proper payment to all laborers and mechanics working on a project. The construction contract between the subrecipient and the prime contractor must require that all subcontracts include clauses imposing the federal labor standards provisions. Even if the required provisions are not included in a subcontract, the prime contractor remains responsible for underpayments, as well as any liquidated damages of subcontractors. The required contract provisions from HUD Form 4010 are contained in Exhibit 4-2j. When labor standard violations occur, whether prime or subcontractor, the subrecipient

will be required to ensure that the prime contractor is ultimately responsible to ensure that corrective action is taken by the applicable subcontractor.

## **9.2 Weekly Payroll Submission Requirements and Payroll Numbering**

Payrolls are submitted weekly by each contractor and subcontractor and numbered by date from the time work begins until the project is completed. Contractors may use the DOL Certified Payroll Form (DOL Publication WH-347), which is designated as Exhibit 8-14.

The signature page of WH-347, where a contractor certifies wages and fringe benefits, if any, is commonly called the Statement of Compliance. Although the document is no longer officially designated with the title of Statement Compliance, it must be included with each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of Exhibit 8-14 are included; however, the wording of the Statement of Compliance must be verbatim.

It is not required to submit a payroll if no work is performed on the project during a given work week. The subrecipient should be informed by phone or email that no work was done. Once work resumes, use the next consecutive number.

**Example:** Work was done during weeks 1, 2, 3, and 7; the payroll number for week 7 would be Payroll #4.

The payrolls of subcontractors are submitted by the prime contractor. The prime contractor reviews the subcontractor's payrolls and may require revisions. The prime contractor forwards the subcontractor's payroll(s) to the subrecipient. This does not relieve the prime contractor of responsibility for the review of payrolls.

## **9.3 Addresses and Social Security Numbers**

The first and last name of each worker and last four digits of each worker's social security number are to be listed on each payroll. This procedure will, in most cases, allow unique identification of each worker. Alternatively, if an employer does not want to display a worker's social security number on a payroll report, they can create a unique identifying number. To protect the worker's privacy, the address and full social security number is not needed for payrolls. However, the office or place of record keeping of each contractor must keep the full

name, address, and social security number of each worker to provide to an authorized person requesting the information.

#### **9.4 Signature on the Statement of Compliance**

The Statement of Compliance (the certification part of Payroll Form WH-347) must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.

#### **9.5 Prompt Submission of Payrolls**

The subrecipient should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor to the subrecipient within seven working days after the payroll ending date. Payrolls must be examined promptly by the subrecipient so that any problems discovered can be corrected while contractors are still on the job. Attention should be given to payroll review during the early stages of construction to ensure that the prime contractor understands and is fulfilling their responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the subrecipient can withhold contractor payment until acceptable payrolls are submitted.

#### **9.6 Subcontractor Communication**

The subrecipient's contractual relationship is between the subrecipient and the prime construction contractor. A contract with a subcontractor is between the prime contractor and the subcontractor. There is no direct relationship between the subrecipient and subcontractor. Even though a direct contractual relationship does not exist, LOCD-DR recognizes the following conditions under which the subrecipient may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (1) the prime contractor agrees, (2) the subcontractor is cooperative, (3) the issues are not complex, and (4) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.

## 9.7 Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on CDBG-DR and CDBG-MIT projects. The hours for an employee's work at job sites other than the project should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

## 9.8 Wage Rates and Proper Classification

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), Employee Interview Forms (if available), and actual work done or in progress. This ensures that the prevailing wage rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked, as well as mathematical accuracy of wages and deductions.

## 9.9 Employees Performing Work in More Than One Classification

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called "split" payrolls, should be used to assign hours worked at more than one classification in a workday according to each classification.

Alternatively, the worker can be paid at the highest rate for multiple classifications performed in a workday. This avoids the extra work involved in split payroll reporting.

**Example:** Joe, a backhoe operator, gets off of his backhoe to find a buried water line. He uses a shovel, which is the work of a laborer. Later, Joe mounts the backhoe and digs a trench for a sewer line. The employer can list Joe as a backhoe operator if Joe is paid the backhoe rate, being the higher of the two.

## 9.10 Working Foreman Requirements

A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. For example, if the task would be done by an electrician, the "working foreman" should be paid no less than the prevailing wage for the classification. If paid a "salary," it should be designated

on the payroll, and must be no less than the prevailing wages for the classification. The amount of the salary must be stated, and if there is a considerable amount of overtime being worked, additional research may be necessary.

### **9.11 Classifications**

Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not sufficiently specific to allow the reviewer to determine whether Davis-Bacon requirements were met.

*Example:* *Operator* is a generic classification; however, *Backhoe* is on the wage decision and would be a proper classification.

## **10. What To Do When the Basic Hourly Rate Is Less Than on the Wage Decision**

Total compensation (called *prevailing wages*, as indicated on wage decision(s)) is required. There is some leeway given regarding the breakdown of total compensation between the two components of basic hourly rate and the hourly fringe benefit.

When calculating overtime pay where total compensation is adequate, there is one notable restriction: If the basic hourly rate on the payroll is less than the basic hourly rate on the wage decision, then the higher basic hourly rate on the wage decision must be used in the calculation of minimum overtime pay.

### **10.1 Fringe Benefits**

If the wage decision calls for fringe benefits to be paid, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued. Fringe benefits do not appear on a worker's check but are paid to a receiving institution, such as a health insurance company, on behalf of the worker. Sometimes fringe benefits are confused with deductions. For example, the health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee's gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting Davis-Bacon requirements if they are paid to the employee as cash on the payroll or into an approved fund, plan, or program on the employee's behalf. When this situation occurs, the Statement of Compliance indicates the payment of fringe benefits "in cash." This does not mean that the payment was made in paper currency, but rather the compensation was considered dispersed as payment in cash. If the wage decision includes a fringe benefit and the employer does not participate in approved fringe benefit programs, the employer must add the fringe benefit rate to the basic hourly rate of pay.

If a wage decision contains fringe benefits for a classification used on the construction project, Box 4a or 4b of the Payroll Form/Statement of Compliance (see Exhibit 8-14) must be marked to indicate the method of fringe benefit payment (i.e., in cash or to an approved plan). If there were no classifications used on the project that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to Box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash, except one, who gets payment of fringe benefits into an approved plan, Box 4b would have been marked for payment of fringe benefits in cash with Box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are calculated at a per hour worked rate and are not calculated at a "time and a half" rate. However, when fringe benefits are paid in cash, the payroll reviewer must be able to differentiate the basic hourly rate from the fringe benefit rate in order to calculate overtime properly. This total hourly compensation (basic hourly rate plus hourly fringe benefits) should be separated into the two components:

1. In Column 6 of the WH-347 payroll form,
2. In the Comments section on the Statement of Compliance, or
3. By supplementary signed statement from the employer.

If the separate components cannot be identified, the entire monetary compensation per hour must be multiplied times 150% to calculate the required overtime minimum rates.

The payroll reviewer is not permitted to estimate or try to calculate the actual amount of the fringe benefits component. This must be clearly stated by the contractor.

Below is an example of the breakdown of the basic hourly rate and the fringe benefits per hour:

Basic Hourly Rate on Wage Decision	\$10 per hour
Fringe Benefits Requirement on Wage Decision	\$1 per hour
Work Week	52 hours

$$\begin{array}{rclclcl}
 \text{Regular Pay} & + & \text{Overtime Pay} & + & \text{Fringe Benefits} & = & \text{Gross Pay} \\
 40 \times \$10 & + & 12 \times (\$10 \times 1.5) & + & 52 \times \$1 & = & \$632
 \end{array}$$

There is flexibility in the allocation of paying fringe benefits. Using the above example, a contractor may use one of the following payment options:

- Pay all of the \$632 in cash.
- Pay \$580 in cash and \$52 in fringe benefits.
- Pay more or less than \$580 in cash and more or less than \$52 in fringe benefits with the total paid to be \$632.

An example where the basic hourly rate and fringe benefits are not separated:

If a total compensation rate is \$11, but fringe benefits were not identified, the proper overtime calculation, as required by the CDBG-DR and CDBG-MIT programs, of the gross pay would be:

$$\begin{array}{rclcl}
 \text{Regular Pay} & + & \text{Overtime Pay} & = & \text{Gross Pay} \\
 40 \times \$11 & + & 12 \times (\$11 \times 1.5) & = & \$638
 \end{array}$$

One result—\$632—was due to calculations based on the separation of the basic hourly rate and fringe benefits, while the other result—\$638—occurred based on calculations without the separation of basic hourly rate and fringe benefits.

The basic procedure to follow will depend on one of these conditions:

1. **Condition One:** If the payroll properly separates the hourly rate from fringe benefits, then overtime at 150% of the basic rate must be paid, while overtime at 150% is not required for fringe benefits. Fringe benefits are paid only at 100% for each hour worked regardless of whether overtime is included.
2. **Condition Two:** If the payroll does not separate the hourly rate from fringe benefits, the overtime compensation must be calculated at 150% of the sum of the base rate plus fringe benefits.

The contractor is responsible for providing payrolls that properly separate the basic hourly rate from the fringe benefit amounts. If the initial payroll provided for review does not separate the base hourly rate from fringe benefits, the payroll reviewer should obtain a supplementary statement or corrected payroll that shows the breakdown between the basic hourly rate and the fringe benefits. The supplementary statement must be signed by an authorized person and clearly show which payrolls are associated with the supplementary statement.

#### **10.1.1 Fringe Benefit Verification**

Fringe benefits may be paid in cash, and such payment(s) can be determined by examining the face of the payroll:

1. When fringe benefits are paid in cash, Box 4b of the Statement of Compliance must be checked. Fringe benefits paid to an approved plan are not usually posted on the payroll.
2. When fringe benefits are paid to an approved plan, Box 4a of the Statement of Compliance must be checked. If Box 4a is checked on the Statement of Compliance to show that fringe benefits, equal to the amount stated on the wage decision, were paid, additional verification is not necessary.
3. If the basic hourly rate is less than required on the wage decision, and a contractor claims that fringe benefits are making up the balance to meet the total Davis-Bacon prevailing wage, a subrecipient may consider verification of the payment. In some cases,

if problems are suspected, verification of the payment of fringe benefits should be pursued.

An approved plan should have an institution(s) that receives fringe benefit payments regularly. Fringe benefit payments into an approved plan may be on a weekly, monthly, or quarterly basis, but not semi-annually or annually. The applicable contractor is the source of contact information for the receiving institution. Verification should include the following:

1. Institution's name(s)
2. Phone number(s)
3. Date(s) contacted
4. Results of the inquiry
5. Person(s) contacted at the institution
6. The name of the person who made the verification for the subrecipient

Verification may be by phone, written correspondence, computer printout, or fax from a receiving institution or union, or a copy of a cancelled check(s) to a receiving institution.

A computer printout from the contractor is also acceptable as supporting evidence of payment of fringe benefits.

## **10.2 Deductions**

A deduction is an amount subtracted from a worker's gross wages. Deductions must be reviewed to determine whether they are permissible.

Deductions allowed by law include the following:

1. Court-ordered deductions
2. Federal Insurance Contributions Act (FICA)
3. Federal or state income taxes

Deductions not required by law (e.g., union dues, 401(k) deductions, loan payback amounts, uniforms) should be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. Exhibit 8-14 should be used.

### 10.3 Payroll Certification of the Self-Employed Contractor Who Works Alone

A self-employed laborer or mechanic (or group of working partners) with no other employees working on the job is not authorized to sign their own payroll and Statement of Compliance. Instead, a “working subcontractor” must be listed on the prime’s (responsible employer’s) payroll.

**Example:** Joe’s Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on a CDBG-DR and CDBG-MIT projects. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages, as well as the employee’s wages.

The minimum information needed on the responsible employer’s payroll for the working subcontractor includes the following:

1. Name
2. Address
3. Classification(s)
4. Hours worked
5. Estimated hourly pay
6. Estimated gross pay

Deductions for Social Security and the federal taxes required by the subcontractor are not the responsibility of the prime contractor because these amounts may be unknown to the prime contractor. As such, deduction listings are not required. The Statement of Compliance should indicate Box 4c for the working subcontractor as an exception to the way that fringe benefits may have been paid for regular employees.

The explanation for Box 4c can be worded as “Working sub, Lump sum contract, Fringes and deductions not applicable.” It can be confusing for a prime contractor to list a working subcontractor on his payroll in addition to his regular employees. The prime contractor may prepare a separate weekly payroll listing only the working subcontractor, using the WH-347 payroll form (see Exhibit 8-14).

Regardless of the method by which a worker is compensated, such as piece work or a weekly contract draw for performance, the compensation paid is divided by the actual hours of work performed for that week. This will result in an “effective” hourly wage rate to be reported. The compensation may not be less than the prevailing hourly rate for the type(s) of classification(s) of the work involved.

### **10.3.1 Truck Owner-Operators Exception**

Truck owner-operators must be reported on the prime’s (responsible employer’s) weekly payrolls; however, only the notation *Owner-Operator* is required, not the hours worked or the rates. A truck driver owner-operator exception is not to be confused with a truck driver working on-site for a prime contractor. That does not fall under the exception.

### **10.3.2 Business Owners Working with Their Crew**

Businesses owners working with their crew on the same CDBG-DR job site may certify that their wages are compliant with the Davis-Bacon prevailing wages paid to employees. The exception to compliance standards does not suggest that owners are not entitled to be paid, but rather that the certification is sufficient to document that the wages paid are consistent with the wage determination for the project. On weekly payroll reports, the owner’s name should be included as the “owner’s name,” identified as the “owner,” and the daily and total hours worked on the covered project for the week. The rate of pay and the amount earned should be omitted.

## **10.4 Liquidated Damages**

*Liquidated damages* is a predetermined amount that is a penalty payment for failure to meet a specified requirement. Liquidated damages, based on the review of payrolls in the CDBG-DR and CDBG-MIT programs, refer to the penalty amount calculated for overtime violations under the Contract Work Hours and Safety Standards Acts (CWHSSA).

Note that penalty payments for overtime violations to a specified government entity as *liquidated damages* are separate and distinct from wage restitution paid to workers. Liquidated damages are paid to a federal agency (e.g., HUD for CDBG-DR and CDBG-MIT projects) in addition to any restitution paid to a worker(s). For current information about penalties, visit the

DOL Wage and Hour Division website at <https://www.dol.gov/agencies/whd/resources/penalties>.

The liquidated damages penalty should be assessed based on when the overtime violation(s) occurred. Use the following chart to determine the proper penalty amount. The “Effective Date” column is when the penalty was instituted. Depending on when the violation(s) occurred, the proper amount should be used to calculate the penalty:

Effective Date	Liquidated Damages Penalty Amount
Prior to August 1, 2016	\$10
As of August 1, 2016	\$25
As of January 3, 2018	\$26
As of January 24, 2019	\$27
As of January 16, 2022	\$29
As of January 16, 2023	\$31
As of January 16, 2024	\$32
As of January 16, 2025	\$33

Due to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, as of January 16, 2025, the predetermined penalty is \$33 per worker per day for an overtime violation(s). Subrecipients should check the link provided above to ensure that the proper liquidated damages penalt(ies) are used.

**NOTE: For CWHSSA violations, the liquidated damages penalty is calculated on a “per worker per day” basis. For examples of how to calculate liquidated damages, see Subsection 12.1.3 below.**

## 11. Corrective Actions Regarding Labor Standards Violations

### 11.1 Inadequate Payroll Information

The payroll form (Exhibit 8-14) has the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must have the necessary information found on WH-347. If a contractor's alternate form is not sufficient, the contractor must provide the necessary information on an acceptable form or provide a supplementary statement.

Payrolls that are incomplete, such as lacking classifications or rates of pay, will trigger the need for the contractor to send a corrected payroll and Statement of Compliance that lists the required information.

### 11.2 Handwritten Corrections on the Face of a Payroll by Reviewer Not Allowable

The subrecipient cannot make corrections on the face of a payroll or on the Statement of Compliance. Such documents are sufficient as evidence in a legal proceeding, and corrections by multiple sources make it difficult to know who made the corrections. If the subrecipient wants to send written clarification of a minor payroll item, a note or memo with the reviewer's name and date should be attached.

## 12. Three Scenarios of Payroll Review

Three scenarios about payroll review and corrective actions are listed in Exhibit 8-15, the LOCD-DR Payroll Review Flowchart. The three scenarios are as follows:

- **Scenario 1:** Error that involves restitution
- **Scenario 2:** Error that does not involve restitution
- **Scenario 3:** Error not detected

Each scenario triggers a unique set of events. Review Exhibit 8-15, the LOCD-DR Payroll Review Flowchart, for an overview of the processes involved.

## 12.1 Notice to Contractor When Restitution Is Involved

**Scenario 1:** Payroll error with restitution due to the underpayment of wages. Underpayment may result from Davis-Bacon violation(s), CWHSSA overtime violation(s), or both. The subrecipient must promptly notify the prime contractor in writing that payment of back wages is required. This notice should name the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, the dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need for restitution by using a Certified Correction Payroll (as discussed below).

If overtime violations under CWHSSA exist, the notice to the contractor should also show a calculation of liquidated damages and inform the contractor of two choices regarding liquidated damages—pay or request a waiver.

### 12.1.1 Certified Correction Payroll

Under Scenario 1, a payroll that reflects restitution paid under Davis-Bacon and/or CWHSSA is called a *Certified Correction Payroll*. A Certified Correction Payroll must always be prepared by the employer and the Statement of Compliance must be signed by the authorized signatory. A Certified Correction Payroll only lists the workers receiving restitution. A Certified Correction Payroll may cover multiple weeks and must specify the weeks covered. The monetary amounts listed—wages and deductions—reflect restitution amounts paid and should not show amounts paid and listed on past payrolls. Optionally, a Certified Correction Payroll may also cover one week at a time.

Payroll problems that require the employer to prepare a Certified Correction Payroll include the following:

1. Wage rates on the payrolls do not meet Davis-Bacon requirements.
2. Wage rates on the payrolls do not meet CWHSSA requirements.
3. Worker classifications are wrong, incomplete, or do not follow the applicable wage decision, resulting in restitution due.
4. Calculations are in error and result in the underpayment of wages.

A Certified Correction Payroll records the difference between the amount paid and the required amount that should have been paid. The deficiency is multiplied by the applicable number of hours worked at the lower than allowable rate.

**Example:** If a worker was paid \$10 per hour and should have been paid \$11 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be  $\$1 \times 100 = \$100$ .

The contractor may submit a Certified Correction Payroll for each applicable work week or for multiple work weeks. A Certified Correction Payroll, if prepared for multiple weeks, should show the weeks.

**Example:** Weeks 2 through 8 and 11: A Certified Correction Payroll prepared for one week at a time must be numbered the same as the original payroll for that work week. It must show the correct revision number: "Payroll #2, Revision #1," "Payroll #3, Revision #1, and so forth.

In most cases, the Statement of Compliance, as part of the Certified Correction Payroll, is sufficient to prove that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer needed as proof of restitution. If problems are suspected, additional proof may be required by LOCD-DR or another reviewing agency.

### **12.1.2 The Use of Corrected Payrolls to Demonstrate Restitution**

Contractors can send corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

1. A corrected payroll is always for one weekly period; a Certified Correction Payroll may cover multiple weekly periods.
2. A corrected payroll lists all workers who worked on a project during a weekly period; a Certified Correction Payroll lists only workers to whom restitution was paid.

3. A corrected payroll lists the original disbursements and disbursements made for the payment of restitution; the Certified Correction Payroll will list only the disbursements made for the payment of restitution.

A contractor can send a corrected payroll to prove restitution rather than a Certified Correction Payroll. However, a Statement of Compliance with a later signature and date must accompany the corrected payroll. The corrected payroll should be numbered to associate it with the original payroll, such as “Payroll 2, Revision 1.”

### **12.1.3 Calculation of Liquidated Damages**

Continuing with Scenario 1, where restitution involves Davis-Bacon and overtime violation(s) under CWHSSA, overtime rates must be paid at 150% of the basic hourly rate, referred to as “time and a half.” Under CWHSSA, as of January 16, 2025, liquidated damages are computed at the rate of \$33 per worker per day (see the link in Section 10.4 for the current liquidated damages penalty). *Per worker per day* refers to the worker who worked in excess of 40 hours in a week without payment of overtime rates.

**Example 1:** If workers worked six days a week for 12 hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should start on day 4 and continue on day 5 and day 6. The liquidated damages calculations are \$99 per worker (\$33 per worker per day). Liquidated damages are calculated in addition to the payment of wage restitution.

**Example 2:** During summer 2021, one worker was underpaid for overtime hours for one day, and then two workers were underpaid for overtime hours the following day. Using the table in Section 10.4 above, the calculation of liquidated damages is calculated as follows:

$$3 \text{ workers} \times \$27 \text{ (penalty for summer 2021)} = \$81$$

### **12.1.4 Steps in Calculation, Assessment, Payment, or Appeal of Liquidated Damages**

The subrecipient calculates restitution due and liquidated damages due and notifies the contractor by traceable correspondence (i.e., email, fax, or letter). The contractor, having

received notification, must make restitution via a Certified Correction Payroll (or a corrected payroll with certification) and must agree to one of the following two choices regarding liquidated damages: (1) pay the penalty or (2) request a waiver. The contractor is to notify the subrecipient of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Contact the LCO at LOCD-DR for instructions regarding a wire transfer. Such procedures involve filling out a special deposit slip, which is sent to HUD to enable a receiving account to be established. The contractor is notified when the wire transfer can be received by an active account at HUD and will be sent a form that is similar to a deposit slip. The contractor uses a financial institution to conduct the wire transfer. After the wire transfer and proper notification/documentation of the payment are distributed to all parties concerned, the contractor's responsibility for the payment of liquidated damages is met. The financial institution charges the contractor a fee for making the wire transfer. The wire transfer procedure is a very cumbersome process involving many steps before final resolution is reached.

The other choice is to request a waiver. This choice is more efficient and is recommended by LOCD-DR if the mistake on the payroll was unintentional. If requesting a waiver is the contractor's choice, the contractor submits written communication to the subrecipient explaining the reasons that a waiver was requested.

Waivers are generally granted for two reasons:

1. An unintentional error despite taking due care
2. A mathematical error

The subrecipient forwards the waiver request letter to LOCD-DR. For liquidated damage penalties of less than \$100, the LOCD-DR LCO has the authority to grant or deny the waiver request. For penalty amounts of \$100 and above, LOCD-DR forwards the request to the proper HUD representative. Following HUD's response, LOCD-DR communicates HUD's response to the subrecipient by traceable correspondence. The subrecipient communicates the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, then labor standards requirements regarding liquidated damages are met. If HUD does not approve the request for the waiver, call the LCO at LOCD-DR for further instructions. The contractor has 60 days to appeal the notice from HUD.

## **12.2 The Use of Corrected Payrolls Where Restitution Is Not Due**

**Scenario 2:** Restitution is not due but some other type of correction is necessary. A corrected payroll may be used to reclassify workers, correct mathematical errors, clarify monetary amounts, revise improper dating, and so forth. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll.

*Example:* “Payroll 4, Revision 1.” The contractor may strikethrough the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature and date on a Statement of Compliance must be provided. One way to provide a new signature is by attaching a copy of the original Statement of Compliance with a new signature and date above the original signature. The contractor may also prepare a new Statement of Compliance, and sign and date it, for any week with a corrected payroll.

### **12.2.1 Supplementary Statements**

A supplementary statement from the contractor may be used to clarify major issues involving restitution but also minor issues that do not involve restitution. Situations where a supplemental statement would be acceptable include (1) the payroll on which an employee appears does not have the last four digits of the Social Security number and (2) an incorrect employee name. The supplementary statement should be signed and dated by the authorized payroll signatory and show the associated payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

## **12.3 No Error Detected**

**Scenario 3** is the scenario under which no error is detected.

## 13. Payroll Reporting Requirements

See Exhibit 8-15 for a visual diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario.

- A Labor Standards Enforcement Report (LSER) is an interim report completed during a project and a Final Wage Compliance Report is completed at the conclusion of a project. The LSER (Exhibit 8-8) is needed when restitution cumulatively reaches \$1,000 or more for any contractor or subcontractor. Instructions for completing the form are included in Exhibit 8-8. One CDBG-DR or CDBG-MIT project could trigger multiple LSERs.
- An LSER is sent to LOCD-DR when most or all of the corrective action is completed. For example, if a contractor paid restitution and also paid liquidated damages, the subrecipient could wait until the documentation of restitution, and the contractor's agreement and payment of the liquidated damages are received. When submitting the LOCD-DR enforcement report, the subrecipient should include the documentation of the wire transfer, contractor agreement to pay damages, and proof of payment.
- The LSER should be sent before closeout documents are submitted. If a waiver of payment of liquidated damages is requested, understand that HUD may not respond in a timely manner.

The flowchart indicates that, for all three scenarios, the last item regarding labor standards—the Final Wage Compliance Report (within Exhibit 13-1h)—must be sent to LOCD-DR with any closeout documents.

### 13.1 Reporting Restitution Under Davis-Bacon and CWHSSA

In reporting restitution on the LSER or the Final Wage Compliance Report, it is important to correctly classify the restitution. The Davis-Bacon portion of the restitution involves an underpayment rate for each hour worked at the incorrect rate. The CWHSSA part of the restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked.

**Example:** A laborer worked 48 hours in one work week. He was paid \$10 per hour for 48 hours. The wage decision calls for \$11 per hour with no fringe benefits. Most payroll clerks would know that \$52 of restitution is due. However, some may not realize the proper classification of each of the components of the restitution.

The proper classification would be \$48 under Davis-Bacon and \$4 under CWHSSA.

Davis-Bacon			CWHSSA			Restitution
48 hours	x	\$1	+	8 hours	x	\$0.50 = \$52

## 14. Withholding Funds Based on Non-Compliance with Labor Standards

If violations regarding restitution are not corrected within 30 calendar days from the date of the first notice of underpayment, the subrecipient may withhold funds due to the prime contractor. Only an amount considered necessary to ensure payment of underpaid wages (and liquidated damages, if applicable) should be withheld to meet labor standards requirements.

If it is necessary to estimate the withholding amount, prompt action must be taken. To determine an exact amount and disburse any applicable excess to the prime contractor according to the invoices presented for payment, the following steps must be taken:

1. The subrecipient must notify the prime contractor of the withholding and send the second notice of underpayment.
2. The subrecipient must, again, identify the underpaid workers and correct the job classifications and wage rates, the dates when the underpayments occurred, and the amounts of underpayments owed.
3. The subrecipient must notify LOCD-DR if restitution is not made within 30 days of the second notice of underpayment, or if there is disagreement about the finding of wages owed to LOCD-DR. LOCD-DR determines whether it is appropriate and the subrecipient will be notified.

4. The subrecipient must disburse wages owed to the respective workers from the withheld funds.
5. The subrecipient should contact LOCD-DR for information on the proper procedure for the disbursement of funds.

## **15. Withholding Funds Based on Non-Compliance with CDBG-DR and CDBG-MIT Requirements**

If a labor standards violation(s) occurs that results in the subrecipient not following the approved CDBG-DR and CDBG-MIT programs, LOCD-DR may suspend payment on the next Request for Payment. For example, if the subrecipient does not ensure the prompt submission of contractor payrolls by the prime contractor (and any lower tier subcontractor), then the subrecipient is considered to be non-compliant with the CDBG-DR and CDBG-MIT program requirements.

## **16. Unfound Workers**

If all affected workers cannot be located and restitution made, either by the contractor directly or through the use of withheld funds, sufficient funds must be reserved by the subrecipient to pay those workers the wages owed. Efforts to locate workers should continue. However, if they are not found by the time the closeout of the project occurs, the subrecipient must return the withheld funds to LOCD-DR. A check made payable to the Louisiana Division of Administration, LOCD-DR, covering the remaining withheld funds, must be sent to LOCD-DR before the project closes. If the restitution for unfound workers totals \$1,000 or more, an LSER (Exhibit 8-8) must also be submitted.

## **17. Falsification**

If intentional falsification by a contractor is suspected, the subrecipient's LCO must not return the payroll to the contractor for correction and submittal. LOCD-DR must be informed of the suspected falsification.

## 18. Payroll Retention

Payroll records must be retained by the subrecipient for a period of three years from the date of the letter indicating Final Close of the CDBG-DR and CDBG-MIT programs relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of LOCD-DR, HUD, and DOL.

## 19. Finalizing Labor Compliance

The Final Wage Compliance Report (within Exhibit 13-1, Project Completion Report) must be approved by the LOCD-DR LCO before the project can be conditionally closed out. If there are unresolved labor compliance problems at that time, the LOCD-DR LCO helps the subrecipient decide how to correct the problems.

## 20. Processing Labor Complaints

All complaints received by LOCD-DR from worker(s) on a CDBG-DR or CDBG-MIT funded project are referred by the LOCD-DR LCO to the DOL Wage and Hour Division, New Orleans, Louisiana. The LCO keeps a record of each complaint received and will follow-up with DOL on the resolution of each.

## 21. LOCD-DR Exhibits

Exhibit	Description
Exhibit 8-1	Sample Project Wage Sheet
Exhibit 8-2	Sample Verification of Project Wage Rate Sheet and Project Sign
Exhibit 8-3	Sample Required Construction Site Posters
Exhibit 8-4	Sample Appointment of Labor Compliance
Exhibit 8-5	Wage Decision Example
Exhibit 8-6	Verification of Wage Decision
Exhibit 8-7	Sample Payroll Deduction Authorization Form
Exhibit 8-8	Sample Labor Standards Enforcement Report

<b>Exhibit</b>	<b>Description</b>
Exhibit 8-9	Report of Additional Classification
Exhibit 8-10	Record of Employees Interview Form
Exhibit 8-11	Force Account Record Keeping
Exhibit 8-12	Sample Contractor's/Subcontractor's New Employee Information Form
Exhibit 8-13	Sample Contractor's/Subcontractor's Existing Employee Information Form
Exhibit 8-14	Payroll Form and Statement of Compliance
Exhibit 8-15	LOCD-DR Payroll Review Flowchart

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 9: Acquisition and Relocation



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

In executing Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) projects, subrecipients may need to acquire real property to complete specific activities. Prior to acquiring real property or attempting to undertake a relocation project, a determination must be made as to whether the requirements of the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended \(URA\)](#), apply. This regulation was amended, effective June 3, 2024. Since 1989, when the regulation was last updated, there have been only a few amendments made to the rule.

The revisions are prompted by the enactment of the [Moving Ahead for Progress in the 21st Century Act \(MAP-21\)](#), which increased statutory relocation benefits and reduced the length of occupancy requirements. This final rule updates existing regulations on the use of those provisions. The U.S. Department of Housing and Urban Development (HUD) is currently developing implementation guidance for its programs.

Requirements for acquisition and relocation activities are described in HUD Handbook 1378: Real Estate Acquisition and Relocation Policy and Guidance.

[Tenant Assistance, Relocation and Real Property Acquisition Handbook](#)

HUD works closely with the U.S. Department of Transportation’s Federal Highway Administration (FHWA), the designated Federal Lead Agency for the URA. Additional information concerning the URA is available on the [FHWA website](#).

The URA also intends to establish a uniform policy for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs. Whether the particular requirements of the URA pertain is dependent upon, among other factors, determining whether the proposed acquisition and/or relocation activity(ies) is voluntary or involuntary. Additionally, HUD has approved waivers that modify the URA and the [Housing and Community Development Act of 1974 \(HCDA\), Section 104\(d\)](#) requirements. See Subsection 3.2.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Appraisal:** A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of the defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
2. **Expropriation:** The confiscation of private property for public use.
3. **Housing and Community Development Act of 1974 (HCDA):** Authorizes the Secretary of Housing and Urban Development to make grants to States and Units of general local government to help finance Community Development programs.
4. **HUD Handbook 1378:** The U.S. Department of Housing and Urban Development's Handbook 1378: Real Estate Acquisition and Relocation Policy and Guidance, located at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/13780](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780).
5. **Lawful Presence Requirement:** To be eligible for relocation assistance, at least one person from the household must be a U.S. citizen or a lawful resident in accordance with [49 Code of Federal Regulations \(CFR\) 24.208](#). A person who is not lawfully present in the United States refers to someone who has not been officially allowed to enter or stay in the United States by the U.S. Department of Homeland Security.
6. **Profit:** The element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. It does not necessarily represent net income to contractors. This potential remuneration element and the government's estimate of allowable costs to be incurred during contract performance together equal the government's total pre-negotiation objective.
7. **Review Appraisal:** A secondary appraisal that is performed to ensure a reasonable property valuation.

8. **Tenant-Based Rental Assistance (TBRA):** Provides rental subsidies to low-income individuals and families, allowing them to rent housing at market rates.
9. **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA):** Provides important protections and assistance for people affected by federally funded projects. It requires that displaced persons have decent, safe and sanitary housing made available to them.
10. **Waiver:** Granted by HUD to alter typical CDBG regulations and activities.

## 3. Overview

### 3.1 Applicable Regulations

There are three major regulations that cover relocation and acquisition activities in CDBG-DR and CDBG-MIT programs:

1. URA regulations, **effective June 3, 2024**, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.<sup>1</sup>
2. [Section 104\(d\) of the Housing and Community Development Act \(HCDA\) of 1974](#) and the implementing regulations.<sup>2</sup>

#### Federal Regulations:

<sup>1</sup> [49 CFR 24](#)

<sup>2</sup> [24 CFR 42](#)

<sup>3</sup> [24 CFR 570.606](#)

**Note:** HUD has waived portions of Section 104(d) of the HCDA of 1974; see Section 3.2: Waived Requirements below.

3. [24 CFR 570.606](#)<sup>3</sup> of the regulations requires compliance with the regulations listed above.

An overriding principle when implementing a CDBG-DR or CDBG-MIT program and the URA is that the subrecipient shall ensure that it has taken all reasonable steps to minimize displacement.

### 3.2 Waived Requirements

To speed the recovery effort and simplify the administration of disaster recovery projects, HUD has waived requirements of Section 104(d) of the HCDA dealing with one-for-one replacement

of lower income dwelling units demolished or converted in connection with the CDBG-DR or CDBG-MIT-assisted development project for housing units damaged by one or more disasters. HUD has also waived the relocation assistance requirements contained in Section 104(d) of the HCDA to the extent that they differ from the URA ([42 United States Code \(U.S.C.\) 4601, et seq.](#)), and HUD has approved waivers that modify the URA requirements. As a result of these waivers, the URA does not apply to the following:

1. To an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person
2. To the extent that a tenant has been paying rent in excess of 30% of household income without demonstrable hardship, rental assistance to reduce the tenant's costs to 30% would not be required
3. To the extent necessary to permit a subrecipient to meet all or a portion of a subrecipient's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is also supplied with referrals to a suitable, available rental replacement dwelling where the owner is willing to participate in the TBRA program and the period of authorized assistance is at least 42 months
4. To the extent that they require a subrecipient to offer a person displaced from a dwelling the option of receiving a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the subrecipient establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displaced dwelling, whether the person owns and moves the furniture, and, at a minimum, the kinds of expenses described in [49 CFR 24.301](#).<sup>1</sup> Persons displaced from a dwelling remain entitled to choose

Federal Regulations:

<sup>1</sup> [49 CFR 24.301](#)

a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

### 3.3 Timing of the URA Coverage

It is important for subrecipients to know that the timing of an acquisition can trigger the URA requirements. Regardless of the source of funds, any acquisition of property made by a state agency, on or after the date of submission of the individual project application for financing of an activity using that property, is subject to the URA.

If an acquisition took place prior to project application submission, it can be subject to the URA if the Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) finds clear evidence that the purchase was done in anticipation of obtaining CDBG-DR or CDBG-MIT funds for an activity.

The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the end result of the purchase is a federally assisted project.

**Table 1: Timing of Required Notices**

URA TIMEFRAMES FOR NOTICES			
ACTIVITY	Approval of Project	Site Selection	Appraisal Property Closing
ACQUISITION NOTICES SENT		↑ Notice to Owner or Notice of Intent to Acquire	↑ Notice of Just Compensation
RELOCATION NOTICES SENT		↑ General Information Notice to Occupants	↑ Notice of Eligibility for Relocation Benefits

## 4. Voluntary versus Involuntary

Subrecipients must understand the critical difference between voluntary and involuntary sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain.

### 4.1 Voluntary Acquisition

Voluntary acquisition occurs when the subrecipient acquires real property at fair market value from an owner who has submitted a proposal to the community for the purchase of their property in response to a public advertisement. The subrecipient may undertake a voluntary acquisition when a site needed for a CDBG-DR or CDBG-MIT project can be satisfied by more than one property. Property owners can voluntarily respond to the advertisement, inform the subrecipient of their property's availability, and enter negotiations for its sale. Voluntary acquisition is not subject to the URA.

#### 4.1.1 Voluntary Acquisition Policy

The subrecipient must have or prepare a formal, written policy that authorizes voluntary acquisition. **The policy in Exhibit 9-1 should be used.** The public invitation or solicitation should include a description of what the subrecipient wants to buy and all other conditions of which a seller should be aware, as stated in Exhibit 9-1. The solicitation must also indicate that if a mutually satisfactory agreement cannot be reached, the subrecipient will not condemn the property for the same purpose.

Relocation eligibility for tenants that need to move only becomes effective when a binding written agreement has been negotiated between the subrecipient and the owner of the property. The tenant becomes eligible when the subrecipient is obligated to purchase the property. Options to purchase are not considered binding for this purpose. The subrecipient needs to notify an owner-occupant that they are not eligible for relocation assistance as a condition of voluntary acquisition. All pertinent information should be included in the public solicitation and should be included in the written purchase offer (see Exhibit 9-1).

#### **4.1.2 Voluntary Acquisition Property Valuation**

Valuation of parcels of property will need to be established and may be completed by the appraisal process or by a knowledgeable person. If the appraisal process is used, a review appraisal is not mandatory because voluntary acquisition is not subject to the URA. If a knowledgeable person does a valuation of the property, it must be in writing. The valuation does not need to be complicated or detailed. The written opinion is not required to be based on a selection of chosen “comparables” as is often the case with a formal appraisal. The knowledgeable person should state at least three items in the written opinion: (1) his or her qualifications in one short paragraph, (2) a brief description (but not an official legal description) of the location of the property, and (3) an estimate of the value of the property.

#### **4.1.3. Caution**

It is important to note that voluntary acquisition is a valuable technique in specific situations. However, it should not be used to circumvent the URA. The LOCD-DR can provide guidance early in the planning phase to help structure the subrecipient’s policy and any public solicitations, which can prevent the need for the challenging “clean-up” that becomes necessary if involuntary acquisition is ultimately required.

#### **4.1.4 Non-Profit Organizations**

The acquisition activities of non-profit organizations (NPOs) are subject to the URA if such activities are for a federal or federally assisted program or project. Pertinent considerations in determining whether an acquisition is “for” a program or project include, but are not limited to, (1) when HUD assistance was requested, and (2) whether the acquisition is integrally related to the program or project.

### **4.2 Involuntary Acquisition**

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. In accordance with the requirements of the URA, for involuntary transactions, the subrecipient must follow the steps outlined in Subsection 6.1: General URA Acquisition Process (see Exhibit 9-33).

## 5. Acquisition Types Not Applicable to the URA

Five types of acquisition are not subject to the requirements of the URA; however, these types of acquisition are still subject to Louisiana law and specific CDBG-DR or CDBG-MIT requirements. These five types are listed within the following table:

**Table 2: Types of Acquisition Not Subject to URA**

Not Subject to the URA	
Type	Example
<b>Acquisition from Another Public Agency</b>	A municipality acquires a water well site from a parish for a CDBG-DR funded project. This acquisition is not subject to the URA.
<b>Temporary Construction Servitudes/Easements</b>	<a href="#">42 CFR 24.101(c)(2)</a> stipulates that temporary construction servitudes/easements or permits needed solely to perform work for the benefit of the property owner, which may not be done if agreement cannot be reached, is not subject to the URA.
<b>Short-Term Leases (fewer than 15 years)</b>	A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is needed for only five more years, at which time a new force main system will be installed that will render the lift station obsolete. The subrecipient chooses to obtain a 10-year lease, which is not automatically renewable, from an appropriate property owner. Acquisition of the 10-year lease would not be subject to the URA.
<b>Voluntary Acquisition</b>	A parcel is needed for a CDBG-DR funded fire station. The fire station could be placed on many different parcels located in the northern part of the municipality. The subrecipient adopts a voluntary acquisition policy. The subrecipient chooses to advertise in the local newspaper for a parcel of property for the fire station. Acquisition of the parcel for the fire station is not subject to the URA.
<b>Acquisition of Streets Under <a href="#">Louisiana Revised Statute (LRS) 48:491</a></b>	LRS 48:491 provides ownership status to subrecipients that provide evidence of subrecipient or state maintenance of respective streets for a period of three years. In order to document street ownership on a CDBG-DR project, the three-year period should have been completed by the date that the CDBG-DR application was submitted to LOCD-DR.

## 5.1 Procedures Required for Acquisition Not Subject to the URA

The subrecipient must ensure compliance for all types of acquisition, regardless of whether they are subject to the URA. The minimum requirements for the acquisition of property that is not subject to the URA include the following steps:

1. Determination of ownership
2. Valuation of the property
3. Offer and acceptance
4. Act of sale, donation, or transfer
5. A statement of settlement costs
6. Recordation
7. In general, any documentation of acquisition activity from start to finish

## 6. Acquisition Types Applicable to the URA

Specific types of acquisition require additional steps to ensure compliance with the URA. All involuntary acquisitions are subject to the URA. Examples of these types of acquisitions are outlined in the following table:

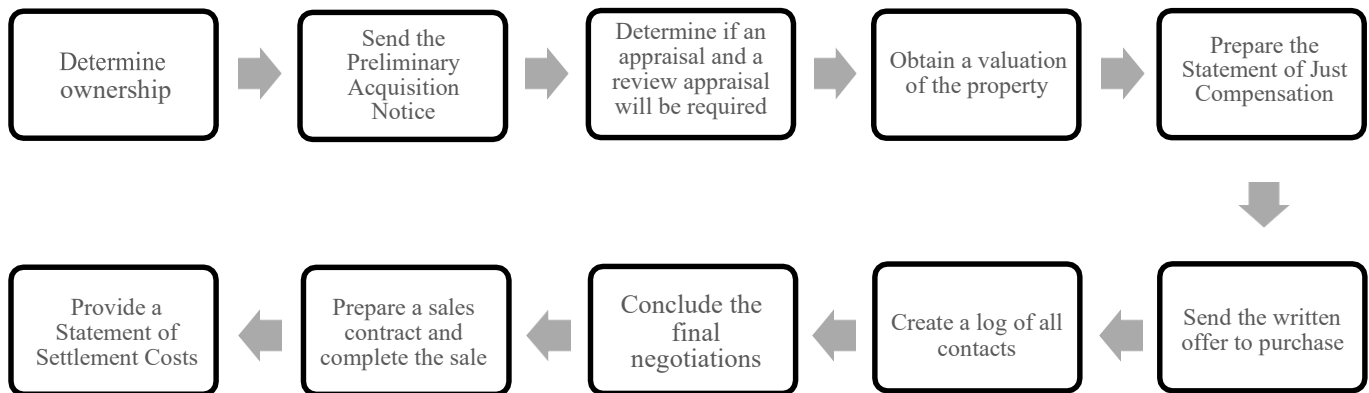
**Table 3: Types of Acquisition Subject to URA**

Subject to the URA	
Type	Example
<b>Acquisition of Specific Parcels of Property by Purchase</b>	<p>A certain parcel of property owned by John Doe, a citizen of the community, is needed by the subrecipient for a fire station. It has been determined by the subrecipient that this specific parcel is the best location for the fire station. CDBG-DR funding has been awarded for the project. The acquisition of this parcel by the subrecipient would be subject to the URA.</p> <p>A parcel of property owned by Private Enterprise, Inc. is needed for the installation of a water well involving a CDBG-DR funded project. The life expectancy of the water well is estimated to be as much as 40 years. Private Enterprise, Inc. is willing to enter a lease with the subrecipient for the long-term use of the parcel for a water well. Acquisition of a</p>

<b>Subject to the URA</b>	
<b>Type</b>	<b>Example</b>
	<p>leasehold agreement by the subrecipient would be subject to the URA.</p> <p>The subrecipient needs to obtain permanent roadside rights of way for sewer lines that are part of the installation of a new sewer system, which is funded, in part, with CDBG-DR funding. Some of the rights of way are expected to be donated, while others are expected to be purchased. Acquisition of such rights of way, whether by donation or purchase, would be subject to the URA.</p>
<b>Acquisition by Private Entities</b>	<p>The subrecipient, on behalf of Widget, Inc., has been funded for an economic development project. A parcel, now privately owned and located next to the widget plant, is to be acquired by Widget, Inc. LOCD-DR will provide funds for infrastructure associated with the expansion; however, Widget, Inc. will be the entity that acquires the parcel of adjacent land. Such an acquisition would be subject to the URA.</p>
<b>Purchases, Donations, and Partial Donations</b>	<p>John Doe, a citizen of the community, donates his property to the subrecipient to build a fire station. The fire station is being constructed using CDBG-DR funds. This donation is subject to the URA.</p>
<b>Additional Rights of Way – Street Projects</b>	<p>The subrecipient must obtain land for Widget, Inc., an entity that does not have eminent domain, to widen the road.</p>
<b>Leases That Are for a Duration of 15 Years or Longer or Less Than 15 Years But Are Automatically Renewable</b>	<p>A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is the community’s permanent solution and will be needed for at least 15 years. The subrecipient chooses to obtain a 15-year lease, which is automatically renewable, from an appropriate property owner.</p> <p>Acquisition of the lease is subject to the URA.</p>

**6.1 Steps for Meeting the URA Requirements**

Certain steps regarding the acquisition of property are necessary to meet the CDBG-DR or CDBG-MIT, and URA requirements. The steps for the purchase of property under the URA and the order in which they should occur are outlined in the following diagram:



Notices, letters, and other documents regarding acquisition sent by the subrecipient must be sent by certified or registered mail, return receipt requested, or hand delivered with receipt documented.

If the owner or occupant does not read or understand English, the subrecipient must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

**NOTE: The subrecipient must keep a log of any conversations or contact with anyone involved in the acquisition process, from the time the offer letter is sent to the completion of the acquisition (refer to Exhibits 9-15ii and 9-15iii).**

### 6.1.1 Determine Ownership

The subrecipient is responsible for determining the ownership of the property that may be needed for a CDBG-DR or CDBG-MIT project. A title search to determine ownership is often necessary.

### 6.1.2 Send the Preliminary Acquisition Notice

As soon as possible after the subrecipient decides to acquire property, a Preliminary Acquisition Notice must be sent to the owner (Exhibit 9-2).

The Preliminary Acquisition Notice:

1. Explains that it is not a notice to vacate
2. Does not establish eligibility for relocation payments or assistance
3. Must be accompanied by the brochure, “When a Public Agency Acquires Your Property”
4. Must be accompanied by the subrecipient’s Acquisition Policy if different but more stringent than the guidance in the brochure

### **6.1.3 Determine if an Appraisal and a Review Appraisal Are Required**

Either of these two conditions will trigger an appraisal:

1. The value of the property is estimated to be more than \$15,000, or
2. The owner of the property wants an appraisal. If an appraisal is required, the owner of the property must be invited to accompany the appraiser.
3. When an appraisal is required, a review appraisal will automatically be required (see Subsection 6.1.4).

### **6.1.4 Obtain a Valuation of the Property**

Regardless of whether an appraisal is required, it will be necessary to obtain valuation of the property to prepare the Statement of Just Compensation as discussed in Subsection 6.1.5.

If an appraisal and review appraisal are required, then the valuation will be based on the appraisals. However, if the review appraisal is higher in monetary valuation than the first appraisal, it is considered to be the controlling document.

If an appraisal and a review appraisal are not required, then a knowledgeable person may provide a written opinion as to the value of the property (“written valuation”). A knowledgeable person may be a real estate broker, salesperson, banker, or some other type of locally recognized authority on the value of local property. In all cases, the scope of the service and the cost of the service to provide a written valuation should be substantially lower than the cost of an appraisal and a review appraisal.

The written valuation does not need to be complicated or detailed. The written valuation is not required to be based on a selection of chosen “comparables,” as is often the case with a formal appraisal. The knowledgeable person should state at least three items in the written valuation:

1. His or her qualifications in one short paragraph
2. A brief description (but not an official legal description) of the property
3. An estimate of the value of the property: The written valuation should be signed and dated, but does not have to be notarized, and should be made part of acquisition records.

#### **6.1.5 Prepare the Statement of Just Compensation**

After valuation of the property, the Statement of the Basis for the Determination of Just Compensation (Statement of Just Compensation) must be prepared. The amount determined to be just compensation must be based on the fair market value as determined in the valuation. A sample Statement of Just Compensation is included as Exhibit 9-3. It must contain the following elements:

1. Legal description and location of the property
2. Description of the interest to be acquired (e.g., full ownership, servitude)
3. Inventory identifying the building, structures, fixtures, and so forth, which are considered to be a part of the real property
4. The amount of the offer
5. A statement to the effect that the amount offered is the full amount believed by the subrecipient to be just compensation, is not less than the fair market value of the property, disregards any increase or decrease in the fair market value attributable to the project for which the property was acquired, and does not include any consideration or allowance for relocation costs
6. Definition of *fair market value*
7. Explanation of the method used to value the property

8. In the case of tenant-owned improvements, the amount determined to be just compensation for the improvement and the basis as set forth in [Handbook 1378](#)
9. In the case of owner retention of the improvements, the amount determined to be just compensation for these improvements and the basis as set forth in [Handbook 1378](#)
10. Any purchase option agreement should be attached
11. If only a part of the parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages and benefits to be remaining portion

#### **6.1.6 Send the Written Offer to Purchase**

The subrecipient should send the owner a written Offer to Purchase (Exhibit 9-4), along with the written Statement of Just Compensation. The Offer to Purchase must specify the date on which negotiation for the sale of the property will begin (initiation of negotiations). As with all notices, it should be sent certified or registered mail, return receipt requested.

The initiation of negotiations is the trigger date for issuance of the Notice of Eligibility for Relocation Assistance (Exhibit 9-5). For more details on Relocation Procedures and Anti-Displacement under Section 104(d) of the Act, refer to [HUD Handbook 1378](#).

#### **6.1.7 Conclude Final Negotiations**

The sale is negotiated on the date specified within the Offer to Purchase. The owner may accept the fair market value, and the subrecipient can enter into an agreement with no further action necessary by LOCD-DR. The owner must be provided with an opportunity to discuss the offer, propose a higher value, and document that higher value. There may be occasions when an owner proposes or insists on more than the fair market value. If this occasion arises, the subrecipient may:

1. Obtain a new valuation.
2. Initiate expropriation proceedings (see Subsection 6.5).
3. Decide not to acquire.

4. Request approval from LOCD-DR to proceed with the purchase at a price higher than the fair market value.
5. The use of CDBG-DR and CDBG-MIT funds, which are more than the fair market value and are not approved prior to disbursement by LOCD-DR, will be disallowed.
6. Documentation of negotiation proceedings should be placed in the project acquisition file.

#### **6.1.8 Prepare a Sales Contract and Complete the Sale**

Following successful negotiations, an act of sale must be prepared and executed, and the transfer of documents secured. The subrecipient must also reimburse the owner to the extent deemed fair and reasonable for incidental costs associated with the transfer of title (e.g., recording fees, transfer taxes, penalty costs, or other charges for prepayment of any pre-existing recorded mortgages).

#### **6.1.9 Provide a Statement of Settlement Costs**

The subrecipient must give the owner a Statement of Settlement Costs (see Exhibit 9-6) that identifies all settlement costs, regardless of whether they are paid at, before, or after closing, and must clearly separate the charges paid by the owner. If a title or escrow company is used, their standard form is acceptable. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction.

The subrecipient must also be able to prove the payment of the purchase price by retaining a copy of the canceled check and the Act of Sale.

### **6.2 Appraisals Under the Uniform Act**

#### **6.2.1 Selecting Appraisers**

The subrecipient must select an independent appraiser. The appraiser should have no interest in the property and not be related to, or in business with, anyone having any interest in the property to be acquired. The appraiser should be qualified, reputable, and professional.

Generally, only people who obtain at least 50% of their income from doing appraisals and who belong to a professional association that has a code of ethics should be considered. Look for appraisers who have had experience doing the types of appraisals you need. An appraiser who

usually establishes values for vacant, unimproved land may not be appropriate to establish the accurate values of houses. State-certified or licensed real estate appraisers eligible to perform appraisals for federally related transactions are now listed on the Internet at the National Registry of State-Certified or Licensed Appraisers' website.

[National Registry of State-Certified or Licensed Appraisers](#)

Subrecipients should request statements of qualifications from several local appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values exceed \$100,000, it is recommended that two independent appraisals be conducted. A review appraisal must be prepared for each appraisal conducted.

### **6.2.2 Procuring Appraisal Services**

Subrecipients must execute a professional services contract with the independent appraiser. See Section 4: Procurement Methods and Contractual Requirements for the steps required to be followed when procuring these professional services. Exhibit 4-15 contains an appraisal contract that has the required elements for use in CDBG-DR and CDBG-MIT programs. This contract may be used, or another prepared, which contains the elements found in Exhibit 4-15. Subrecipients should go over the contents of this contract with their appraiser. The contract must require the appraiser to invite the property owner, or their designated representative, to accompany the appraiser during the property inspection. The contract must also prohibit the appraiser from considering race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential real property. Compensation for an appraisal shall not be based on the amount of the valuation.

Exhibit 9-8, which states the Uniform Appraisal Standards for Federal Land Acquisition, sets forth standard requirements for appraisals involving federally funded acquisitions. Standard Federal Housing Administration appraisal forms may be used if they cover all of the requirements of the appraisal contract covered in Exhibit 4-15.

## 1. Property Valued at \$250,000 or More

A contract (fee) appraiser making a “detailed appraisal” on property valued at \$250,000 or more must be certified and licensed in accordance with state law implementing [Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 \(FIRREA\), P.L. 101-73](#) and must be currently active on the Louisiana State Certified Appraisers General Appraisal list. The review appraiser must also be on the state’s General Appraisal list.

[State’s General Appraisal List](#)

## 2. Property Valued at Less Than \$250,000

As of September 6, 2001, for property valued below \$250,000, the subrecipient may use a general appraiser or a residential appraiser. This is also applicable to the review appraisal.

### 6.2.3 Owner Invitation

Before the first appraisal is undertaken, the subrecipient or the appraiser, on behalf of the subrecipient, must formally invite the property owner or their designated representative to accompany the appraiser during inspection of the property (Exhibit 9-9). This notice should be in writing and a copy placed in your property acquisition file, along with evidence of receipt by the owner. The requirement to invite the property owner to accompany the appraiser is optional for the review appraisal.

### 6.2.4 Servitude Appraisal Forms

Exhibit 9-10 is an example of a short form that can be accepted for an appraisal establishing the value of servitude. This form summarizes complete documentation, which the appraiser must have on file.

### 6.2.5 The Review Appraisal

Once the appraiser has prepared and submitted the appraisal, a review appraisal must be obtained. The review must be completed by a qualified staff appraiser or an independent fee appraiser. The review appraiser should be required to visit the property. The review must be written, signed, and dated. It should assess the adequacy of the appraiser’s supporting data, the appraisal procedures used, and the soundness of the appraiser’s opinion of the fair market value.

The review appraisal must also include the reviewer’s recommendation of the fair market value of the property. Exhibit 9-11, the Sample Review Appraisal Report, contains the required elements needed in a review appraisal. If the review appraiser disagrees with the fair market value of the original appraisal, the locality can request that the original appraiser modify and document any changes in the original report. When judging between differences in the first appraisal and the review appraisal, and if the differences are not resolved by the modification of the first appraisal, then the review appraisal is to be considered authoritative. Subrecipients will also have the option of obtaining another “first appraisal” and review appraisal.

### **6.2.6 Acquiring Property Without an Appraisal**

If subrecipients can determine that the valuation of a parcel of land or servitude is uncomplicated and that the fair market value of the property does not exceed \$15,000, and if the owner does not desire an appraisal, then an offer can be made to the owner(s) of the property without a formal appraisal; however, a written valuation of the property by a knowledgeable person will be required. If an appraisal is not required, then a review appraisal will not be required.<sup>1,2</sup>

#### **Federal Regulations:**

<sup>1</sup> [42 U.S.C. 4651\(2\)](#)

<sup>2</sup> [49 CFR](#)

An option to increase the \$15,000 valuation amount to \$35,000 may be requested in writing from LOCD-DR.

### **6.3 Deciding Not to Acquire**

If the subrecipient decides not to buy or expropriate a property at any time after the Preliminary Acquisition Notice has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the subrecipient does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This Notice of Intent Not to Acquire (Exhibit 9-12) must be sent within 10 days of the decision not to acquire.

## 6.4 Donations

If a property is to be fully donated, the subrecipient should inform the owner of his or her rights under the URA and obtain a signed acknowledgment. A sample Property and/or Servitude Acquisition Acknowledgment is included as Exhibit 9-13. The owner must be given a copy of the HUD brochure, [When a Public Agency Acquires Your Property](#). If property is to be partially donated, the subrecipient must follow the procedures of the URA as detailed in the steps herein and the property owner must acknowledge that their right to just compensation is waived for the donated portion of the property. If donations are being made by elderly, very poor, functionally illiterate, or non-English-speaking persons, the subrecipient should carefully document the efforts made to ensure that the owner-occupant understands their rights in order to demonstrate that the owner is not persuaded or coerced into donating their property.

## 6.5 Expropriation

If the subrecipient cannot negotiate the sale, expropriation proceedings may be instituted. Inexperienced localities sometimes think that expropriation is cheaper than negotiated sales. When the owner is an individual, especially elderly or infirm, courts may be very generous and expropriation can be substantially more expensive than negotiation. The subrecipient is required to pay the amount established by the court.

### 6.5.1 Initiation of Expropriation Proceedings

Expropriation is a legal action and must be carried out by the subrecipient's attorney. The local governing body should authorize the proceedings by resolution. Copies of surveys and maps related to the subject property in the parish are recorded. Expropriation proceedings can then be initiated in the district court of the parish in which the property is located. The subrecipient will have to deposit the amount determined to be "just compensation" in escrow with the court.

The court will establish compensation to be paid for the property. The judgment of the court will vest full ownership title to the property to the subrecipient. Once the title is vested and the subrecipient takes possession of the property, it may enter, secure, and dispose of existing or remaining improvements.

## 6.5.2 Quick Take

The 2003 Louisiana Legislature authorized the expropriation of property by “quick take,” which authorizes a municipality with a population in excess of 450,000 to expropriate abandoned or blighted property by a declaration of taking (quick take) and provides for notification to the landowner by certified mail of the intention to expropriate:

- Requires the filing of a petition and resolution regarding the public purpose, depositing an amount equal to the estimated value of the property with the court, and vesting of the title in the municipality.
- Grants the defendant an opportunity to contest the validity of the taking, applicable only to blighted property within a federally designated census tract in which 10% or more of the property is blighted, and an equal opportunity for all natural and juridical persons and business entities to purchase expropriated blighted property from the governing authority.

## 7. General URA Policy Requirements

The URA covers the temporary or permanent displacement of resident and business occupants in federally assisted projects. The subrecipient shall develop, adopt, and make public a statement of local policy indicating the steps that will be taken, consistent with the other goals and objectives of the CDBG program, to minimize the displacement of persons from their homes and neighborhoods and to mitigate the adverse effects of any such displacement on low- and moderate-income persons<sup>1</sup> (see [URA, Section 104\(d\), and Related CDBG Program Requirements](#)). The subrecipient’s Relocation Policy must contain, at a minimum, the provisions within the recommended local relocation policy/grievance procedure policy (Exhibit 9-14).

Federal Regulations:

<sup>1</sup> [24 CFR 570.606](#)

## 8. Displacement

### 8.1 Displaced Person

As property is acquired that is subject to the URA (see Subsection 6.0), the subrecipient is responsible for ensuring that all displaced persons receive proper URA benefits.

### 8.1.1 URA Definition

Under the URA, the term *displaced person* is defined as:

1. Any person who moves permanently from the real property or moves his or her personal property from the real property as a direct result of a written notice of intent to acquire, rehabilitate, and/or demolish, the initiation of negotiations for, or the acquisition of such real property.
2. Any person whose displacement is a direct result of rehabilitation or demolition for a project.
3. A tenant when the displacement is a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation for a project.
4. A person who is required to move temporarily. A person who is required to move or moves his or her personal property from the real property as a direct result of the project, but is not required to relocate permanently.
5. **Voluntary acquisitions:** A tenant who moves as a direct result of a voluntary acquisition is eligible for relocation assistance when there is a binding agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property.
6. **Lack of Notice of Nondisplacement:** A person who moves permanently and was not issued a Notice of Nondisplacement (Exhibit 9-32) after the application for CDBG-DR or CDBG-MIT funds is approved.

Even if there was no intent to displace the person, if a Notice of Nondisplacement was not provided, HUD considers the move to be a permanent, involuntary move for the project because the person was not given timely information essential for making an informed decision about moving from the project.

The URA also protects the following *displaced persons*:

1. **Tenants Required to Move Within the Project:** A tenant-occupant of a dwelling who receives a Notice of Nondisplacement but is required to move to another unit in the building/complex may be considered displaced if the tenant moves from the building/complex permanently or temporarily, and either:
  - a. The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project, or
  - b. Other conditions of the move within the project were not reasonable
2. **Change in the Use of the Building:** A tenant who moves permanently or temporarily after the building changes from residential use to public use as a direct result of a CDBG-DR or CDBG-MIT-assisted project (e.g., the building now leases units to serve persons who were homeless or require supportive housing). Under the CDBG-DR and CDBG-MIT programs, leases of 15 years or more are considered to be acquisitions for the purposes of the URA.
3. **Nonresidential Tenants:** A nonresidential tenant who receives a Notice of Nondisplacement but moves permanently from the building/complex if the terms and conditions under which the tenant may remain are not reasonable.

### 8.1.2 CDBG Definition

The CDBG regulations define a *displaced person* as someone who moves after a specific event occurs:

1. **Event Triggering Displacement:** This event establishes a presumption that a project may begin (e.g., date of submission of an application). It is presumed that displacement before this date did not occur “for the project” and is not covered by the URA unless rebutted by convincing evidence to the contrary.
2. **Presumption of an Involuntary Move:** It is also presumed that a permanent, involuntary move on or after that date is a displacement “for the project” unless the subrecipient or state determines otherwise.

CDBG regulations also define a *displaced person* as:

1. **Economic Displacement:** A tenant who moves permanently after the CDBG-DR or CDBG-MIT funded acquisition or rehabilitation, and the increased rent is not affordable (they are “economically displaced”).
2. The CDBG program regulations cover “economic displacement” while the URA is silent on this issue. If rents are increased after the CDBG-DR or CDBG-MIT project is completed and the new rent exceeds 30% of the tenant’s monthly income, the tenant would be “economically displaced.”

### 8.1.3 Persons Not Considered a “Displaced Person”

The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

- A person who moves before the initiation of negotiations,<sup>1</sup> unless the subrecipient determines that the person was displaced as a direct result of the program or project.
- A person who initially enters into occupancy of the property after the date of its acquisition for the project.
- A person who has occupied the property for the purpose of obtaining assistance under the URA.
- An owner-occupant who moves as a result of an acquisition of real property as described in [24.101\(a\)\(2\) or \(b\)\(1\) or \(2\)](#),<sup>2</sup> or as a result of the rehabilitation or demolition of the real property.
- A person whom the agency determines is not displaced as a direct result of a partial acquisition.
- A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. Such written notification shall not be issued unless the person has not moved.

#### Federal Regulations:

<sup>1</sup> [24 CFR 24.403\(d\)](#)

<sup>2</sup> [24 CFR 24.101\(a\)\(2\) or \(b\)\(1\) or \(2\)](#)

- An owner-occupant who voluntarily conveys his or her property, after being informed in writing that if a mutually satisfactory agreement on the terms of the conveyance cannot be reached, the agency will not acquire the property.
- A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency.
- An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the U.S. Department of the Interior under [Public Law 93–477](#), Appropriations for National Park System, or [Public Law 93–303](#), Land and Water Conservation Fund, except that such owner remains a displaced person for the purposes of Subpart D of this part.
- A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance.
- Temporary, daily, or emergency shelter occupants are, in most cases, not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors that could include reasonable expectation of a prolonged stay, or other extenuating circumstances.

## **8.2 Permanent and Temporary Relocation**

Depending on the nature of the activity causing the displacement and the duration of displacement from the property, tenants and homeowners can be either permanently or temporarily displaced.

A person is considered permanently displaced if the property that they have been occupying becomes unavailable due to an action funded, in whole or in part, with federal funds. If the tenant or homeowner must leave the property temporarily (i.e., for less than a year) and can return after the federally funded project has ended, they are considered to be temporarily displaced.

URA advisory services and moving expenses are provided equally to those who are permanently or temporarily displaced.

### **8.3 Denial of Relocation Benefits**

HUD must concur with a determination to deny a person relocation benefits to a person based on the following:

1. When an owner either evicts a tenant or fails to renew a lease to sell a property as “vacant” to a subrecipient for a HUD-funded project, HUD will generally presume that the tenant was displaced “for the project.” (Evictions for serious or repeated violations of the lease are permissible; however, the owner must follow state tenant-landlord laws governing eviction.)
2. In cases where the tenant was wronged, the subrecipient is responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the subrecipient can demonstrate that the move was not attributable to the project.

## **9. Section 104(d) and Demolition**

### **9.1 Section 104(d) Waiver – Period of Assistance**

The requirements under Section 104(d) are similar to those required by the URA; however, there are differences that apply to the CDBG-DR and CDBG-MIT programs. One difference between the laws is the period of time used to calculate a rental assistance payment; Section 104(d) uses 60 months versus 42 months for the URA. In order to eliminate the disparity for disaster-affected households assisted by other federal agencies, such as the Federal Emergency Management Agency, HUD has waived the requirement to use 60 months when determining the relocation assistance for displaced persons.

### **9.2 Section 104(d) Waiver – One-for-One Unit Replacement**

For each unit demolished to complete a project funded by CDBG-DR funds, the subrecipient, however, must comply with the requirements under Section 104(d) regarding one-for-one unit replacement. While HUD has issued limited waivers that permit a subrecipient not to replace units that are “substandard damaged not suitable for rehabilitation,” a subrecipient will need to

address any vacant occupiable unit that was purchased for an infrastructure or buyout program. Additionally, [Louisiana Revised Statute 33:476, et seq.](#) requires that prior to demolishing a unit, the subrecipient must ensure that the unit was not able to be rehabilitated in a cost-efficient manner and that the unit was vacant.

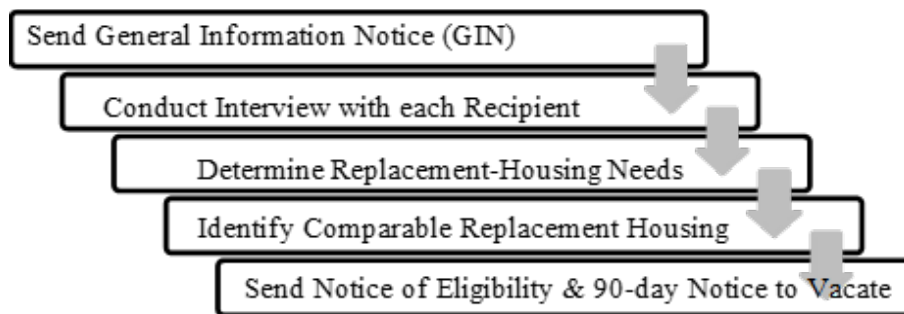
**NOTE: For the CDBG-DR grants for Hurricanes Katrina and Rita, as well as all CDBG-MIT funds, the HUD waiver removes the one-for-one unit replacement requirement entirely.**

The use of other HUD funds, such as CDBG or HOME, for a mixed-financed project will eliminate these waivers or alternative requirements for the CDBG-DR or CDBG-MIT funds.

See Chapter 3: Records Management for documents that are required to be maintained for projects that involve demolition.

## 10. URA Process

Displaced persons who are eligible for relocation benefits should be identified as soon as possible, and the URA relocation steps must be implemented. The following diagram shows the process that must occur for each recipient:



### 10.1 Tenant Notices

As part of advisory services, the URA requires that all occupants, including permanently and temporarily displaced persons, receive notices informing them of their various rights.

The notices must:

1. Be written in plain, understandable language

2. Be hand delivered with receipt documented, sent certified mail, return receipt requested, or electronically delivered with electronic signatures
3. Contain the name and phone number of a person who may be contacted for answers to questions or other assistance needed
4. Be made available in appropriate translations if the relocatees do not speak or read English

### General Information Notices

A General Information Notice is a written notice that informs the person that they may be permanently or temporarily displaced. It must include the following:

1. Inform the person that they may be permanently or temporarily displaced and generally describe the payments, basic conditions of eligibility, and procedures for obtaining payments
2. Inform the person that they will be given advisory services, referrals, assistance in filing claims, and other assistance to successfully relocate
3. Inform the person that they will not be required to move without at least 90 days' advance written notice
4. Inform the person that if they are an alien not lawfully present in the United States, they are ineligible unless they can present proof of an exceptional and unusual hardship
5. Inform the person that they have a right to appeal the agency's determination for assistance

This notice must be accompanied by a copy of [HUD-1044-CPD: Relocation Assistance to Displaced Homeowner Occupants](#) or [HUD 1042-CPD: Relocation Assistance to Tenants Displaced from Their Homes](#), whichever one is applicable for the displaced household. A copy of the Grievance Procedure taken from the subrecipient's local Relocation Policy should be sent with these materials.

[Relocation Assistance to Displaced Homeowner Occupants](#)

[Relocation Assistance to Tenants Displaced from Their Homes](#)

## **Notice of Eligibility**

Under the URA, a Notice of Eligibility (NOE) is a formal written notification provided to individuals or entities who are eligible for relocation assistance due to displacement caused by a federally funded project. The NOE serves to:

1. Define the effective date of eligibility.
2. Outline the benefits and services they are entitled to receive.
3. Remind that the notice is not a notice to vacate the premises immediately but provides information about the date by which they will be required to move, which will be no less than 90 days from the date of the NOE. The notice refers the person to a separate notice that details the move-by date.
4. Provide details about the right to appeal the agency's determination if the person feels that their application for assistance was not properly considered.

## **90-Day Notice to Vacate**

Under the URA, this notice is a formal written notification provided to occupants who are required to move due to a federally funded project. This notice ensures that no person is required to move without receiving at least 90 days' advance written notice of the required move-by date.

## **10.2 Intake and Eligibility**

As soon as these initial notices are sent out, each recipient must be interviewed in person to determine their need for assistance. A sample interview format, the first section of a Sample Household Case Record (Exhibit 9-15), is provided to show the type of information that is required.

The primary purpose of the household survey is to provide the information needed to determine replacement-housing needs. All replacement housing must be "decent, safe, and sanitary" and be "functionally similar" to the acquired unit with respect to the number of rooms and living space. See Subsection 10.3.

While the interviewers are conducting the family survey, the relocation process should be reviewed with the relocatee. Special attention must be given to the following:

1. The assistance to be provided
2. The benefits available
3. The fact that replacement housing payments cannot be made unless the household relocates into a standard unit
4. The importance of consistent communication with the subrecipient
5. The need to notify the subrecipient before they move

It is important that all significant contacts with displacees be logged into Exhibit 9-15: Household Case Record.

### **Lawful Presence Requirement**

In order to be eligible for relocation assistance, at least one person from the household must be a U.S. citizen or a lawful resident. This does not include anyone who stays in the United States longer than they were allowed or breaks the rules of their stay.

To be eligible for relocation payments or advisory assistance, each applicant must certify:

1. **For an individual:** They must confirm they are either a U.S. citizen or an alien who is lawfully present in the United States.
2. **For a family:** The head of the household must confirm that each family member is either a U.S. citizen or an alien who is lawfully present in the United States.
3. In the case of an unincorporated business, farm, or non-profit organization, each owner is a citizen or an alien who is lawfully present in the United States. This certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or non-profit organization, the corporation is authorized to conduct business within the United States.

If there is reason to believe a person's certification is invalid and as a result the person may not be lawfully present in the United States, then lawful presence must now be verified using the [Systematic Alien Verification for Entitlements \(SAVE\) system](#).

Relocation payments or advisory assistance cannot be given to someone who has not provided the required certification or who is not legally allowed to be in the United States. However, a person not lawfully present in the United States can claim extreme hardship if denying them relocation help would directly cause:

1. A serious negative impact on the health or safety of their spouse, parent, or child
2. A serious negative impact on keeping their family together
3. Any other significant negative impact on their spouse, parent, or child

**90-Day Occupancy Requirement:** To be eligible for replacement housing payments, the displaced person must lawfully occupy the dwelling as their primary residence for at least 90 days before the start of negotiations. They are then eligible for full relocation advisory services and rental assistance payments. They must rent or purchase a comparable replacement dwelling within 1 year of the time of displacement. The subrecipient may allow an extension for good cause.

### **10.3 Locating Comparable Replacement Housing**

The subrecipient must inventory available housing resources to meet the replacement housing needs of the displaced person. In doing this, the subrecipient must be aware of affirmative action criteria that must be met when relocating low-income and minority persons. The regulations require the following:

1. The community makes comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available.
2. If there are vacant, standard, affordable units available in middle-/upper-income areas or predominantly white areas of the community, low-income or minority relocatees

must be given at least one replacement housing choice in those areas before the subrecipient can give such relocatees a 90-day notice to vacate.

3. The subrecipient is required to make available special counseling and related services (e.g., transportation and escort services) to low-income and minority families. These services may be secured through fair housing or civil rights groups.

The following provides guidance for inventorying available resources:

1. Contact landlords, realtors, and movers; read the classified ads; and tour neighborhoods looking for “For Rent” and “For Sale” signs.
2. When a landlord puts a vacancy sign on their building, those most likely to learn about the vacancy sign are neighborhood residents interested in moving out of their current quarters.
3. Depending on the timing of the displacement, these listings can be inspected and, if found to be decent, safe, and sanitary, placed on a list to be used for referrals.
4. Public housing resources may prove to be less helpful than anticipated.
5. Displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular).
6. Also, there have been cases in which the public housing authority has failed to cooperate by refusing to disclose the number and size of vacancies that it has, or by refusing to grant preference to displacees.

The process of finding comparable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to rehousing resources, and accompany displacees to inspect possible dwellings. Up-to-date information on the availability and prices of comparable sales and rental housing must be provided. All units must be inspected and certified as meeting local housing and occupancy codes, and fair housing and civil rights laws before being placed on a referral list.

The regulations stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. However, LOCD-DR requires the subrecipient to document the case file if three comparable dwellings are not identified.

Prior to making a referral to comparable replacement housing units, the subrecipient must ensure the following of the comparable replacement housing units:

1. Inspected and found to be decent, safe, and sanitary.
2. Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function and provides the same utility.
3. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present.
4. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used.
5. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the subrecipient may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.
6. Adequate in size to accommodate the occupants.
7. In an area not subject to unreasonable adverse environmental conditions.
8. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
9. On a site that is typical in size for residential development with normal site improvements, including customary landscaping.
10. Currently available to the displaced person on the private market (unless they are displaced from subsidized housing as described below).

11. Within the financial means of the displaced person.
12. A replacement dwelling is considered to be within the person's financial means if a subrecipient pays the appropriate replacement housing payment.

For a person receiving government housing assistance before displacement, relocation is to be to a dwelling that may reflect similar government housing assistance. For example, a comparable unit for a tenant who had a Housing Choice Voucher prior to displacement must be offered another unit where the voucher could be used or is accepted. When the government housing assistance program has requirements related to the size of the replacement dwelling, the rules for that program apply.

Subrecipients may use Exhibit 9-16: HUD Form 52580: Section 8 Existing Housing Program Inspection Checklist to determine whether a comparable unit is decent, safe, and sanitary. Because replacement housing units must meet all local codes and housing standards, an inspector must be familiar with these requirements to ensure that displaced persons move to standard housing.

Exhibit 9-17: HUD Form 40061 may be used to identify the most representative comparable replacement dwelling units for the purposes of computing a replacement housing payment.

The subrecipient should then provide the potentially displaced household with a Notice of Eligibility for Relocation Assistance (Exhibit 9-5). The notice must identify the cost and location of the comparable replacement dwelling(s).

### **10.3.1 Last Resort Housing Measures**

When undertaking relocation activities, subrecipients must be sure to provide a comparable replacement dwelling in a timely manner. If the subrecipient cannot identify comparable replacement housing, they must seek other means of assisting displacees under the Last Resort Replacement Housing provisions of the regulations. This situation can occur in communities where there is a limited supply of available comparable units.

The Last Resort sections of the URA require subrecipients to take alternate measures to assist displaced persons to be able to afford to move to a decent, safe, and sanitary comparable unit.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of the regulatory limits; the construction of new units; relocation of a replacement dwelling; and removal of barriers to disabled persons in a replacement dwelling.

### **10.3.2 Early Movers: Relocation Prior to Notice of Eligibility**

Some relocatees will not wait for the subrecipient to locate comparable units. They will search for their own units and relocate themselves. Self-relocations can prove to be a problem. Occupants who relocate themselves risk not receiving the compensation to which they are entitled.

This can occur because of the following:

1. The occupants do not know that they are entitled to money and fail to apply.
2. The locality is unable to trace them to their new quarters.
3. The new quarters are substandard (in which the relocatees still receive moving expenses).

Self-relocatees who do not inform the subrecipient of their plans forego a pre-move inspection of their new quarters. An inspection after a move is often ineffective in securing the needed repairs. The subrecipient has little leverage with the landlord at this point. Neither does the occupant unless they initiate code enforcement proceedings. However, actions of this kind can result in a tenant's eviction, either as a result of retaliation by the landlord or because the required repairs are so extensive that they cannot be made until the building is vacated.

### **10.3.3 Self-Relocation into a Substandard Unit**

If an individual locates or moves into a replacement unit that is not decent, safe, and sanitary, the subrecipient must make efforts to upgrade the unit to minimum code in order to entitle the relocatee to benefits. This can include providing any assistance for which the unit is eligible with CDBG-DR or CDBG-MIT funds or securing comparable assistance from other sources. In the event that the subrecipient cannot get the unit brought up to code, the subrecipient must inform such relocatees that if they remain in or move to another substandard unit, they will not

be eligible for replacement housing payments, although they will be eligible for moving expenses.

The subrecipient must also inform them that if they move into a standard dwelling within one year from the date that they received payment for their acquired dwelling or from the date that they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment. A sample letter to relocate to a substandard unit is included as Exhibit 9-18.

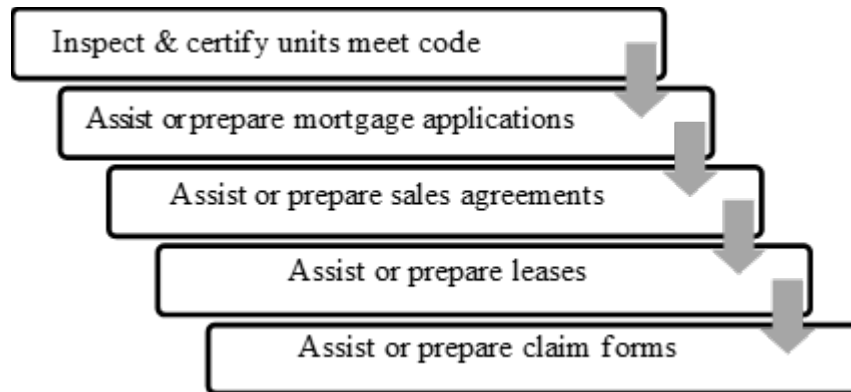
#### 10.4 90-Day Notice to Vacate

When the subrecipient has made a reasonable choice of comparable replacement housing opportunities available to the relocatee, the subrecipient may issue the 90-day Notice to Vacate (Exhibit 9-19). **This notice cannot be issued before the Notice of Displacement has been issued or before a reasonable choice of comparable replacement housing has been made available that meets HUD's decent, safe, and sanitary standards.**<sup>1</sup> The notice must state the date by which the property must be vacated and indicate that a second notice will be issued at least 30 days in advance of the date that the property must be vacated. The date on which the property must be vacated **cannot** be less than 30 days after the subrecipient has obtained title to the property or legal right of possession, whichever comes earlier. This means that if negotiations for acquisition continue for six months, the occupant cannot be required to move until at least 30 days after the subrecipient has obtained the title. Thus, the timing of the notices is very important.

Federal Regulations:

<sup>1</sup> [24 CFR 24.2\(a\)\(8\)](#)

Prior to and following sending the notices, the subrecipient should continue to work with the relocatees to perform the following tasks, as appropriate:



## 11. Permanent Relocation Benefits Under the URA

Residential occupants who will be displaced are entitled to receive a range of benefits under the URA. These include the following:

1. Advisory services
2. Offer of a comparable replacement unit
3. Replacement housing payments
4. Moving expenses

### 11.1 Advisory Services for Displaced Households

The subrecipient should work with the household that will be displaced throughout the process to ensure that the household is provided the appropriate and required advisory services.

1. Subrecipients must provide counseling and appropriate referrals to social services agencies, when appropriate.
2. Subrecipients must offer or pay for transportation (e.g., taxi, rental car) to inspect housing for all displaced persons.
3. When a displacee is a minority, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration, if feasible.
4. The subrecipient must provide current and continuing information on the availability, purchase price, or rental cost, and the location of “comparable replacement dwellings”

(see Subsection 11.2 below for more information on comparable replacement dwellings).

## 11.2 Replacement Housing Payments

In some instances, a comparable replacement dwelling within the budget limits for owners or tenants may not be possible. This is where the purpose of the replacement housing payments come in. It is important to note that relocation payments are not considered “income” by the IRS or the Social Security Administration.

The revised regulations state that a subrecipient cannot encourage or ask a displaced person to waive their relocation assistance. However, if a person is fully informed, they may choose not to apply for financial benefits and must acknowledge this decision in writing and clearly describe the assistance they are choosing not to accept.

### 11.2.1 90-Day Homeowner Eligible for a Replacement Housing Payment

This person must have owned and occupied the displacement dwelling that they are living in at least 90 days prior to the initiation of acquisition negotiations and purchased and occupied a decent, safe, and sanitary comparable replacement house. The maximum payment is \$41,200.

The 90-day replacement housing payment is calculated by summing the following:

Full price differential between the displacement home and the replacement home	
Replacement dwelling purchase price:	\$131,500
Less Displacement dwelling purchase price:	- \$101,500
Differential	= \$30,000
Plus, all increased mortgage interest costs, necessary to retain the same monthly mortgage payment and based on the buy-down method (e.g., mortgage buy-down and other debt service costs), if applicable:	+ \$2,000
Plus, all incidental expenses (e.g., recording fees, prorated taxes, appraisal fees, notary fees, boundary surveys, termite inspection, title insurance, deed preparation):	+ \$1,300
<b>Total Housing Replacement Payment</b>	<b>= \$33,300</b>

A 90-day claim form must be filed with the subrecipient by the displaced family before the subrecipient may process the replacement housing payment.

**11.2.2 90-Day Tenants Eligible for a Replacement Housing Payment**

This person must have:

1. Occupied the dwelling from which they will be displaced for no less than 90 days immediately prior to the initiation of the acquisition negotiations,
2. Rented or purchased and occupied a decent, safe, and sanitary replacement unit within one year, and
3. Filed their relocation assistance claim form with the subrecipient within 18 months of moving to their replacement dwelling.

The 90-day tenant is eligible to choose between one of the following two forms of payment: rental assistance or down payment assistance.

**Rental Assistance Payment (not to exceed \$9,570)**

Payment must be disbursed in installments (other than a lump sum) over several months. Payments are calculated by adding the monthly rent and estimated utilities cost of the lesser of either the comparable replacement unit or the actual replacement unit and then subtracting the same monthly costs of the displaced dwelling. A claim form for a rental assistance payment must be approved by the subrecipient and maintained in their relocation file.

**Example:**

Replacement unit monthly rent	\$377.00
Replacement unit average monthly utilities	<u>+ \$100.00</u>
Replacement unit base monthly cost	\$477.00
Less displaced dwelling base monthly cost	<u>- \$250.00</u>
Average monthly differential	\$227.00
X 42 months	<u>x 42</u>
Rental Assistance Payment	\$9,534.00

The replacement rental unit selected by the displaced person must be inspected by the subrecipient and found to be decent, safe, and sanitary, as evidenced by inspection.

**NOTE: Down Payment Assistance Payment (also limited to \$9,570)**

Relocation assistance payment is available in a lump sum if a tenant purchases a replacement home. The following requirements must be met:

1. This dwelling must be decent, safe, and sanitary, as evidenced by inspection.
2. This payment is calculated in the same manner as the above rental assistance payment.
3. The displaced family must file a down payment assistance claim form with the subrecipient.
4. A claim form must be processed before the subrecipient can make payment.

### 11.3 Moving Expenses

Displaced homeowners and tenants may choose to receive payment for moving and related expenses either by:

1. Commercial mover selected through competitive bids obtained by the subrecipient paid directly to the mover or reimbursed to the household, or
2. Reimbursement of actual expenses for a self-move, or
3. Receipt of a fixed payment based on a schedule established by the U.S. Department of Transportation, FHWA.
4. The updated regulations<sup>1</sup> clarified that subrecipients now allow residential self-moves based on the lower of two bids. If the reimbursement of actual expenses for a self-move is chosen, the subrecipient must determine that the expenses are reasonable and necessary and include only eligible expenses. See Exhibit 9-20 for a list of eligible moving expenses.

Federal Regulations:

<sup>1</sup> [49 CFR 24.301\(b\)\(iv\)](#)

If the displaced homeowner/tenant chooses a fixed payment, the amount is based on the FHWA's [Fixed Residential Moving Cost Schedule](#). It provides a one-time payment to help cover moving expenses. The following apply:

1. A person displaced from a dwelling, or a seasonal residence, may, at their discretion, choose to receive a fixed moving expense payment as an alternative to a payment for actual reasonable moving and related expenses.
2. This payment is determined according to the applicable schedule published by FHWA. The most current schedule was published in August 2021.
3. The payment is based on the number of rooms in the displacement dwelling and whether the displaced person owns and must move the furniture. If a room or an outbuilding contains an unusually large amount of personal property (e.g., a crowded basement), the agency may increase the payment accordingly (i.e., count it as two rooms). HUD's website will contain the latest version.
4. **Occupant of Dwelling with Congregate Sleeping Space (Dormitory):** The moving expense for a person displaced from a permanent residence with congregate sleeping space ordinarily occupied by three or more unrelated persons is \$100.
5. **Homeless Persons:** A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a permanent residence and, therefore, is not entitled to a fixed moving expense payment. (Such a person may, however, be eligible for payment for actual moving expenses.)

In addition to the moving expenses, the updated regulations<sup>1</sup> added professional home inspection to the list of eligible incidental expenses for displaced owner-occupants only.

Federal Regulations:

<sup>1</sup> [49 CFR 24.401\(f\)\(4\)](#)

The URA also allows subrecipients to pay for non-refundable security deposits but clarifies that refundable security and utility deposits are ineligible.

## 12. URA Process – Temporary Relocation

Agencies administering housing rehabilitation programs should establish written policies for temporary relocation of both owner-occupants and tenants. These policies should be incorporated into the subrecipient’s URA policy. Any temporary relocation must be for a 12-month period or less (no longer than one year) or the household is considered permanently displaced. Agencies must administer temporary relocation consistently and provide equitable treatment for all individuals under similar circumstances. All terms must be “reasonable,” as failure to do so may result in the household qualifying as a “displaced person.”

### 12.1 Determining Whether Temporary Relocation Is Required

The Lead Safe Housing Rule<sup>1</sup> outlines the conditions under which occupants (both tenants and owners) must be temporarily relocated before and during hazard reduction activities.

Federal Regulations:

<sup>1</sup> [24 CFR 35](#)

Under the lead regulations, temporary relocation is not required if any of the following conditions are met:

1. Treatment will not disturb lead-based paint or create lead-contaminated dust.
2. Interior treatment is completed within one period within eight daytime hours; the site is contained; and no additional safety, health, or environmental hazards are created.
3. Only the building’s exterior is treated with all windows, doors, ventilation intakes, and other openings near the work site sealed during hazard reduction activities and cleaned afterward, while a lead-free entry is provided.
4. The treatment is completed within five calendar days; the work area is sealed; debris within 10 feet of the contaminated area is cleared daily; occupants have safe access to sleeping areas, bathrooms, and kitchen facilities; and no additional safety, health, or environmental hazards are created.

**If these above conditions are not met, temporary relocation of the household *is required*.**

**NOTE: Elderly residents living in units undergoing lead hazard reduction activities may waive the relocation requirement, provided the subrecipient obtains a written and signed waiver (see Exhibit 9-21 for a sample Elderly Waiver).**

Additionally, the Lead Safe Housing Rule requires that temporary dwellings must be free of lead-based paint hazards. Therefore, subrecipients must ensure that all temporary housing units are safe from lead. This means that temporary housing units were built after 1978 or have undergone a visual assessment and dust wipe sampling to ensure that no lead hazards are present.

## **12.2 Optional Relocation of Owner-Occupants in Rehabilitation Projects**

An owner-occupant who is participating in a CDBG-DR or CDBG-MIT subrecipient's housing rehabilitation program is not eligible under the URA for relocation assistance because they have enrolled voluntarily unless code enforcement was used to induce an owner-occupant to participate. If a subrecipient chooses to provide temporary relocation assistance to owner-occupants, the subrecipient must adopt an Optional Temporary Relocation Assistance Policy.

### **12.2.1 Guidance for Owner-Occupant Temporary Relocation in Rehabilitation Projects**

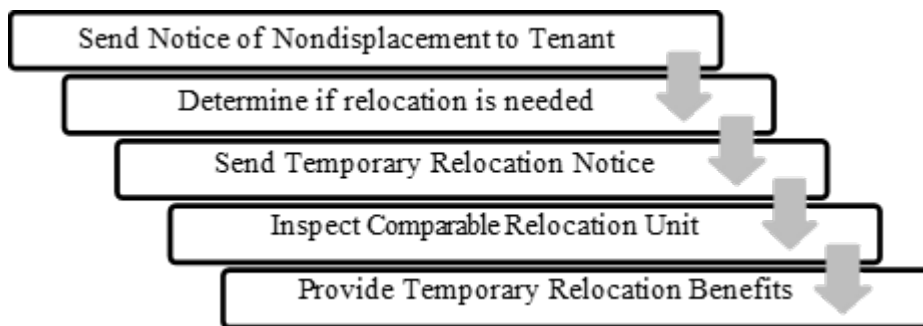
Because the URA does not cover owner-occupants who voluntarily participate in housing rehabilitation programs, the subrecipient has broad discretion regarding payments to owners during the period of temporary relocation. The subrecipient must outline the conditions for providing temporary relocation payments within their URA policy (see Section 7). Owner-occupants should be notified of temporary relocation policies as early as possible during the application phase to allow for suitable arrangements with minimal disruption.

The owner-occupant may be encouraged to stay with family or friends provided that these units meet decent, safe, sanitary, and lead-safe standards. If no suitable alternatives are available and hardship would result, the agency may define what constitutes a *hardship* within their URA policy (Section 7) and provide a certain level of financial assistance.

Subrecipients may negotiate discounted rates with hotels and pay the negotiated rate on behalf of the owner-occupants, ensuring that these accommodations meet the safety and lead-free requirements. Before signing agreements, subrecipients should inspect hotel units for compliance. If the temporary housing lacks cooking facilities, agencies may also provide a meals stipend.

### 12.3 Temporary Relocation of Tenants in Rehabilitation Projects

Tenants are protected by the URA during temporary relocation. HUD Handbook 1378 recommends providing at least 30 days' advance notice before a temporary move. The following illustrates the process for providing URA benefits for temporary relocation:



#### 12.3.1 Notices

The tenant must receive a Notice of Nondisplacement (Exhibit 9-32) informing them that they may be or will be temporarily relocated. Once relocation becomes necessary, the subrecipient must issue a Temporary Relocation Notice to inform tenants who will be relocated of their rights and the conditions of their temporary move. (See Exhibit 9-22 for a sample Temporary Relocation Notice.)

The Notice of Nondisplacement is important when dealing with temporary relocation because it helps prevent temporary moves from becoming permanent.

#### 12.3.2 Inspection of Temporary Relocation Property

The temporary unit need not be comparable to the original unit but must meet the tenant's needs and be decent, safe, sanitary, and lead-safe. The subrecipient should document inspections using Exhibit 9-16: HUD Form 52580: Section 8 Existing Housing Program Inspection

Checklist. If a tenant pays rent to a friend or family member, the subrecipient should document that rent was paid and the housing met the suitability standards.

### **12.3.3 Temporary Relocation Benefits**

Temporarily relocated tenants must receive the following:

1. **Reimbursement for reasonable out-of-pocket expenses**, including moving costs to and from the temporary unit and any increase in rent/utility costs. Tenants remain responsible for their share of the rent in the original unit undergoing renovation.
2. **Appropriate advisory services**, including reasonable advance written notice of the following:
  - a. The date and approximate duration of the temporary relocation
  - b. The address of the temporary unit
  - c. The terms and conditions of returning to the rehabilitated unit
3. **Provisions of reimbursement for all reasonable out-of-pocket expenses.**

## **12.4 Guidance on Tenant Temporary Relocation**

To assist with the temporary relocation of tenants, a subrecipient may encourage tenants to identify their own housing (within the established guidelines). However, the agency ultimately remains responsible for securing suitable shelter. If necessary, hotel accommodations may be used until rehabilitation is completed. In addition, the agency could use hotel rooms and provide a meal stipend if there are no cooking facilities. The stipend could vary depending on the age of the children in the household (if any).

The terms and conditions of the temporary move must be reasonable, or the tenant may become “displaced.” The tenant must be provided with adequate advance notice to move out of their unit and return when rehabilitation work is completed. Anything more than one year is considered permanent displacement, and the steps outlined in Section 12 must be followed. If the owner of the property is planning to raise the rent or offer a different unit in the property (which exceeds the greater of either their former rent or 30% of their gross monthly income),

the tenant must be notified of these changes before returning. If the cost of rehabilitation, including lead hazard control work, causes the rent to be increased and creates a rent burden (“economic displacement”), the tenant is protected by the URA and could be eligible for relocation assistance.

The term *economic displacement* is used to cover households that have lived in the project prior to the federally funded activity (acquisition or rehabilitation) and whose rent is raised, resulting in a move because they can no longer afford to remain. If the rent is increased and the household can no longer afford to stay, the subrecipient should treat the household as a displaced person and provide them with all of the assistance outlined under Section 12, including notices, a replacement housing payment, offer of a comparable unit, and moving expenses.

A nonresidential tenant who receives a Notice of Nondisplacement but moves permanently from the building or complex due to the terms and conditions under which the tenant may remain in the property, are deemed not reasonable.

### **13. Business Relocation Under the URA**

The URA provides coverage for business owners (whether or not they are on-site) for owner/occupants of a business, and for tenants operating a business in rented space. To qualify for assistance, the business must meet the definition of a *displaced person* and must be required to move temporarily or permanently as a direct result of an assisted project involving acquisition, rehabilitation, or demolition.

Displaced businesses are entitled to advisory services and relocation assistance under the URA. A *business* is defined as any lawful activity, except a farm operation, which is conducted:

1. Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;
2. Primarily for the sale of services to the public;

3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
4. By a non-profit organization that has established its non-profit status under applicable federal or state law.

**NOTE: Refer to Subsection 3.2: Waived Requirements and the applicable allocation federal registration notice to determine whether a waiver applies.**

### **13.1 Business versus Residential**

URA coverage for moving expenses is similar for residential and non-residential displacees as qualified businesses may choose between a fixed payment or actual moving expenses. Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential for making these decisions.

A displaced business is eligible to choose a fixed payment if the subrecipient determines that:

1. The business owns or rents personal property that must be moved, and an expense will be incurred.
2. The business either (a) discontinues operations, or (b) it relocates but is likely to incur a substantial loss of its existing patronage.
3. The business is not part of a commercial enterprise, having more than three other entities that are not being displaced by the subrecipient, and which are under the same ownership and engaged in the same or similar business activities.
4. The business contributed materially to the income of the displaced person.
5. The business operation at the displacement property is not solely for the rental of that real property to others.
6. The business contributed materially to the income of the displaced person for the two taxable years prior.

Actual moving expenses provide for the reimbursement of limited re-establishment expenses.

There are differences between coverage for residential and non-residential displaced:

1. A 90-day Notice to Move may be issued without a referral to a comparable site.
2. Businesses are entitled to temporary moving expenses; however, displaced businesses are not eligible for 104(d) assistance.
3. Owners or tenants who have paid for improvements will be compensated for their real property under the acquisition rules. A complete, thorough appraisal is essential to making these decisions.

### 13.2 Notices and Inspections

The subrecipient must provide a business to be displaced with written information about their rights and provide them with a General Information Notice (GIN) tailored to the situation when a Notice of Interest (Notice to Owner) is issued to the property owner. See Exhibit 9-23 for a sample GIN to use for businesses (non-residential tenants). The GIN should include the following:

1. An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance. (See Exhibit 9-24 for a sample of this notice.)
2. A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD information booklet, [Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms \(HUD 1043-CPD\)](#) includes this general information and should be given to the business.
3. Information that they will receive reasonable relocation advisory services to help locate a replacement site, including help to complete claim forms, and information that they will not be required to move without at least 90 days' advance written notice.
4. A description of the appeal process available to businesses.

[Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms](#)

If a business must be displaced, a tailored Notice of Eligibility must be provided as soon as possible after the initiation of negotiations (see Exhibit 9-24 for a sample notice).

This notice should:

1. Inform the business of the effective date of their eligibility.
2. Describe the assistance available and the procedures.
3. If necessary, a 90-day Notice to Move may be sent after the initiation of negotiations.
4. The business must be told as soon as possible that they are required to:
  - a. Allow inspections of both the current and replacement sites by the subrecipient's representatives, under reasonable terms and conditions;
  - b. Keep the subrecipient informed of their plans and schedules;
  - c. Notify the subrecipient of the date and time that they plan to move (unless this requirement is waived); and
  - d. Provide the subrecipient with a list of the property to be moved or sold.

Subrecipients need to be aware of when a property will be vacated. In many situations, the subrecipient must be on-site during a business move to provide technical assistance and represent the subrecipient's interests. In accordance with state law, any property not sold, traded, or moved by the business becomes the property of the subrecipient.

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be prepared and provided to the subrecipient. The subrecipient should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

## **13.3 Business Relocation Benefits**

### **13.3.1 Advisory Services**

1. Non-residential moves are often complex. Subrecipients must interview business owners to determine their relocation needs and preferences. Displaced businesses are entitled to the following:

- a. Information about the upcoming project and the earliest date that they will have to vacate the property;
- b. A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives;
- c. Assistance in following the required procedures to receive payments;
- d. Current information on the availability and cost to purchase or rent suitable replacement locations;
- e. Technical assistance, including referrals, to help the business obtain an alternative location and become re-established;
- f. Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, which may help the business re-establish, and help in applying for funds; and
- g. Assistance in completing relocation claim forms.

### **13.3.2 Personal Property Left or Replaced**

A business is eligible for either a Direct Loss or Substitute Equipment payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

Payment Type:	Can be made:	Payment based on the lesser of:
Direct Loss	For personal property that will not be moved or as a result of discontinuing the business of the non-profit or farm.	The fair market value of the item for continued use at the displacement site, minus the proceeds from the sale, or The estimated cost to move the item, with no allowance for the following: storage or reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
Substitute Equipment	When an item used by the business, non-profit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site.	The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, or The estimated cost to move and reinstall the item, but with no allowance for storage.

### 13.3.3 Replacement Location Search Expenses

Certain costs incurred while searching for a replacement location are also eligible:

1. Businesses are entitled to reimbursement up to \$5,000. Subrecipients can pay more than this if they believe it is justified.
2. Costs may include reasonable levels of items such as the following:
  - a. Transportation
  - b. Meals and lodging away from home

- c. Time spent while searching, based on a reasonable salary or earnings
  - d. Fees paid to a real estate agent or broker while searching for the site (note that commissions related to the purchase are not eligible costs)
  - e. Time spent obtaining permits and attending zoning hearings
  - f. Expenses for negotiating the purchase of a replacement site, including actual, reasonable, and necessary attorney fees
3. Subrecipient may allow a one-time payment of \$1,000 for search expenses with minimal or no documentation as an alternative to the documented costs detailed above.

#### **13.3.4 Reimbursement of Actual Moving Expenses**

Any displaced business is eligible for the reimbursement of reasonable, necessary actual moving expenses:

1. Only businesses that choose actual moving expenses—versus a fixed payment—are eligible for a re-establishment expense payment.
2. Subrecipients should not place additional hardships on businesses; however, they can limit the amount of payment for actual moving expenses based on a least cost approach.
3. Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include the following:
  - a. Transportation of personal property
  - b. Packing, crating, uncrating, and unpacking of personal property
  - c. Disconnecting; dismantling; removing; reassembling; and reinstalling machinery, equipment, and personal property
  - d. Storage of personal property
  - e. Insurance for the replacement value of personal property in connection with the move and/or storage
  - f. Any license, permit, or certification required at the new location

- g. Professional services to plan the move, move the personal property, or install the personal property at the new location
- h. Provision of utility service from the right of way to the business
- i. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation, including, but not limited to, soil testing, feasibility, and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such a site)
- j. Impact fees or one-time heavy utility use assessments
- k. Re-lettering signs and replacing existing stationery that are obsolete due to the displacement
- l. Reasonable costs are incurred while attempting to sell items that will not be relocated

### **13.3.5 Other Moving and Related Expenses**

The subrecipient may pay other moving and related expenses that the subrecipient determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses may be limited by the subrecipient to the amount determined to be least costly without causing the business undue hardship.

There may be instances where a person is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm, or non-profit organization. Eligible expenses for moving the personal property are listed above.

Businesses may have personal property that is considered low value and high bulk, such as stockpiled sand, gravel, minerals, metals, or other similar items in stock. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the subrecipient, the allowable moving cost payment shall not exceed the lesser of:

1. The amount that would be received if the property were sold at the site, or
2. The replacement cost of a comparable quantity delivered to the new business's location.

### **13.3.6 Ineligible Expenses**

The following are ineligible for payment as an actual moving expense, as a re-establishment expense, or as “other reasonable and necessary expenses”:

- Loss of goodwill
- Loss of profits
- Personal injury
- Interest on a loan to cover any costs of moving or re-establishment expense
- Any legal fees or other costs for preparing a claim for a relocation payment, or for representing the claimant before the subrecipient
- The cost of moving any structure or other real property improvement in which the business reserved ownership
- The cost for the storage of personal property on real property already owned or leased by the business before the initiation of negotiations
- The costs of physical changes to the replacement site beyond that required to move and re-establish the business
- The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under “moving and related costs”
- Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in Subsection 13.3.7: Re-Establishment Expenses
- Refundable security and utility deposits

See Exhibit 9-26 for a sample claim form for moving and related expenses for businesses.

### **13.3.7 Re-Establishment Expenses**

Only certain small businesses are eligible for re-establishment expenses up to \$33,200. *Small businesses* for this purpose are defined as those with at least one, and no more than 500

people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a re-establishment expense payment.

Eligible items included in the \$33,200 maximum figure are:

1. Repairs or improvements to the replacement site, as required by codes or ordinances
2. Modifications to the replacement property to accommodate the business
3. Modifications to structures on the replacement property to make it suitable for conducting the business
4. Construction and installation of exterior advertising signs
5. Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting
6. Other licenses, fees, and permits not otherwise allowed as actual moving expenses
7. Feasibility surveys, soil testing, and market studies
8. Advertisement of the replacement location
9. Estimated increased costs of operation for the first two years at the replacement site for such items as:
  - a. Lease or rental charges
  - b. Utility charges
  - c. Personal or property taxes
  - d. Insurance premiums
10. Other re-establishment expenses as determined by the subrecipient to be essential to re-establishment.

### **13.3.8 Fixed Payments**

A displaced business may select a fixed payment instead of actual moving expenses (which includes re-establishment expenses) if the subrecipient determines that the displacee meets the following eligibility criteria:

1. The nature of the business cannot solely be the rental of property to others.
2. The business discontinues operations, or it will lose a substantial portion of its business due to the move. (The latest regulations state that a business is presumed to meet this test unless the subrecipient can demonstrate that it is not “location sensitive.”)
3. The business is not part of an operation with more than three other entities where:
  - a. No displacement will occur, and
  - b. The ownership is the same as the displaced business, and
  - c. The other locations are engaged in similar business activities.
4. The business contributed materially to the income of the displaced business.
5. The term *contributed materially* means that during the two taxable years prior to the taxable year in which the displacement occurred (or the subrecipient may select a more equitable period), the business or farm operation:
  - a. Had average gross earnings of at least \$5,000, or
  - b. Had average net earnings of at least \$1,000, or
  - c. Contributed at least one-third of the owner’s or operator’s average annual gross income from all sources.
6. If the subrecipient determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

### **13.3.9 Fixed Payment Amount**

The amount of the fixed payment is based on the average annual net earnings for a two-year period of a business or farm operations. To calculate the amount of the fixed payment, the following steps should be taken:

1. Calculate any compensation obtained from the business that is paid to the owner, the owner’s spouse, and dependents **before** federal, state, and local income taxes for a two-year period:

- a. The two-year period should be the two tax years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used.
  - b. If the business were not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
  - c. If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.
2. Divide this figure in half.

The minimum payment is \$1,000; the maximum payment is \$53,200.

When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred during the base period, the amount should be adjusted accordingly.

### **13.3.10 Entities Entitled to Fixed Payments**

When two or more entities at the same location are one business, they are only entitled to one fixed payment. This determination should be based on the following:

1. Shared equipment and premises
2. Substantially identical or inter-related business functions and financial affairs that are co-mingled
3. Entities that are identified with the public and their customers as one entity
4. The same person or related persons own, control, or manage the entities
5. Businesses must furnish subrecipients with sufficient documentation of income to justify their claim for a fixed payment. This might include the following:
  - a. Income tax returns
  - b. Certified or audited financial statements
  - c. W-2 forms

- d. Other financial information accepted by the subrecipient.

### **13.3.11 Required Form**

Optional Form HUD-40056: Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses (Exhibit 9-27) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail as described within HUD Form 40056 (Exhibit 9-27).

## **14. Owners of Manufactured Housing Units**

Mobile homeowners who lease a homepad or private lot and who must relocate to a new location as the result of the acquisition of their pre-disaster homepad or lot are entitled to URA relocation benefits and replacement housing payments, regardless of whether the land owner voluntarily participates in the purchase of a homepad or land. A person who rents both the mobile home and homepad or private lot is considered a tenant and would be compensated using assistance outlined for tenants.

Displaced mobile homeowners who rent their homepads are entitled to assistance detailed below in Subsection 14.1 and either 14.2 or 14.3. However, only in rare cases may the combination of the two types of URA assistance exceed \$41,200.

### **14.1 Homepad Rental Assistance**

The displaced mobile homeowner and homepad renter is entitled to compensation for rental and utility increases resulting from renting a comparable homepad and moving expenses as detailed in the section for tenants. Compensation for homepad rent increases is also 42 times the amount that is obtained by subtracting the “base monthly rent” for the displacement homepad from the monthly rent and average monthly cost of utilities for a comparable replacement homepad. The rental increase payment may not exceed a total of \$9,570.

### **14.2 Replacement Housing Assistance**

For URA purposes, the displaced mobile homeowner is considered to be involuntarily displaced from his or her residence due to the homepad owner (landlord) selling that property.

Therefore, if the mobile home is purchased, the displaced mobile homeowner is also entitled to replacement housing assistance to compensate for his or her need to find replacement housing.

Compensation for mobile home replacement is equivalent to the amount that is obtained by subtracting the value of the displacement mobile home from the cost of a new replacement mobile home. For acquisition projects where the mobile homes are intact and are being relocated to new homepads, there is no difference. The replacement housing payment may not exceed a total of \$41,200.

If the owner is also being compensated for a homepad rental increase, not to exceed \$9,570, then the combination of rental and relocation assistance may not exceed a total of \$50,770.

### **14.3 Costs to Move a Manufactured Home**

If the owner of a manufactured home wishes to move their existing home to a new location rather than sell it, those moving costs are eligible. The reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, anchoring the unit, and utility hook-up charges are included.

### **14.4 Completion of Relocation**

The subrecipient should make every effort to expedite relocation because claims may be filed up to 18 months following the completion of the move. This means that claims can be filed months, perhaps years, after the conclusion of the program.

Therefore, if the subrecipient has unsettled relocation cases at the time of project close-out, the subrecipient should show the maximum payments for each potential claimant as unpaid costs on the close-out form.

Otherwise, LOCD-DR may cancel the funds remaining in the subrecipient's Letter of Credit and the subrecipient would be financially liable for relocation costs. For more details on close-out procedures, refer to Chapter 13: Close-Out. Claim forms for relocation payments are included in the exhibits. They include Claim for Moving Costs (Exhibit 9-28), Claim for Replacement Housing Payment for Homeowners (Exhibit 9-29), and Claim for Rental Assistance or Down Payment Assistance (Exhibit 9-30). Instructions for completing each claim form are provided.

## 14.5 Timely Payment

The subrecipient is responsible for ensuring that all payments are made in a timely manner. Payments should be issued within 30 days following the submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce hardship. When advance payments are made, the subrecipient must document that the payment was used for the purpose intended. The subrecipient should have the recipient sign a letter acknowledging receipt of relocation payments (Exhibit 9-31).

## 14.6 Use of Relocation Payments

Rental assistance payments may be used for down payment assistance for the purchase of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters to assist with increased housing costs must be made in “other than a lump sum.” The subrecipient shall determine the frequency of payments, provided that they are not in a single disbursement.

# 15. Recordkeeping

## 15.1 Acquisition

For each project, the subrecipient’s files shall include a list identifying all parcels to be acquired for the project. An Acquisition Composite List (Exhibit 9-7) must be completed on CDBG-DR and CDBG-MIT projects having any acquisitions.

Acquisition notices, letters, and other documents that are mailed are required to be sent by registered or certified mail, return receipt requested. If hand-delivered, the delivery should be evidenced by a signature and date.

For additional acquisition recordkeeping requirements, refer to Chapter 3: Records Management and HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition Handbook.

**NOTE: Refer to Exhibit 9-34: Sample Real Estate Acquisition Checklist.**

## 15.2 Relocation

The subrecipient must maintain a separate case file on each displaced household for three years after final project close-out or after the relocation payments, whichever is later.

In addition, the following information, at a minimum, shall be maintained for at least three years after each owner of the property and each person displaced from the property have received the final payment to which they are entitled.

For each project, the subrecipient's files shall include a list or lists identifying the name and address of the following:

1. All persons occupying the real property at the beginning of the project. Generally, this is the date of the initial submission of the application for assistance by the property owner to the subrecipient or by the subrecipient to HUD; however, if site control is not obtained until after submission of the application, the date of site control is usually considered the beginning of the project.
2. All persons moving into the property on or after the date on which the project begins but before the completion of the project.
3. All persons occupying the property upon completion of the project.

**NOTE: Refer to Exhibit 9-35: Sample Relocation File Checklist.**

**For additional relocation recordkeeping requirements, refer to Chapter 3: Records Management.**

## 16. Acquisition and Relocation Resources

- HUD Handbook 1378  
<https://www.hud.gov/hudclips/handbooks/cpd-1378-0>
- FHWA's URA Website  
<https://www.fhwa.dot.gov/pgc/index.cfm?ddisc=100&dsub=1212>

- HUD Fair Market Rents  
<https://www.huduser.gov/portal/datasets/fmr.html>
- National Registry of State-Certified or Licensed Appraisers  
<https://www.asc.gov/appraiser>
- Louisiana General Appraiser License Search  
<https://portal.lrec.gov/public/search>

## 17. LOCD-DR Exhibits

Exhibit	Description
Exhibit 9-1	Sample Voluntary Acquisition Policy
Exhibit 9-2	Preliminary Notice, Acquisition Notice, Form, and Brochure
Exhibit 9-3	Sample Statement of the Basis for the Determination of Just Compensation
Exhibit 9-4	Sample Written Offer to Purchase
Exhibit 9-5	Guideform Notice of Eligibility for Relocation Assistance – Residential Tenant
Exhibit 9-6	Sample Statement of Settlement Costs
Exhibit 9-7	Acquisition Composite List
Exhibit 9-8	Uniform Appraisal Standards for Federal Land Acquisition
Exhibit 9-9	Sample Invitation to Accompany an Appraiser
Exhibit 9-10	Sample Short Appraisal Form for Servitude Takings
Exhibit 9-11	Sample Review Appraisal Report
Exhibit 9-12	Sample Notice of Intent Not to Acquire
Exhibit 9-13	Sample Property and/or Servitude Acquisition Waiver
Exhibit 9-14	Recommended Local Relocation Policy
Exhibit 9-15	Sample Household Case Record
Exhibit 9-16	HUD Form 5280 Inspection Checklist – Housing Choice Voucher Program
Exhibit 9-17	HUD Form 40061: Selection of Most Representative Comparable Replacement Dwelling for Computing a Replacement Housing Payment
Exhibit 9-18	Sample Letter to Relocate in a Substandard Unit

Exhibit	Description
Exhibit 9-19	Sample 90-/30-Day Notice to Vacate
Exhibit 9-20	List of Eligible Moving Activities
Exhibit 9-21	Sample Elderly Waiver for Relocation
Exhibit 9-22	Sample Temporary Relocation Notice (Tenant)
Exhibit 9-23	Sample Displaced Tenant General Information Notice
Exhibit 9-24	Sample Notice of URA Eligibility (Nonresidential)
Exhibit 9-25	HUD Notice: Relocation Assistance to Displaced Businesses
Exhibit 9-26	HUD Form 40055: Claim for Actual Reasonable Moving and Related Expenses – Nonresidential
Exhibit 9-27	HUD-40056: Claim for Fixed Payment in Lieu of Payment for Actual Nonresidential Moving and Related Expenses
Exhibit 9-28	HUD Form 40054: Residential Claim for Moving and Related Expenses
Exhibit 9-29	HUD Form 40057: Claim for Replacement Housing Payment for 180-Day Homeowner-Occupant
Exhibit 9-30	HUD Form 40058: Claim for Rental Assistance or Down Payment Assistance
Exhibit 9-31	Sample Letter of Acknowledgement: Services and Payments Rendered
Exhibit 9-32	Guideform Notice of Nondisplacement to Residential Tenant
Exhibit 9-33	General URA Acquisition Process Checklist
Exhibit 9-34	Sample Real Property Acquisition Checklist
Exhibit 9-35	Sample Relocation File Checklist

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 10: Lead-Based Paint, Asbestos, and Mold



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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## 1. Introduction

Housing projects often attract significant public and political attention due to their impact on community health and safety. Many projects are designed as stand-alone efforts, yet others seek to leverage private and public initiatives in order to maximize the impact of Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) funding. Each directly affects the ability of individuals impacted by disasters to resume a safe and comfortable housing standard.

Each housing project has its own specific eligibility standards and grant calculation requirements. Subrecipients need to be familiar with the regulatory requirements associated with the individual projects. The Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) is available to assist the subrecipient in identifying the regulatory requirements associated with the established state projects linked to a particular disaster.

Among the critical concerns in these projects are the presence of lead-based paint (LBP), asbestos, and mold, which pose serious health risks. The Lead Safe Housing Rule (LSHR) addresses the dangers of LBP, ensuring that rehabilitation, repair, or demolition projects comply with safety standards to protect families and children. Similarly, asbestos regulations under the Clean Air Act (CAA) and Occupational Safety and Health Act mandate safe practices during renovation or demolition to prevent exposure to asbestos fibers. Mold, although not regulated by specific federal standards, requires careful management to prevent health issues, especially in areas affected by severe weather events. This manual provides detailed guidance on the regulatory requirements and safety measures for handling LBP, asbestos, and mold in housing projects.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Abatement:** Any set of measures designed to permanently (at least 20 years) eliminate LBP or LBP hazards. Abatement includes:

- a. The removal of LBP and lead-contaminated dust hazards, the permanent enclosure or encapsulation of LBP, the replacement of components or fixtures painted with LBP, and the removal or permanent covering of lead-contaminated soil hazards.
  - b. All preparation, cleanup, disposal, and associated post-abatement clearance testing activities.
2. **Applicable Surfaces:** Applicable surfaces include deteriorated, impact, friction, and chewable surfaces, and surfaces that will be disturbed.
3. **Clearance Examination:** An activity conducted following LBP hazard reduction activities to determine that the hazard reduction activities have been completed and that no lead-contaminated soil hazards or settled lead-contaminated dust hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental (dust) samples.
4. **Designated Party:** A federal agency, subrecipient, participating jurisdiction, housing agency, Indian Tribe, tribally designated housing entity, sponsor, or property owner responsible for complying with applicable requirements.
5. **Elevated Blood Lead Level (EBLL):** A confirmed concentration of lead in the whole blood of a child under age six, equal to or greater than the concentration in the most recent guidance published by the U.S. Department of Health and Human Services on recommendation that an environmental intervention be conducted. As of January 17, 2025, a blood lead level of 3.5 micrograms per deciliter ( $\mu\text{g}/\text{dl}$ ) or higher is considered to be an EBLL.
6. **Environmental Investigation:** The process of determining the source of lead exposure for a child under age six with an EBLL. In accordance with Chapter 16 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the investigation consists of a risk assessment with the administration of a questionnaire, comprehensive environmental sampling, case management, and other measures.

7. **Evaluation:** The principal lead hazard evaluation methods are risk assessment or lead hazard screen, risk assessment combined with LBP inspection, and LBP inspection combined with visual assessment. Alternatives to evaluation include visual assessment and the presumption that LBP and/or LBP hazards are present.
8. **Index Unit:** A housing unit where a child with an EBLL resides.
9. **Interim Controls:** A set of measures designed to temporarily reduce human exposure or likely exposure to LBP hazards. Interim controls include repairs, painting, temporary containment, specialized cleaning, clearance, ongoing LBP maintenance activities, and the establishment and operation of management and resident education programs.
10. **Lead-Based Paint:** Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5% by weight or 5,000 parts per million (ppm) by weight.
11. **Lead-Based Paint Hazard:** Any condition that causes exposure to lead from lead-contaminated dust hazards, lead-contaminated soil hazards, or LBP that is deteriorated or present on chewable surfaces, friction surfaces, or impact surfaces and that would result in adverse human health effects.
12. **Lead-Based Paint Inspection:** A surface-by-surface investigation to determine the presence of LBP and a report explaining the investigation results.
13. **Lead Hazard Screen:** A limited risk assessment activity that involves paint testing, dust sampling, soil sampling, and analysis. For properties in good condition, a lead hazard screen risk assessment is used to determine whether a full risk assessment is necessary.
14. **Lead-Safe Work Practices:** Work practices to perform any maintenance, hazard reduction, or renovation work that disturbs paint that may be LBP above the *de minimis*. These include prohibited methods of paint removal, occupant protection, worksite preparation, and specialized cleaning.

15. **Other Covered Units:** Federally assisted housing units on the property where a child under age six lives or is expected to live.
16. **Paint Stabilization:** Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and then applying a new protective coating or paint.
17. **Presumption:** An alternative to evaluation that allows property owners to assume without testing that all painted surfaces are coated with LBP and that all bare soil is hazardous. However, the property owner must treat all surfaces to be disturbed as if they contain lead.
18. **Repair:** Work done on disturbed LBP that includes surface preparation and applying a new coat of paint.
19. **Risk Assessment:**
  - a. An on-site investigation to determine the existence, nature, severity, and location of LBP hazards.
  - b. The provision of a report by the individual or firm conducting the risk assessment explaining the investigation results and options for reducing LBP hazards.
20. **Substrate:** The material components directly beneath the painted surface, such as wood, drywall, plaster, concrete, brick, or metal.
21. **Target Housing:** Any housing constructed prior to 1978. Housing for the elderly or persons with disabilities or any zero-bedroom dwelling are exceptions unless any child who is less than age six resides or is expected to reside in such housing.
22. **Visual Assessment:** Visual assessment means looking for, as applicable:
  - a. Deteriorated paint
  - b. Visible surface dust, debris, and residue as part of a risk assessment or clearance examination

- c. The completion or failure of a hazard reduction measure

**NOTE: A visual assessment alone is not considered to be an evaluation.**

## **3. Lead-Based Paint**

### **3.1 Introduction**

The primary reason that the U.S. Department of Housing and Urban Development (HUD), LOCD-DR, and its subrecipients need to address the presence of LBP and LBP hazards, is to protect children and families. LBP is still present in millions of homes built before 1978, the year it was banned in the United States. The most recent national survey conducted reflects that more than 18% of pre-1978 housing has identifiable LBP hazards.

Addressing these hazards is critical to ensuring that Americans, especially children, can have healthy, productive lives. LBP is usually not a hazard if it is in good condition. However, deteriorating (e.g., peeling, chipping, chalking, cracking, damaged) LBP is a hazard that needs prompt attention. A housing provider has a responsibility to provide decent, safe, and sanitary housing to its residents. Part of this responsibility is to protect residents from the health risks of lead hazards.

#### **3.1.1. Protecting Children**

Lead can affect almost every organ and system in the human body. Children under age six are vulnerable because their bodies are still growing. In children, lead can cause delayed growth and development; a lower IQ; learning problems; brain and nervous system damage; and hearing, speech, and behavior problems. If a pregnant person is exposed to lead, their developing baby can also be exposed. This can increase the risk of miscarriage; cause the baby to be born too early or too small; harm the baby's brain, kidneys, and nervous system; or cause the child to have learning or behavioral challenges.

Local housing project households are most likely to be affected by lead poisoning. Recent studies have shown that more young children from low-income families living in older housing have levels of lead in their blood above the level of concern set by the Centers for Disease Control and Prevention (CDC), when compared with young children from higher income

families. Taking proper precautions during maintenance, repair, and renovation work in homes known or assumed to contain LBP can protect children and families.

### 3.1.2. Benefits of Addressing the Presence of Lead-Based Paint

There are other reasons why HUD and its subrecipients need to address the presence of LBP and LBP hazards, including the following:

1. **Reducing Liability:** Like any property owner, subrecipients can face lawsuits for failing to address LBP hazards in a unit if a young child is poisoned. By taking action to reduce LBP hazards, subrecipients can demonstrate that they are working to provide safe, suitable housing. This reduces the risk that courts will find them negligent when deciding on lawsuits.
2. **Reducing Insurance Costs:** Subrecipients who address LBP may be able to receive favorable premiums for insurance coverage.
3. **It Is Required:** [Title X of the 1992 Housing and Community Development Act](#) mandated that HUD address LBP in housing receiving federal assistance. HUD published its final consolidated rule on September 15, 1999. This rule requires actions by HUD grantees.

### 3.1.3. The 1992 Housing and Community Development Act Included Title X (“Title Ten”)

To protect families from exposure to lead from paint, dust, and soil, Congress passed the [Residential Lead-Based Paint Hazard Reduction Act of 1992](#). This is also known as Title X (“Title Ten”).<sup>1</sup> The U.S. Environmental Protection Agency (EPA) issued a rule under Section 1018 of this law, known as the [Lead-Based Paint Disclosure Rule](#).<sup>2</sup>

#### Federal Regulations:

<sup>1</sup> [Title X](#)

<sup>2</sup> [Section 1018 of Title X](#)

It directs EPA and HUD to require the disclosure of known information on LBP and LBP hazards before the sale or leasing of most housing built before 1978. It is designed to help people make more informed choices based on the information they receive.

Title X is a new approach to the LBP problem that requires a comprehensive HUD LBP regulation:

1. Former LBP regulations for HUD-funded housing projects focused on the existence of deteriorated paint. Control of identified LBP and LBP hazards did not occur unless a poisoned child lived in the unit.
2. Title X called for a three-pronged approach to target conditions that pose health risks to housing occupants and avoid cases of lead poisoning:
  - a. Notification of occupants about the existence of these hazards so that they can take proper precautions.
  - b. Identification of LBP hazards before a child can be poisoned.
  - c. Control of these LBP hazards to limit lead exposure to residents.

#### 3.1.4. HUD's Goals in Implementing Title X

In responding to Title X, HUD had several goals in mind, as described below:

1. **Streamline and Consolidate Lead Regulations:** HUD revised and consolidated its LBP regulations throughout its projects. Redundant regulations were eliminated and different projects now have consistent requirements.
2. **Organized by Project Type:** Before this regulation, many HUD clients received funding from several HUD projects with separate and sometimes inconsistent sets of lead regulations. This regulation groups HUD projects by type of assistance provided. For example, a subrecipient receiving HUD funds from several different sources to conduct a housing rehabilitation project will find the LBP requirements for rehabilitation under Subpart J of the lead regulation.<sup>1</sup>
3. **Update Lead-Based Paint Requirements to Better Protect Children and Families:** In issuing its LBP regulations, HUD took advantage of new knowledge. The requirements are based on the practical experience of cities, states, and others who have been controlling LBP hazards in housing. The requirements reflect the results of scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling LBP hazards. This knowledge allowed the

Federal Regulations:  
<sup>1</sup> [24 CFR 35 Subpart J](#)

regulation to target those conditions that pose the greatest risk to human health. The regulation also requires improved lead hazard evaluation techniques. Decisions about lead hazard reduction activities are more informed and available resources better target lead exposure reduction.

4. **Balance the Need for Cost-Effective Action with the Duty to Protect Children:**

The LSHR balances the practical need for cost-effective, affordable LBP hazard notification, evaluation, and reduction measures with Title X's statutory requirements and HUD's duty to protect children living in property that is owned or assisted by the federal government.

## **3.2 Statutory Requirements**

### **3.2.1. Legislation**

1. [Lead-Based Paint Poisoning Prevention Act of 1971](#)
2. [Residential Lead-Based Paint Hazard Reduction Act of 1992 \(Title X or Title Ten\)](#)
3. [Sections 1012/1013 of Title X](#)

### **3.2.2. Lead Regulations Adopted by the Following Organizations**

1. HUD – Housing and health
2. U.S. Environmental Protection Agency (EPA) – Environment and health
3. Occupational Safety and Health Administration (OSHA) – Workplace safety and health
4. Consumer Product Safety Commission (CPSC) – Lead in consumer products in conditions that pose the greatest risk to housing residents

## **3.3 Requirements**

The following discussion focuses on the two major aspects of the LSHR: (1) disclosure upon sale or leasing of residential property, and (2) approaches to dealing with LBP hazards, including the Five Key Requirements to Lead Safe Housing.

### 3.3.1. Disclosure Rule

#### *Disclosure of Known Lead-Based Paint Hazards Upon Sale or Leasing of Residential Property (from the [HUD Occupancy Handbook – 4350.3](#))*

The Disclosure Rule<sup>1</sup> [[40 Code of Federal Regulations \(CFR\) 745, Subpart F](#)<sup>2</sup> and [24 CFR 35, Subpart A](#)<sup>3</sup> – Requirements for the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing], published March 6, 1996, specifies the types of information that owners must give to applicants prior to signing their leases. These requirements apply to all properties built prior to January 1, 1978, including cooperatives, with certain exemptions established by regulation. The list below identifies specific exemptions when the disclosure rule does not apply. If a property is exempt, the owner does not need to comply with the requirements discussed in this paragraph.

#### Federal Regulations:

<sup>1</sup> [Lead-Based Disclosure Rule](#)

<sup>2</sup> [40 CFR 745 Subpart F](#)

<sup>3</sup> [24 CFR 35 Subpart A](#)

#### Disclosure Rule Exemptions

- Residential structures built after January 1, 1978, are exempt from LBP requirements because Congress banned the use of LBP for residences after this date.
- Rental property found to be LBP free by an LBP inspector or risk assessor accredited by the state or tribal certification program is exempt.
- Zero-room dwelling units, including single-room occupancy units, are exempt.
- Housing specifically designated for the elderly or persons with disabilities is exempt unless a child under age six resides or is expected to reside in the unit.
- Short-term leases of 100 days or fewer when no lease renewal or extension can occur.

#### Disclosure Rule Overview

For properties where the requirements apply, both owners and tenants need to be aware of LBP hazards, such as paint chips, paint dust in units, and contaminated soil in common areas. LBP is dangerous to adults and children, but especially to children under age six. Units that are

older, are in poor physical condition, have been renovated unsafely, or have exterior lead-contaminated soil are at the most risk. Owners in all applicable properties must provide tenants with basic information on LBP and its hazards, and they must maintain an accurate record of this communication. Compliance with these regulations is crucial to reduce liability and avoid lawsuits, obtain more favorable insurance premiums, and avoid penalties for failing to meet government requirements.

The following details an owner's requirements regarding LBP during the leasing process. These requirements must be met during the life of the property and are discussed in [Handbook 4350.1, Multifamily Asset Management and Project Servicing](#) or other current notices. These requirements include the following:

- Visual assessments to identify deteriorated paint (for assistance over \$5,000 per unit annually) or risk assessments to identify LBP hazards
- Paint stabilization (for assistance over \$5,000 per unit annually) or interim controls with clearance testing when appropriate
- Ongoing paint maintenance (for assistance over \$5,000 per unit annually) and re-evaluation every two years to identify hazards
- Notification of tenants about the actions above
- Special actions when a child under age six is reported to have high blood lead levels

Compliance with fair housing requirements applies when adhering to LBP regulations. Owners may not refuse to rent to households with children to avoid triggering lead paint requirements because this would constitute discrimination based on familial status.

Owners may affirmatively market the following types of units to families with children under age six:

- Units that are built after January 1, 1978, and
- Units that are built prior to January 1, 1978, and found to be free of lead hazards.

Owners must disclose known LBP and/or LBP hazards in the property and provide the EPA/HUD/CPSC Lead Hazard Information Pamphlet ([Protect Your Family from Lead In Your Home](#)) to tenants when leases are renewed, modified, or renegotiated unless no new information on those subjects has come into the possession of the owner and the owner has already provided the tenants with the disclosure information and the pamphlet. This is in accordance with [24 CFR 35.82\(d\)](#) in the Lead Disclosure Rule.

### 3.3.2. Disclosure Rule Requirements

Prior to leasing, owners must provide the tenant with two items:

- **Lead Hazard Information Pamphlet:** Owners must provide tenants of a residential property with the Lead Hazard Information Pamphlet (see above), or an EPA-approved equivalent. Owners are required to document that the tenant was given a copy of the pamphlet before signing the lease.

**NOTE: The Lead Hazard Information Pamphlet distributed to meet the Disclosure Rule requirement is the same pamphlet distributed for other lead-based paint requirements (e.g., the Lead-Based Paint Pre-Renovation Education Rule). It does not have to be distributed twice as long as it is documented that it has been provided.**

- **Disclosure Form:** Owners must include the disclosure form in the lease packet and obtain the prospective tenant's signature before he or she signs the lease. The disclosure form is designed to document receipt of the Lead Hazard Information Pamphlet and to meet three disclosure requirements, as follows:
  - a. **Disclose the presence of known LBP/hazards:** Owners of target housing must disclose the presence of known LBP and/or LBP hazards. The disclosure form has a line for owners to mark to verify that LBP/hazards have been disclosed.
  - b. **Disclose information on LBP/hazards:** Owners must provide applicants with any available records or reports pertaining to the presence of LBP and/or LBP hazards. Owners must inform applicants about how to access available records or reports pertaining to the presence of LBP and/or LBP hazards. The disclosure form has a line

for owners to verify that copies of all relevant records and reports have been provided to the applicant. The form also documents whether there are no records or reports available.

- c. **Include contract language:** Leasing contracts must include a Lead Warning Statement and an acknowledgment section to be signed by the prospective tenant, the owner, and any agent. The owner must present the disclosure form signed by the owner and the Lead Hazard Information Pamphlet to the prospective tenant before the tenant signs the lease. The disclosure form has the Lead Warning Statement printed at the top and a place at the bottom for the applicant to sign, acknowledging disclosure and receipt of the Lead Hazard Information Pamphlet.

### 3.3.3. Record-Keeping Requirements

There are specific records that owners must keep to verify compliance with the Disclosure Rule requirements.

- **Disclosure Form:** Owners must keep records of the Disclosure Form provided to each tenant for three years from the commencement of the leasing period.
- **Lead Hazard Information Pamphlet:** A record of the distribution of the Lead Hazard Information Pamphlet is required under the HUD-EPA Lead-Based Paint Disclosure Rule and the EPA Lead Pre-Renovation Education Rule.

### 3.3.4. General Lead-Based Paint Requirements for All Programs Funded Through Community Planning and Development

The requirements of the LSHR apply to the following HUD Community Planning and Development programs subject to the LSHR,<sup>1</sup> including CDBG, HOME, Housing Trust Fund, Rental Rehabilitation Grant Program, Housing Opportunities for Persons With AIDS, Shelter Plus Care, Emergency Solutions Grants, and Supportive Housing.

Federal Regulations:

<sup>1</sup>[24 CFR 35](#)

#### [24 CFR 35](#)

- Subpart A: Disclosure of Known Lead-Based Paint Hazards

- Subpart B: General Requirements and Definitions
- Subpart J: Rehabilitation
- Subpart K: Acquisition, Leasing, Support Services, or Operation
- Subpart M: Tenant-Based Rental Assistance
- Subpart R: Methods and Standards for Evaluation and Reduction Activities

The subparts which address other types of federally funded properties include the following:

- Subpart C: Disposition of Residential Property
- Subpart D: Project-Based Assistance Provided by a Federal Agency Other Than HUD
- Subpart F: HUD-Owned Single-Family Property
- Subpart G: Multifamily Mortgage Insurance
- Subpart H: Project-Based Rental Assistance
- Subpart I: HUD-Owned and Mortgagee-in-Possession Multifamily Property
- Subpart L: Public Housing Programs
- Subparts E and N through Q are reserved for future use.

#### Exemptions<sup>1</sup>

- Post-1978 housing
- Zero-bedroom units
- Housing exclusively for the elderly or disabled
- Property certified as LBP free
- Property where LBP was removed
- Unoccupied property pending demolition (note that EPA requirements related to property demolition apply)

Federal Regulations:

<sup>1</sup>[24 CFR 35.115](#)

- Nonresidential part of property
- Rehabilitation or maintenance activities that do not disturb painted surfaces
- Emergency actions

### 3.3.5. Lead Safe Housing Rule

The LSHR requires different approaches to addressing lead hazards in different types of housing. The requirements for each type of housing are best understood if the following five Key Requirements that make up the LSHR are considered:

1. **Communication with Residents:** Subrecipients must meet the lead disclosure requirements that apply to all housing (assisted or unassisted) at lease or sale and provide certain notices to residents.
2. **Lead Hazard Evaluation/Assessment:** Any housing that receives HUD funds must undergo some form of evaluation or assessment (unless lead is presumed to be present).
3. **Lead Hazard Reduction Methods:** After the appropriate evaluation or assessment, the subrecipient must conduct lead hazard reduction. Such work must be done using lead safe work practices and is not considered to be complete until clearance is performed.
4. **Ongoing Maintenance:** Some types of housing projects are subject to ongoing maintenance requirements.
5. **Elevated Blood Lead Levels (EBLLs):** The EBLL threshold, effective January 17, 2025, has been reduced from 5 to 3.5 micrograms of lead per deciliter of blood ( $\mu\text{g}/\text{dL}$ ) for a child under age six, consistent with the CDC's current blood lead reference value of 3.5  $\mu\text{g}/\text{dL}$ .

The LSHR requires some form of evaluation or assessment for any dwelling unit that receives HUD funding. The specific type of

[Lead Safe Housing  
Rule Toolkit](#)

evaluation or assessment depends on the nature of the housing project or activity being conducted or the amount of assistance provided.

### 3.3.6. EPA – Renovation, Repair, and Painting Rule

On April 22, 2008, EPA issued the [Renovation, Repair, and Painting \(RRP\) Rule](#), which is aimed at preventing lead poisoning. Under the rule, beginning in April 2010, contractors performing renovation, repair, and painting projects that disturb LBP in homes, childcare facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. The HUD LSHR is similar to the EPA RRP Rule.

Although there are some differences between the EPA RRP Rule and the HUD LSHR. A major difference is that the LSHR requires clearance examinations. All housing receiving federal assistance must still comply with the LSHR.

**Table 1: LSHR and RRP Rule requirements**

Requirement	HUD LSHR	EPA RRP Rule	Changes to LSHR Projects to Comply with RRP Rule
<b>Planning and Set-Up</b>			
<b>Determination that lead-based paint (LBP) is present</b>	EPA-recognized test kits cannot be used to say that paint is not LBP. Only a certified LBP inspector or risk assessor may determine whether LBP is present.	Certified renovators use an EPA-recognized test kit to determine whether the RRP Rule applies.	None
<b>Training</b>	HUD does not certify renovators or firms. All workers and supervisors must complete a HUD-approved curriculum in lead safe work practices, except that non-certified	EPA or EPA-authorized states certify renovation firms and accredit training providers that certify renovators. Only the certified renovator is required to have classroom training.	Renovation firms must be certified. At least one certified renovator must be at the job site or available when work is being done. (The certified renovator may be a certified LBP abatement

Requirement	HUD LSHR	EPA RRP Rule	Changes to LSHR Projects to Comply with RRP Rule
	renovation workers need only on-the-job training if they are supervised by a certified LBP abatement supervisor who is also a certified renovator.	Workers must receive on-the-job training from the certified renovator.	supervisor who has completed the four-hour RRP refresher course.)
<b>Pre-Renovation Education</b>	HUD requires conformance with EPA regulations, including EPA’s Pre-Renovation Education Rule. EPA had required renovators to hand out the EPA/HUD/CPSC Protect Your Family from Lead in Your Home (Lead Disclosure Rule) pamphlet.	Renovators must hand out the EPA/ HUD Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools pamphlet. (This requirement went into effect on December 22, 2008.)	None
<b>During the Job</b>			
<b>Treating LBP Hazards</b>	Depending on the type and amount of HUD assistance, HUD requires that lead hazards be treated using “interim controls” or “ongoing lead-based paint maintenance.”	EPA generally requires that renovations in target housing be performed using lead-safe work practices.	None

Requirement	HUD LSHR	EPA RRP Rule	Changes to LSHR Projects to Comply with RRP Rule
<b>Planning and Set-Up</b>			
<b>Prohibited Work Practices</b>	HUD prohibits six work practices. These include EPA's three prohibited work practices plus heat guns that char paint, dry scraping or sanding farther than 1 foot of electrical outlets, and the use of a volatile stripper in poorly ventilated space.	EPA prohibits three work practices (i.e., open flame burning or torching, heat guns above 1,100 degrees Fahrenheit, and machine removal without a HEPA vacuum attachment).	None
<b>Threshold minimum amounts of interior paint disturbance that trigger lead activities</b>	HUD has a lower interior de minimis threshold (2 ft <sup>2</sup> per room, or 10% of a small component type) than EPA for lead-safe work practices. HUD also uses this lower threshold for clearance and occupant notification.	EPA's interior threshold (6 ft <sup>2</sup> per room) for minor repair and maintenance activities are higher than HUD's de minimis threshold.	None
<b>End of Job</b>			
<b>Confirmatory Testing</b>	HUD requires that a clearance examination be completed by an independent party instead of the certified renovator's cleaning verification procedure.	EPA allows cleaning verification by the renovator or clearance examination. The cleaning verification does not involve sampling and	None

Requirement	HUD LSHR	EPA RRP Rule	Changes to LSHR Projects to Comply with RRP Rule
<b>Notification to Occupants</b>	HUD requires the designated party to distribute notices to occupants within 15 days after lead hazard evaluation and control activities in their unit (and common areas, if applicable).	EPA has no requirement to notify residents who are not the owners after the renovation.	None

laboratory analysis of the dust.

### 3.3.7. Evaluation Methods Required for CDBG-DR and MIT Programs

The following evaluation and assessment methods are used with CDBG-DR and CDBG-MIT funded activities:

1. **Visual Assessment:** A visual assessment for deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipping paint, as well as visible dust, debris, and paint chips. Because a visual assessment is not considered to be a method of lead hazard evaluation, there is no requirement for a Notice of Lead Hazard Evaluation associated with this procedure.
2. **Paint Testing:** Paint testing entails testing painted surfaces to determine whether they contain LBP. An XRF analyzer or laboratory analysis are methods used to test paint. A certified paint inspector or a certified risk assessor must perform paint testing.
3. **Risk Assessment:** A risk assessment is a comprehensive investigation of a dwelling to identify LBP hazards. It includes paint testing, dust and soil sampling, and a visual evaluation. A certified risk assessor must perform a risk assessment. Risk assessment results are summarized in a written report with recommendations for action.

### 3.3.8. Other Methods

There are other methods of evaluation/assessment; however, these methods are not required with CDBG-DR or CDBG-MIT funded activities.

1. **Paint Inspection:** A paint inspection is a surface-by-surface investigation to determine the presence of LBP. Because the inspection evaluates all painted surfaces, it is more comprehensive than paint testing. A certified paint inspector must perform paint inspections. Paint inspections are not required for CDBG-DR or CDBG-MIT funded activities.
2. **Lead Hazard Screen:** A lead hazard screen is similar to a risk assessment but is designed for properties in good condition. A screen requires fewer samples than a risk assessment but uses more stringent evaluation criteria. If the results of a screen indicate that LBP hazards are or may be present, a full risk assessment must be conducted.
3. A certified risk assessor must conduct a lead hazard screen. A lead hazard screen is permitted in CDBG-DR and CDBG-MIT funded projects as an alternative to a risk assessment.

### 3.4 Lead Hazard Reduction

Lead hazard reduction methods are the specific types of treatments to control LBP hazards. The method of lead hazard reduction required is determined by the type of housing activity being undertaken. The lead hazard reduction methods, including abatement and interim controls are discussed below:

1. **Abatement:** A lead hazard reduction method that is designed to permanently eliminate LBP or LBP hazards. According to the Louisiana Department of Environmental Quality regulations, LBP abatement contractors must be licensed by the Louisiana State Licensing Board for Contractors. For information on how to obtain a license to abate LBP, see [www.LSLBC.louisiana.gov](http://www.LSLBC.louisiana.gov). *Permanent* is defined as having 20 years of expected life. Abatement must be performed by Louisiana state certified abatement workers who successfully completed an accredited abatement worker

course and are supervised by an abatement supervisor. State abatement activities include the following:

- a. Removing LBP and its dust.
  - b. Permanently encapsulating or enclosing the LBP.
  - c. Replacing components with LBP.
  - d. Removing or permanently covering lead-contaminated soil.
2. **Interim Controls:** Lead hazard reduction activities that temporarily reduce exposure to LBP hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education projects. A person performing paint stabilization, interim controls, or standard treatments must be trained in accordance with lead safe work practices and have successfully completed a HUD or EPA-approved training course. Interim control methods require safe work practices.
3. **Paint Stabilization:** Repair any physical defect in the substrate of a painted surface that is causing paint deterioration. Remove loose paint and other material from the surface to be treated and apply a new protective coating or paint.
- a. **Treatment for friction and impact surfaces:** Correct the conditions that create friction or impact with surfaces with LBP.
  - b. **Treatment for chewable surfaces:** If a child under age six has chewed surfaces known or presumed to contain LBP, these surfaces must be enclosed or coated so that they are impenetrable.
  - c. **Lead-contaminated dust control:** All rough, pitted, or porous horizontal surfaces must be covered with a smooth, cleanable covering. Carpets must be vacuumed on both sides using HEPA vacuums or the equivalent.
4. **Lead-Contaminated Soil Control:** If bare soil is contaminated with lead, impermanent surface coverings, such as gravel, bark, and sod, as well as land use controls, such as fencing, landscaping, and warning signs, may be used.

5. **Standard Treatments:** May be conducted in lieu of a risk assessment and interim controls. Standard treatments are designed to reduce all LBP hazards in a unit. Standard treatments must be performed on all applicable surfaces, including bare soil, to control LBP hazards that may be present. All standard treatment methods must follow safe work practices.
6. **Amount of Federal Assistance:** The term *rehabilitation* is used by HUD to describe residential renovation work. Specific requirements depend on the amount of federal rehabilitation assistance that the project is receiving:
  - a. **Up to \$5,000 per unit:** “Do no harm” approach. Lead safety requirements cover only the surfaces being disturbed. Program participants can either test these surfaces to determine whether they contain LBP or presume that they contain LBP. Work which disturbs painted surfaces, known or presumed to contain LBP, is done using lead safe work practices. Clearance of the worksite is performed at the end of the job (unless it is a very small de minimis scale project) to ensure that no lead dust hazards remain in the work area. Training that meets the EPA’s RRP Rule requirements is sufficient for this work.
  - b. **Greater than \$5,000 and up to \$25,000 per unit:** Identify and control lead hazards. Identify all lead hazards at the affected units and common areas servicing those units by performing an LBP risk assessment. Control the hazards using interim controls. Participants may skip the risk assessment and presume that all potential lead hazards are present and then must use standard treatments to address them. Additionally, training that meets the EPA’s RRP Rule requirements and HUD-approved interim control training (such as the HUD-EPA RRP Rule curriculum) is required for renovators and workers.
  - c. **Greater than \$25,000 per unit:** Identify and abate lead hazards. Identify all lead hazards at the property by performing a risk assessment and then abate all the hazards. Participants may skip the risk assessment and presume that all potential

lead hazards are present and abate the hazards. This approach requires certified abatement contractors to perform the abatement.

**Table 2: Rehabilitation requirements**

<b>Rehabilitation (Subpart J)</b>			
	<b>≤ \$5,000</b>	<b>\$5,000 – \$25,000</b>	<b>&gt; \$25,000</b>
<b>Approach to Lead Hazard Evaluation and Reduction</b>	Do no harm.	<b>Rehabilitation (Subpart J)</b>	<b>Rehabilitation (Subpart J)</b>
<b>Notification</b>	Yes	Yes	Yes
<b>Lead Hazard Evaluation</b>	Paint Testing (of surfaces to be disturbed)	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment
<b>Lead Hazard Reduction</b>	Repair surfaces disturbed during rehabilitation	Interim Controls	Abatement (interim controls on exterior surfaces not disturbed by rehabilitation)
<b>Ongoing Maintenance</b>	<b>Safe work practices Clearance</b> For HOME rental only	<b>Safe work practices Clearance</b> For HOME rental only	<b>Safe work practices Clearance</b> For HOME rental only
<b>EBBL Requirements</b>	No	No	No
<b>Options</b>	Presume LBP Use safe work practices on all surfaces	Presume LBP and/or hazards Use standard treatments	Presume LBP and/or hazards Abate all applicable surfaces

### **3.5 Responding to Child Under Age Six with an Elevated Blood Lead Level**

HUD has modified the Lead Safe Housing Rule (LSHR) to enhance protections from LBP hazards, enforceable since July 31, 2017. These regulations place responsibilities on the owners of HUD-assisted housing built before 1978. The significant changes for a child under age six identified with an EBLL are as follows:

- Enhance the assessment in that child’s unit (the index unit) from a risk assessment to an environmental investigation (EI).
- Add a requirement that if LBP hazards are found in the index unit, then every assisted unit in the property occupied by a child under age six must receive a risk assessment and control of any LBP hazards.
- Add a requirement that HUD be notified when these events occur.

An EBLL child is identified as a child under age six who has a confirmed concentration in whole blood of 3.5 micrograms of lead per deciliter of blood (3.5 µg/dL) or more.

When assistance provided by subrecipients involves an ongoing relationship with a property, such as Tenant-Based Rental Assistance (TBRA) or the HOME Rental properties project, subrecipients are responsible for ensuring that the owners perform ongoing maintenance to ensure that lead hazard reduction methods are maintained. In other cases, ongoing maintenance is encouraged.

For TBRA (including Housing Choice Vouchers) programs, the responsibilities are divided between the subrecipient and the owner. It is important that subrecipients and owners clarify responsibilities. By default, initial verification and evaluations are the responsibility of the subrecipient. The lead hazard control work and related notices are the owner’s responsibility unless the subrecipient has explicitly assumed that responsibility. The subrecipient could also explicitly assign responsibility for evaluations, EIs, and risk assessments to the owner.

### **3.5.1. Verification and Notice**

Once there is an EBLL case reported for a child under age six in an assisted housing unit, there are verification and notice requirements. If the original EBLL report did not come from a **health care provider** or local **public health department**, the subrecipient should immediately verify the child’s blood lead level with one of those sources. If no initial medical verification is received, the owner or Public Housing Agency (PHA)/subrecipient must contact the HUD Program Representative (HUD Rep) regarding the lack of response.

The HUD Rep will either proceed to verify independently or contact the Office of Lead Hazard Control and Healthy Homes (OLHCHH) to assist with verification. You may continue to attempt to verify the EBLL. Keep records of all attempts (yours and HUD's) to verify the EBLL with the public health department or health care provider. Avoid unnecessary delays that slow down the response. The EBLL response requirements apply whether the child is or is not living in the unit. If any other household receiving TBRA is living in the unit or is planning to live there, EBLL response requirements apply to the unit.

### **3.5.2. Information Privacy**

Information emailed/shared with HUD/PHA should not include the child's name or blood result, unless done in a secure manner. This is considered personally identifiable information (PII) and is also confidential medical information that must be maintained in accordance with the PHA's/subrecipient's policy for private medical information. If the PHA/subrecipient must transmit PII, it must be done in a secure manner or in an encrypted email.

### **3.5.3. Notification**

The responsible party (TBRA owner or subrecipient) must notify the local health department, local HUD Field Office, and HUD OLHCHH ([LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov)) within five business days of verification. Notification to the HUD Field Office and HUD OLHCHH should include the following:

- Owner's name and address (if the owner is providing the information)
- Date of the EBLL test result
- Housing program (e.g., TBRA)
- Unit address and (if it is a multi-unit property) the development's
- Whether the owner has notified the local health department of the EBLL, or has been notified by the local health department
- Date of the notification

#### **3.5.4. Investigation of the Index Unit**

The responsible party must ensure that a certified lead risk assessor performs an **Environmental Investigation (EI)** within 15 calendar days of verification of the EBLL child. By default, the regulations assign this to subrecipients in TBRA programs.

#### **3.5.5. Risk Assessors and Inspectors**

- The EI must be performed by a certified risk assessor.
- Certified risk assessors may perform environmental investigations, inspections, post-abatement clearances, lead hazard screens, and risk assessments.
- The PHA/subrecipient can rely on the results of the health department's evaluation of the EBLL child's home and environment.
- Many local public health departments conduct lead poisoning prevention services or can arrange for such services.
- The health department may evaluate a child's home for LBP hazards and other potential sources of lead exposure when a child is found to have an EBLL.

#### **3.5.6. Notification of EI Results**

The responsible party must notify the local HUD Field Office and the index unit occupant family of the results. If LBP hazards were identified, also notify all assisted residents that an EI was completed. The HUD Field Office must be notified within 10 business days and the occupants within 15 calendar days.

Notices regarding the evaluation to HUD and the residents must include the date that the investigation was completed, because the investigation is only valid for one year. If the EI does not identify LBP hazards (**of paint, dust, or soil**) in the index unit, but does identify other potential sources of lead exposure, then:

- Residents should be encouraged to follow the EI's recommendations for controlling other household sources of lead (e.g., water, tub leaching, ceramic tile chipping and dusting, take-home exposures from work or hobbies, imported jewelry, pottery, folk remedies).

- Subrecipients and owners may assist the family directly or coordinate with the health department to encourage the elimination of non-LBP hazards identified in the EI.
- The EBLL response for the index unit is complete after the subrecipient (for TBRA) notifies the family of the results. The PHA/subrecipient should maintain the records.

If the EI also identifies LBP hazards in the index unit:

- Within 30 days of the EI results, the owner (for TBRA) is responsible for controlling and clearing all hazards from housing sources in the index unit and common areas, using a certified LBP abatement firm or certified lead renovation firm

### **3.5.7. Other Covered Units**

If an index unit with LBP hazards is in a property with multiple federally assisted units:

- Risk assessment is required for other assisted target housing units in the property where children under age six reside or are expected to reside. These are known as other “covered units.”
- Identify all the work needed for all covered units before abatement begins.
- Residents of other covered units can be notified of risk assessment results through a central posting or individual notifications.

**NOTE: The exception of other covered units is if “the owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirement” for these units for the 12 months preceding the EI. Provide documentation to HUD within 10 days of receiving the results of the EI.**

### **3.5.8. Guidelines for Sampling Other Covered Units for Risk Assessments**

Sampling of units is permitted for properties built before 1960 with more than 20 covered units, and properties built between 1960 and 1977 and with more than 10 covered units. The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing provides

further guidance on the required sample sizes. The certified LBP risk assessor will design and implement the sampling protocol.

### 3.5.9. Sampling Detail for Other Covered Units

If LBP hazards are found in a sample of covered units, they are presumed to exist in all the other covered units that were not sampled. The hazards are presumed to be present on the same type of building components (e.g., bedroom windowsills) as detected in the sampled units. Components found to be hazard-free in sampled units do not require treatment. If risk assessments did not identify LBP hazards in other covered units, the owner must notify the residents and HUD Field Office of the results and then the EBLL response is complete regarding other covered units.

### 3.5.10. Timing

EBLL Response Activity	Timeframe
Notify the Public Health Department and HUD Field Office of the EBLL case	Within five business days after verification of EBLL
Conduct an environmental investigation for the index unit	Within 15 calendar days after verification of EBLL
Notify the HUD Field Office about the results of the EI	Within 10 business days of receiving the results of the EI
Conduct a risk assessment for covered units	Within 30 calendar days for a property with $\leq 20$ covered units after the EI results Within 60 calendar days for a property with $> 20$ covered units after the EI results
Complete lead hazard control work and clearance	Within 30 calendar days of receiving the results of the EI
Interim control of other LBP hazards in other covered units	Within 30 calendar days for a property with $\leq 20$ covered units with LBP hazards after the risk assessment results Within 90 calendar days for a property with $> 20$ covered units after the risk assessment results
Notify the HUD Field Office of clearance	Within 10 business days after clearance
Notify the assisted resident of clearance	Within 15 calendar days after clearance

## 3.6 Maintenance

### 3.6.1. Exemptions

Ongoing maintenance activities are not required when:

- A clearance report indicates that all building components with LBP have been removed,  
**OR**
- A current risk assessment indicates that no lead-contaminated soil or lead-contaminated dust is present.

### 3.6.2. Required Maintenance Activities

Depending on project size, subrecipients and owners must ensure that maintenance activities are conducted that minimize the threat of LBP hazards. Required maintenance activities include the following:

1. Conduct visual assessments for deteriorating paint and the failure of any lead hazard reduction measures every 12 months and when the unit turns over.
2. Address deteriorated paint through paint stabilization unless an evaluation states that there is no LBP.
3. Repair enclosures or encapsulations.
4. Perform other lead hazard reductions, as necessary.
5. If the initial reduction activity required the treatment of soil, identify and treat bare soil.
6. Provide notice of lead hazard reduction activity.
7. Provide a written notice to occupants asking them to report deteriorated paint or failed encapsulation or enclosure. Include the contact's name, address, and telephone number. CDBG recommends that the notice be provided every 12 months or at unit turnover. To the extent feasible, the notice should be written in the language of the occupant.

### 3.6.3. Maintenance-Related Requirements

Safe work practices must be followed for all maintenance or renovation work that disturbs paint that may be LBP above the de minimis level.

The de minimis level is the surface area allowed with LBP before triggering additional LBP requirements. The de minimis level includes the following:

1. 20 square feet on exterior surfaces
2. 2 square feet in any one interior room or space
3. 10% of the total surface area on an interior or exterior type of component with a small surface area, such as windowsills, baseboards, and trim.

Lead safe work practices must be used during lead hazard reduction, rehabilitation, and maintenance work that involves surfaces with presumed or identified LBP.

### 3.6.4. Lead Safe Work Practice Exemptions

Safe work practices are not required when:

1. The paint being disturbed was tested and found not to be LBP.
2. Maintenance or lead hazard reduction activities disturb a total surface area that is less than the de minimis amount.

There are four components of safe work practices:

1. **Occupant Protection:** Appropriate actions must be taken to protect occupants from LBP hazards associated with lead hazard reduction, paint stabilization, maintenance, or rehabilitation activities.
  - a. Occupants may not enter the worksite during lead hazard reduction activities.
  - b. Occupants must be temporarily relocated to a suitable unit that is decent, safe, sanitary, and free of LBP hazards during lead hazard reduction activity. There are circumstances when occupant relocation is not required.

- c. Property owners must protect occupants' belongings from lead contamination by relocating, covering, or sealing them.
- d. Property owners must secure the worksite against entry during non-work hours.

2. **Worksite Preparation and Containment:**

- a. The worksite must prevent the release of lead dust and debris.
- b. Minimize the spread of lead dust, paint chips, soil, and debris, using approved methods.
- c. Warning signs are required at the main and secondary entrances to a building, and at each entrance where lead hazard reduction occurs.
- d. For exterior worksites, signs must be readable from 20 feet.

3. **Prohibited Methods:** There are some methods that may not be used at any time to remove paint with presumed or identified LBP. Prohibited methods include the following:

- a. Open flame burning or torching
- b. Machine sanding or grinding without high-efficiency particulate air (HEPA) local exhaust control
- c. Abrasive blasting or sandblasting without HEPA local exhaust control
- d. Heat guns operating above 1,100 degrees Fahrenheit, or those that operate at high enough temperatures to char the paint
- e. Dry sanding or dry scraping

**NOTE: Four exceptions to this prohibition are as follows:**

1. Dry scraping in conjunction with heat guns
2. Dry scraping within 1.0 foot (0.20 meter) of electrical outlets
3. Treating deteriorated paint spots that total no more than 2 feet of any one interior room or space
4. Treating deteriorated paint spots that total no more than 20 feet of exterior surfaces

- f. Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the CPSC at [16 CFR 1500.3](#),<sup>1</sup> and/or a hazardous chemical in accordance with OSHA at [29 CFR 1010.1200](#)<sup>2</sup> or [1926.59](#),<sup>3</sup> as applicable to the work.

Federal Regulations:

<sup>1</sup> [16 CFR 1500.3](#)

<sup>2</sup> [29 CFR 1010.1200](#)

<sup>3</sup> [29 CFR 1926.59](#)

**NOTE: Methylene chloride paint strippers may cause cancer and should be avoided.**

**Use of these strippers is prohibited by some jurisdictions.**

4. **Worksite Cleanup:** Worksite cleanup removes dust and debris from the work area. Good cleanup is critical to passing [clearance](#) and leaving the unit safe for habitation. Worksite cleanup must be done using methods, products, and devices that are successful in cleaning lead-contaminated dust, such as vacuum cleaners with HEPA filters, and household or lead-specific detergents.

### 3.6.5. Maintenance Records

Subrecipients must keep records of inspections, repairs, and any other lead hazard evaluation and reduction activities for three years after the activities cease or for the time required by program regulations. The HOME program requires that records be kept for five years.

### 3.7 Clearance

The standard EPA-HUD clearance examination determines whether the clearance area is safe for occupancy or for entry by unprotected workers. Clearance must be conducted unless the work area was below the de minimis level. The LSHR requires clearance after paint stabilization, interim controls, standard treatments, rehabilitation, or ongoing LBP maintenance. HUD's standards and procedures for clearance are the same as those for EPA-regulated abatement. There are some differences in the qualifications for clearance examiners. Hazard reduction work is only complete upon passing a clearance examination for compliance and the site is clear of hazards.

- **Abatement Work:** Clearance must be performed by a certified risk assessor or LBP inspector.
- **Non-Abatement Work:** Clearance can be done by a certified risk assessor, LBP inspector, or sampling technician. The supervisor must sign off on the clearance.
- No conflict of interest.
- Clearance examiners must be independent from hazard control, rehabilitation, or maintenance work.
- Clearance examiners may work for the same firm that provides pre-work paint testing or risk assessment.
- **Interim Clearance:** Allowing non-lead workers to enter the site is permitted; however, final clearance must also be done.

The clearance procedures require dust clearance sampling by a certified sampling professional. The EPA RRP Rule allows for optional dust clearance testing in lieu of the "cleaning verification" procedure. The dust wipe samples collected by the state-certified risk assessor/inspector or clearance technician must be submitted to an EPA-accredited laboratory for analysis.

### 3.7.1. Clearance Activities

Clearance activities include the following:

- Visual assessment to determine completion of work
- Absence of hazards
- Dust sampling, processed by an EPA-accredited laboratory, to measure residual lead-dust levels
- Interpretation of sampling results and the preparation of a report

### 3.7.2. Dust Action Levels

Clearance examinations are required upon completion of any hazard control work and before re-occupancy. Clearances must be done by certified professionals and adhere to the standards of EPA at [40 CFR 745.227\(h\)\(3\)\(i\)](#)<sup>1</sup>, or [24 CFR 35.1340](#)<sup>2</sup> and [24 CFR 35.1320](#)<sup>3</sup> if such standards are not in effect:

- Carpeted Floors      10 µg/ft<sup>2</sup>
- Hard Floors            10 µg/ft<sup>2</sup>
- Interior Windowsills   100 µg/ft<sup>2</sup>
- Window Troughs      400 µg/ft<sup>2</sup>

#### Federal Regulations:

<sup>1</sup> [40 CFR 745.227\(h\)\(3\)\(i\)](#)

<sup>2</sup> [24 CFR 35.1340](#)

<sup>3</sup> [24 CFR 35.1320](#)

If the applicable EPA, state, or local clearance standards for lead in dust are not met, HUD requires that cleaning be repeated and additional dust testing performed until the area meets clearance standards. If lead-contaminated dust levels determined by a clearance examination remain above the clearance standards, the work is not complete. Levels of lead in dust must be within clearance standards for the work to be complete.

**NOTE: It is anticipated that on or after January 12, 2026, levels of lead in dust must be below the following:<sup>1</sup>**

- Carpeted Floors 5 µg/ft<sup>2</sup>
- Hard Floors 5 µg/ft<sup>2</sup>
- Interior Windowsills 40 µg/ft<sup>2</sup>
- Window troughs 100 µg/ft<sup>2</sup>

### 3.8 Louisiana Requirements for Lead-Based Paint Testing and Abatement

The Louisiana Department of Environmental Quality regulates lead-based paint activities:

- Louisiana Environmental Regulatory Code, [Title 33: Part III – Louisiana Air Quality Regulations. Chapter 28: Lead-Based Paint Rule – Recognition, Accreditation, Licensure, and Standards for Conducting Lead-Based Paint Activities](#)<sup>2</sup>

Federal Regulation and State Laws:

<sup>1</sup> 40 CFR 745.227(h)(3)(i)

<sup>2</sup> LAC Title 33:III. Chapter 28

### 3.9 Lead-Based Paint Resources

- HUD Occupancy Handbook 4350.3, Rev-1, Section 1: Leases and Lease Attachments, Chapter 6: Lease Requirements and Leasing Activities, Subsection 6-8: Lead-Based Paint Disclosure Form  
*HUD's handbook details the requirements for compliance with 24 CFR Subpart A that presents the requirements for leasing pre-1978 housing units.*  
<https://www.hud.gov/sites/documents/43503hsggh.pdf>
- HUD Website – Lead Safe Housing Rule Toolkit  
<https://www.hudexchange.info/programs/lead-based-paint/lshr-toolkit/introduction/>
- Lead-Based Paint – Louisiana Environmental Regulatory Code, Title 33, Part III, Chapter 28  
[https://deq.louisiana.gov/assets/docs/legal\\_affairs/erc/33v03air.docx](https://deq.louisiana.gov/assets/docs/legal_affairs/erc/33v03air.docx)
- Louisiana Department of Environmental Quality Lead Brochure

[https://www.deq.louisiana.gov/assets/docs/Air/Lead\\_Paint/lead-brochure.pdf](https://www.deq.louisiana.gov/assets/docs/Air/Lead_Paint/lead-brochure.pdf)

- Louisiana Trainers for EPA Renovation/Repair/Painting Program

[https://www.deq.louisiana.gov/assets/docs/Asbestos\\_and\\_Lead\\_Accreditations/LA-RRP-program-Trainers-EPA-as-of-02042022.pdf](https://www.deq.louisiana.gov/assets/docs/Asbestos_and_Lead_Accreditations/LA-RRP-program-Trainers-EPA-as-of-02042022.pdf)

- HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012)
- The Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing support HUD's vision to reduce hazards in housing in a cost-effective manner while protecting the health of children. The Guidelines apply to lead hazard evaluation and control in all federally associated housing. This second edition of the Guidelines replaces *the 1995 edition*, as amended.

[https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines)

- HUD Exchange

<https://www.hudexchange.info/programs/lead-based-paint>

- HUD Lead-Based Paint Resources

<https://www.hudexchange.info/programs/lead-based-paint/resources/>

- HUD's Lead Safe Housing Rule and EPA's Renovation, Repair, and Painting Rule  
[LSHR Toolkit: HUD's LSHR and EPA's Renovation, Repair, and Painting Rule Chart](#)

- HUD Designated Parties for EBLL Children

<https://www.hudexchange.info/programs/lead-based-paint/resources/>

## 4. Asbestos

### 4.1 Asbestos

While HUD does not have a specific regulation related to asbestos as it does for LBP, there are federal laws, particularly the [Clean Air Act \(CAA\)](#)<sup>1</sup> and the [Occupational Safety and Health Act](#).<sup>2</sup> These requirements could be triggered if there is a renovation or demolition of a home or facilities that contain asbestos materials. The CAA specifies the work practices that must be followed during demolition and renovation of buildings.

#### Federal Laws:

<sup>1</sup>CAA

<sup>2</sup>OSHA

Asbestos is a naturally occurring mineral fiber. It was used in numerous building materials for its strength and ability to resist heat and corrosion before its dangerous health effects were discovered. Individual asbestos fibers cannot be seen by the naked eye, which puts workers at an increased risk. OSHA has regulations to protect workers from the hazards of asbestos.

Initial screening on the statutory checklist form will look at the potential for disturbing any kind of asbestos-containing materials. This necessitates an inspection of the building before the work begins. A higher level screening may be needed to determine the extent and type of asbestos present. If any kind of renovation or demolition is considered, structures must be inspected. Standardized practices that comply with the CAA and OSHA regulations must be employed if asbestos is found and will be disturbed. Make certain the contract specifications and documents address these practices and include inspection, testing, removal, and final clearance procedures that meet or exceed applicable health codes.

Contact the state Department of Public Health or Environmental Quality for more information on asbestos. Additionally, local construction code enforcement agencies may have specific requirements for buildings containing asbestos. State laws may regulate the training and licensing of contractors, inspectors, laboratories, project safety monitors, and asbestos abatement actions.

The regulatory requirements usually apply to the following:

- Worker exposure to asbestos

- Procedures for abating asbestos when a building undergoes renovation or demolition
- Disposal of asbestos-containing materials

## 4.2 Asbestos Resources

- [Louisiana Title 33, Part III, Chapter 27, Section 2071](#) and following the [Asbestos Hazard Emergency Response Act](#), which is sometimes incorporated by reference into clearance requirements for other buildings.
- U.S. EPA  
<https://www.epa.gov/asbestos>

## 5. Mold

### 5.1 Mold

Louisiana residents continue to struggle with the environmental impact from severe weather events. In August 2000, the Louisiana Department of Health/Office of Public Health/Section of Environmental Epidemiology and Toxicology developed Indoor Environmental Quality Education Service. This serves as the agency's primary program that is responsive to the public's indoor environmental quality concerns.

HUD does not have a specific regulation related to mold. Since no EPA or other federal limits have been set for mold or mold spores, sampling cannot be used to check a building's compliance with mold standards.

Surface sampling may be useful to determine whether an area has been adequately cleaned or remediated. Sampling for mold should be conducted by professionals who have specific experience in developing mold sampling protocols, sampling methods, and interpreting results. Sample analysis should follow analytical methods recommended by the [American Industrial Hygiene Association](#), the [American Conference of Governmental Industrial Hygienists](#), or other professional organizations.

The EPA has issued guidance for the identification and cleanup of mold, who should do the cleanup, cleanup guidelines, and mold prevention and control tips, among other topics. It

issued a guide for situations where there has been a lot of water damage and/or mold growth covers more than 10 square feet. Although this guidance is focused on schools and commercial buildings, it is applicable to other building types.

## 5.2 Mold Resources

- A Brief Guide to Mold, Moisture and Your Home, EPA 402-K-02-003  
[www.epa.gov/iaq](http://www.epa.gov/iaq)
- EPA Mold Cleanup in Your Home  
<https://www.epa.gov/mold/mold-cleanup-your-home>
- HUD Exchange: Site Contamination  
<https://www.hudexchange.info/programs/environmental-review/site-contamination/>

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 11: Monitoring



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

Monitoring and evaluation of program performance and compliance by recipients of Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) funds is a requirement of the U.S. Department of Housing and Urban Development (HUD). The Louisiana Office of Community Development – Disaster Recovery (LOCD-DR), along with its subrecipients, is responsible for implementing a monitoring program that ensures adherence to statutory and regulatory requirements. “[The subrecipient] is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve [the subrecipient] of this responsibility. [The subrecipient] is responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise....”<sup>1</sup>

Federal Regulations:

<sup>1</sup> [24 CFR 570.501\(b\)](#)

This chapter outlines the framework and responsibilities for monitoring subrecipients.

It details how subrecipients will be monitored by LOCD-DR and serves as a guide for subrecipients to monitor their subrecipients by outlining key practices and regulatory requirements. This chapter provides information to help subrecipients establish monitoring processes, address deficiencies, and implement corrective actions as needed, supporting compliance with federal funding requirements and the achievement of program goals.

The methodology and tools described within this chapter provide guidance to subrecipients in developing their own Monitoring Plan and tools. The LOCD-DR Monitoring Plan closely mirrors the concepts described herein. Once the subrecipient understands the concepts within this chapter, it should develop a Monitoring Plan to review compliance with the requirements.

A sample Monitoring Plan is included as Exhibit 11-1. Exhibits 11-2 through 11-5 may be tailored for monitoring any state or local subrecipient’s (parish or municipality) implemented programs and projects, or subrecipients of subrecipients.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Binding Agreement:** An agreement that, pursuant to state and HUD regulations, obligates the parties to expend or distribute federal funds and undertake responsibilities as set forth in the agreement.
2. **Concern:** A deficiency in program performance, which should be brought to the attention of the program participant, and if not properly addressed, could become a finding. Sanctions are not issued for concerns; however, specific corrective actions for improvement may be issued.
3. **Contract Administrator:** The individual responsible for ensuring that services outlined in the contract are performed adequately, within a specific timeframe, and within budget.
4. **Contractor:** An entity competitively selected to provide clearly specified goods or services. The contract price is established through the procurement process. CDBG-DR and CDBG-MIT funds are paid to the contractor as compensation for the satisfactory provision of the goods and services as specified in the contract.
5. **Corrective Action:** Required steps to be taken to resolve findings.
6. **Deficiency:** An inadequacy based on a statutory, regulatory, or program requirement.
7. **Finding(s):** A violation of a statutory, regulatory, or program requirement for which sanctions or other required corrective actions are issued.
8. **Monitored Entity:** The entity that is evaluated during a Monitoring Review.
9. **Project/Program:** The housing, infrastructure, economic development, or planning endeavor undertaken by the subrecipient.
10. **Recommendation:** A specific course of action issued for concerns that details areas of improvement in program performance.
11. **Subrecipient:** The parish or municipality that has a binding agreement in place with the LOCD-DR to administer the CDBG-DR and CDBG-MIT project(s) and/or program(s).

Subrecipients can also be a public or private non-profit agency, authority, or organization that is provided with CDBG-DR and CDBG-MIT funds through a state or local subrecipient for use in carrying out agreed-upon eligible activities.

### 3. Monitoring Roles and Responsibilities

Monitoring is a responsibility shared by the LOCD-DR and its subrecipients. These entities must conduct thorough monitoring activities to ensure adherence to executed agreements, compliance with applicable state and federal laws and regulations, and alignment with established project or program performance criteria.

The monitoring responsibilities for each party are outlined in Table 1 below, providing a detailed description of the roles and obligations necessary to maintain compliance and achieve program objectives. This collaborative effort is essential for ensuring the proper management and effectiveness of projects and programs funded through CDBG-DR and CDBG-MIT or other federal assistance.

**Table 1: Monitoring Responsibilities**

Monitor	Monitored Entity
<p><b>LOCD-DR</b></p>	<ul style="list-style-type: none"> <li>• Subrecipients, including a sample of the subrecipient’s projects</li> <li>• Program/Project administrators, contractors, and subcontractors</li> </ul>
<p><b>Subrecipient</b></p>	<ul style="list-style-type: none"> <li>• Subrecipient’s programs/projects</li> <li>• Subrecipient’s subrecipient, including a sample of the subrecipient's programs/projects</li> <li>• Program/Project administrators, contractors, and subcontractors</li> </ul>

### 4. LOCD-DR Monitoring Strategy

LOCD-DR staff may conduct either a desk review or on-site monitoring of the subrecipient at any time. These reviews may either be comprehensive—covering all aspects of the subrecipient’s program or targeted to specific areas of performance or compliance concern. Regardless of the

scope, the subrecipient is expected to fully cooperate by providing timely access to all relevant program records, files, and any other requested information. Monitoring activities will be guided by standardized tools and checklists, such as those included in Exhibits 11-2 and 11-3, to ensure consistency in evaluating subrecipient operations and project compliance.

#### **4.1 Monitoring Philosophy & Objectives**

LOCD-DR's monitoring strategy is grounded in proactive oversight, early engagement, and risk mitigation. The primary objectives are:

- Ensure compliance with CDBG-DR, CDBG-MIT, and other applicable requirements.
- Provide timely technical assistance to improve subrecipient performance.
- Detect and resolve deficiencies early.
- Promote transparency, accountability, and successful project outcomes.

#### **4.2 Core Monitoring Strategy**

- **Start Early**
  - Initiate monitoring activities in the early stages of project implementation.
  - Use the startup phase to provide guidance and clarify compliance expectations.
- **Deliver Technical Assistance**
  - Offer hands-on support and clarify regulatory requirements.
  - Use findings from desk and on-site reviews to tailor assistance.
- **Conduct Follow-Up Reviews**
  - Re-assess areas of concern identified in initial reviews.
  - Confirm that corrective actions have been implemented effectively.
- **Maintain Ongoing Oversight**
  - Continue monitoring through project/program closeout.
  - Adapt frequency and scope based on risk and past performance.

### 4.3 Risk-Based Prioritization

- **Categorize Risk**
  - Classify projects as high, medium, or low risk using criteria such as funding size, past performance, complexity, and capacity.
- **Special Attention to High-Risk Projects**
  - Provide early, intensive technical assistance.
  - Increase review frequency and depth.
- **Allocate Resources Strategically**
  - Focus staff time and effort on projects with greater compliance risk or programmatic impact.

### 4.4 Overview of the LOCD-DR Monitoring Process

1. **Send Notification Letter:** The subrecipient is generally notified 30 days before the review begins.
2. **Hold Entrance Conference:** An entrance conference is conducted to initiate the monitoring process.
3. **Execute the Review:** The review assesses compliance and performance.
4. **Discuss Findings at an Exit Conference:** Upon completion, findings are discussed in an exit conference, ideally with the authorized representative present.

5. **Provide a Monitoring Report Letter:** A written report is sent to the subrecipient summarizing the review outcomes.
6. **Provide Technical Assistance:** Support is offered, as needed, to address findings or concerns.

#### 4.5 Follow-Up and Reporting

During the review, LOCD-DR staff will work on-site with the subrecipient to resolve any identified issues where possible. If problems cannot be addressed during the review, they will be documented in a Monitoring Report Letter. This letter will outline the following:

1. **Areas of Merit:** Positive aspects or strengths identified during the review.
2. **Concerns:** Deficiencies in program performance that are not tied to statutory, regulatory, or program requirements. Concerns typically do not result in sanctions.
3. **Findings:** Violations of statutory, regulatory, or program requirements that require corrective actions or may result in sanctions.

#### 4.6 Notice of Deficiency (Finding)

If findings are identified during LOCD-DR's monitoring activities, a structured corrective action is initiated to address and resolve the finding. The first step involves issuing a Notice of Finding(s) to the subrecipient via a Monitoring Report. This report will:

1. Clearly and objectively describe the identified deficiency.
2. Outline the specific corrective actions that the subrecipient must take to remedy the finding.
3. Provide a deadline for completing the corrective actions.
4. Explain the consequences of failing to remedy the finding, including potential administrative sanctions or legal actions.

#### 4.7 Sanctions

If a finding remains unresolved within the prescribed timeframe, LOCD-DR will impose one or more sanctions. The choice of sanction(s) will depend on the objectives outlined in the

program, the type of deficiency, and its severity. Possible sanctions include, but are not limited to, the following:

1. **Required Administrative Change**

*Example:* If a consultant administering the program is performing poorly but the subrecipient retains the capacity to administer the grant, the subrecipient may be required to replace the consultant with a more qualified individual or organization.

2. **Suspension of Grant Payments**

Payments to the subrecipient may be temporarily halted until the deficiency is resolved.

3. **Reduction of Grant Amount**

The subrecipient's funding may be reduced to reflect the unresolved finding or concern.

4. **Termination of Grant**

In severe cases, the grant may be terminated entirely.

## **4.8 Purpose of Sanctions**

The imposition of sanctions serves to:

1. **Encourage Prompt Resolution of Deficiencies**

Sanctions motivate subrecipients to take timely and appropriate action to resolve identified findings or concerns.

2. **Ensure Compliance with Program Requirements and Objectives**

Sanctions reinforce adherence to federal, state, and program-specific regulations, ensuring the proper use of CDBG-DR and CDBG-MIT funds.

3. **Protect the Integrity of the CDBG-DR and CDBG-MIT Programs**

Sanctions safeguard the program from misuse, fraud, or inefficiency, ensuring that resources are used effectively and responsibly.

4. **Require the Repayment of Disallowed Costs**

By mandating the repayment of ineligible or improperly used funds, sanctions ensure that public funds are restored and appropriately allocated.

#### 5. **Disqualify Non-Compliant Subrecipients from Future Funding**

Preventing repeat offenses by disqualifying non-compliant subrecipients from future CDBG-DR and CDBG-MIT funding protects the program and ensures the fair allocation of resources.

#### 6. **Pursue Legal Action for Persistent Non-Compliance**

In cases of severe or continued non-compliance, legal action by the state ensures the enforcement of regulations and the recovery of funds, demonstrating the seriousness of the program's accountability measures.

#### 7. **Escalate Sanctions for Unresolved Findings or Concerns**

If deficiencies remain unaddressed, additional sanctions or legal actions may be applied, emphasizing the critical importance of compliance and protecting federal and state interests.

### **4.9 Monitoring Report**

The Monitoring Report Letter becomes a formal part of the records maintained by LOCD-DR. As such, it is in the best interest of the subrecipient to minimize the number and scope of negative findings.

### **4.10 Response to Findings**

LOCD-DR typically allows the subrecipient 30 to 45 days to respond to any findings noted in the Monitoring Report Letter. During this period, the subrecipient must:

1. **Describe Corrective Actions:** Outline the steps taken to resolve the findings based on the recommendations provided by LOCD-DR staff.
2. **Provide Additional Information:** Submit any new information or clarification that may not have been reviewed during the monitoring visit.

Once the response is received, LOCD-DR staff will evaluate whether the corrective actions and/or additional information are sufficient to clear the findings or address any concerns or deficiencies. It is essential that all findings are resolved prior to program or project closeout to ensure compliance and avoid further findings or concerns.

#### 4.11 Monitoring Responsibility

LOCD-DR generally does not monitor programs or projects administered by a subrecipient's subrecipient. The responsibility for monitoring subrecipient programs lies with LOCD-DR's subrecipient. However, if LOCD-DR determines that a subrecipient has failed to perform adequate monitoring of its subrecipients, LOCD-DR may monitor a sample of the subrecipient's programs or projects.

## 5. Monitoring Tools

The monitoring tools included as exhibits in this manual are designed to guide monitors in conducting thorough and consistent reviews of subrecipients, contractors, projects, and programs. Each tool serves a specific purpose and is tailored to various monitoring scenarios.

### 5.1 Monitoring Tools Overview

#### 1. Core Checklist (Exhibit 11-2)

- a. **Purpose:** Evaluate the overarching compliance and administrative requirements across programs or subrecipients.
- b. **Focus Areas:**
  - i. Financial management systems.
  - ii. Record keeping.
  - iii. Policies and procedures adherence.
- c. **Application:** Applies broadly to core functions and compliance areas of the entity being monitored.

## 2. Project Checklist (Exhibit 11-3)

- a. **Purpose:** Focus on project-specific compliance, such as housing rehabilitation, infrastructure improvements, or public facilities projects.
- b. **Focus Areas:**
  - i. Project planning and implementation.
  - ii. Compliance with environmental reviews.
  - iii. Performance metrics and outcomes.
- c. **Application:** Tailored to individual projects to ensure adherence to programmatic and regulatory requirements.

## 3. Contract Administration Form (Exhibit 11-4)

- a. **Purpose:** Assess contract-specific activities, including procurement, oversight, and performance.
- b. **Focus Areas:**
  - i. Contractor selection and procurement processes.
  - ii. Contract terms and conditions compliance.
  - iii. Monitoring of contractor performance and deliverables.
- c. **Application:** Focuses on contracts and contracted entities to ensure compliance with relevant regulations and expectations.

## 5.2 Key Considerations for Monitoring

### Checklist Utilization

- 1. The activities of the contractor, subrecipient, project, or program determine which checklist sections are applicable.
- 2. Monitors should apply only the relevant portions of the checklists based on the scope of the review.

## **Contractors versus Subrecipients**

1. Contractors may not be subject to all of the same federal, state, local, and CDBG-DR and CDBG-MIT administrative requirements that apply to subrecipients.
2. Monitoring for contractors should focus on procurement, deliverables, and contractual obligations rather than broader program administration requirements.

## **5.3 Core Checklist**

The Core Checklist is a critical monitoring tool for evaluating compliance, administrative effectiveness, and the readiness of subrecipients in implementing CDBG-DR and CDBG-MIT programs. Both the subrecipient and LOCD-DR use the Core Checklist to ensure program and regulatory compliance at all levels.

## **5.4 Primary Functions of Core Checklist**

1. **Policies and Procedures Review**
  - a. Determine whether policies and procedures meet minimum standards for compliance with HUD, state, and local regulations.
  - b. Evaluate the clarity, comprehensiveness, and implementation of these policies.
2. **Financial Management System Validation**
  - a. Verify the adequacy of financial controls and systems to ensure proper use and tracking of funds.
3. **Civil Rights Compliance**
  - a. Confirm adherence to civil rights requirements, including nondiscrimination and equal opportunity provisions.

## **5.5 Core Checklist Review Areas**

1. **Financial Management Policies and Procedures**
  - a. Ensure that the entity has documented policies addressing the following:
    - i. Budgeting.
    - ii. Accounting systems.
    - iii. Internal controls.
    - iv. Cash management.

- b. Financial reporting:
  - i. Validate compliance with standards.

## 2. Procurement Policies and Procedures

- a. Confirm that procurement policies are consistent with federal, state, and local requirements, including the following:
  - i. Open and competitive bidding.
  - ii. Conflict-of-interest provisions.
  - iii. Cost reasonableness analysis.
- b. Review supporting documentation for recent procurements.

## 3. Contracting Policies and Procedures

- a. Assess the adequacy of policies for the following:
  - i. Drafting and executing contracts.
  - ii. Managing contractor performance.
  - iii. Ensuring compliance with federal and state contracting regulations.

## 4. Monitoring Policies and Procedures

- a. Verify that monitoring policies are in place to:
  - i. Identify and address compliance risks.
  - ii. Provide oversight of contractors and subrecipients.
  - iii. Ensure timely corrective actions when deficiencies are identified.

## 5. Financial Management System Validation

- a. Test the reliability of financial systems, including the following:
  - i. Segregation of duties.
  - ii. Timeliness and accuracy of financial reporting.
  - iii. Audit trails for expenditures.

## 6. Civil Rights Compliance

- a. Review policies and practices to ensure that they align with civil rights laws, including the following:
  - i. [Americans with Disabilities Act \(ADA\)](#).
  - ii. [Title VI of the Civil Rights Act of 1964](#).

- iii. [Section 504 of the Rehabilitation Act](#).
- b. Check for public notices, nondiscrimination policies, and outreach to diverse populations.

## 5.6 Using the Core Checklist for Technical Assistance

**Early Identification:** Use the Policies and Procedures sections to identify gaps or areas where technical assistance may be required early in program or project implementation.

**Action Plans:** Develop action plans or targeted training to address deficiencies and improve compliance.

## 5.7 Project Checklist

The Project Checklist is an essential tool used to monitor compliance for projects funded under CDBG-DR and CDBG-MIT programs. It serves to ensure that all projects meet programmatic and regulatory requirements prior to closeout. This checklist can be used for both desk reviews and on-site reviews, with the flexibility to adapt its sections based on the activities and contracts associated with each project.

## 5.8 Key Features of the Project Checklist

**Compliance Areas Reviewed:** The checklist covers the following compliance areas:

1. **Citizen Participation:** Review public outreach and involvement in the project.
2. **Financial Management:** Evaluate financial controls and fund utilization
3. **Procurement:** Assess procurement processes and documentation
4. **Contracting:** Review contract terms and contractor performance.
5. **Labor:** Examine compliance with labor laws, including the Davis-Bacon Act.
6. **Civil Rights:** Verify nondiscrimination and equal opportunity compliance.
7. **Environmental Review:** Confirm that environmental regulations are met.
8. **Acquisition and Relocation:** Review compliance with the Uniform Relocation Assistance Act.
9. **Property Management:** Assess the management and disposition of program assets.

10. **Monitoring:** Verify ongoing oversight and risk mitigation.
11. **Lead-Based Paint, Asbestos, and Mold:** Review environmental health and safety compliance.
12. **National Objective and Eligible Activities:** Confirm that the project aligns with HUD's National Objectives and eligible use requirements.

## 5.9 Selecting a Sample of Projects for Review

LOCD-DR should select a representative sample of the subrecipient's projects for review using the following guidelines:

1. **Minimum Sample Size**
  - a. At least four subrecipient projects should be reviewed.
  - b. If the subrecipient administers four or fewer projects, all projects should be reviewed.
2. **Diverse Program Categories**
  - a. Select at least one project from each program activity category (housing, infrastructure, economic development, and planning) where feasible.
  - b. If a subrecipient does not have projects in all four categories, document the methodology for selecting the sample.
3. **Non-Random Selection for Additional Projects**
  - a. Include projects with the following:
    - i. High risk or expanded scope.
    - ii. Unresolved findings or concerns.
    - iii. Similar characteristics to projects with previously identified findings or concerns.
    - iv. Oversight by specific subrecipient staff.

#### 4. Random Selection Methods

- a. Use random sampling tools (e.g., Excel’s RAND function) to select a subset of projects from the population.

**Table 2: Example Sample Selection**

Subrecipient	Projects	Sample Selection
Subrecipient 1	3 Housing, 5 Infrastructure, 2 Planning	1 Housing, 2 Infrastructure, 1 Planning
Subrecipient 2	15 Infrastructure Projects	Select 4; broaden if deficiencies are revealed
Subrecipient 3	1 Housing Project	Review the 1 Housing Project/Program

### 5.10 Sampling Exceptions

**High-Risk/Unresolved Projects:** Projects with significant unresolved findings or concerns should be included in subsequent reviews.

**Inactive Projects:** Projects that have not started or have insufficient progress may be replaced in the sample.

### 5.11 Project Worksheets (Exhibit 11-3a)

**Purpose:** Used to document specific conclusions related to the following:

1. Procurement
2. Contracting
3. Labor compliance
4. Section 3 compliance

**Execution:** These worksheets support detailed assessments and provide the basis for findings and recommendations.

### 5.12 Ongoing Monitoring

1. As resources allow, continue to monitor additional projects from the subrecipient’s portfolio.

2. Ensure a different project is sampled with each review, except for high-risk projects with unresolved issues.

### **5.13 Contractor Sample**

For each project, the monitor must select and review contractors to assess the adequacy of the subrecipient's administrative systems. This process involves examining procurement, contracts, invoices, and other associated documentation. The guidelines below outline the contractor sampling process and its application to different scenarios.

### **5.14 Guidelines for Contractor Selection**

1. **Minimum Sample Size**
  - a. Two contractors per project should be reviewed.
  - b. If only one contractor is engaged, review that single contractor.
2. **Documentation of Selection Rationale**
  - a. Document the reasoning for selecting the specific contractors.
  - b. Factors influencing selection may include the following:
    - i. High-risk activities or unresolved deficiencies.
    - ii. Contractors with significant project roles or unique responsibilities.
3. **Subsequent Reviews**
  - a. If a project undergoes multiple reviews, select different contractors for each review cycle to ensure broader coverage.
4. **Expansion of Sample Size**
  - a. The monitor may include additional contractors if:
    - i. Initial testing reveals significant deficiencies.
    - ii. Retesting is required to confirm corrective actions.
5. **Projects Without Contractors**
  - a. For projects executed "in-house," review the subrecipient's internal activities.
  - b. Responses to the Project Worksheet should reflect the internal operations, records, and processes of the relevant division.

**Table 3: Example of Contractor Sampling**

Project	Contractors Engaged	Sampling Actions
<b>Project 1</b>	Contractor A, Contractor B, Contractor C	Select <b>two contractors</b> and execute the Project Worksheets.
<b>Project 2</b>	Contractor A	Execute the Project Worksheets for the <b>one contractor</b> .
<b>Project 3</b>	Public Works Division (In-House)	Execute the Project Worksheets by reviewing the <b>Public Works Division's records</b> .

### 5.15 Review Process

1. **Procurement Review**
  - a. Assess compliance with procurement policies.
  - b. Verify documentation of competitive bidding, cost analysis, and contractor selection.
2. **Contracts Review**
  - a. Ensure that contracts meet regulatory requirements, including the following:
    - i. Scope of work.
    - ii. Payment terms.
    - iii. Performance standards.
3. **Invoices and Financial Documentation**
  - a. Verify the proper documentation of invoices and payments.
  - b. Check for consistency with contract terms and approved budgets.
4. **Administrative Systems Testing**
  - a. Evaluate the subrecipient's processes for oversight, monitoring, and record keeping.

### 5.16 Key Considerations

**Diverse Sampling:** Ensure that selected contractors represent a range of project activities and risk levels.

**In-House Activities:** Adapt the review to focus on internal processes, documentation, and performance.

**Documentation:** Maintain thorough records of all sampling decisions, findings, and conclusions.

### 5.17 Selecting an Invoice Sample to Review

The Project Checklist includes a requirement to select a sample of invoices for each contractor being reviewed. The sample size is determined using Table 4, which aligns with the total population of invoices submitted. This ensures that the sample is representative and supports a thorough compliance verification of invoices.

**Table 4: Sample Size Guidelines**

Total Number of Invoices	Minimum Sample Size
> 200 invoices	65
100–199 invoices	20
50–99 invoices	10
20–49 invoices	5
< 20 invoices	3

### 5.18 Steps for Invoice Selection and Review

1. **Determine Population Size**
  - a. Identify the total number of invoices (or timesheet entries for in-house activities) submitted by the contractor.
2. **Determine Sample Size**
  - a. Use Table 4 to calculate the minimum number of invoices to be reviewed based on the population size.
3. **Select a Representative Sample**
  - a. Use a random selection method (e.g., Excel’s RAND function) to ensure unbiased sampling.
4. **Conduct the Review**
  - a. Verify that the selected invoices meet program requirements, including the following:

- i. Proper documentation
  - ii. Consistency with contract terms
  - iii. Evidence of approval and payment
- b. Check for any irregularities or deficiencies.
5. **Document Findings**
- a. Record observations for each invoice on the Project Worksheet.
  - b. Note any findings and recommend corrective actions, as necessary.

**Table 5: Invoice Sampling**

Project	Contractor	Population (invoices submitted)	Sample Size
Project 1	Contractor A	21 invoices	Select <b>5</b> invoices to review.
Project 2	Contractor C	51 invoices	Select 10 invoices to review.
Project 3	Contractor A	2 invoices	Review <b>both</b> invoices.
Project 4	Public Works Division (In House)	107 timesheet entries/receipts included in the subrecipient’s draw request	Review <b>20</b> timesheet entries/receipts.

### 5.19 Special Cases

**Small Populations (< 20 invoices):** Review all invoices if the population size is less than or equal to the sample size.

**In-House Projects:** Review timesheets, receipts, or other supporting documentation as if they were invoices to ensure proper internal controls.

### 5.20 Contractor Administration

Subrecipients are required to maintain a contract administration system to ensure that contractors comply with the terms, conditions, and specifications of their contracts or purchase

orders.<sup>1</sup> This is essential for maintaining program integrity and achieving compliance with federal regulations. See Chapter 4: Procurement of the Grant Implementation Manual.

Federal Regulations:

[<sup>1</sup> 2 CFR 200.318-200.327](#)

## 5.21 Key Requirements for Contractor Compliance

### 1. Maintain a Contract Administration System

- a. Subrecipients must establish and implement systems to:
  - i. Monitor contractor performance.
  - ii. Verify compliance with contract terms, conditions, and specifications.
  - iii. Ensure that deliverables are provided as outlined in the contract.

### 2. Review of Contractors

- a. Contractors implementing specific projects (e.g., construction contracts) are reviewed during the Project Review.
- b. Consultants or vendors engaged for multiple projects are tracked using the Contract Administration Form (Exhibit 11-4).

### 3. Documentation

- a. Use the Contract Administration Form to:
  - i. Track contractor performance and compliance over time.
  - ii. Document deliverables, payments, and adherence to contract terms.
  - iii. Record any issues, delays, or deviations from the contract.

## 5.22 Using the Contract Administration Form (Exhibit 11-4)

### 1. Purpose

- a. Provides a standardized format for tracking contractor performance and ensuring compliance with executed contracts.

### 2. Key Sections

- a. **Contract Information:** Includes contractor's name, contract number, start/end dates, and scope of work.

- b. **Performance Tracking:** Documents milestones, deliverables, and timelines.
  - c. **Payment Tracking:** Records invoices submitted, payments made, and remaining balances.
  - d. **Compliance Checks:** Tracks adherence to contract specifications, applicable regulations, and performance standards.
  - e. **Issues and Resolutions:** Documents any non-compliance, corrective actions, or unresolved concerns.
3. **Application**
- a. **For Project-Specific Contracts:** Incorporate into the Project Reviews to assess contractor compliance.
  - b. **For Multi-Project Consultants or Vendors:** Use to monitor long-term performance across multiple projects or services.

### 5.23 Best Practices for Contract Administration

- 1. **Regular Monitoring**
  - a. Conduct periodic reviews of contractor performance against contract terms.
  - b. Include site visits, desk reviews, or interviews as applicable.
- 2. **Clear Communication**
  - a. Maintain open communication with contractors regarding expectations, timelines, and performance metrics.
  - b. Provide feedback and address issues promptly to prevent escalation.
- 3. **Record Keeping**
  - a. Ensure that all contract-related documentation is up-to-date and accessible.
  - b. Store copies of contracts, amendments, performance reviews, and correspondence in a centralized system.
- 4. **Escalation Protocols**
  - a. Develop protocols for addressing non-compliance or performance deficiencies.
  - b. Escalate unresolved issues to appropriate management or oversight entities.

## 6. Recommended Subrecipient Monitoring Methodology

Each subrecipient is required to implement a structured approach to monitor their own subrecipients, consultants, contractors, and program activities. This includes ensuring compliance with CDBG-DR and CDBG-MIT requirements.

Subrecipient monitoring responsibilities include:

- Developing a Monitoring Plan (see Exhibit 11-1).
- Performing desk reviews and on-site monitoring of a sample of subrecipient projects.
- Documenting findings and providing technical assistance.
- Retaining all monitoring documentation for audit and LOCD-DR review.

### 6.1 Monitoring Process

- **Designate a Monitoring Coordinator:** Assign a staff member or consultant responsible for overseeing all monitoring activities and ensuring adherence to the Monitoring Plan.
- **Set a Monitoring Schedule:** Develop a schedule that ensures all projects and subrecipients are reviewed at appropriate intervals.
- **Use the Checklists to monitor:** Apply the LOCD-DR Compliance Monitoring Core Checklist (Exhibit 11-2) and Project Checklist (Exhibit 11-3) to review programmatic, financial, and regulatory compliance.
- **Draft Monitoring Report:** Document the results of each monitoring visit, including findings, concerns, and recommendations. Distribute the Monitoring Report and keep it on file for LOCD-DR review.
- **Provide Technical Assistance and Follow-Ups as Needed:** Offer training, written guidance, or other forms of support to address deficiencies. Ensure all corrective actions are tracked and completed in a timely manner.

- Continue the cycle for each project or program to ensure ongoing compliance and continuous improvement.

## **6.2 Subrecipient Monitoring Coordinator**

To ensure effective oversight of federally funded activities, each subrecipient must designate a Monitoring Coordinator to lead the monitoring effort and ensure alignment with the subrecipient’s Monitoring Plan (see Exhibit 11-1). The monitoring process involves multiple key roles, including the Monitoring Coordinator, the Monitor, and—if applicable—an Administrative Consultant and Contract Administrator. This section outlines the responsibilities of each role in maintaining compliance and executing successful monitoring.

## **6.3 Responsibilities of the Monitoring Coordinator**

The Monitoring Coordinator plays a pivotal role in ensuring that all monitoring activities are executed efficiently, timely, and in compliance with federal, state, and program-specific requirements. Responsibilities include:

- **Monitoring Oversight:** Ensure subrecipients, contractors, and consultants are monitored promptly following contract execution.
- **Schedule Management and Planning:** Maintain a comprehensive monitoring calendar that aligns with the Monitoring Plan and ensures coverage of all programs and projects.
- **Documentation and Tracking:** Ensure that all monitoring activities—including site visits, desk reviews, and corrective actions—are properly recorded and filed.
- **Escalation of Severe Issues:** Promptly notify LOCD-DR of any severe concerns or deficiencies discovered during reviews.
- **Technical Assistance Coordination:** Engage LOCD-DR for additional support or clarification, particularly when addressing complex or recurring issues.
- **Monitoring Plan Compliance:** Confirm that all reviews adhere to the approved Monitoring Plan’s scope, methodology, and frequency requirements.

## **6.4 Monitoring Administrative Consultants**

When a subrecipient contracts with an administrative consultant to serve as the Monitoring Coordinator, the subrecipient must appoint a Contract Administrator to directly oversee the consultant's activities. This ensures accountability, compliance, and effective execution of the Monitoring Plan under third-party arrangements.

## **6.5 Responsibilities of the Monitor**

The monitor plays a key role in the monitoring process and is responsible for the following activities:

1. Executing Monitoring Checklists
  - a. Utilize standardized checklists to ensure thorough and consistent evaluation of compliance, performance, and capacity.
2. Identifying Findings or Concerns and Corrective Actions
  - a. Pinpoint deficiencies or areas requiring improvement.
  - b. Determine the necessary corrective actions or technical assistance needed to address the identified findings or concerns.
3. Confirming Performance and Corrective Action
  - a. Verify the performance of the monitored entity.
  - b. Recommend appropriate corrective actions and confirm the development and implementation of a corrective action plan.
  - c. Conduct follow-up activities to ensure the resolution of deficiencies.
4. Drafting the Monitoring Report
  - a. Prepare a detailed Monitoring Report summarizing findings, corrective actions, and any recommendations.
  - b. Distribute the report to all applicable parties, including the subrecipient and LOCD-DR, as required.
5. Maintaining Documentation

- a. Ensure that all monitoring efforts, findings, corrective actions, and follow-up activities are thoroughly documented and retained within the project file.

## **6.6 Monitoring Prioritization and Scheduling**

HUD guidance and LOCD-DR experience indicate that activities managed by subrecipients present elevated risk due to the potential for noncompliance, performance issues, or insufficient oversight. Therefore, all subrecipient-administered programs and projects should be classified as high risk and prioritized accordingly in the monitoring schedule.

To ensure compliance and program success:

- **Risk-Based Scheduling:** Subrecipients must prioritize which programs or projects receive earlier and more frequent reviews.
- **Minimum Review Requirement:** At least one on-site review is required for each project or program prior to closeout. This review should verify compliance, assess program performance, and resolve any outstanding concerns.
- **Ongoing Oversight:** Additional desk reviews or technical assistance may be conducted throughout the program lifecycle based on project complexity, dollar amount, or risk level.

## **6.7 Monitoring Approach**

Subrecipients must prioritize oversight and initiate monitoring promptly after executing a binding agreement with their subrecipients. The primary goals of this initial review are to:

- Confirm the subrecipient's early performance and compliance, and
- Identify technical assistance needs to proactively address potential challenges.

## **6.8 Monitoring Tools**

To ensure consistency and thoroughness in the subrecipient monitoring process, the following tools should be utilized:

- **Core Checklist (Exhibit 11-2):** This checklist is designed to facilitate the initial review of subrecipients, focusing on compliance, performance, and operational readiness.

- **Project Checklist (Exhibit 11-3):** After completing the initial review using the Core Checklist, subrecipients should monitor a sample of their subrecipients' projects to assess project-specific compliance and performance.

## 6.9 Prioritizing On-Site Reviews

The subrecipient should prioritize on-site reviews based on project complexity, funding amount, and the potential for compliance challenges. Projects involving construction, multiple contractors, or large budgets should receive earlier and more frequent monitoring attention. While all projects require monitoring, emphasis should be placed on programs or activities that are more administratively complex or have historically presented challenges.

## 6.10 Performance Monitoring

The complexity and volume of projects managed by a single entity often create challenges in effective planning and implementation. Without sufficient oversight and strategic planning, projects may take years to complete after initial approval. To address these challenges, subrecipients are encouraged to adopt performance-based strategies to streamline project execution and improve outcomes.

### Key Challenges

1. **Numerous and Diverse Projects:** Managing multiple projects with varying scopes and requirements demands significant coordination.
2. **Delays Due to Insufficient Planning:** A lack of well-defined goals and oversight can result in extended timelines and stalled progress.

### Recommendations for Improvement

1. **Establish Goals and Timelines**
  - a. Define clear and achievable objectives for each project.
  - b. Develop project-specific timelines with milestones to track progress.
2. **Implement Performance Measures**
  - a. Identify key performance indicators to evaluate project efficiency, resource utilization, and milestone achievement.

- b. Use these measures to assess progress regularly and make data-driven adjustments.

### 3. Monitor and Track Progress

- a. Regularly review each project's performance against its goals.
- b. Document and address challenges or delays to ensure that projects remain on track.

## Benefits of Performance Measurement

1. **Improved Oversight:** Provides transparency and accountability throughout the project life cycle.
2. **Timely Decision-Making:** Enables proactive identification of issues, allowing for timely intervention.
3. **Enhanced Program Capacity:** Strengthens the ability to manage complex projects effectively, ensuring that resources are allocated efficiently.

## 7. Record Keeping

All monitoring efforts must be documented to ensure compliance and accountability. These records must be maintained in the appropriate file corresponding to the subrecipient, project, or program being monitored. Proper documentation supports transparency and facilitates future reviews, audits, or evaluations.

### 7.1 Key Requirements

#### Maintain Comprehensive Records

1. All monitoring efforts, including reports, findings, corrective actions, and follow-ups, must be documented thoroughly.
2. Records should include detailed observations, supporting evidence, and conclusions drawn during the monitoring process.

#### File Organization

1. Documentation should be stored in the applicable subrecipient, project, or program file.
2. Each file must be clearly labeled and readily accessible for monitoring or audit purposes.

**Refer to Chapter 3: Records Management**

1. The Records Management chapter provides detailed guidance on records management practices, including the following:
  - a. Required retention periods.
  - b. File organization standards.
  - c. Access and confidentiality protocols.

## 8. LOCD-DR Exhibits

Exhibit	Description
Exhibit 11-1	Sample Subrecipient Monitoring Plan
Exhibit 11-2	Compliance Monitoring Core Checklist Template
Exhibit 11-3	Compliance Monitoring Project Checklist Template
Exhibit 11-3a	Supplemental Worksheets for Project Checklist
Exhibit 11-4	Sample Contract Administration Form
Exhibit 11-5	Monitoring Report Template
Exhibit 11-6	HUD Office of Community Planning and Development (CPD) Green Building Retrofit Checklist Template

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 12: Property Management



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

If the Community Development Block Grant – Disaster Recovery (CDBG-DR) or Community Development Block Grant – Mitigation (CDBG-MIT) funds are used to acquire real or personal property, the subrecipient is responsible for ensuring the following:

- The property continues to be used for its intended and approved purpose.
- Proper records are maintained to keep track of the property.
- Steps are taken to maintain the property.
- If the property is sold, the Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) is reimbursed for the CDBG-DR or CDBG-MIT share of the property's value.

Subrecipients must tag and log all property valued greater than \$1,000 and update inventory records. (see Exhibit 12-1 for an example of a property control tracking log).

This policy about the ownership, management, and disposition of property is complicated by two facts: First, the rules about property management and disposition differ slightly, depending on whether a subrecipient is a public sector entity. (The rules are generally more explicit for governmental entities). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property such as copyrights).

This chapter outlines the rules that subrecipients must follow regarding the ownership, management, and disposition of real and personal property. Despite the differences, several key themes that are applicable to most property should be emphasized:

- Subrecipients may only acquire property with CDBG-DR or CDBG-MIT funds for a specific purpose that must be approved by LOCD-DR and made part of the subrecipient's Cooperative Endeavor Agreement (CEA).
- Subrecipients must continue to use the property for the approved purpose.
  - In the case of personal property, this is generally for as long as it is needed if the subrecipient organization owns it and the property is needed for the CDBG-DR or CDBG-MIT activity.

- In the case of real property (acquired or improved with CDBG-DR or CDBG-MIT funds in excess of \$25,000), this is generally for at least five years following the expiration of the Subrecipient Agreement.
- If the property is owned, subrecipients must maintain accurate records for the property (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, other inventory data).
- Subrecipients must control the use of the property in accordance with its intended purpose and take care to protect it (i.e., take adequate steps to prevent damage, theft, or loss).
- If the property is no longer needed, subrecipients must dispose of the property according to specific rules (e.g., paying back LOCD-DR, accounting for program income).

### 1.1 Regulations

The federal requirements related to property are organized according to title (ownership), use, and disposition. In general, the subrecipient's property management system must provide for the following:

- Keeping accurate records.
- Conducting regular inventories.
- Providing adequate maintenance and control.
- Ensuring proper sales procedures. Subrecipients must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

The following table summarizes specific sections of the regulations and how they apply to particular categories of property and shows the relevant regulations that affect its ownership, use, and disposition. Subrecipients that were awarded CDBG-DR funds prior to December 26, 2014, should follow [24 Code of Federal Regulations \(CFR\) 85](#). Otherwise, follow [2 CFR 200](#).

**Table 1: Rules for Property Management and Disposition**

Property Management and Disposition Regulations 24 CFR 570.503—all subrecipients (subs)  2 CFR Part 200 Subpart D (200.310 through 200.316)	Real Property (Acquired with CDBG funds)	Personal Property Acquired with CDBG funds		
		Tangible		Intangible
		Nonexpendable	Expendable	
<i>Typical Example</i>	<i>Land/Buildings</i>	<i>Cars/Equipment</i>	<i>Office Supplies</i>	<i>Copyrights</i>
Ownership	See property acquisition, <a href="#">24 CFR 570.201(a)and(c)</a> , <a href="#">24 CFR 570.202</a> , <a href="#">24 CFR 570.203(a)</a>	Vested in subs  Post 12/26/2014: <a href="#">2 CFR 200.313(a) and (b)</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.32</a> <a href="#">24 CFR 84.34</a>	Vested in subs  Post 12/26/2014: <a href="#">2 CFR 200.314</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.33</a> <a href="#">24 CFR 84.35</a>	Nonexclusive license to govt.  Post 12/26/2014: <a href="#">2 CFR 200.315(b)</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.34</a> <a href="#">24 CFR 84.36</a>
Use & Management	<a href="#">24 CFR 570.505</a>  governs subrecipients; subrecipients follow 503(b)(7) *	Post 12/26/2014: <a href="#">2 CFR 200.313(c) and (d)</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.32</a> <a href="#">24 CFR 84.34</a>	Post 12/26/2014: <a href="#">2 CFR 200.314</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.33</a> <a href="#">24 CFR 84.35</a>	
Disposition	<a href="#">24 CFR 70.503(b)(7)</a>	Generally, fair-market value or proceeds returned to subrecipient; with subrecipient approval, proceeds retained as program income  Post 12/26/2014: <a href="#">2 CFR 200.313(e) and (f)</a>	Residual inventories  Post 12/26/2014: <a href="#">2 CFR 200.314</a>  Prior to 12/26/2014: <a href="#">24 CFR 85.33</a> <a href="#">24 CFR 84.35</a>	Nonexclusive license to use remains with govt.

Property Management and Disposition Regulations 24 CFR 570.503—all subrecipients (subs)  2 CFR Part 200 Subpart D (200.310 through 200.316)	Real Property (Acquired with CDBG funds)	Personal Property Acquired with CDBG funds		
		Tangible		Intangible
		Nonexpendable	Expendable	
<i>Typical Example</i>	<i>Land/Buildings</i>	<i>Cars/Equipment</i>	<i>Office Supplies</i>	<i>Copyrights</i>
		Prior to 12/26/2014: <a href="#">24 CFR 85.32</a> and <a href="#">24 CFR 570.502(a)(8)</a> <a href="#">24 CFR 84.34</a> as modified by <a href="#">570.502(b)(3)(vi)</a>		

\* [570.501\(b\)](#) requires that units of general local government participating with, or as part of, an urban county, or as part of a metropolitan city, follow the same requirements as are applicable to grantees/subrecipients, except that the 5-year period identified under [570.503\(b\)\(7\)\(i\)](#) begins with the date that the unit of general local government is no longer considered by HUD to be a part of the urban county or metropolitan city, instead of the date that the subrecipient agreement expires.

## 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Expendable personal property:** All tangible personal property other than non-expendable personal property.
2. **Non-expendable personal property:** Tangible personal property that has a useful life of more than 1 year and an acquisition cost of \$300 or more per unit.
3. **Personal property:** Any kind of property other than real property. Personal property can be tangible (e.g., supplies, furniture, equipment) or intangible (e.g., copyrights, patents, inventions).
4. **Program income:** Gross income received by the subrecipient directly generated from the use of CDBG-DR or CDBG-MIT funds or matching contributions.
5. **Real property:** Land, including all natural resources and the permanent buildings on it.

### 3. Real Property

Subrecipients' CEAs must explicitly define the intended use of any real property acquired or improved with CDBG-DR or CDBG-MIT funds exceeding \$25,000.

The following conditions apply to such real property:<sup>1</sup>

Federal Regulations:

<sup>1</sup> [24 CFR 570.503\(b\)\(7\)](#)

- It must continue to meet one of the CDBG-DR or CDBG-MIT program's National Objectives for at least five years following the expiration of the CEA (or longer if specified in the CEA by LOCD-DR).
- If a National Objective is not met within this timeframe, subrecipients must reimburse LOCD-DR for the current fair market value of the property, less any value attributable to non-CDBG funds.
- In addition, when subrecipients acquire or improve real property with CDBG-DR or CDBG-MIT funds exceeding \$25,000, subrecipients are prohibited from altering the use or planned use of the property (including its intended beneficiaries) without first notifying affected citizens, providing them with an opportunity to comment, and determining one of the following:
  - The proposed new use fulfills a CDBG National Objective and it does not provide for the general conduct of government.
  - The proposed new use is deemed appropriate after consulting with affected citizens but does not meet a National Objective. In this case, subrecipients must reimburse the CDBG-DR or CDBG-MIT program for the current fair market value of the property, less the portion of the value attributable to non-CDBG funds used in the acquisition or improvements.

The use of real property for programs under LOCD-DR's jurisdiction is governed by [24 CFR 570.505](#).<sup>2</sup>

Federal Regulations:

<sup>2</sup> [24 CFR 570.505](#)

**NOTE: Property acquired through a Buyout Program is subject to a perpetual Conservation Servitude that runs with the land. This servitude permanently restricts the property's use in order to protect natural floodplain values and preserve it as open space.**

## **4. Personal Property – Equipment**

### **4.1 Title**

The title to equipment that subrecipients have acquired with CDBG-DR or CDBG-MIT funds is vested in a subrecipient's organization, subject to the conditions described in Subsection 4.2 below.

### **4.2 Use**

Subrecipients must use equipment purchased with CDBG-DR or CDBG-MIT funds, or other forms of federal assistance, primarily for the program or project for which it was originally acquired, as long as the equipment is needed. This requirement applies regardless of whether the program or project continues to receive federal funding.

Subrecipients must also make the equipment available for use in other projects or programs that are currently or were previously supported by federal funds, provided that such use does not interfere with the original project's work or objectives.

Additionally, subrecipients are strictly prohibited from using CDBG-DR or CDBG-MIT acquired equipment to provide services for a fee in a manner that creates unfair competition with private companies offering equivalent services, unless explicitly authorized by federal statute.

With the approval of LOCD-DR, subrecipients may also use equipment acquired using CDBG-DR or CDBG-MIT funds as a trade-in toward the acquisition of replacement property.

### **4.3 Disposition**

When subrecipients no longer need original or replacement equipment acquired with CDBG-DR or CDBG-MIT funds for the original project or program or for other activities currently or previously assisted with federal funds, subrecipients must either:

- Transfer the equipment to LOCD-DR for the CDBG-DR or CDBG-MIT program, or
- Retain the equipment only after compensation to LOCD-DR.<sup>1</sup>

Federal Regulations:

<sup>1</sup> [2 CFR 200.313\(e\)](#)

The following rules of disposition will apply to subrecipients:

- Subrecipients may retain, sell, or otherwise dispose of equipment with a current per-unit fair market value of less than \$10,000 (for subrecipients awarded after December 26, 2014) or \$5,000 (for subrecipients awarded prior to December 26, 2014) **after notice to LOCD-DR.**
- Subrecipients may retain or sell equipment with a current per-unit fair market value of \$10,000 (for subrecipients awarded after December 26, 2014) or \$5,000 (for subrecipients awarded prior to December 26, 2014) or more **after notice to LOCD-DR,** with LOCD-DR having the right to compensation in an amount equal to multiplying the current fair market value or the proceeds from the sale by the federal share (percentage) of the original acquisition price of the equipment.
- LOCD-DR reserves the right to transfer the title of the equipment to a federal agency or a third party to be used in other activities currently or previously supported by the agency.<sup>2</sup>
- In addition, in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income. For additional guidance on program income, see the following:
  - Chapter 5 – Financial Management
  - [24 CFR 570.502\(a\)\(6\)](#)
  - [24 CFR 570.504](#)

Federal Regulations:

<sup>2</sup> [2 CFR 200.313\(e\)\(3\)](#)

## 5. Personal Property – Supplies

### For awards made on or after December 26, 2014:

When a CEA or award from LOCD-DR is terminated, subrecipients must assess whether there is any residual inventory of unused supplies with a total aggregate fair market value exceeding \$10,000. If so, and if the supplies are not required for any other federally sponsored program or project, subrecipients may retain or sell the supplies. LOCD-DR is entitled to compensation in an amount calculated by multiplying the percentage of the CDBG-DR or CDBG-MIT contribution toward the cost of the original purchase by the current market value or proceeds from the sale.

The use of personal property for programs under LOCD-DR's jurisdiction is governed by [2 CFR 200.314](#).

### For awards made prior to December 26, 2014:

When a CEA or award from LOCD-DR is terminated, subrecipients must assess whether there is any residual inventory of unused supplies with a total aggregate fair market value exceeding \$5,000. If so, and if the supplies are not required for any other federally sponsored program or project, subrecipients must compensate the LOCD-DR for the share of such supplies that were acquired with CDBG-DR or CDBG-MIT funds.

## 6. Personal Property – Intangible

The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal government purposes, the copyright to any work developed with CDBG-DR or CDBG-MIT funds, and any rights that a subrecipient or a contractor purchases with CDBG-DR or CDBG-MIT support.<sup>1,2</sup>

### Federal Regulations:

<sup>1</sup> [2 CFR 200.315](#)

<sup>2</sup> [24 CFR 85.34](#)

## 7. Management Requirements

For equipment (including replacement equipment) acquired in whole or in part with CDBG-DR or CDBG-MIT funds, subrecipients must have procedures and control systems in place to:

- Keep adequate equipment records, which must include the following information:
  - Property description
  - Identification
  - Funding source (grant number)
  - Title holder
  - Acquisition date and cost
  - Federal share of the cost
  - Location, use, and condition
  - Unit acquisition cost
  - Disposition data
- Conduct a physical inventory of the property at least every two years,<sup>1</sup> with a reconciliation of the inventory results with the equipment records.
- Ensure adequate safeguards for preventing loss, damage, or theft of property.
- Maintain the equipment in good condition.

Federal Regulations:

<sup>1</sup> 2 CFR 200.313(d)(2)

To adequately manage all property, subrecipients must maintain all property details on the Property Control Tracker (see Exhibit 12-1 for the Property Control Tracker form).

## 8. LOCD-DR Exhibits

Exhibit	Description
Exhibit 12-1	LOCD-DR Property Control Tracker

# Louisiana Disaster Recovery and Mitigation Grant Implementation Manual

Chapter 13: Closeout



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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# 1. Introduction

Closing a project signifies that the Louisiana Office of Community Development – Disaster Recovery (LOCD-DR) has confirmed that all costs paid with Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT) funds are final, the work has been completed, and all responsibilities under the grant or Cooperative Endeavor Agreement (CEA), as well as any related laws and regulations, have been met.<sup>1</sup>

Federal Regulations:

<sup>1</sup>[24 CFR 570.489\(i\)](#)

All closeout documents must be submitted on time. LOCD-DR can only close out a project after all draw requests have been paid, all activities have been completed, and the National Objective has been met. For example, if the project funds a new sewage system, it cannot be closed out until households are connected to the system and it is fully operational.

# 2. Definitions

Refer to these definitions of terms used within this chapter:

1. **Activity Completion Report:** A report that tells LOCD-DR when an activity in the project has been completed and is ready to close.
2. **Audit:** A review to ensure that the project’s expenditures and activities follow the rules.
3. **Certificate of Completion:** A document which confirms that all work has been completed.
4. **Community Development Block Grant – Disaster Recovery (CDBG-DR):** A type of federal government grant used to help communities recover after disasters.
5. **Community Development Block Grant – Mitigation (CDBG-MIT):** A type of federal government grant that supports projects designed to reduce or eliminate the long-term risks associated with natural disasters.
6. **Cooperative Endeavor Agreement (CEA):** An agreement between LOCD-DR and subrecipients to carry out a project.

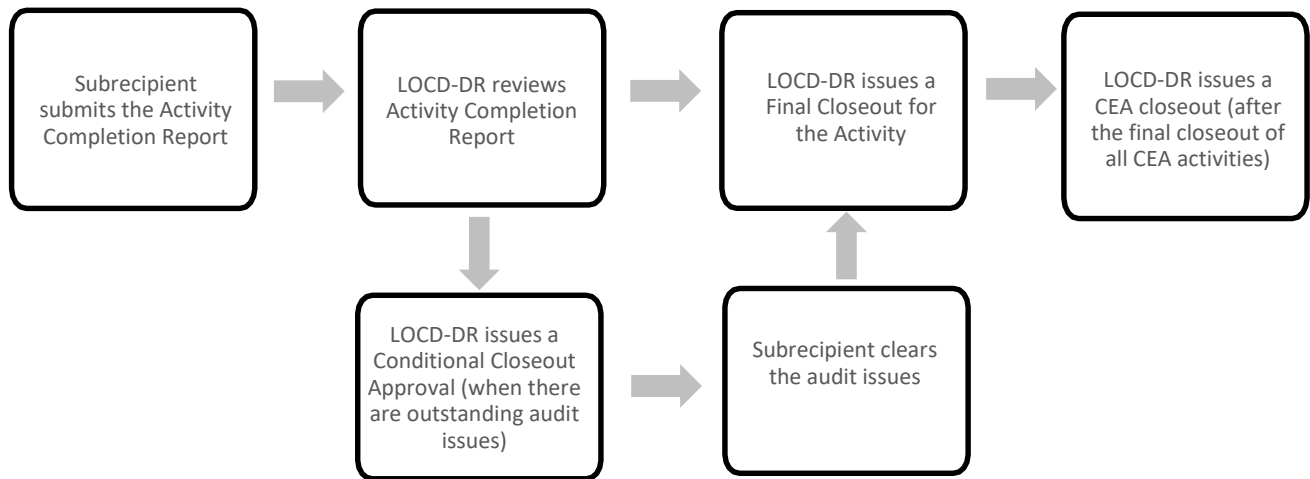
7. **De-Obligated Funds:** Money that was set aside for the project but is no longer needed or will be returned.
8. **Displacement:** When people or businesses are moved because of the project.
9. **Final Closeout Letter:** The letter which confirms that the project has been officially completed after all checks and reviews are finalized.
10. **Final Wage Compliance Report:** A report which shows that workers on the project were paid fairly in accordance with wage laws.
11. **National Objective:** The main goal of the project (e.g., helping low-income people or solving urgent community needs).
12. **Program Income:** Money made from the project (e.g., fees, rent, sale proceeds) that must be returned or used according to the rules.
13. **Section 3:** A rule that requires federally funded projects to expand economic opportunities for low-income people in and around the location of the project.
14. **Single Audit:** A review by the awarding agency to ensure that the project is following all rules required for projects that spend more than \$1,000,000 in federal funds during the fiscal year.
15. **Subrecipient:** An entity, organization, or group that receives CDBG-DR or CDBG-MIT funds to help cover the costs of the project.

### 3. Closeout Process

To initiate the closeout process, subrecipients must submit the required documents to LOCD-DR for review and approval. The closeout process consists of two stages:

1. Individual Activity Closeout
2. Subrecipient CEA Closeout

Figure 1: A high-level overview of the closeout process is shown in the diagram below.



In order to complete the necessary closeout documents, subrecipients must close out any subcontracts or subrecipient agreements associated with the program/activity and complete the financial settlement of any outstanding claims. Subcontractors should be advised to prepare their claims or invoices and submit them to the subrecipient within 30 days of completion of the activity.

### 3.1 Individual Activity Closeout

Subrecipients must submit an Activity Completion Report within 90 days of the completion of each activity. If there are multiple activities in a CEA, close out each one separately when they have been completed. Subrecipients must complete a Request for Project Amendment to reallocate any unused funds. The forms listed below may be found in Exhibit 13-1 and must be completed and submitted as part of the closeout package for each activity.

**Table 1: Closeout forms**

Activity Closeout Form	Description
Final Activity Performance Report (Exhibit 13-1a)	Summary sheet for the closed activity. This includes the eligible activity, National Objective, activity description, and the signature of the responsible party.

Activity Closeout Form	Description
Activity Beneficiary Forms (Exhibit 13-1c, i-iv)	Subrecipients must provide beneficiary information, including details on income level, race, ethnicity, area, jobs created or retained, and applicant data, if applicable.
Civil Rights Compliance Report – Displacement of Low- and Moderate-Income Households (Exhibit 13-1d)	Subrecipients must report on the impact of displacement caused by the activity being closed out, broken down by income levels and race.
Miscellaneous Information Form (Exhibit 13-1e)	Subrecipients must report any program income generated during the grant, including the source and amount of income, and whether it was retained by the subrecipient or returned to the state. It also includes information about property or equipment purchased with CDBG-DR and CDBG-MIT funds, land acquired or donated, and any construction subject to Davis-Bacon and Related Acts.
Section 3 Summary Report (Exhibit 13-1f)	Subrecipients must report on economic opportunities created by the CDBG-DR and CDBG-MIT funds for low- and very-low-income persons. This includes information about the total number of labor hours worked by all workers, Section 3 workers, and Targeted Section 3 workers, as well as efforts made to satisfy Section 3 obligations.
Certificate of Completion Final Statement of Cost/Activity Funds Balance (Exhibit 13-1g)	Subrecipients must report on the final statement of cost and activity funds balance. This includes details about the source and status of funds, final costs for various activity categories, and any unpaid costs or unsettled third-party claims. It also requires certification from the responsible official that all activities have been carried out in accordance with the activity application.

Activity Closeout Form	Description
Final Wage Compliance Report (Exhibit 13-1h)	Subrecipients must report contractor wage compliance with the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act, which includes wage underpayments and unresolved labor issues.
CDBG Equipment Inventory Form (Exhibit 13-1i)	If the answer to question no. 9 is “Yes” on the miscellaneous information form, subrecipients must report all property or equipment purchased with CDBG-DR and CDBG-MIT funds. It requires details such as the identification number, description, funding source, title holder, acquisition date and cost, federal share of cost, location, use, condition, and disposition date.

Subrecipients must follow these guidelines when completing the closeout forms:

1. List activities exactly as they appear in the contract or any approved project applications and amendments.
2. Provide the total amounts spent, including any other funding sources.
3. On all tables, ensure that the rows and columns of figures add up correctly.
4. Explain the methods used to determine the beneficiaries. For new water and sewer systems, the beneficiaries are the persons connected to the new system.
5. The responsible official must sign and date the following two forms before submitting them to LOCD-DR:
  - a. Final Activity Performance Report
  - b. Certificate of Completion Final Statement of Costs/Activity Funds Balance
6. Submit one copy of the closeout package to LOCD-DR at [DRU.Closeout@la.gov](mailto:DRU.Closeout@la.gov).

7. Use the Section 3 form in Exhibit 13-1 only for activity funds committed after November 30, 2020. If your activity or subcontractor had funds committed prior to this date for a Section 3 covered project, contact LOCD-DR.
8. Report all underpayments on the Final Wage Compliance Report, even if the restitution was paid.

**NOTE: LOCD-DR will return Activity Completion Reports that are incomplete or not signed by the authorized responsible official. Subrecipients must ensure that the report has been completed prior to submission to LOCD-DR. Incomplete reports will delay the closeout process.**

### **3.2 Conditional Closeout Approval**

LOCD-DR will issue a conditional closeout when the final required financial audit review is needed or when there are outstanding financial audit findings pending resolution. For example, if an activity is ready to close now but the subrecipient had expenditures that will not appear in their single audit until the 2025 audit comes out in early 2026, then LOCD-DR will issue a conditional closeout pending receipt and approval of the last required financial audit report.

### **3.3 Final Closeout Approval**

LOCD-DR will issue a final closeout letter to the subrecipient upon receipt and approval of the required audit(s) conducted in accordance with the Single Audit procedures identified in Chapter 5 of this Grant Implementation Manual, Section 11, or when LOCD-DR determines that a subrecipient is exempt from the Single Audit requirements. Prompt closeout of the activity is most desirable because LOCD-DR views it as an indicator of local capacity.

### **3.4 Subrecipient CEA Closeout**

After all activities in the CEA have been completed and closed and the CEA has expired or been terminated, LOCD-DR will close the CEA. Subrecipients are no longer required to submit a CEA Final Performance Report. Any remaining balance of CEA funds will be de-obligated at the time of closeout.

## 4. Disposition of Program Income

All program income must be returned to LOCD-DR. See Chapter 5: Financial Management, Subsection 9.9 for additional guidance regarding program income.

## 5. Disposition of Property

Before closing out the project, it is essential to properly dispose of all property acquired with grant funds:

1. **Disposition of Tangible Personal Property:** Subrecipients must account for all tangible personal property acquired with grant funds.
2. **Disposition of Real Property:** Any proceeds from the sale of real property acquired with grant funds after closeout must adhere to program income requirements.

For additional guidelines for the disposition of equipment, see Chapter 12: Property Management.

## 6. Grant Suspension and Termination

### 6.1 Suspension

When subrecipients fail to comply with the grant award stipulations, standards, or conditions of their grant, LOCD-DR may suspend the grant, withhold further payments, or prohibit further use of grant funds until the issue is resolved.

### 6.2 Termination

#### 6.2.1 Termination for Cause

LOCD-DR may terminate any activity, either partially or entirely, at any time before the date of completion, whenever it is determined that the subrecipient has failed to comply with the conditions of the grant. LOCD-DR shall promptly notify the recipient in writing of the termination, the reasons for the termination, and the effective date of the termination.

Payments made to the subrecipient, or a recovery by LOCD-DR under grants terminated for cause, shall be in accordance with the legal rights and liabilities of the parties. If the grant is terminated for this reason, LOCD-DR will not cover any costs, and the subrecipient must repay any funds already received.

### 6.2.2 Termination for Convenience

LOCD-DR or the subrecipient may terminate grants, either partially or entirely, when both parties agree that the continuation of the activity would not produce beneficial results to justify further expenditure of funds. The two parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The subrecipient shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. LOCD-DR will consider all circumstances under which an activity is to be terminated on a case-by-case basis to determine whether any eligible costs already incurred will be covered.

### 6.2.3 Termination Due to Unavailable Funding

The activity is contingent upon the appropriation and release of sufficient funds to LOCD-DR to fulfill the requirements of the grant. If the appropriate authorities fail to approve and provide an adequate budget to LOCD-DR to fulfill the requirements of the grant, the activity may be terminated by the subrecipient or LOCD-DR. The subrecipient shall be paid for all authorized work completed prior to termination.

## 7. LOCD-DR Exhibits

Exhibit	Description
Exhibit 13-1	Activity Completion Report