

# **FMA (Flood Mitigation Assistance) SWIFT (Non-Federal Share Match) Program**

Policy and Procedures



Louisiana Division of Administration

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**Office of Community Development –  
Disaster Recovery**

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## 1. Program overview

The U.S. Department of Housing and Urban Development (HUD) gave Community Development Block Grant Disaster Recovery (CDBG-DR) funds to Louisiana after Hurricane Ida and the May Floods of 2021 under [Public Law 117-43](#).

We, the Louisiana Office of Community Development – Disaster Recovery (LOCD-DR), created the Flood Mitigation Assistance (FMA) SWIFT (Non-Federal Share Match) Program in [Action Plan Amendment 3](#) to help to address repetitive losses for low and moderate-income communities. The goal of this program is to offset the burden of the non-federal share match requirements faced by state and local entities and jurisdictions. Program funds will be allocated to individual flood mitigation projects that mitigate the risk of flooding to individual National Flood Insurance Program (NFIP) insured structures that are a Severe Repetitive Loss (SRL), Repetitive Loss (RL), or are structures that have been deemed Substantially Damaged after August 26, 2021.

This document explains the policies and procedures of the FMA-SWIFT Non-federal Match Program, called the program. It's intended for you, the subrecipient. Don't interpret this document to override any federal or state laws related to CDBG-DR funds. We may change or cancel this program at any time.

## **2. Program eligibility**

### **2.1. Eligible locations**

The only eligible locations are FEMA Individual Assistance (IA) declared parishes for Hurricane Ida and the May Floods of 2021.

- Ascension (Parish)
- Assumption (Parish)
- East Baton Rouge (Parish)
- East Feliciana (Parish)
- Iberia (Parish)
- Iberville (Parish)
- Jefferson (Parish)
- Lafourche (Parish)
- Livingston (Parish)
- Orleans (Parish)
- Plaquemines (Parish)
- Pointe Coupee (Parish)
- St. Bernard (Parish)
- St. Charles (Parish)
- St. Helena (Parish)
- St. James (Parish)
- St. John the Baptist (Parish)
- St. Martin (Parish)
- St. Mary (Parish)
- St. Tammany (Parish)
- Tangipahoa (Parish)
- Terrebonne (Parish)
- Washington (Parish)
- West Baton Rouge (Parish)
- West Feliciana (Parish)

### **2.2. Eligible applicants**

The only eligible applicants are those with unmet need for required non-federal match for awarded fiscal year 2022 FMA SWIFT current grants in the eligible most impacted and distressed (MID) areas.

### **3. Program information**

In order for CDBG-DR assistance to be used as the non-federal cost share match, the activity must be an eligible activity and must meet a national objective. All program payments will be reimbursed based on actual costs incurred at project completion.

#### **3.1. Meeting a national objective**

The only eligible national objectives for this program are (a) urgent need mitigation and (b) benefit to low and moderate-income (LMI) persons or households.

#### **3.2. Cost-share and draw request procedure**

Ultimately, the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) is responsible for ensuring that it contributes the proper cost share to its actual project costs. If actual total project costs exceed the projected total project costs stated in the federal award, and the additional costs are not approved by FEMA, GOHSEP will be responsible for contributing additional funds above the required cost match. If actual total project costs are less than the projected total project costs stated in the federal award, GOHSEP will be responsible for contributing a cost match calculated as a percentage of those actual project costs.

##### **3.2.1 Before your first payment request**

You must complete and submit an Authorized Signature Form for Invoices before you submit your first payment request. This form tells us who can sign payment requests for your organization.

##### **3.2.2. How to submit payment requests**

Submit your payment requests in order (1, 2, 3, and so on). We cannot process requests that arrive out of order. For example, we cannot process request number 3 until we receive and approve requests 1 and 2. Submit all draw requests to [OCDFinance@la.gov](mailto:OCDFinance@la.gov), copying the program analyst.

### **3.2.3. What happens if we find errors**

We will review your request when we receive it. If we find errors, we will return your request and ask you to make corrections. This will delay your payment.

### **3.2.4. Document format**

Submit all documents as PDF files unless we specifically ask for a different format. If you submit documents in other formats, we may return them and ask you to convert them to PDF.

### **3.2.5. Required Documentation**

Supporting documentation for draw request may include, but is not limited to:

- Request for Payment (RFP) form
- Invoice summary
- Parish award with cost share breakdown
- Property award letters to homeowner
- Procurement documents
- Contractor statement of qualifications
- Contractor selection form and contract
- Elevation contract and elevation certificate(s)

## **3.3. Program reporting**

You must (a) provide monthly and quarterly reports and (b) attend status meetings as requested.

## **3.4. Project closeout**

Your project is ready for closeout when (a) you've spent all your program funds, (b) you've completed all your program activities, and (c) you've met your national objective. You're responsible for initiating closeout and submitting closeout documents in a timely manner. Follow the closeout procedures in [24 CFR 570.509](#). Alternatively, we may start closeout if there's no federal or state interest in maintaining the grant agreement.

We must confirm that you incurred all costs paid with program funds. Additionally, we must

ensure that (a) the project work has been satisfactorily completed, (b) you've fulfilled all your responsibilities from our agreement, and (c) you've complied with all relevant laws and regulations. We'll work with you to make sure your closeout documents are complete and accurate. Finally, we'll process your documentation to formalize the closeout process.

## **4. Federal requirements**

This document assembles resources and guidance on key cross-cutting federal requirements for Community Development Block Grant—Disaster Recovery (CDBG-DR). This document is not intended to be comprehensive of all resources and requirements but provides a high-level overview. We strongly encourage you to consult the [CDBG regulations in 24 CFR 570](#) and [crosscutting federal requirements applicable to CDBG-DR](#). Refer to [HUD's CDBG-DR webpage](#) and [HUD Exchange](#) for more information.

Modification of federal statutes or regulations governing the CDBG-DR program may become effective immediately and apply to the activities funded under this program. These federal requirements are in addition to all applicable state, local, and tribal laws and regulations.

### **4.1. Duplication of benefits**

You may fund your project from a variety of both public and private sources. The Stafford Act section 312 (42 U.S.C. 5155) prohibits duplication of benefits. A duplication of benefits occurs when financial assistance received from one source – such as federal, state, or local funding and other non-profit, private sector, or charitable funding – is provided for the same purpose as CDBG-DR funds.

CDBG-DR funds must supplement, not supplant other available funds. The FEMA regulations in [44 CFR 206.191](#) define the order of funding assistance. CDBG-DR funds must not be used for “activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers.”<sup>1</sup>

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<sup>1</sup> As defined on page six of [FR-6169-N-01](#).

You must certify that you haven't received duplicative assistance. This certification will occur at two points in your project's life cycle:

1. Submission of your project application
2. Project closeout

Follow HUD's guidance in [FR-6169-N-01](#).

## **4.2. Environmental review requirements**

Your project and all related activities are subject to the National Environmental Policy Act of 1969 (NEPA) and HUD environmental review regulations at [24 CFR Part 58](#).

You must not start work on a project before the environmental review process is completed, even if that work is being done using non-HUD funds. You must get environmental clearance for your project before you commit federal or non-federal funds to any project expenses or contracts.

If you don't follow this requirement, your entire project could become ineligible – not just the costs incurred before completing the environmental review. If your project has multiple environmental issues that can't be addressed timely and cost effectively, we'll cancel your program award.

The environmental review (a) identifies environmental factors you may encounter at potential project sites and (b) develops procedures that comply with applicable regulations. You must comply with the environmental provisions of air and water quality, coastal zones, endangered species, environmental justice, farmland protection, floodplains, historic properties, manmade hazards, noise, and wetland laws and regulations.

## **4.3. Lead-based paint**

There are many regulations and statutes pertaining to lead-paint hazards. We're providing you with links to a number of the most important ones, especially as they relate to this program:

- [Information on EPA's Renovation, Repair, and Painting Rule.](#)



- Title X Regulations (Residential Lead-Based Paint Hazard Reduction Act).
  - [Public Law 102-550](#) - Residential Lead-based Paint Hazard Reduction Act of 1992.
  - [Title X, Sections 1012 and 1013](#) - Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance. Visit HUD's [Lead-Safe Housing Rule](#) web site to learn more.
  - [Title X, Section 1018](#) - Requirements for the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing. Visit HUD's [Lead-Based Paint Disclosure Rule](#) webpage to learn more.
- The Environmental Protection Agency's [Lead Regulations for Lead in Paint, Dust, and Soil](#).
- U.S. Department of Labor - [Occupational Safety & Health Administration](#).

#### **4.4. Fair labor and related regulations**

Visit HUD's [Federal Labor Standards Requirements in Housing and Urban Development Programs](#) webpage to learn more.

##### **4.4.1. The Fair Labor Standards Act (FLSA)**

[The Fair Labor Standards Act \(FLSA\)](#) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.

##### **4.4.2. Equal Employment Opportunity (EEO)**

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

of their employment.

Additionally, the Executive Order prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers.

#### **4.4.3. The Davis-Bacon Act and Related Acts (DBRA)**

The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor (DOL) to determine such locally prevailing wage rates.

You must include [Davis-Bacon labor standards clauses](#) in covered contracts and accepted by the general contractor prior to closing. You must pay covered workers weekly and submit weekly certified payroll records to the contracting agency. You must post the applicable Davis-Bacon wage determination and the [Davis-Bacon poster \(WH-1321\)](#) on the work site in a prominent and accessible place where they can be easily seen by the workers.

#### **4.4.4. The Contract Work Hours & Safety Standards Act (CWHSSA)**

[The Contract Work Hours and Safety Standards Act 24 \(CWHSSA\)](#) applies to federally financed contracts over \$100,000 and requires contractors to pay laborers and mechanics, including watchpersons and guards, employed in the performance of covered contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.

In the event of violations, the contractor or subcontractor shall be liable to any affected employee for their unpaid wages and for liquidated damages computed at \$29.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be

withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

#### **4.4.5. The Copeland Anti-Kickback Act**

[The Copeland Act's Anti-Kickback](#) provision prohibits contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which they're entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period.

Additionally, the Act's regulations at [29 CFR 3.5](#) and [29 CFR 3.6](#) list payroll deductions that are permissible without the approval of Department of Labor and those deductions that require consent of Department of Labor and prohibit all other payroll deductions.

#### **4.4.6. Section 3**

[The Section 3 provision of the HUD Act of 1968](#) requires recipients of HUD funding to direct employment, training, and contracting opportunities to low-income individuals and the businesses that employ these persons within their community. You must follow the regulations at [24 CFR Part 75](#).

Per this statutory language, recipients of HUD funds (grantees and contractors) ensure that "to the greatest extent feasible," when certain HUD funds are used to assist housing and community development projects, preference for construction-related training, jobs, and contracting opportunities go to low- and very-low income people and to businesses that are owned by low- and very-low income persons or businesses that hire them. These opportunities are both gender and race neutral.

### **4.5. Fair housing and related regulations**

Visit HUD's [Fair housing and related statutes, regulations, and executive orders](#) webpage to learn more.

#### **4.5.1. The Fair Housing Act (AFFH)**

[Title VIII of the Civil Rights Act of 1968 \(Fair Housing Act\)](#), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. It also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively furthers fair housing. You must meet the design and construction requirements at [24 CFR 100.205](#) for the entire affordability period.

#### **4.5.2. Title VI of the Civil Rights Act of 1964**

[Title VI](#) prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

#### **4.5.3. Section 504 of the Rehabilitation Act of 1973**

[Section 504](#) prohibits discrimination based on disability in any program or activity receiving federal financial assistance. You must meet the accessibility requirements at [24 CFR Part 8](#) for the entire affordability period.

#### **4.5.4. The Americans with Disabilities Act (ADA)**

[Title II of the ADA](#) prohibits discrimination based on disability in programs and activities provided or made available by public entities. HUD enforces Title II with respect to housing-related programs and activities of public entities, including public housing, housing assistance, and housing referrals.

[Title III of the ADA](#) prohibits discrimination based on disability in the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodations owned, leased, or operated by private entities. The Department of Justice enforces Title III of the ADA, but certain HUD recipients and private entities operating housing and community development programs are covered by Title III of the ADA.

#### **4.5.5. Architectural Barriers Act of 1968**

[The Architectural Barriers Act](#) requires that buildings and facilities designed, constructed,

altered, or leased with certain federal funds after September 1969 must be accessible to and useable by persons with disabilities. You must also comply with the [Uniform Federal Accessibility Standards \(UFAS\)](#).

#### **4.5.6. Equal Opportunity in Housing**

[Executive Order 11063](#), issued on November 20, 1962, prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

#### **4.5.7. The Uniform Relocation Assistance and Real Property Acquisition Act (URA)**

You must follow a residential anti-displacement policy. CDBG-DR federal funds are subject to the Uniform Relocation Act (URA) and Section 104(d) of the Housing and Community Development Act of 1974. The applicable federal regulations are located at [49 CFR Part 24, 24 CFR Part 42 \(Section 104\(d\)\)](#), and in the [Tenant Assistance, Relocation and Real Property Acquisition Handbook \(HUD Handbook 1378\)](#).

If CDBG-DR funds are used to acquire or improve real property, you must use the property for its intended and approved purpose. Failure to meet the intended use of the property, or a subsequent change of use, may result in either a recapture of the grant and/or program income.

#### **4.5.8. Improving Access to Services for Persons with Limited English Proficiency (LEP)**

[Federal Executive Order 13166](#) requires recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries. Read HUD's [Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#) notice and visit their [limited English proficiency \(LEP\) frequently asked questions](#) webpage to learn more.

### **4.6. Procurement policy**

You must have and use documented procurement procedures following the federal standards of [2 CFR 200](#).

## **4.7. Record retention requirements**

You must follow the records retention requirements at [2 CFR 200.334](#). You must maintain records for the life of the program and three years from the grant closeout date. This includes administrative, financial, general program, legal, and project case files.

### **4.7.1. Administrative records**

These are the overall administration records for the CDBG-DR activities. For example, personnel files and property management files.

### **4.7.2. Financial records**

These include account charts; accounting journals, ledgers, and procedures; audit files; bank account records; financial reports; procurement files; source documentation such as purchase orders, invoices, and canceled checks; and all other applicable files.

### **4.7.3. General program files**

These include your program application, this policy, reports, and all other applicable files. Please include copies of all correspondence between us.

### **4.7.4. Legal files**

These include articles of incorporation, bylaws, tax status, board or counsel minutes, required public notices, resolutions, ordinances for units of local government, contracts, and other agreements.

### **4.7.5. Project case files**

These include files related to individual beneficiaries, property owners, and/or properties.

#### **4.8. Conflicts of interest**

You must follow the conflict of interest regulations at [2 CFR 200.112](#) and [24 CFR 570.611](#).

Conflicts of interest between subrecipients, program administrators, contractors, program staff, and other parties are strictly prohibited by federal law. A “covered person” is an employee, agent, consultant, officer, or elected or appointed official of the State, or of a unit of general local government, or any designated public agencies, or subrecipients that are receiving CDBG-DR funds.

A covered person who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities, and who are in a position to participate in a decision making process or gain inside information with regard to such activities, must not obtain a financial interest or benefit from the activity.

A covered person must not have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

These restrictions are in addition to, not in place of, any applicable restrictions or requirements of the [Louisiana Government Code of Ethics](#).