

NEBRASKA

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DEPT. OF ECONOMIC DEVELOPMENT

State of Nebraska CDBG-DR Manual

Winter Storm Ulmer – Action Plan: DR – 4420

NOVEMBER 2023 – Version 1.1

RECORD OF CHANGES

The following table summarizes amendments to the Nebraska CDBG – DR Manual.

Date Change Approved	Change Number	Description of Change
09/2022	1.0	Initial Publication
11/2023	1.1	<p><i>To Chapter 16, Monitoring and Compliance Plan:</i> Clarifying processes and updating toolkit items; expanding risk assessment to include both Applicant and Project Risk Assessments; and incorporating a record of change to acknowledge and track revisions.</p> <p><i>To Chapter 1, Introduction:</i> Discussing Record of Changes by chapter and version numbering system; and incorporating a record of change to acknowledge and track revisions.</p>

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1 INTRODUCTION

VERSION 1-1.1

1.1 CHAPTER 1 RECORD OF CHANGES

CDBG-DR Program Manual – Chapter 1, Introduction.

From time to time, it may be necessary to update the DR Manual.¹ DED will incorporate a Record of Changes table as a tracking mechanism that, at a minimum, identifies the version number, date of publication, and a summary description of changes. In most cases, revisions by DED will be to a specific chapter or set of chapters, rather than the entire DR Manual. The following information is listed to clarify how DED will update the DR Manual when changes are deemed necessary:

- **Chapter 1, Record of Changes.** The Record of Changes table located in this Chapter 1 will list all revisions to the balance of the manual. This will help readers track which chapter(s) have been updated, when they were updated, and the description of changes associated with a particular revision.
- **Respective Chapter, Record of Changes.** As chapters are updated, DED will insert a Record of Changes table to the top of affected chapter(s) to track the immediate and any subsequent revisions.
- **Notes on the Version Number.** The table summarizes changes by version. Version numbers include the chapter number to indicate which chapter was revised. This identifier is also located immediately above (near the first header of the chapter), on the cover page of the full DR Manual, and included in the Record of Changes of the respective chapter(s).

For example, “Version 1-1.1” indicates a revision to *Chapter 1* and the number succeeding the dash (or “-”) signifies the revision number in ascending order. Version 1.0 is the original version. Version “1.1” represents a minor revision that does not involve a policy change or otherwise significant set of revisions.

¹ Underlying reasons for revisions may include, but may not be limited to, changes to policy or requirements at the federal- or state-level, changes to support efficiency or compliance considerations, clarifications to processes or procedures, or the like.

Version	Date	Description of Change
1-1.0	09/2022	Initial Publication.
1-1.1	11/2023	Discussing Record of Changes by chapter and version numbering system; and incorporating a record of change to acknowledge and track revisions.
16-1.1	11/2023	Clarifying processes and updating toolkit items; expanding risk assessment to include both Applicant and Project Risk Assessments; and incorporating a record of change to acknowledge and track revisions.

1.2 ASSOCIATED ALLOCATIONS

The Community Development Block Grant-Disaster Recovery (“CDBG-DR”) Program is authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended and, in the event of a Presidentially declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S. 5121 et seq.), provides the vehicle through which Congress may appropriate funding to aid disaster impacted areas in the recovery process. The U.S. Department of Housing and Urban Development (“HUD”) is the federal authoritative agency for these Congressionally allocated CDBG-DR funds and promulgates the specific rules to govern each of those allocations.

The State of Nebraska has received a CDBG-DR grant to support long-term disaster recovery. The Nebraska Department of Economic Development (“DED”) is the lead agency in the State of Nebraska responsible for all CDBG programs, including CDBG-DR.

This CDBG-DR Manual is currently associated with recovery from Winter Storm Ulmer and may be updated should other allocations become available due to subsequent disaster events and/or supplemental allocations.

1. In early 2019, the State of Nebraska suffered record-breaking damage from severe winter weather, straight-line winds, and its worst flooding event in 50 years, leading to a Federal major disaster declaration ([DR-4420](#)) under the Stafford Act. Damage from DR-4420 was

widespread, leading to disaster declarations in 84 of the State's 93 counties (and four [4] tribal areas), with the worst damage located in the eastern part of the State.

2. HUD Most Impacted and Distressed (MID) is detailed in the Action Plan and includes Dodge, Douglas, and Sarpy counties.
3. Pursuant to the Federal requirements for DR-4420, a minimum of 80% of this allocation must be invested in HUD-defined MID areas.
4. A minimum of 70% of total CDBG-DR program funds must be spent on Low- to Moderate-Income (LMI) populations.

1.3 MANUAL STRUCTURE

The Nebraska CDBG-DR program includes a variety of funding programs and will work with a range of other entities to implement those programs (see **Chapter 20: Infrastructure Match Program**, **Chapter 21: Affordable Housing Construction Program**, and **Chapter 22: Planning Programs** for additional information). These entities are either referred to as "Subrecipients" or "Successful Applicants," depending on which program they are working on and what type of organization it is. As further described in **Appendix B: Program Definitions**, Subrecipients are a public or private nonprofit agency, authority, or organization, or a for-profit entity. Successful Applicants include any eligible entity that is selected to enter into a Funding Agreement with DED to implement CDBG-DR program activities (e.g., for-profit developers). The majority of requirements listed in this Manual apply to all Subrecipients and Successful Applicants. Exceptions are noted where applicable.

The contents of this manual are intended to assist all DED employees and external providers, vendors, contractors, consultants, Subrecipients, Successful Applicants, partners, citizens, external departments, and agencies doing business with DED, as well as beneficiaries and others associated with, working for, accessing, or attempting to access benefits under the CDBG-DR Programs.

This manual contains policies and procedures to ensure effective communication and coordination related to the CDBG-DR program. The policies and procedures with referenced regulations, guidelines and Action Plan(s) outline programs, eligible activities, required records management, procurement requirements, subrecipient oversight, technical assistance, monitoring procedures, cost allocation methodology, the requirements for timely expenditure of funds, etc. while outlining training for Subrecipients and Successful Applicants on Federal and state CDBG-DR requirements. It is the responsibility of each recipient of CDBG-DR funds to understand both the federal and state requirements and to adhere to them.

This manual contains chapters on each major subject that CDBG-DR programs are required to adhere to, along with a chapter on administrative requirements that Subrecipients and Successful Applicants should keep in mind when implementing their projects but are not specific to CDBG-

DR. Appendix A contains a list of acronyms and Appendix B contains a list of definitions that will aid in reading and understanding this manual.

The majority of requirements laid out in this manual apply to all programs funded with Federal dollars, but the practical implementation of these requirements can differ depending on the type of program or project. Details are listed in this manual, along with references to the original law or regulation. If any entity has a question on any requirement, they should reach out to DED for clarification.

Each chapter of this manual can be read independently to gain knowledge of requirements in that subject. However, requirements frequently overlap with each other. For example, the requirements established in the Recordkeeping and Data Management chapter establish guidelines for keeping documents that will be necessary to comply with the requirements in the Auditing chapter.

This manual may be updated from time to time to reflect current requirements and/or practices. Changes will be summarized in a Chapter Record of Changes table at the beginning of each updated chapter, as well as in the overall Record of Changes Table on Page 1. Chapters without a Record of Changes table have not been updated and appear as originally published in September 2022. Updated chapters will include a new version number, with minor revisions reflected as a decimal change (e.g. the first minor revision to chapter one reads 1-1.1) and major changes as the next full numeral (e.g. the first major change to chapter one will read 1-2).

This manual is not a comprehensive document of everything associated with the State of Nebraska's CDBG-DR grant. Additional resources available on DED's website:

- Action Plan and amendments
- Program Guides for each program
- Technical Assistance page
- Toolkit of functional documents needed for program implementation

Any outside document that is referred to in this Manual is available in the [Toolkit on DED's website](#).

1.4 NON-DISCRIMINATION STATEMENT

The State of Nebraska enforces conduct in the CDBG-DR program to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, marital status, or any other Federally protected class.

2 PROGRAM ADMINISTRATIVE REQUIREMENTS

Community Development Block Grant - Disaster Recovery (CDBG-DR) funding is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Public Laws are the appropriation acts that provide funding for each disaster. In addition to any requirements cited in the appropriation acts, the CDBG regulations in 24 CFR Part 570 apply to CDBG-DR funds. However, CDBG-DR appropriations generally grant HUD broad authority to issue waivers and alternative requirements, which are identified in a Federal Register Notice issued by HUD shortly following the announcement of allocations. HUD also provides guidance on the CDBG program through Community Planning and Development (CPD) Notices.

CDBG-DR grantees (i.e., DED) must also comply with the applicable requirements of 2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements. Additional details regarding these requirements are set forth in this Manual.

Similarly, the list of requirements set forth below apply to the use of federal funds, as applicable, and are not specific to CDBG-DR Programs. The summaries listed below are for the convenience of Subrecipients, Successful Applicants and other entities involved in Nebraska CDBG-DR programs. These summaries are not meant to be comprehensive, but rather an invitation to further research. Requirements specific to CDBG-DR or with detailed implementation instructions for CDBG-DR are laid out in the subsequent chapters of this Manual. Subrecipients and Successful Applicants are responsible for ensuring their projects follow all applicable requirements.

Requirement	Description
<p>Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act</p>	<p>The Americans with Disabilities Act (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination based on disability in any program or activity receiving federal financial assistance. A Subrecipient of Federal financial assistance may not, on the basis of disability:</p> <ul style="list-style-type: none"> • Deny qualified individuals the opportunity to participate in or benefit from Federally funded programs, services or other benefits; • Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers; or • Deny employment opportunities, including hiring, promotion, training and fringe benefits, for which they are otherwise entitled or qualified.
<p>Certification Eligibility</p>	<p>By entering into a contract, contractors certify they are eligible. All subcontractors must also be eligible.</p>
<p>Complaints, Proceedings, or Testimony by Employees</p>	<p>The contractor shall not retaliate against employees or subcontractors if they make a complaint or intend to testify in labor standard proceedings.</p>
<p>Conflicts of Interest and Confidentiality</p>	<p>As stated in the Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, Federal regulations require that State grantees, in the direct grant administration and means of carrying out eligible activities, be responsible in complying with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.</p>

Requirement	Description
<p>Contract Work Hours & Safety Standards Act</p>	<p>Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC §3701 et seq.; 29 CFR Part 5). This Act imposes liquidated damage (LD) assessments and is typically made by HUD or by the local contracting agency (i.e., public housing authorities, tribally-designated housing entities, community development agencies, etc.) to a contractor for failure to pay overtime compensation for workers who work over 40 hours in a 7-day workweek. Overtime compensation is typically at 1 ½ times the regular pay (in some areas it may be higher). When a contractor fails to pay overtime, then the agency should assess the contractor liquidated damages, as prescribed in 29 CFR § 5.8 per workday, per person, where the worker was permitted to work overtime without being properly compensated. CWHSSA is imposed on contracts greater than \$100,000 in value. Labor violations on contracts less than \$100,000 may be captured under the Fair Labor Standards Act, which is enforced by the US Department of Labor (DOL). See also Chapter 14: Davis-Bacon and Related Acts (DBRA).</p>
<p>Health and Safety Regulations for Construction</p>	<p>In prime contracts that exceed \$100,000, no laborers or mechanics shall be required to work in unsanitary, hazardous, or dangerous conditions. Contractors and subcontractors shall comply with the Secretary of Labor regulations pursuant to 29 CFR Part 1926.</p>
<p>Copeland "Anti-Kickback" Act</p>	<p>Copeland "Anti-Kickback" Act (and related requirements), 18 U.S.C. 874 and its implementing regulations of the US DOL at 29 C.F.R. Part 3 and Part 5. All contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act. The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.</p>
<p>Debarment</p>	<p>A debarment sanction means that an individual, organization, and its affiliates are excluded from conducting business with any Federal Agency. Depending upon the outcome of an investigation or legal proceeding, a suspension may lead to debarment.</p>
<p>Disputes Concerning Labor Standards</p>	<p>Disputes between the contractor and employees, subcontractors, or DOL shall be resolved according to 29 CFR Parts 5, 6, and 7.</p>

Requirement	Description
Equal Employment Opportunity (EEO)	As a condition for the receipt of CDBG-DR funds, each Subrecipient and Successful Applicant must certify that it and the contractors, subcontractors, subrecipients and consultants that it hires with CDBG-DR funds will abide by the Equal Employment Opportunity (EEO) Laws of the United States. Additionally, Subrecipients and Successful Applicants must incorporate the Equal Employment Opportunity clause set forth in 31 C.F.R. §60-1.4(b) into any contracts or subcontracts as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60.
Fair Labor Standards	The Fair Labor Standards Act of 1938, as amended (referred to as “the Act” or “FLSA”), provides minimum standards for both wages and overtime entitlements, and administrative procedures by which covered worktime must be compensated.
Limited English Proficiency (LEP)	For a person whose primary language is not English, this refers to their assessment of their ability to speak English as "not well" or "not at all."
Recapture	<p>Recapture allows the Grantee (i.e., DED) to recapture funds.</p> <p>For example:</p> <ul style="list-style-type: none"> • Recapture in Housing: Recapture allows the Grantee (i.e., DED) to recapture a predetermined amount of the proceeds of the sale of any property before the affordability period ends. This method often fits better in stable markets, where the Grantee can use recaptured funds to help make another house affordable for an eligible homebuyer. Recapture can only be used where there is a direct subsidy to an individual homebuyer that can be repaid through a soft second mortgage or other lien on the property. • Recapture in Infrastructure: Recapture allows the Grantee (i.e., DED) to collect any funds determined to be duplicative through a Duplication of Benefits analysis to the extent that they are in excess of the need and duplicate other assistance received for the same purpose.
Subcontracts	Contractors shall require all subcontractors to also follow the rules and regulations described in this table and in other chapters of this Manual.

3 PROGRAM MANAGEMENT GUIDE

3.1 EXECUTIVE SUMMARY

The Program Management Guide serves as an overarching framework for the Nebraska Department of Economic Development (DED) to implement programs funded by CDBG-DR for the State of Nebraska. This manual should be consulted to determine the roles and responsibilities of the agencies, organizations, and partners needed for successful CDBG-DR program implementation and grant distribution (see **Section 3.2: Roles and Responsibilities**). The primary program contributors covered within this manual include:

- DED, as the program Grantee (program administrator),
- Partner organizations who will be consulted or hired as part of the program implementation process.
- Technical Providers, as supplemental staff; and
- Subrecipients and Successful Applicants as the recipient of grant funds and program implementors.

The manual is also designed to provide an overview of each CDBG-DR program category and the associated program policies and procedures (see **Section 3.3: Program Overview**). The program types covered within the State of Nebraska CDBG-DR program and referenced within this manual are inclusive of the following program types:

- Infrastructure Programs
 - Public Assistance Match
 - Hazard Mitigation Grant Program Match
- Housing Programs
 - Affordable Housing Construction Program
 - Homeowner Assistance Program
- Planning Programs
 - Risk Awareness Planning Program

This manual should be used to give a “big picture” overview of the program and as a proverbial springboard to initiate program implementation under the operational structures that will be used for administration of CDBG-DR funds.

In implementing this manual for the CDBG-DR Program, the State of Nebraska will ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, marital status, or any other federally protected class.

3.2 ROLES AND RESPONSIBILITIES

3.2.1 GRANTEE (DED)

As Lead Agency, DED is responsible for administration of the CDBG-DR funds. DED must ensure that CDBG-DR funds are expended in compliance with HUD regulations contained in the Federal Register Notice dated January 27, 2020 (85 FR 4681) and at 24 CFR Part 570 and all other applicable Federal Register Notices. These responsibilities include:

- Determining allocations based on Unmet Needs Assessment and has developed the CDBG-DR Action Plan;
- Ensuring that the State complies with its Citizen Participation Plan during the Action Plan development process;
- Submitting the Action Plan and any subsequent Amendments to HUD;
- Submitting all required reports including the Quarterly Performance Report, Semi-Annual Davis-Bacon reports, Section 3 Reports, and Program Monitoring Reports;
- Executing Subrecipient Agreements with Subrecipients and funding agreements with Successful Applicants;
- Providing technical assistance to Subrecipients and Successful Applicants of CDBG-DR funds throughout the program lifecycle: Subrecipient and Successful Applicant selection process, program setup, implementation, and closeout;
- Ensuring any capacity gaps in DED or its Subrecipients and Successful Applicants are filled by hiring additional staff, engaging outside consultants, or getting support from government agencies, as needed;
- Completing all Environmental Reviews and acting as the Responsible Entity for HUD Environmental Clearances;
- Setting up activities and budgets in the DRGR system;
- Ensuring all invoices paid in the program align with CDBG-DR rules and regulations, compliance documents are completed, Performance Reports (PRs) are submitted, and budgets are managed;

- Procuring qualification-based contracts and will use this authority to procure relevant support services;
- Executing CDBG-DR draws through the DRGR system;
- Ensuring expenditures do not duplicate benefits of other funding sources;
- Monitoring Subrecipients and Successful Applicants for program compliance with HUD and State requirements;
- Internally monitoring the CDBG-DR funded activities to ensure compliance with HUD regulatory requirements;
- Tracking performance metrics to ensure timely expenditure of funds; and
- Ensuring that the CDBG-DR website is in compliance with HUD requirements.

3.2.2 PARTNER ORGANIZATIONS

Nebraska DED leads all programs under the CDBG-DR grant. Within DED, the CDBG-DR grant has a single oversight point of contact and program implementation staff are integrated with the annual CDBG Program to ensure, as appropriate and applicable, consistent policies and implementation.

DED will coordinate with other state partners as necessary to gain information, technical assistance, or ensure coordination on program goals.

3.2.2.1 NEBRASKA EMERGENCY MANAGEMENT AGENCY (NEMA)

The Infrastructure Match Program will be administered in partnership with NEMA, which administers the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) and Hazard Mitigation Grant Program (HMGP) funds.

3.2.2.2 NEBRASKA INVESTMENT FINANCE AUTHORITY (NIFA)

Through the application phase of the Affordable Housing Construction Program conducted in coordination with the NIFA's Low Income Housing Tax Credit (LIHTC) application, DED and NIFA will coordinate to leverage CDBG-DR funds with LIHTC and affordable housing tax credits (AHTC) to increase the supply of affordable rental housing in disaster-impacted areas. CDBG-DR funds will be used as gap funding for LIHTC developments in impacted communities, incentivizing developers to target these communities.

3.2.2.3 NEBRASKA DEPARTMENT OF NATURAL RESOURCES (NEDNR)

The Risk Awareness Planning Program will be administered in partnership with NeDNR. As part of this collaboration, NeDNR will assist DED by sharing data related to zoning in floodplains and regularly attending meetings to collaborate on decision making as it relates to the program.

3.2.3 TECHNICAL PROVIDERS

Supplementing staff, DED has retained a technical provider to provide grant implementation and management assistance for the award. The technical provider will be responsible for assisting with the program design, pre-application and application process, project development, bidding and pre-construction, construction, reviewing invoices and bidding processes by Subrecipients and Successful Applicants, managing budget reports and other supportive financial management duties as assigned, and closeout associated with programs. The Director of Disaster Recovery provides administrative oversight of the technical provider for the activities conducted pursuant to the agreement and makes final determinations and approvals of any documents or materials.

3.2.4 SUBRECIPIENTS AND SUCCESSFUL APPLICANTS

Subrecipients and Successful Applicants will implement the planning, housing and infrastructure programs, as appropriate, with oversight and technical assistance from DED and other partner agencies. DED will be in regular communication with Subrecipients and Successful Applicants to ensure program implementation and ensure projects done by different Subrecipients and Successful Applicants do not conflict with each other.

Subrecipient and Successful Applicant responsibilities include:

- Implementing program operations including:
 - Application Intake;
 - Eligibility review, including duplication of benefits (DOB) check;
 - Ensuring beneficiaries are always aware of their project status;
 - All requirements described in the SRA or Funding Agreement;
 - Project management;
 - Financial management (i.e., contractor invoicing); and
 - Project closeout.
- Coordinating with DED for review of program expenditures and reporting to HUD in DRGR;

- Coordinating with DED for reporting in Federal Funding Accountability Act Subaward Reporting System, as applicable;
- Coordinating with DED Finance for payment and DED for reimbursement through draws working through the AmpliFund grant management system;
- Managing detailed program implementation budgets, including Activity Delivery Costs and Project Costs;
- Reviewing all procurement for HUD regulatory requirements, as applicable, subject to verification by DED;
- Leveraging existing purchasing processes and ensure purchasing follows CDBG-DR purchasing procedures; and
- Coordinating with DED to prepare for any HUD and the Office of the Inspector General monitoring or audits.

Under the annual CDBG program, Subrecipients are required to hire or employ a Nebraska CDBG Certified Administrator (CA) to oversee projects and ensure the project and parties involved are in good standing. DED strongly encourages CDBG-DR Subrecipients and Successful Applicants to utilize CAs (or equivalent). Subrecipients and Successful Applicants are encouraged to participate in DED's CDBG CA Program.

3.3 PROGRAM OVERVIEW

3.3.1 TYPES OF PROGRAMS

DED has defined a series of programs within the Action Plan. Each program has a separate program guide that defines all programmatic operations, expectations for Subrecipients or Successful Applicants, and key standards for program implementation that exceed the cross-cutting standards set forth for the CDBG-DR program.

Table 1: Types of Programs

Program Category	Program Name	Primary Resource
Infrastructure Programs	Public Assistance Match	Infrastructure Match Program Guide
	Hazard Mitigation Grant Program Match	
Housing Programs	Affordable Housing Construction Program	Affordable Housing Construction Program Guides
Planning Programs	Risk Awareness Planning Program	Risk Awareness Planning Program Guide
	Housing Resiliency Planning Program	Housing Resiliency Planning Program Guide

Alignment of the National Objectives to program activities are defined in the table below.

Table 2: CDBG-DR Program Descriptions

Program Name	Description	Connection to National Objectives
INFRASTRUCTURE Infrastructure Match Program	This program will utilize CDBG-DR funding to alleviate the burden for local communities in meeting the local match requirements for the PA program and HMGP in the aftermath of the 2019 disasters.	Benefiting LMI Persons; Urgent Need

Program Name		Description	Connection to National Objectives
HOUSING	Affordable Housing Construction Program	<p>This program is intended to increase affordable renter- and owner-occupied housing supply in flood-impacted areas. The program will be administered by DED and will consist of three subprograms:</p> <ul style="list-style-type: none"> • CDBG-DR LIHTC Gap Financing; • Small/Non-LIHTC Rental Production; and • Homeownership Production. 	Benefiting LMI Persons
PLANNING	Risk Awareness Planning Program	<p>This program will target areas with risk exposure from private levees or levee-like structures in counties that received a disaster declaration under DR-4420 and focus on flood hazard vulnerabilities that led to flood damage during Winter Storm Ulmer. Efforts under this program will educate individuals on the risk associated with private levees and levee-like structures as water control infrastructure and provide alternative flood mitigation options to promote resilience.</p>	N/A
	Housing Resiliency Planning Program	<p>This program focuses on providing support to Subrecipients to develop plans related to housing recovery, housing resilience, and affordable housing that reduce flood vulnerability. The program intends to provide for the development of housing plans to address flood vulnerabilities.</p>	N/A

3.3.2 CDBG-DR TIMELINE OVERVIEW

A general overview of the timeline for project launch and implementation is described in **Figure 1**. Note this will differ by project, as defined within the respective Program Guides. This overview is for planning purposes only.

Figure 1: Timeline Overview

Months 0-1	Months 0-3	Months 3-closeout		
<p>DED executes the Subrecipient Agreement with the Subrecipient or Funding Agreement with the Successful Applicant</p> <p>Subrecipient or Successful Applicant is provided access to the Grants Management System (i.e., AmpliFund) and sets up an account</p>	<p>Subrecipient or Successful Applicant submits Special Conditions to DED</p> <p>Subrecipient or Successful Applicant reviews P&Ps and applicable program guide(s)</p> <p>Subrecipient or Successful Applicant uploads applicable files needed for launch</p>	<p>DED and the Subrecipient or Successful Applicant execute contracts associated with project activities</p> <p>Project activities begin</p> <p>DED can submit Request for Funds (i.e., drawdowns) to HUD</p>	<p>Subrecipient or Successful Applicant is under the period of performance</p> <p>Subrecipient or Successful Applicant must submit quarterly reports</p> <p>DED conducts regular monitoring reviews</p>	<p>DED and the Subrecipient or Successful Applicant conduct closeout by completing the following:</p> <ul style="list-style-type: none"> Request Closeout Final reporting (e.g., Financial, Performance Report, Wage Compliance, Planning Product)

4 FINANCIAL MANAGEMENT

4.1 POLICY OVERVIEW

This chapter is written as an extension of the policy articulated in the Certification of Proficient Controls, Processes, and Procedures for CDBG-DR Public Law 116-20 Grant. This chapter provides additional detail to expand upon the processes described within the certifications and supersedes the procedures articulated within said certifications. Financial Management is central to the CDBG-DR program. Subrecipients and Successful Applicants must ensure that all costs charged to the program are necessary, reasonable, allowable, and allocable as described below and in the referenced regulations.

4.2 FINANCIAL MANAGEMENT POLICY

In maintaining a financial management system, DED and its Subrecipients and Successful Applicants are required to follow 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” and 24 CFR Part 570, “Community Development Block Grants.” Specific CDBG-DR regulations pertaining to financial issues include but are not limited to those items listed in **Table 1**.

Table 1: CDBG-DR Financial Regulations

Regulation	Description
24 CFR Part 570 - "Community Development Block Grants"	Subpart I govern the State CDBG program. 24 CFR § 570.489 details program administrative requirements.
2 CFR Part 200 Subpart A (§200.0 - §200.1)	Acronyms and Definitions
2 CFR Part 200 Subpart B (§200.100 - §200.113)	General Provisions
2 CFR Part 200 Subpart C (§200.200 - §200.216)	Pre-Federal Awards Requirements and Contents of Federal Awards
2 CFR Part 200 Subpart D (§200.300 - §200.346)	Post Federal Award Requirements
2 CFR Part 200 Subpart E (§200.400 - §200.476)	Cost Principles
2 CFR Part 200 Subpart F (§200.500 - §200.521 and Appendix I to Part 200 – Appendix XII to Part 200)	Audit Requirements

2 CFR § 200.302 requires that DED and its Subrecipients and Successful Applicants who receive CDBG-DR funds each have a financial management system to provide the following:

- Accurate, current, and complete disclosure of financial results;
- Records that identify adequately the source and application of grant funds;
- Comparison of actual outlays with amounts budgeted for the grant;
- Procedures for determining reasonableness and allowable costs;
- Accounting records that are supported by appropriate source documentation such as canceled checks, paid bills, payroll records, time and attendance records, contracts, and subgrant award documents, etc.; and
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The three (3) basic functions, which must be served by the financial management system, are:

- The financial management system must have an identified procedure for recording all financial transactions;
- All expenditures should be related to allowable activities in the Subrecipient Agreement, Funding Agreement, or similar contract approved by DED; and
- All expenditures of CDBG-DR funds must be in compliance with applicable laws, rules, and regulations.

In addition, the use and accounting for CDBG-DR funds are governed by CDBG-DR requirements. Failure to account for and manage CDBG-DR funds accordingly may result in sanctions imposed by DED and/or HUD.

Specifically, DED must ensure for each Subrecipient or Successful Applicant that:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current, reviewed periodically; and
4. Audits (where applicable) are conducted in a timely manner and in accordance with applicable standards.

The purpose of financial management is to ensure the appropriate, effective, timely, and honest use of funds. Subrecipients, Successful Applicants, and contractors who receive CDBG-DR funds must maintain sufficient documentation about the use of funds to allow oversight by DED and HUD (see **Chapter 17: Recordkeeping and Data Management**).

4.3 BUDGETS

All grant awards, program and project budgets, obligations, unobligated balances, assets, liabilities, and expenditures are tracked within the AmpliFund system. Subrecipients and Successful Applicants will have access to their projects in the AmpliFund system and submit all requests for payment in that system.

DED will review and approve each invoice submitted for a draw request by Subrecipients and Successful Applicants if all documentation is complete and there are sufficient funds in the activity, project, and program budgets. DED will upload draw requests into HUD's DRGR grant management system. Upon HUD approval of the draw request, the Subrecipient or Successful Applicant will be paid via the State of Nebraska's EnterpriseOne accounting system. DED's Finance Team will reconcile AmpliFund, EnterpriseOne, and DRGR after each invoice is approved in AmpliFund, and additionally as required by State and Federal requirements.

Program budgets are established in the Action Plan and amendment(s), and project budgets will be set in Subrecipient Agreements, Funding Agreements, or similar contracts. Program Managers are responsible for ensuring their programs and projects stay within budgets established and recorded in AmpliFund. Activity line budgets will be set within a project in AmpliFund for any obligated contract amount or similar sub-project budget. Activity line budgets can be modified with the approval of the Program Manager, as long as the project budget remains constant. Any modification of project budgets must remain within the program budgets set in the Action Plan and amendment(s) and be approved by the Director of Disaster Recovery. Program budgets can only be modified with an Action Plan amendment and are subject to public comment as described in the Action Plan.

4.4 PAYMENT POLICY

4.4.1 REQUEST FOR FUNDS

DED will not request lump sum drawdowns from HUD. Any drawdown will be as a reimbursable activity and supported with appropriate documentation. Likewise, Subrecipients and Successful Applicants shall not request lump sum drawdowns from DED and must submit all requests for payment with appropriate documentation.

4.4.2 CLASSIFYING FEDERAL AND CDBG-DR COSTS

DED and its Subrecipients and Successful Applicants are responsible for ensuring that all costs incurred conform with 2 CFR Part 200, Subpart E. All cost items described in 2 CFR Part 200, Subpart E that require Federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR Part 200, Subpart E and are otherwise eligible, except for the following:

- Depreciation methods for fixed assets shall not be changed without the express approval of HUD;¹
- Fines, penalties, damages and other settlements resulting from DED's, Subrecipient's, or Successful Applicant's violations of, alleged violations of, or failure to comply with, Federal, State, Tribal, local, or foreign laws and regulations are unallowable costs to CDBG-DR except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of HUD;²
- Costs of goods or services for personal use of the employees of DED, Subrecipients, or Successful Applicants are unallowable regardless of whether the cost is reported as taxable income to the employees;³
- Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by HUD;⁴ and
- Organization costs, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of DED, Subrecipients, or Successful Applicants in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of HUD.⁵

Subrecipients and Successful Applicants are responsible for ensuring that all costs incurred meet the following requirements. DED will review all requests for payment to ensure they meet these.

4.4.3 ELIGIBLE/ALLOWABLE COSTS

All costs charged to the Subrecipient Agreement, Funding Agreement, or similar contract must be eligible as described herein. Eligible costs are those that conform to HUD CDBG-DR requirements, including limitations and waivers described in applicable Federal Register Notices, comply with federal cost principles, and align with all associated cross-cutting federal requirements (e.g., Davis-Bacon and Related Acts, environmental requirements, etc.) and State and local law.

Pursuant to 2 CFR § 200.403, costs must meet the following general criteria in order to be allowable as a charge against any Federal award:

- Costs must be necessary and reasonable for the performance of the Federal award and be allocable to that award and not to a different award;

¹ 2 CFR § 200.436.

² 2 CFR § 200.441.

³ 2 CFR § 200.445.

⁴ 2 CFR § 200.445.

⁵ 2 CFR § 200.455.

- Costs must conform to any limitations or exclusions set forth in 2 CFR Part 200 or in the Federal award as to types or amount of cost items;
- Costs must be consistent with this chapter that apply uniformly to both Federally financed and other activities of the Subrecipient or Successful Applicant;
- Costs must be accorded consistent treatment;
- A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost;
- Costs must be determined in accordance with Generally Accepted Accounting Principles (GAAP); and
- Costs must be adequately documented.

4.4.4 NECESSARY COSTS

Costs must be necessary expenditures of Federal funding in order to meet program objectives. Unnecessary costs are those that are not required to achieve the objectives of the Subrecipient Agreement, Funding Agreement, or similar contract or are not related to the CDBG-DR program being administered.

4.4.5 REASONABLE COSTS (2 CFR § 200.404)

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the Subrecipient or Successful Applicant or the proper and efficient performance of the Federal award;
- The restraints or requirements imposed by such factors as sound business practices; arms-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award;
- Market prices for comparable goods or services for the geographic area;
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the Subrecipient or Successful Applicant, its employees, the public at large, DED, and the Federal Government;
- Whether the Subrecipient or Successful Applicant significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the cost.

4.4.6 PRE-AWARD AND PRE-APPLICATION COSTS

Subrecipients and Successful Applicants may be reimbursed for costs incurred on a project before a Subrecipient Agreement, Funding Agreement, or similar contract is signed, with DED's approval. Subrecipients and Successful Applicants may only charge pre-award costs to the award that meet the following general requirements:

- Subrecipients may only charge the costs for rehabilitation, demolition, and reconstruction of single-family, multifamily, and nonresidential buildings owned by private individuals and entities incurred before the owner applies to the Subrecipient for CDBG-DR assistance;
- For rehabilitation and reconstruction costs, Subrecipients and Successful Applicants may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
- As required by 2 CFR Part 200, Subpart E, costs must be adequately documented;
- Pre-award costs are subject to the Duplication of Benefits rules (see **Chapter 18: Duplication of Benefits**).

4.4.7 ALLOCABLE COSTS (2 CFR § 200.405 AND § 200.406)

Successful Applicants cannot be reimbursed for administrative or indirect costs, as those costs must be built into the project application. The following are requirements for Subrecipients and guidelines for Successful Applicants. A cost is allocable to a particular award, Subrecipient Agreement, Funding Agreement, or similar contract, vendor contract, program, or other cost objectives if the goods or services involved are chargeable or assignable to that cost objective in accordance with relative benefits received. This standard is met if the cost:

- Is incurred specifically for that cost objective;
- Benefits both that cost objective and other work of the Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the Subrecipient and is assignable in part to the specified cost objective in accordance with 2 CFR Part 200, Subpart E.

All cost objectives which benefit from the Subrecipient's indirect (Facility & Administrative [F&A]) cost, including unallowable activities and donated services by the Subrecipient or third parties, will receive an appropriate and proportionate allocation of indirect costs.

Any cost allocable to a particular cost objective may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the Subrecipient or Successful Applicant from shifting costs that are allowable under two or more cost objectives in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.

For all entities charging the CDBG-DR grant, costs should only be charged net of all applicable credits. Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the cost objective. Examples include:

- Purchase discounts;
- Rebates or allowances;
- Recoveries or indemnities on losses;
- Insurance refunds or rebates; and
- Adjustments of overpayments or erroneous charges.

To the extent that such credits accruing to or received by the Subrecipient or Successful Applicant relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate. These credits do not constitute program income (for further information see **Chapter 7: Program Income**).

4.4.8 CLASSIFICATION OF COSTS: DIRECT AND INDIRECT (2 CFR § 200.412)

There is no universal rule for classifying certain costs as either direct or indirect F&A under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of the cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect F&A cost in order to avoid possible double-charging of Federal awards.

4.4.9 DIRECT COSTS (2 CFR § 200.413)

Direct costs are those costs that can be identified specifically with a particular cost objective and directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect F&A costs.

The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1. Administrative or clerical services are integral to a project or activity;

2. Individuals involved can be specifically identified with the project or activity;
3. Such costs are explicitly included in the budget or have the prior written approval of HUD; and
4. The costs are not also recovered as indirect costs.

4.4.10 INDIRECT COSTS AND INDIRECT COST RATES

Indirect costs are those costs incurred for a common or joint purpose benefitting more than one (1) project, and not readily assignable to a single project. Indirect costs are generally administrative and are considered PACs or ADCs (defined below).⁶ Subrecipients must receive prior DED approval to charge indirect costs to the award. A request to claim and charge costs must be submitted as a cost allocation plan to DED. Cost allocation plan procedures and requirements can be found in 2 CFR Part 200, Subpart E.

4.4.11 CLASSIFICATION OF CDBG-DR COSTS – PROGRAM ADMINISTRATIVE COSTS, ACTIVITY DELIVERY COSTS, PROJECT COSTS, AND PLANNING COSTS

Regardless of the determination of costs as either direct or indirect, all HUD CDBG-DR costs must also be allocated to the eligible activity and CDBG-DR funded program based on the type of cost and the particular function performed. Options include:⁷

- Project Costs – direct costs of undertaking a project and providing a benefit to a beneficiary of CDBG-DR funding;
- Activity Delivery Costs (ADCs) – costs of carrying out a specific CDBG-DR program and providing a program benefit;
- Planning Costs – costs related to the development of Action Plans, functional plans, methods of distribution, or other activities as described more below; and
- Program Administrative Costs (PACs) – costs incurred for the general management, oversight, and coordination of the CDBG-DR grant.

Each of these cost types has budgets and caps described within each Subrecipient Agreement or similar contract and Application Guide. Further description of each follows.

⁶ Successful Applicants are ineligible to receive both PAC and ADC reimbursements on top of their project budgets and must factor their administrative costs into their application budgets.

⁷ For additional information regarding CDBG-DR cost types, see <https://files.hudexchange.info/resources/documents/CDBG-DR-Cost-Types-Summary.pdf>.

4.4.12 PROJECT COSTS

Project costs include all assistance directly to developers (e.g., Successful Applicants), homeowners, businesses, and other beneficiaries. Examples of project costs include, but are not limited to:

- Construction hard costs for building improvements or infrastructure projects;
- Grants or loans to homeowners or businesses;
- Developer fees and associated contractor overhead and profit related to the provision of direct services when using a developer; and
- All costs related to the provision of public services, including staff time and other direct costs (such as supplies) to deliver these services.

4.4.13 ACTIVITY DELIVERY COSTS

ADCs include staff and consultant costs necessary to implement and carry out a specific CDBG-DR program or cost objective. Successful Applicants (developers), homeowners, businesses, and other beneficiaries cannot incur ADCs. Examples of eligible ADCs include, but are not limited to:

- Staff time necessary to administer a specific program;
- Environmental reviews (if completed by Subrecipient);
- Applicant intake and eligibility screening in a specific program; and
- Project underwriting and selection.

4.4.14 PLANNING COSTS

Planning costs (as defined in 24 CFR § 570.205) are those costs that generally result in the development of “a plan” (although with some exceptions). Planning for a specific project may be an ADC if undertaken by the Subrecipient and a planning activity can be a CDBG-DR eligible activity and may convert to an ADC if planning progresses far enough to meet a CDBG-DR National Objective. Developers (i.e., Successful Applicants), homeowners, businesses, and other beneficiaries cannot incur planning costs.

Subrecipients should refer to their Subrecipient Agreement or similar contract to determine whether any planning funding has been allocated and for what purpose. Examples of eligible planning activities:

- Comprehensive Plans;
- Community Development Plans;
- Functional plans for housing, land use, and economic development; and

- Mitigation plan or disaster resiliency plan.

4.4.15 PROGRAM ADMINISTRATIVE COSTS

PACs must only be used for activities related to the CDBG-DR program and cannot pay for general operational expenses unrelated to the award. Successful Applicants (developers), homeowners, businesses, and other beneficiaries cannot incur PACs. Subrecipients generally will not be able to use PAC funding (details can be found in their Subrecipient Agreement or similar contract). Examples of eligible PACs include, but are not limited to:

- Monitoring overall program performance;
- Leased office space and general operations;
- Staff time and contracted services to manage the funds and CDBG-DR program overall;
- Administrative support;
- Legal, accounting, human resources, and audit;
- Financial management;
- Reporting, including QPR; and
- On-going compliance monitoring after project close-out.

A Subrecipient managing a single program may not need to incur any PACs, since all of their costs may be directly related to that single activity. **Subrecipients may not use ADC funding to pay for costs that are only eligible as PACs.**

4.4.16 TIMELY EXPENDITURE OF FUNDS

All CDBG-DR funds in connection with Winter Storm Ulmer (DR-4420) must be expended by July 7, 2027 pursuant to DED's grant agreement with HUD. All Subrecipient Agreements and Funding Agreements must expire no later than six (6) months before that date. Any contracts entered into by Subrecipients and Successful Applicants in connection with CDBG-DR programs and projects must end no later than the expiration date of their respective Subrecipient Agreement or Funding Agreement. All programs and projects must be planned to ensure sufficient time to complete work and finish closeout within the time allotted (see **Section 4.4.17: Final Payments**, and **Chapter 5: Procurement** for additional information).

Each entity is responsible for ensuring that all invoices are submitted to DED with sufficient time for final invoices to be paid prior to their funding expiration date. Final invoices from contractors, vendors, Subrecipients, and Successful Applicants will not be paid until the project or program has completed all work and submitted all documentation. Final invoices for Subrecipients and Successful Applicants cannot be paid until all contracts and other open spending in the projects or programs they are managing have been closed out. Subrecipients and Successful Applicants

are strongly encouraged to monitor the timely expenditure of funds to ensure all project funds are spent within the time frame allotted.

4.4.17 FINAL PAYMENTS

DED will not approve any final payments to Subrecipients or Successful Applicants for contractors or vendors until all deliverables are completed and required reporting documents are received. Subrecipient Agreements, Funding Agreements, or similar contracts will be closed out once all of the projects listed therein have received final payment and been closed out. Any final PAC invoices for Subrecipients⁸ will not be paid until all deliverables are completed, required reporting documents are received, and projects are closed out.

Construction projects must be properly inspected prior to closing out the project and before the final payment request is made. When construction work has been completed, the following steps must be taken:

1. The Vendor/Contractor must certify completion of work to the Subrecipient or Successful Applicant and submit a final request for payment. A Successful Applicant doing construction work itself must provide written certification that work is complete.
2. The Subrecipient or Successful Applicant must then arrange for a final inspection.
3. The Subrecipient or Successful Applicant, or their architect/engineer and/or construction manager should attend the final inspection and prepare a written report of the inspection prior to DED's issuance of a final payment. Architect/engineer sign-off is required for Successful Applicants doing their own construction work.
4. If the project involved the construction of a building, the Office of the State Fire Marshal, Code Enforcement, and Building Safety must issue a Certification of Occupancy.

Before making the final payment (less retainage) to Vendor/Contractor on a construction project, the following must be verified:

1. All weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved;
2. All discrepancies identified via on-site interviews must have been resolved;
3. All other required equal opportunity and labor standards provisions must have been satisfied;
4. All contract submissions must have been received;

⁸ Subrecipients generally will not be able to use PAC funding (details can be found in their Subrecipient Agreement or similar contract).

5. All claims and disputes involving the Vendor/Contractor must have been resolved, and all files must be complete;
6. As-built information has been provided to the engineer; and
7. A Final Wage Compliance Report is drafted by each Vendor/Contractor and submitted to Subrecipient or Successful Applicant to submit to DED.

Subrecipients will verify these documents for their projects. Successful Applicants will collect these documents and submit them to DED for the Program Manager's approval. For more information, see **Chapter 14: Davis-Bacon**.

Once the final work is inspected and all documents are properly executed and submitted, the Subrecipient, or DED for projects implemented by Successful Applicants, can issue an acceptance of work. Then DED can approve the final payment. The Subrecipient's or Successful Applicant's Vendor/Contractor(s) should file the acceptance of work at the designated location.

4.4.18 FEDERAL REQUIREMENTS FOR TREATMENT OF SPECIAL TYPES OF COSTS

Federal requirements place limitations on specific items of costs, including prohibiting certain costs from being charged to a Federal award (notable examples include expenditures for lobbying, alcohol, and payment on uncollectable debts). These requirements are specific and enumerated in 2 CFR Part 200, Subpart E. Subrecipients and Successful Applicants should reference these requirements and become familiar with them in order to carry out any Federal program.

4.4.19 INELIGIBLE COSTS AND IMPROPER PAYMENTS

The following list includes common items that will not be approved for CDBG-DR funding. This list is not intended to be comprehensive and includes, by reference, all other ineligible costs referenced throughout this chapter, including costs determined to be unnecessary, unreasonable, or unallowable to the CDBG-DR grant:

- Individuals, homes, or projects not approved as beneficiaries or projects in the application;
- Billing software and related equipment not physically connected to the CDBG-DR-funded projects, including software that must be considered in relation to DED's system of record;
- Generators that are not permanently installed at the designated location (trailer-mounted generators are not considered permanently installed);
- Cost of obtaining permits or other documentation that would be required regardless of the current projects;
- Commercial advertising and public relations costs, such as the replacement or addition of a logo, water system name, or other cosmetic painting on CDBG-DR funded water tanks and other structures;

- Projects that have not received environmental clearance for Release of Funds (ROF);
- Funds to benefit political campaigns;
- Funds for costs associated with the conduct of government (e.g., city hall, courthouses, emergency operation centers); and
- Other similar costs.

Refer to 2 CFR Part 200, Subpart E for the basic guidelines of eligible costs. If the Subrecipient or Successful Applicant will be incurring any special or unusual costs, the Subrecipient or Successful Applicant should seek prior written approval from DED.⁹

4.4.20 COLLECTION OF UNALLOWABLE COSTS (2 CFR § 200.410)

Payments made for costs determined to be unallowable by HUD, DED, the State Auditor, the Subrecipient's cognizant agency for indirect costs, or any other oversight entity, either as direct or indirect costs, must be refunded (including interest) to DED in accordance with instructions from the entity that determined the costs are unallowable.

Subrecipients and Successful Applicants should have adequate internal and quality controls to appropriately prevent the issuance of improper payments to contractors or beneficiaries. Subrecipients and Successful Applicants should also implement quality assurance procedures to check for such improper payments and take appropriate corrective actions upon identifying such payments.

4.5 AMPLIFUND

The primary method for communicating the status of a payment request is the messaging system within AmpliFund, DED's grant management system. Only Subrecipients and Successful Applicants will have access to AmpliFund, and vendors, contractors, and beneficiaries must submit invoices and all other required documents to the Subrecipient or Successful Applicant they are working with. Subrecipients or Successful Applicants must log into AmpliFund, via <https://ne.amplifund.com>, to upload required documentation for payment requests.

4.6 INTERNAL CONTROLS

DED and its Subrecipients and Successful Applicants are required to establish internal controls over CDBG-DR funds that provide reasonable assurance that funds are being managed in compliance with federal statutes, regulations, and the terms and conditions of the HUD award.

⁹ See 2 CFR § 200.407.

Internal controls are designed to minimize the misuse of funds and poor recordkeeping and to maximize the likelihood of detecting problems if they occur. Internal controls require that multiple people with different roles review every financial transaction. In this way, internal controls make sure that funds are being used appropriately. Effective internal controls always crosscheck one another to ensure consistency across budgets, costs, records, and reports. Project funds may be withheld from Subrecipients, Successful Applicants, or vendor/contractors if CDBG-DR requirements are not met.

4.6.1 WITHHOLDING FUNDS BASED ON NON-COMPLIANCE WITH LABOR STANDARDS

CDBG-DR funding is subject to Davis-Bacon and Related Acts, which apply to contractors and subcontractors performing on federally funded or assisted contracts more than \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. See **Chapter 14: Davis-Bacon** for further information. If any violations of these labor standards are made, they must be corrected before an invoice can be paid.

If violations regarding restitution have not been corrected within thirty (30) calendar days from the date of the first notice of underpayment, the Subrecipient may withhold funds due to the prime Vendor/Contractor. DED may withhold funds to a Successful Applicant in the event of underpayment. The Successful Applicant is responsible for ensuring labor standards are followed on their projects, and must report to DED any violations that have been discovered. Only an amount considered necessary to ensure payment of underpaid wages (and liquidated damages, if applicable) may 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 Vendor/Contractor according to invoices presented for payment. The following steps should be taken:

- The Subrecipient must notify the prime Vendor/Contractor of the withholding and provide the second notice of underpayment.
- The Subrecipient must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed.
- If restitution is not made within thirty (30) days of the second notice of underpayment, or if there is disagreement regarding the finding of wages owed, DED must be notified.
- The Subrecipient must disburse wages owed from the withheld funds to the respective workers to whom they are due.
- The Subrecipient should contact DED for information on the proper procedure for disbursement of funds.

If a labor standards violation(s) does occur that results in the Subrecipient or Successful Applicant not being in compliance with CDBG-DR programs, DED may suspend payment on the next

payment request. For example, if the Subrecipient or Successful Applicant fails to ensure the timely submission of Vendor/Contractor payrolls, then the Subrecipient or Successful Applicant may be considered as being non-compliant with CDBG-DR programs.

4.6.2 SUSPENSION

When a Subrecipient, vendor/contractor, Successful Applicant or other entity receiving CDBG-DR funds fails to comply with the grant award stipulations, DED may suspend the award, withhold further payments, or prohibit the Subrecipient or Successful Applicant from incurring additional obligations of CDBG-DR funds, pending corrective action by the Subrecipient, vendor/contractor, Successful Applicant or other entity.

4.6.3 TERMINATION FOR CAUSE

DED may terminate any activity in whole, or in part, at any time before the date of completion, whenever it is determined that a Subrecipient or Successful Applicant has failed to comply with the conditions of the award. DED shall promptly notify the Subrecipient or Successful Applicant in writing of the termination and the reasons for the termination, together with the effective date. For this type of termination, DED will not honor any costs. If funds have been paid to the Subrecipient, Successful Applicant, or a Vendor/Contractor they must be repaid to DED, as applicable.

4.6.4 TERMINATION DUE TO UNAVAILABLE FUNDING

The activity is contingent upon the appropriation and release of sufficient funds to DED to fulfill the requirements of the award. If the appropriate authorities fail to approve and provide an adequate budget to DED to fulfill the requirements of the award, the activity may be terminated by DED, the Subrecipient, or Successful Applicant. The Subrecipient or Successful Applicant shall be paid for all authorized services performed prior to termination.

4.7 COLLECTIONS AND REPAYMENT

If DED disburses funds and subsequently determines that the funds were disbursed in error the Program Manager will contact the Subrecipient or Successful Applicant of the funds and determine if subsequent funds will be drawn for the same activity. If the award is still open and subsequent funds will be drawn, the amount disbursed in error will be deducted from the next amount drawn.

If the award is closed or no subsequent funds will be drawn, DED will send an invoice to the Subrecipient or Successful Applicant of the funds for repayment.

4.8 DOCUMENTATION RETENTION

Subrecipients and Successful Applicants must retain all documentation related to the use of CDBG-DR funds. Documentation required includes procurement or selection processes for any

contractors, vendors, and beneficiaries, information showing compliance with the requirements listed above, and project completion metrics. Financial documentation is inextricably tied to other program requirements, and reviews of compliance with those requirements are connected to reviews of financial documents. Please (see **Chapter 17: Recordkeeping and Data Management**) for further details.

4.9 INVOICE SUBMISSION

4.9.1 REQUIRED DOCUMENTATION

DED provides Subrecipients and Successful Applicants with a Request for Payment User Guide with instructions on how to submit required documentation in AmpliFund. User guides and how-to videos are available at <https://opportunity.nebraska.gov/amplifund/>, including program specific guides and FAQs.

To receive payment, Subrecipients or Successful Applicants will submit an invoice package, which includes but is not limited to the invoice package forms, certifications, and other supporting documents to support the authorization for payment in compliance with applicable Federal, State, and local regulations. The invoice package should be complete, accurate, and provide all required supporting documents and certifications, without exception, in a timely and organized manner, as well as any corrections or additional documents requested by the Program Manager. All payments must be reimbursements of costs already incurred.

Before a first payment is submitted, the State of Nebraska W-9 & ACH Enrollment Form (see [State of Nebraska W-9 & ACH Enrollment Form](#)) must be uploaded into AmpliFund.

A fully signed Subrecipient Agreement, Funding Agreement, or similar contract is required before any invoices can be submitted. In all cases, Subrecipients and Successful Applicants are responsible for ensuring that funding is drawn against their Subrecipient Agreement, Funding Agreement, or similar contract at a pace that ensures completion within their period of performance. Further, DED will not pay invoices that exceed a project's approved budget.

Every invoice must include a cover page (see [Invoice Submission Cover Page](#)) with the following information:

1. Project Name;
2. Time period in which work was done, and date of invoice;
3. Dollar amount requested;
4. Name(s) of entity(ies) incurring costs;
5. All appropriate backup documentation to justify the dollar amount requested (invoices, complete payrolls, etc.); and
6. Environmental review, Section 3, and other compliance documentation as necessary for the project must be up to date.

All expenses must have backup documentation to show the details of the expenses incurred, plus proof of payment. CDBG-DR is a reimbursement program and will only pay Subrecipients and Successful Applicants for expenses already paid. Non-payroll expenses should be supported by paid invoice or periodic bill for service. If unavailable, a copy of canceled check with a written description will be acceptable. Claims for salaries and wages must be supported by copies of attendance, gross pay, pay rate time hours worked, and payroll tax.

If Subrecipients or Successful Applicants have any questions on required documentation for invoice submission, they should contact their Program Manager. If a Subrecipient or Successful Applicant has more than one (1) CDBG-DR project, they must submit separate invoices for each project. Subrecipients and Successful Applicants should submit invoices no more than once per month, or a minimum of \$5,000. Final invoices should be submitted no later than ninety (90) days after work completion. (See **Section 4.4.17: Final Payments**), above for further details on final payments.

4.10 INVOICE REVIEW

DED staff will review all requests for payment for completeness, accuracy, and eligibility. Subrecipients and Successful Applicants must ensure that all CDBG-DR funding is spent only on eligible, necessary, reasonable, and allocable costs associated with project activities within their Subrecipient Agreement, Funding Agreement, or similar contract.

DED will endeavor to pay all invoices within thirty (30) days of receipt of a complete invoice package. Incomplete invoice packages will incur delays and cannot be paid until all documentation is received. Payment requests will not be partially paid, they will either be approved or rejected. Rejected payment requests will come with an explanation to the Subrecipient or Successful Applicant on how deficiencies in the invoice package can be cured or why requested costs are not eligible to be paid.

TOOLKIT LIST

The following documents for **Chapter 4: Financial Management** are available on the [Toolkit section of DED's website](#):

- Invoice Submission Cover Page
- State of Nebraska W-9 & ACH Enrollment Form

5 PROCUREMENT

5.1 POLICY OVERVIEW

The CDBG-DR grant will be administered by the State of Nebraska Department of Economic Development (DED), through procurement contracts or through Subrecipients or Successful Applicants. The State of Nebraska maintains ultimate responsibility for ensuring compliance with procurement policies as outlined in the [State of Nebraska Procurement Manual](#), which applies to all programs regardless of source of funds.¹

This chapter is intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the implementation of programs using CDBG-DR funds.

5.2 ROLES AND RESPONSIBILITIES

DED: As Grantee for the CDBG-DR program, has adopted 2 CFR § 200.317 for any procurement it undertakes with CDBG-DR funds. Subrecipients and non-profit Successful Applicants are required to adopt the standards set forth in 2 CFR §§ 200.318 through 200.327, as well as State and local laws and regulations for any procurement it undertakes with CDBG-DR funds. State of Nebraska procurement is set out in Neb. Rev. Stat. § 73-504(2), and detailed in the [State of Nebraska Procurement Manual](#), and is applicable to all procurement in the State of Nebraska. This chapter is a guide for Subrecipients and non-profit Successful Applicants and does not supersede the applicable reference documents. DED will review all contracts procured by Subrecipients and non-profit Successful Applicants with CDBG-DR funds to ensure compliance with all applicable laws and regulations.

Subrecipient: A governmental entity that is serving as a Subrecipient shall follow the procurement rules in 2 CFR Part 200, in the [State of Nebraska Procurement Manual](#), and other references detailed in this chapter.

Successful Applicant: A non-profit, non-governmental Successful Applicant is responsible for the same Federal funds oversight responsibilities as a Subrecipient, including the procurement requirements set out in 2 CFR Part 200. For-profit Successful Applicants (for example, housing developers) are not required to follow these procurement standards unless specifically mentioned. See particularly **Section 5.8.11: System for Awards Management (SAM) Verification**.

¹ The “reciprocal preference” outlined in Section 6.15 of the State of Nebraska Procurement Manual and set forth in Neb. Rev. Stat. §73-101.01 shall not apply to administration or implementation of projects paid with CDBG-DR funds.

5.3 PROCUREMENT POLICY

The Subrecipient and non-profit Successful Applicant must establish and maintain effective internal control over the CDBG-DR award, providing reasonable assurance that all parties involved comply with Federal, State, and local statutes, regulations, and the terms and conditions of the CDBG-DR award. Internal controls should comply with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the US or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).²

Under internal controls, the Subrecipient or non-profit Successful Applicant establishes standards of conduct concerning integrity and ethical values. The Subrecipient or non-profit Successful Applicant uses ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the general public. The standards of conduct guide the directives, attitudes, and behaviors of the organization in achieving the entity’s objectives. Furthermore, these internal controls are critical when a Subrecipient or non-profit Successful Applicant is working with a contractor to do work on behalf of the organization. For example, a contractor shall not be involved in the preparation of bid documents should said contractor intend to bid on any part of the Subrecipient’s or non-profit Successful Applicant’s project. Nor should that entity be involved in reviewing, scoring, or decision-making involving an award of contract. Internal control of such procedures may safeguard against loss leader arrangements, conflicts of interest, and other compliance concerns.

At the application stage, DED will review the procurement policies of Applicants for all programs. DED will review all primary contracts procured by Subrecipients and non-profit Successful Applicants for adherence to the requirements outlined in this document. For Infrastructure Match projects already in progress, this review will happen at the application stage. For other projects, DED may require submission of a proposed contract before it is signed by the Subrecipient or Successful Applicant for review. DED will use the [Sample Procurement Checklist](#) as the basis for its review of proposed contracts. Subrecipients and Successful Applicants are encouraged to ensure their procurements meet the requirements listed in this chapter.

WARNING: Conducting procurement processes prior to CDBG-DR award does not remove the requirement to make use of internal controls. It is the Subrecipient’s or non-profit Successful Applicant’s responsibility to comply with Federal, State, and local statutes, regulations, and the terms and conditions of Federal awards, including CDBG-DR. The Subrecipient or Successful Applicant may not execute any contract for goods or services after application for funding and prior to HUD issuing the Subrecipient or Successful Applicant a written environmental clearance and Request for Release of Funds (RROF) with the exception of contracts to support program or project delivery.

² 2 CFR § 200.303(a).

5.4 CONFLICT OF INTEREST

DED and its Subrecipients and non-profit Successful Applicants must take significant steps to avoid **conflicts of interest**. As set out in 2 CFR § 200.318, “No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.”³ In certain instances, where the Subrecipient or non-profit Successful Applicant solicited a firm to prepare the CDBG-DR application for submission to DED, and where that firm may also provide professional services related to the CDBG-DR project and intends to submit a proposal for those services, that firm may not in any way assist the Subrecipient or non-profit Successful Applicant in the procurement process. For example, if ABC & Associates intends to submit a proposal for services, ABC & Associates, as CDBG-DR application preparer, may not assist the Subrecipient or non-profit Successful Applicant in the procurement process. Such a conflict of interest may result in DED disallowing the use of CDBG-DR funds for the payment of such costs of the subsequently procured contract and may affect future eligibility to receive CDBG-DR funds.

State of Nebraska personnel involved in the procurement of goods and services have the responsibility to uphold Nebraska procurement laws and act in good faith to serve the best interests of the State of Nebraska and its taxpayers. All public officers and state employees, not just procurement professionals, are expected to read and understand these key statutes prescribing proper conduct. Any alleged violations of these standards of conduct shall be reported to DED and are subject to review, and if proven, disciplinary action including, but not limited to, dismissal or transfer. Where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

5.5 GENERAL PROVISIONS (2 CFR § 200.318)

The intent of standards and procedures for procurement is to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible; and
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must explain all the requirements that the bidder or offeror has to meet for the Subrecipient or non-profit Successful Applicant to evaluate the bid or offer. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or

³ A conflict of interest arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. See 2 CFR § 200.318(c)(1).

service to be procured, and cannot contain features which unduly restrict competition.⁴ Some of the situations considered restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Non-competitive pricing practices between firms or affiliated companies;
- Non-competitive awards to consultants on retainer contracts;
- Organizational conflicts of interest;
- Specifying only “brand name” products instead of allowing an “equal” product; and
- Any arbitrary action in the procurement process.

Subrecipients and non-profit Successful Applicants must award contracts to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Subrecipient or non-profit Successful Applicant, price, and other factors considered. Any and all bids may be rejected when it is in the Subrecipient’s or non-profit Successful Applicant’s interest to do so. The Subrecipient and non-profit Successful Applicant must ensure to award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. The Subrecipient and non-profit Successful Applicant should consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

5.6 NEBRASKA PROCUREMENT REQUIREMENTS

When construction contractors are required, a licensed contractor with the State of Nebraska and local jurisdictions will be required. According to each local jurisdiction, permits may be required for work conducted utilizing CDBG-DR funding. For all work being performed, construction contractors will be required to have a one-year warranty.

5.7 FEDERAL PROCUREMENT REQUIREMENTS

Subrecipients and non-profit Successful Applicants receiving CDBG-DR funding will be required to follow the procurement standards of 2 CFR §§ 200.318 through 200.327 and the contract provisions within Appendix II to Part 200 (see [Text of 2 CFR §§ 200.318 through 200.327 and Appendix II to Part 200](#)). These procurement standards are to be incorporated into all Subrecipient Agreements and Funding Agreements with non-profit Successful Applicants.

⁴ 2 CFR § 200.319.

Subrecipients and non-profit Successful Applicants will also be required to update procurement policies and procedures to correspond with these requirements.

Subrecipients and non-profit Successful Applicants should utilize resources to comply with procurement requirements. The [Sample Procurement Checklist](#) is a prime resource which should be utilized to identify the action items of the procurement process and ensure all compliance steps are completed. This, and other guidance is designed to maximize CDBG-DR resources and avoid common pitfalls of noncompliance that could result in the recapture of funds and re-procurement. Subrecipients and non-profit Successful Applicants are strongly encouraged to understand the procurement requirements or risk adverse consequences.

5.7.1 SUMMARY OF FEDERAL REQUIREMENTS

- 1. Records and Files:** Subrecipients and non-profit Successful Applicants must maintain records sufficient to detail the history of procurement. Subrecipients and non-profit Successful Applicants must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection or rejection process, and the basis for the cost or price of a contract.⁵
- 2. Pre-Qualified Lists of Vendors or Contractors:** If such lists are used, they must be current, developed through open solicitation, include adequate numbers of qualified sources to ensure maximum free and open competition, and must allow entry of other firms to qualify at any time during the solicitation period.⁶
- 3. Unfair Competitive Advantage:** To eliminate unfair competitive advantage, if the Subrecipient or non-profit Successful Applicant has used a contractor to develop or draft specifications, requirements, statements of work, or invitations for bids (IFB) or requests for proposals (RFP), the Subrecipient or non-profit Successful Applicant must exclude that contractor from the competition for such procurements.⁷
- 4. Debarred or Ineligible Contractors:** The Subrecipient or non-profit Successful Applicant must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, and 2 CFR § 180.700-885, "Suspension and Debarment."

The Subrecipient or non-profit Successful Applicant must verify and maintain documentation that the firm or contractor and any subcontractor does not have an active exclusion on the System for Award Management (SAM). See **Section 5.8.11: System for Awards Management (SAM) Verification** for additional information on SAM registration. Federal agencies maintain the active exclusion/debarred list. To determine eligibility, the Subrecipient or non-profit Successful Applicants must review SAM (<https://www.sam.gov/>)

⁵ 2 CFR § 200.318(i).

⁶ 2 CFR § 200.319(e).

⁷ 2 CFR § 200.319(b).

for all contractors and firms submitting a bid or proposal. SAM verification should occur at the time of submission or negotiations and must occur prior to selecting a contractor or firm for contract award.

NOTE: SAM registration of contractor or firm is not required to verify they are not on the debarred list nor is an active SAM registration confirmation that they are not debarred/ineligible.

5. Written Procedures For Contractor Selection: The Subrecipient or non-profit Successful Applicant must have written selection procedures for procurement transactions,⁸ adequate to ensure the following:

- a. Avoid acquisition of unnecessary or duplicate items. Consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, make an analysis of lease vs. purchase alternatives, and any other appropriate analysis to determine the most economical approach.⁹
- b. Whenever possible, use local intergovernmental agreements or inter-entity agreements for procurement or use of common goods and services to foster greater economy and efficiency.¹⁰
- c. Whenever possible, use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.¹¹
- d. Whenever possible, use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunity for cost reductions.¹²
- e. All purchase orders (and contracts) are signed by the Subrecipient's or non-profit Successful Applicant's authorized official(s).
- f. Items delivered and paid for are consistent with the purchase order or contract for the goods or services.
- g. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.
- h. Perform a cost or price analysis for every procurement action that exceeds the Simplified Acquisition Threshold, including contract modifications, and maintain documentation to that effect in the Subrecipient's or non-profit Successful

⁸ 2 CFR § 200.319(d).

⁹ 2 CFR § 200.318(d).

¹⁰ See 2 CFR § 200.318(e). Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

¹¹ 2 CFR § 200.318(f).

¹² 2 CFR § 200.318(g).

Applicant's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Subrecipient or non-profit Successful Applicant must make independent estimates before receiving bids or proposals.¹³

- i. Negotiate profit or fee separately from price for each contract where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry profit rates in the surrounding geographical area for similar work.¹⁴
- 6. Contract Pricing:** Subrecipients and non-profit Successful Applicants must not use "cost plus a percentage of cost" pricing for contracts;¹⁵ in addition, Subrecipients and non-profit Successful Applicants may use "time and material" type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.¹⁶
- 7. Protest Procedures:** Subrecipients and non-profit Successful Applicants must have protest procedures in place to handle and resolve disputes relating to procurement.¹⁷
- 8. Documenting Contractor Performance:** Subrecipients and non-profit Successful Applicants must have a documented system of contract administration for determining the adequacy of contractor performance.¹⁸
- 9. Code of Conduct:** Subrecipients and non-profit Successful Applicants must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts.¹⁹

5.8 PROCUREMENT METHODS

Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed-price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the Subrecipient or non-profit Successful Applicant has the opportunity to make the provider assume a large share of the risk for nonperformance. For-profit Successful Applicants are not subject to these requirements.

¹³ 2 CFR § 200.324.

¹⁴ 2 CFR § 200.324(b).

¹⁵ 2 CFR § 200.324(d).

¹⁶ 2 CFR § 200.318(j).

¹⁷ 2 CFR § 200.318(k).

¹⁸ 2 CFR § 200.318(b).

¹⁹ 2 CFR § 200.318(c)(1).

The Federal guidelines listed below are set out in 2 CFR §§ 200.318 through 200.327. Subrecipients and non-profit Successful Applicants are also subject to the requirements and standards as set by the [State of Nebraska Procurement Manual](#).

5.8.1 MICRO PURCHASES (2 CFR § 200.320(A)(1))

DED considers procurement by micro-purchase procedures best suited to obtaining small quantities of supplies and services. Subrecipients and non-profit Successful Applicants may follow either their local small purchase procurement policy or the Federal policy. However, Subrecipients and non-profit Successful Applicants must follow the procurement policy that is most stringent, whether the local policy or Federal policy (described below).

The micro-purchase method may be used for procurement of supplies or services the aggregate of which does not exceed the micro-purchase threshold.²⁰ As of the publication date of this chapter, the micro-purchase threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR § 2.101 is \$10,000, except for construction at \$2,000 and services at \$2,500. Additionally, a Subrecipient or non-profit Successful Applicant may establish a higher threshold than the micro-purchase threshold identified in the FAR. The Subrecipient or non-profit Successful Applicant may self-certify a threshold of up to \$50,000²¹ on an annual basis. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit;
- An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
- For public institutions, a higher threshold consistent with State law.

A procurement of more than this threshold may not be inappropriately broken up into smaller components solely to qualify for the micro-purchase approach. The Subrecipient or non-profit Successful Applicant must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the Subrecipient or non-profit Successful Applicant considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly.

²⁰ 2 CFR § 200.320(a)(1). The “micro-purchase threshold” means the dollar amount at or below which a subrecipient may purchase property or services using micro-purchase procedures. Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR Part 2, subpart 2.1, unless a higher threshold is requested by the subrecipient and approved by the cognizant agency for indirect costs. The subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.

²¹ 2 CFR § 200.320(a)(1)(iv). Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.

5.8.2 SMALL PURCHASE (2 CFR § 200.320(A)(2))

DED considers procurement by small purchase procedures best suited to obtaining small quantities of supplies or services. The Subrecipient or non-profit Successful Applicant may follow either their local small purchase procurement policy or the Federal policy. However, Subrecipients and non-profit Successful Applicants must follow the procurement policy that is most stringent, whether the local policy or Federal policy (described below).

The small purchase method may be used for procurement of property or services exceeding the threshold for the micro-purchase method and up to the simplified acquisition threshold.²² As of the publication date of this chapter, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. A procurement of more than \$250,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.

Competition is sought through oral or written price quotations. The Subrecipient or non-profit Successful Applicant must document the receipt of an adequate number (usually at least three [3]) of price or rate quotations from qualified vendors. If an adequate number is not obtained, contact DED.

All contracts for \$10,000 or more should have provisions allowing the Subrecipient or non-profit Successful Applicant to terminate the contract at any time for cause or for convenience.²³

Documentation Requirements:

1. Identify in writing the item to be procured.
2. Solicit in writing, written quotes from at least three (3) qualified bidders. Verbal quotes, documented by the Subrecipient or non-profit Successful Applicant in writing, are acceptable for purchases of less than \$500.
3. Identify the lowest responsible bidder.
4. Notify each bidder in writing as to whether or not they are the apparent lowest responsible bidder.

²² See 2 CFR § 200.320(a)(2). The “simplified acquisition threshold” means the dollar amount below which a subrecipient may purchase property or services using small purchase methods. Subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by FAR at 48 CFR Part 2, subpart 2.1. The subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR Part 2, subpart 2.1) for the simplified acquisition threshold.

²³ 2 CFR Part 200, Appendix II (B).

5. Draft and execute a contract with the lowest responsible bidder.

5.8.3 COMPETITIVE SEALED BID (2 CFR § 200.320(B)(1))

DED considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials. This method must lend itself to a firm, fixed-price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

1. The Subrecipient or non-profit Successful Applicant must advertise the IFB in publications of general circulation, and solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;
2. The IFB must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
3. Bids must be opened publicly at the time and place stated in the IFB;
4. The Subrecipient or non-profit Successful Applicant must receive at least two (2) or more responsible bids for each procurement transaction. If two (2) or more responsible bids are not obtained, contact DED;
5. If awarded, a firm-fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.²⁴ The Subrecipient or non-profit Successful Applicant can, however, decide not to make the award to any of the bidders; and
6. Any or all bids may be rejected if there is a sound documented reason.

5.8.4 PROPOSALS (2 CFR § 200.320(B)(2))

DED considers this procurement method best suited to obtaining professional services. This is normally conducted with more than one (1) source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids (e.g., consultants, project and service delivery). This method has two (2) sub-parts:

- Request for Proposals (RFP)
- Request for Qualifications (RFQ)

The review process for both statements of qualification and proposals in response to an RFQ or RFP, respectively, should be thorough, uniform, and well documented. The committee or board carrying out the review should, to the extent possible, include persons with technical skills.

²⁴ Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.

Reviewers should have no potential conflicts of interest with the firms or individuals under review (e.g., family relationships, close friendships, or business partnerships).

Procedures must ensure that all solicitations promote competition:²⁵

- Identify all requirements which the offerors must fulfill;
- Identify all factors used in evaluating bids or proposals;²⁶ and
- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not contain features that unduly restrict competition.²⁷

RFPs and RFQs require the following:²⁸

1. RFPs or RFQs must be publicized and identify all evaluation factors and their relative importance. For example: RFP evaluation criteria may include technical expertise of the firm and its personnel (25 points); past record of performance on projects of similar nature, including quality of work and cost control (25 points); familiarity with CDBG-DR program (20 points); capacity of firm to perform the work within time schedule (20 points); and the nature and extent of services proposed versus estimated fees (10 points); etc. In general, Subrecipients and non-profit Successful Applicants should use the RFP process for professional planning services.
2. Proposals must be solicited from an adequate number of qualified sources (at least three [3]), which means that the individuals or entities meet certification, registration, or other professional qualifiers for service performance;²⁹
3. Subrecipients and non-profit Successful Applicants must have a written method for conducting technical evaluations of the RFP or RFQ proposals received according to the criteria specified in the RFP or RFQ and for making selections;
4. Awards must be made to the responsible offeror whose proposal is most advantageous to the program, with price and other specified factors considered as appropriate; and

²⁵ 2 CFR § 200.319.

²⁶ 2 CFR § 200.319(d)(2).

²⁷ 2 CFR § 200.319(d)(1). The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

²⁸ 2 CFR § 200.320(b)(2).

²⁹ Any response to publicized RFPs must be considered to the maximum extent practical.

5. Subrecipients and non-profit Successful Applicants may use competitive proposal procedures for qualification-based procurement of Architectural/Engineering (A/E) professional services, whereby offeror's qualifications are evaluated, and the most qualified offeror is selected subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor for RFQs.

The **RFQ** method, where price is not used as a selection factor, can only be used in procurement of A/E services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort. (NOTE: this does not include professional planning services).

In addition to publicly advertising in the local newspaper or journal of record, the Subrecipient or non-profit Successful Applicant must also publicly advertise in at least one (1) other newspaper that is widely distributed in its region of the state. The Subrecipient or non-profit Successful Applicant evaluates the firms responding and may conduct interviews with one (1) or more of the firms responding and select a consultant. The Subrecipient or non-profit Successful Applicant then negotiates a contract with terms and conditions to its satisfaction. The Subrecipient or non-profit Successful Applicant review committee should score all proposals received in accordance with the terms described and published with the RFP or RFQ, depending on the method used. DED recommends sending RFPs to firms serving the Subrecipient's or non-profit Successful Applicant's region of the State; however, proximity is not an adequate reason for selection and the Subrecipient or non-profit Successful Applicant must take measures to ensure fair and open competition.

5.8.4.1 Competitive Proposals Evaluation Criteria

The Competitive Proposals Evaluation Criteria consists of the following:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts, including quality of work, timeliness, and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

NOTE: Subrecipients and non-profit Successful Applicants may assign weights to each criterion to indicate relative importance. If interviews are required at any time in the review process, it must be expressly stated in the RFP. Additionally, Subrecipients and non-profit Successful Applicants should confirm that no conflicts of interest exist (see **Section 5.4: Conflict of Interest**).

5.8.5 REQUEST FOR PROPOSALS (RFP)

1. RFPs must clearly and accurately state the technical requirements for the goods and services required.

2. The RFP should specify the scope of services and the type of contract to be provided, cost reimbursement (i.e., cost plus fixed fee) or fixed price. Not allowable are cost plus a percentage of cost contracts.
3. The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and ranking and evaluation criteria. Subrecipients or non-profit Successful Applicants shall make every effort to make available pertinent materials, such as reports, maps and site plans to assist the offerors in preparing proposals. For complicated projects, Subrecipients or non-profit Successful Applicants may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG-DR contract regulations.
4. The Subrecipient or non-profit Successful Applicants must publicize the RFP, identify all evaluation factors and their relative importance, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
5. Proposals must be solicited from an adequate number of qualified offerors, consistent with the nature and requirements of the procurement;
6. The Subrecipient and non-profit Successful Applicant must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;
7. As necessary, the Subrecipient and non-profit Successful Applicant must conduct negotiations with those offerors deemed responsive and responsible, and those that fall within a competitive price range, based on the Subrecipient's or non-profit Successful Applicant's evaluation of the offerors' pricing and technical proposals. After negotiations, these offerors may be given the opportunity to submit a "best and final" offer; and
8. The Subrecipient or non-profit Successful Applicant must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful offeror must clearly be the most advantageous source of the goods and services.

5.8.6 REQUEST FOR QUALIFICATIONS (RFQ)

For procurement involving A/E services, the Subrecipient or non-profit Successful Applicant may use the RFQ competitive proposal procedure whereby offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor. The Subrecipient or non-profit Successful Applicant should review and rank every statement received, and either contact the first two (2) or three (3) choices to request a proposal covering the scope of services and estimated costs or select the top firm and begin negotiations.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are

unsuccessful, repeat this process with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The Subrecipient or non-profit Successful Applicant must take care to document the basis for its determination of the most qualified offeror and the reasonableness of the contract price. This qualifications-based approach to the competitive proposal method may only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.³⁰

This means that:

- Use qualifications-based procurement only for A/E services. In no other instance is issuance of an RFQ appropriate.
- Evaluation of offerors' qualifications culminates in selection of the most qualified offeror, subject to negotiation of fair and reasonable compensation.
- An RFQ is not allowable to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the Federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by Federal statutes, due to the restrictions on open competition, which result. However, in procuring A/E services, geographic location is permitted as a selection criterion provided this criterion leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.³¹ Note that the resident bidder preference outlined in Neb. Rev. Stat. 72-101.01 does not apply to projects paid with CDBG-DR funds.

5.8.7 NON-COMPETITIVE PROPOSALS/SOLE SOURCE (2 CFR § 200.320(C))

This method may be used only under very limited circumstances and the Subrecipient or non-profit Successful Applicant must obtain DED approval before using this method.

When requesting permission to use this method, the Subrecipient or non-profit Successful Applicant will have to show that another method of procurement was not feasible because:

- The aggregate dollar amount for the acquisition of property or services does not exceed the micro-purchase threshold;³²
- The item or service was only available from a single source;

³⁰ 2 CFR § 200.320(b)(2).

³¹ 2 CFR § 200.319(c).

³² See previous section for additional information regarding the micro-purchase threshold.

- A public emergency or condition requiring urgency existed which did not permit a delay resulting from publicizing a competitive solicitation; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.

In some cases, the Subrecipient or non-profit Successful Applicant selects one (1) of the other methods of procurement listed above which does not ultimately solicit an adequate number of responses. In such instances where the Subrecipient or non-profit Successful Applicant receives inadequate response, this may trigger 2 CFR § 200.320(c)(5). After solicitation of a number of sources, where competition is determined inadequate, it may be appropriate to convert the process into procurement by noncompetitive proposal. **Prior to awarding a contract under these conditions, the Subrecipient or non-profit Successful Applicant must consult with and obtain DED approval.**

5.8.8 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, SECTION 3 BUSINESS CONCERNS, AND LABOR SURPLUS AREA FIRMS (2 CFR § 200.321)

Subrecipients or non-profit Successful Applicants must take affirmative steps to use minority businesses, women's business enterprises, or labor surplus area firms when possible.³³ For example, the Subrecipient or non-profit Successful Applicant should:³⁴

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that such businesses are solicited whenever they are potential sources;
3. Divide total procurement requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of such businesses;
4. Establish delivery schedules, where the requirement permits, which encourage participation by such businesses;
5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Require prime contractors, if subcontracts are to be let, to take affirmative steps to select such firms.

³³ 2 CFR § 200.321(a).

³⁴ 2 CFR § 200.321(b).

Subrecipients and non-profit Successful Applicants are required to comply with Section 3 of the Housing and Community Development Act of 1968. Section 3 requires, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, the awarding of contracts in connection with Section 3 projects to eligible business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.³⁵ See also, **Chapter 13: Section 3** for additional information.

5.8.9 DOMESTIC PREFERENCES FOR PROCUREMENT (2 CFR § 200.322)

To the greatest extent practicable, Subrecipients and non-profit Successful Applicants should provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

5.8.10 PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.323)

Subrecipients which are governmental entities and its contractors must comply with Section 6002 of the Solid Waste Disposal Act. Section 6002 requires Subrecipients to procure items with the highest percentage of recovered materials possible. It also requires Subrecipients to procure waste management services that maximize energy and resource recovery.

5.8.11 SYSTEM FOR AWARDS MANAGEMENT (SAM) VERIFICATION

Consistent with HUD guidance, an active registration in the System for Award Management (SAM) is required to apply for an award and for DED to make a payment with HUD funds. Any non-governmental entity (**whether for-profit or nonprofit**) must have a Unique Entity Identifier (UEI) and maintain an active listing on sam.gov to be eligible for an award, and throughout the term of any associated Subrecipient or Funding Agreement involving CDBG-DR funds. It is recommended that entities maintain a public (not private) listing.

SAM is an official US government system that was created to provide a comprehensive list of individuals and entities debarred from contracting with the Federal government. Subrecipients and non-profit Successful Applicants are responsible for maintaining SAM verification. Based on the entity's relationship to the CDBG-DR-funded project, there are two primary (2) types of SAM verification. For both instances, the Subrecipient and non-profit Successful Applicant must maintain documentation as to initial verification and confirm verification prior to awarding a contract and charging any costs to the award.

³⁵ 24 CFR § 75.19.

1. **Subrecipient and Successful Applicant:** Subrecipients, Successful Applicants, and vendors/contractors (e.g., businesses participating in a commercial rehabilitation program or property owner participating in a housing rehabilitation program that is not an individual) must have a unique entity identifier, currently the DUNS number, active SAM registry, and have no active exclusions.
2. **Contractors, subcontractors, suppliers, and firms providing professional services (e.g., development districts, engineers, architects, planners, etc.):** SAM verification of contractors, subcontractors, suppliers, and firms providing professional services consists of confirmation the entity is not debarred and does not have an active exclusion.

To be eligible for a CDBG-DR award, the Subrecipient or non-profit Successful Applicant must meet the requirements listed for item 1 above. SAM requirements are again verified prior to processing drawdowns and during performance monitoring.

5.8.12 TIMING OF CONTRACT EXECUTION

After a Subrecipient Agreement or Funding Agreement has been fully executed, the Subrecipient or non-profit Successful Applicant may enter into contracts to support program or project delivery. (See **Chapter 4: Financial Management** for discussion on when and what cost types can be incurred.) Entering into all other contracts associated with the project must occur after ROF. In other words, the Subrecipient or non-profit Successful Applicant would enter into construction management, housing management, professional services, and construction contracts after ROF. Procurement process(es) may occur prior; however, certain contracts may not be entered into prior to HUD issuance of environmental clearance and ROF. Conditional contracts are discouraged. See **Section 5.3: Procurement Policy** for discussion of contracts entered into prior to application.

5.8.13 BONDING AND INSURANCE

For construction or facility improvement contracts or subcontracts exceeding \$250,000,³⁶ the Subrecipient or non-profit Successful Applicant must ensure that its procurement meets the minimum Federal requirements³⁷ for bid guarantees, performance bonds, and payment bonds. These include:

1. A **bid guarantee** from each bidder equivalent to 5% of the bid price. The bid guarantee must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount;

³⁶ \$250,000 is the current Simplified Acquisition Threshold.

³⁷ 2 CFR § 200.326.

2. A **performance bond** from the contractor for 100% of the contract price to secure the contractor's fulfillment of all obligations under the contract;³⁸ and
3. A **payment bond** from the contractor for 100% of the contract price, to assure payment of all persons supplying labor and material under the contract.

5.9 BEST PRACTICES FOR PROCUREMENT

DED guidance is a supplement to Federal and State requirements enumerated and discussed in brief within this chapter. Best practices are included here to encourage successful implementation. The Subrecipient or non-profit Successful Applicant is responsible for understanding and complying with Federal or State requirements located within the original source. In some instances, DED may require a more stringent approach in which case those requirements are detailed. DED will be available to provide support and technical assistance to Subrecipients and non-profit Successful Applicants to help ensure compliant and successful procurement practices.

Where the procurement method requires publication, the advertisement must be such as to inform interested parties and be available to the public (i.e., publicly solicited). Use of listing services requiring membership should not be solely relied upon and do not meet the intent of publication.

Where the Subrecipient or non-profit Successful Applicant received an inadequate number of responses, it is necessary to consult with DED to determine best practice prior to awarding a contract. In some instances, it may be appropriate to reissue procurement materials. DED can provide technical assistance to the Subrecipient or non-profit Successful Applicant to determine the best way forward.

Carry out SAM verification for all offerors responding to a procurement process at the time of submission and prior to negotiations to ensure that the offerors are not excluded from receiving Federal funds.

5.9.1 COMPETITIVE PROPOSALS

Be sure to score all proposals received in accordance with the terms described and published with the RFP or RFQ, depending on the method used. A response to an RFP/RFQ should not be confused with competitive bid. A bid is an estimate of cost in response to detailed specifications. A response to an RFP/RFQ in the competitive proposal process is a description of how a consultant proposes to approach solving a Subrecipient's or non-profit Successful Applicant's problem. Competitive proposals refer to the comparison of qualifications and may include fees where required or deemed appropriate. However, the main focus in selecting the consultant is to

³⁸ A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

evaluate the content of the proposal and the consultant's qualifications and demonstrated competence.

5.9.2 REQUEST REFERENCES

Any time a consultant solicits a Subrecipient's or non-profit Successful Applicant's business, the Subrecipient or non-profit Successful Applicant should always check references prior to contracting with them. Request a list of prior clients, showing the organization's name, address, phone number and contact person, as well as a brief description of the work performed. A list of the most recent clients is preferable (especially previous CDBG or CDBG-DR projects). Contact each reference. Some useful questions might be:

- Were you satisfied with the work?
- Was it performed on time?
- Was the consultant knowledgeable about the program?
- Were the tasks or work products prepared by the consultant useful?
- Did the consultant work with local staff to develop local capacity?
- Were the costs or charges reasonable? Did they stay within their original budget?
- Would you hire them again?

In addition, Subrecipients or non-profit Successful Applicants should check to see if the work done for these clients is similar to what the Subrecipient or non-profit Successful Applicant wants the consultant to do. The ability to write a grant application does not mean the same consultant has the capability to assist with managing a grant.

Sometimes the firm a Subrecipient or non-profit Successful Applicant is interested in will be a new firm with few, if any, client references. New, small firms can be just as good as well established, large firms, so instead of asking for client references, the Subrecipient or non-profit Successful Applicant could ask for past employer references.

Checking references prior to contracting is the most important action you can take to avoid becoming involved with a less than satisfactory firm.

5.9.3 INVOLVE LOCAL STAFF

Whenever a governmental Subrecipient retains a consultant to assist with preparing a grant application or managing a CDBG-DR project, make sure that someone from the city or county works with the consultant and understands the community's application or the management issues involved. The Subrecipient should have a local staff person become familiar with the regulations for the CDBG-DR program and work closely with the consultant in developing the application or managing the project. A consultant is a technical resource.

5.10 CONTRACT MANAGEMENT

5.10.1 CONTRACT LANGUAGE

All contracts require certain language to be included;³⁹ however, construction contracts require additional provisions to be included. See [Sample Professional Service/Consultant Contract Provisions](#) and [Sample Construction Contract Provisions](#) outline the language to be included in the respective contracts between Subrecipients and non-profit Successful Applicants and their contractors and vendors.

For further information on contract information, (see [Procurement Procedures and Code of Conduct](#)) for additional information on wage requirements on construction projects, (see **Chapter 14: Davis-Bacon**).

5.10.2 CONTRACT FILE

The Subrecipient or non-profit Successful Applicant must establish a contract file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants and related documentation;
- Qualification statements, RFP, and proposal(s) received;
- Any documentation used to evaluate respondents, if applicable;
- SAM verification (no active exclusions/debarment);
- Negotiation methods;
- Cost and pricing data;
- Contract for services;
- Records of partial payments and supporting documentation (in financial management files); and
- Contract amendments, if any, and rationale for amendment.

5.11 CONTRACT COMPLETION AND CLOSEOUT

All work must be completed, including delivery of any associated reports and documentation, before a vendor/contractor submits their final invoice. The vendor/contractor's final invoice must

³⁹ 2 CFR § 200.327 and Appendix II to 2 CFR Part 200.

be submitted within ninety (90) days of work completion. DED will not sign-off or approve a final payment to a Subrecipient or non-profit Successful Applicant or project closure if the project has outstanding labor issues (see **Chapter 13: Section 3** and **Chapter 14: Davis-Bacon** for additional information). It must be ensured that the Subrecipient or non-profit Successful Applicant has all payrolls, restitution payments, HUD illls and/or discrepancies resolved prior to close out of any CDBG-DR project. All funding for a CDBG-DR project must be expended before the expiration date of the Subrecipient Agreement or Funding Agreement with non-profit Successful Applicant.

5.12 REPORTING AND RECORDKEEPING

Subrecipients and non-profit Successful Applicants should document procurement process, bids received, contractor selection, and contract progress or status as described herein and in the Subrecipient Agreement or Funding Agreement. See **Chapter 17: Recordkeeping and Data Management** for additional information.

TOOLKIT LIST

The following documents for **Chapter 5: Procurement** are available on the [Toolkit section of DED's website](#):

- Procurement Procedures and Code of Conduct
- Sample Construction Contract Provisions
- Sample Procurement Checklist
- Sample Professional Service/Consultant Contract Provisions
- Text of 2 CFR §§ 200.318 through 200.327 and Appendix II to Part 200

6 AUDIT

6.1 POLICY OVERVIEW

This chapter defines the terminology and responsibilities related to the CDBG-DR auditing process and outlines the steps and requirements related to a successful auditing process. Additionally, this chapter describes the pre-award audit procedures for those deemed eligible, and the audit procedures focused on single audits, and describing the associated requirements.

This chapter details the audit requirements in 2 CFR Part 200 Subpart F. Subrecipients and Non-profit Successful Applicants are held responsible for all funds expended. 2 CFR Part 200 Subpart F outlays the federal requirements for audits for governmental entities and nonprofit organizations. As the HUD Grantee, DED has responsibilities for oversight of these requirements.

The Audit Tracking Management Procedures described below provide an overview of the recordkeeping requirements related to auditing and records database. The Audit Findings Procedures described below detail the outcome of the process. The following associated letters, forms, and checklists can be found on the DED website to aid the Subrecipient or non-profit Successful Applicant in meeting their auditing requirements:

- Notification of Annual Audit Form
- Single Audit Letter Template
- Pre-Audit Checklist

6.2 ROLES AND RESPONSIBILITIES

Applicant: Applicants are advised these auditing policies and procedures are not applicable unless they are subsequently awarded CDBG-DR Program assistance.

DED: DED is responsible for the financial management of all CDBG-DR related funds which includes overseeing eligible activities and conducting required auditing.

Subrecipient: A governmental entity that is serving as a Subrecipient shall ensure that an audit is performed in accordance with 2 CFR § 200.501 and 200.514 on any non-Federal entity that receives more than \$750,000 in federal resources (not exclusive to CDBG-DR) in that entity's fiscal year. See also Applicant.

Successful Applicant: An awarded *non-profit* non-governmental applicant is responsible for the same Federal funds oversight responsibilities as a Subrecipient, including the Single Audit. *For-profit* Successful Applicants (e.g., housing developers) are subject to separate auditing standards. See **Section 6.4.2: For-Profit Successful Applicant Audit** for additional details.

Oversight Audit Agency: HUD is the Federal awarding agency for CDBG-DR funds as established in 2 CFR § 200.1 Definitions: *Oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit.

State Auditor of Public Accounts (State Auditor or APA): As one of five elected constitutional officers, the State Auditor provides an independent and objective assessment of the State of Nebraska's governmental operations. The office of the APA regularly reviews government operations to ensure compliance with State and Federal laws.

6.3 AUDIT PROCEDURES

6.3.1 AUDIT REQUIREMENTS

Audit requirements for non-Federal entities are set forth in 2 CFR 200 Subpart F. Pursuant to 2 CFR § 200.501, audits are required where non-Federal entities, including units of local government and non-profit organizations, **expend \$750,000 in Federal awards in that organization's fiscal year**. Subrecipients and non-profit Successful Applicants are considered "non-Federal entities" and are required to adhere to 2 CFR § 200.501.

For example, in their fiscal year 2021-2022, where Anytown expended \$151,000 in Coronavirus State and Local Fiscal Recovery Funds via the American Rescue Plan Act (ARPA) and is also a Subrecipient under DED's CDBG-DR Affordable Housing Construction Program having expended all of a \$600,000 award, Anytown would be subject to a Single Audit for FY21-22.

DED will comply with all applicable State and Federal audit requirements, which includes filing its own Single Audit each fiscal year. To ensure all applicable entities that participate in DED programs follow these regulations, DED created the **Notification of Annual Audit (NAA) Form** for completion by entities having received Federal awards through DED-administered programs. Completion of the NAA identifies if an audit is triggered. In the Subrecipient Agreement, Subrecipients are required to certify that they will give HUD and DED access to and the right to examine all records, papers, documents, and other materials related to the use of grant funds, regardless of whether the Subrecipient is subject to the single audit. Funding Agreements with non-profit Successful Applicants will contain similar requirements.

DED will work with all Subrecipients and non-profit Successful Applicants to ensure the NAA form is correctly submitted and any questions answered. DED will also monitor any auditor's findings to ensure Federal funds are being spent responsibly (See **Chapter 17: Monitoring and Compliance** for additional information). In addition, the HUD Office of Inspector General provides guidance¹ and a Consolidated Audit Guide on Single Audits and audits of for-profit program participants and is also available to answer questions. HUD provides assistance to independent public accountants who have questions on HUD program requirements and procedures. HUD

¹ <https://www.hudoig.gov/library/single-audit-guidance>.

Office of the Inspector General's (OIG) Single Audit Coordinator provides technical assistance on questions about audit procedures for HUD-required and single audits.

6.4 SINGLE AUDIT

If the expenditures threshold is met per **Section 6.3.1: Audit Requirements**, an audit must be completed. In most cases, this is a single audit.

6.4.1 SINGLE AUDIT REQUIREMENTS

The single audit report must be provided to DED within thirty (30) days after the Subrecipient or non-profit Successful Applicant receives the auditor's report or nine (9) months after the end of the audit period, unless a different period is identified. The Subrecipient or non-profit Successful Applicant must ensure the following guidance is followed when completing a single audit:

- Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and [2 CFR 200 Subpart F](#).² The auditor's responsibilities are described in [Subpart E](#).
- The appropriate Catalog of Federal Domestic Assistance (CFDA) number must be used in the Schedule of Expenditures of Federal Awards, 14.228 for CDBG-DR. The CDBG-DR grant number and amount must also be identified in this schedule. Any local expenditures (i.e., matching funds) should not be included in this schedule.
- The entity is responsible for follow-up and corrective action on all audit findings. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's report. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date.

For all completed single audit reports:

- Submit a copy to DED. Audits must be submitted in the form or manner prescribed by DED.
- Submit to the Federal Audit Clearinghouse in accordance with [2 CFR § 200.512](#):
 - One (1) copy of a signed data collection form (SF-SAC);
 - One (1) copy of the reporting package for the clearinghouse to retain as an archival copy; and

² Such requirements include, but are not limited to, proper procurement for audit services as further described in 2 CFR § 200.509. It is considered best practice to conduct auditor procurement every five (5) years.

- One copy (1) for each federal awarding agency mentioned in the audit. Entities subject to the Single Audit should send their audits to DED. They do not need to send them to HUD.

Failure of the Subrecipient or non-profit Successful Applicant to provide the necessary audit information may result in sanctions that include suspension of payments to the Subrecipients or non-profit Successful Applicants from DED until the audit information is received.

6.4.2 FOR-PROFIT SUCCESSFUL APPLICANT AUDIT

Profit-motivated program participants, such as HUD-approved lenders, mortgage-backed security issuers, multifamily project owners, and others, are subject to HUD uniform financial reporting standards set forth in 24 CFR Part 5, Subpart H; and 24 CFR § 202.5(g) and related mortgagee letters. In such cases, HUD requires an audit that consists of two (2) components: a financial statement audit of the entity and a compliance audit of the entity's major HUD programs. All such audits should be submitted to DED once completed.

The audit, conducted by an independent certified public auditor, must be performed in accordance with Generally Accepted Auditing Standards (GAAS), issued by the American Institute of Certified Public Accountants (AICPA), and GAGAS, issued by the Comptroller General of the United States. For Securities and Exchange Commission registrants, the financial statement audit may be performed in accordance with the standards of the Public Company Accounting Oversight Board (PCAOB) and GAGAS.

The compliance audit is to be conducted in accordance with the HUD Consolidated Audit Guide, which requires that the auditor perform procedures that enable the auditor to opine on whether the entity has complied with laws, regulations, and the provisions of contracts or grant agreements applicable to its major HUD programs.

6.4.3 PROGRAM-SPECIFIC AUDIT

Pursuant to 2 CFR §200.501, a program-specific audit has limited applicability. Most entities that trigger the need for an audit will complete a single audit. Please consult DED prior to completing a program-specific audit.

6.4.4 AUDIT COSTS

Single audit-related costs are not reimbursable as Project Costs or Activity Delivery Costs., and such costs should be considered by the Applicant at the time of their application for funding.

6.5 AUDIT TRACKING MANAGEMENT PROCEDURES

6.5.1 NOTIFICATION OF ANNUAL AUDIT (NAA) FORM

The NAA form (see [Notification of Annual Audit Form](#) on the DED website or AmpliFund) is completed to summarize all Federal expenditures within an organization's fiscal year. During a

fiscal year, Subrecipients and Non-Profit Successful Applicants are responsible for tracking **all** Federal expenditures and required to complete a NAA Form. Subrecipients and Non-Profit Successful Applicants who receive funds under multiple DED-administered programs need only complete a single NAA form. This form must be submitted in the form or manner as prescribed by DED.

6.5.2 AUDIT TRACKING DATABASE

DED tracks in EnterpriseOne which entities may be subject to audit requirements to ensure all of those entities file their NAA form and, if triggered, audit report.

2 CFR § 200.73 states “when there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities.” HUD is the oversight audit agency for CDBG-DR funds, and **DED is responsible for monitoring CDBG-DR funds in the State of Nebraska and providing technical assistance.** The duties of the oversight agency for audit and the process for any reassignments are described in 2 CFR § 200.513(b) which include:

1. Providing technical advice to auditees and auditors as requested.
2. Assuming all or some of the responsibilities normally performed by a cognizant agency for audit.

6.6 AUDIT FINDINGS PROCEDURES

6.6.1 REVIEW OF AUDIT REPORTS

The audit reports are reviewed by DED’s Chief Financial Officer (CFO) to determine whether or not significant findings have been identified by the single audit. A letter must be sent to each Subrecipient or Non-Profit Successful Applicant notifying them of either acceptance of the audit report or the presence of an audit finding that should be corrected. This letter is normally sent to the Subrecipient’s or Non-Profit Successful Applicant’s chief elected official (e.g., mayor, village board chair) or similar. The letter must be sent within 180 days, or timeframe as mutually agreed, after DED’s receipt of the actual audit report. The spreadsheet used to track audit information will be provided to Federal and State auditors conducting on-site reviews. DED retains copies of these letters for each yearly cycle. If the Subrecipient or non-profit Successful Applicant does not responsibly submit a corrective action plan, then DED may issue a management decision for all findings in a single audit report that includes Federal awards granted by DED. Other findings in the single audit may present concerns related to internal controls/grant management.

6.6.2 CORRECTIVE ACTION PLAN SUBMISSION REQUIREMENTS

During the 105th legislative session in 2017, the Nebraska Legislature passed into law LB151, requiring State agencies subject to a report or management letter by the Nebraska Auditor of

Public Accounts to submit corrective action plan(s). This law does **not** apply to non-governmental entities.³

Agencies are required to submit the action plan(s) no more than six (6) months after the report or management letter was issued.

As required by [Neb. Rev. Stat. § 84-304](#)(3)(b) (Supp. 2017), and amended by [LB 151](#) (2017):

Any entity, excluding the State colleges and the University of Nebraska, that is audited or examined pursuant to subdivision (3)(a) of this section and that is the subject of a comment and recommendation in a management letter or report issued by the Auditor of Public Accounts shall, on or before six months after the issuance of such letter or report, provide to the Auditor of Public Accounts a detailed written description of any corrective action taken or to be taken in response to the comment and recommendation. The Auditor of Public Accounts may investigate and evaluate the corrective action. The Auditor of Public Accounts shall then electronically submit a report of any findings of such investigation and evaluation to the Governor, the appropriate standing committee of the Legislature, and the Appropriations Committee of the Legislature. The Auditor of Public Accounts shall also ensure that the report is delivered to the Appropriations Committee for entry into the record during the committee's budget hearing process.

Failure to complete corrective action plan(s) as required by State law would result in noncompliance with Nebraska State law and subsequent action from the Legislature.

Corrective action plans will be verified during subsequent audits, and the results of such audits will be reported to the Governor, the appropriate standing committee of the Legislature, and the Appropriations Committee of the Legislature upon issuance of the audits.

³ This law gives the Nebraska Auditor of Public Accounts power to audit financial records of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska. (Neb. Rev. Stat. § 84-304(3)(a))

TOOLKIT LIST

The following document for **Chapter 6: Auditing** is available on the [Toolkit Section of DED's website](#):

- Notification of Annual Audit Form
- Single Audit Letter Template
- Pre-Audit Checklist

7 PROGRAM INCOME

7.1 POLICY OVERVIEW

The Nebraska CDBG-DR program is not designed to create Program Income. This chapter discusses some possible ways that Program Income might be created, and the requirements for Subrecipients and Successful Applicants who are involved in the creation of Program Income.

Program Income is the gross income received by a Subrecipient that is generated by activities funded in whole or in part by the Subrecipient Agreement. Program Income is regulated by the provisions of 83 FR 5844 at 5853 and 5856. Successful Applicants, including non-profit and for-profit housing developers, are subject to these rules pertaining to Program Income, with slightly modified details depending on what type of project they are working on. This chapter applies regardless of when the Program Income is incurred.

Program Income generally refers to any gross income received by the Grantee (i.e., DED) or a Subrecipient of the Grantee that is generated from the activities funded by CDBG-DR funds; however, some exceptions are detailed in 83 FR 5856 at 5856 through 5857. If a Subrecipient is unsure about what counts as Program Income, they should contact their DED Program Manager. Program Income may include, but is not limited to, the following:

- Payments of principal and interest on loans created using CDBG-DR funds.
 - *Example: Repayment of loans (principal and interest) provided to a business for economic revitalization purposes or a developer for a multifamily building. Outside of the Homeownership Assistance Program (HAP) and Homeownership Production Program (HPP), Subrecipients and Successful Applicants are **not** authorized to make any loans using CDBG-DR funds.*
- Gross income from disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds or of equipment purchased with CDBG-DR funds.
 - *Example: Sale of a home or commercial property purchased with CDBG-DR funding or sale of office printers purchased with CDBG-DR funding. In the case of HPP, DED will calculate the portion of sales proceeds that must be remitted prior to providing a release of DED's construction period lien.*

In general, DED's program design will not produce significant amounts of Program Income. Only the housing programs are expected to yield Program Income, with most receipts not expected for many years. If Program Income is unintentionally generated by the Subrecipient or Successful Applicant, Program Income must be immediately returned to DED, or successor agency, or credited against the next invoice draw request.

7.2 PLANNING AND INFRASTRUCTURE MATCH PROGRAMS

The Planning and Infrastructure Match programs of Nebraska's CDBG-DR Program for DR-4420 are not designed to produce Program Income by any Subrecipient. In the case that Program Income is inadvertently produced, **Section 7.3: Housing Programs** provides guidance regarding the requirements for reporting and returning that Program Income to DED.

7.3 HOUSING PROGRAMS

DED does not anticipate the receipt of Program Income during the term of its HUD grant for DR-4420. It is possible, however, that Program Income may be generated in three (3) ways:

- On rental projects, DED will provide assistance in the form of a loan to the property owner. Generally, those loans will be deferred for the affordability period and/or payable only from "cash flow" after a significant deferral period. When received, payments to DED on the CDBG-DR loan by the property owner are considered Program Income.
- Under HAP, Subrecipients may receive Program Income resulting from an assisted buyer pre-paying their CDBG-DR funded direct buyer assistance (generically referred to as down payment assistance or DPA). These receipts are expected to be limited, as buyers have a strong incentive to remain in the home for at least five (5) years after which their loan would be forgiven in full. Under HPP, Subrecipients or Successful Applicants will hold DPA loans and are required to remit any pre-payments to DED as well.
- Under HPP, DED may receive Program Income resulting from payoffs of the CDBG-DR "construction loan" to the Subrecipient or Successful Applicant. Payoffs will come exclusively from net or "excess" sales proceeds from the sale of an HPP-assisted home to an eligible buyer. By only providing a release of lien in return for remittance of DED calculated proceeds, DED will ensure the return of Program Income.

To the degree a Subrecipient or Successful Applicant receives any Program Income outside of the instances listed above, the terms of DED's award will require it be remitted to DED within 30 days of receipt.

7.4 PROGRAM INCOME FUNDS AND CLOSE-OUT

Program Income incurred during an active project will be recorded in DRGR and used before additional funds from the CDBG-DR allocation are drawn from the US Treasury for any purpose. The DR-4420 grant and the projects within it will be closed out before the terms of all of the loans made under the program have been completed. Program Income is required to be reported and transferred back to DED, or any successor agency, regardless of when it is generated. All Program Income received by Subrecipients or Successful Applicants after a project is closed out is to be transferred back to DED as quickly as feasible.

7.5 REPORTING PROGRAM INCOME

If any Subrecipient or Successful Applicant generates Program Income, they are required to report it as detailed in the Subrecipient Agreement or Funding Agreement or by the request of the Program Manager. If the Subrecipient or Successful Applicant is also an awardee in any other Nebraska CDBG program, reporting must include all Program Income generated from all CDBG funds. All reports should be submitted to DED in a timely manner as requested by DED or by the requirements established in the Subrecipient Agreement or Funding Agreement. Generally, reporting of Program Income will be included in the Quarterly Progress Report while a project is open. Subrecipients and Successful Applicants must retain a copy of each report in their files.

8 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

8.1 POLICY OVERVIEW

Every US Department of Housing and Urban Development (HUD)-assisted project must be in compliance with the National Environmental Policy Act of 1969 (NEPA), HUD's implementing regulations at 24 CFR Part 58, and other related Federal and State environmental laws. Pursuant to 42 USC § 5304(g)(1) and 24 CFR § 58.4, the State of Nebraska assumes the responsibility for Environmental Reviews, decision-making, and actions that would otherwise be carried out by HUD under NEPA and other statutes.

There are two (2) fundamental aspects of NEPA:

- **Public Participation:** The public must be informed about the project before it begins.
- **Limitation on Activities Before Environmental Clearance:** The Responsible Entity (RE) for the project must obtain Environmental Clearance prior to proceeding with the project.

As the Grantee of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, the State of Nebraska Department of Economic Development (DED) is responsible for ensuring compliance with Environmental Review responsibilities under NEPA. REs must complete the Environmental Review prior to obligating any funds to the project, regardless of the source. This requirement also applies to projects funded with CDBG-DR-generated program income.

The purpose of this chapter is to provide an overview of NEPA and describe steps the State of Nebraska will need to take to ensure compliance with NEPA by the State and its Subrecipients and Successful Applicants. This chapter includes guidance for monitoring the activities of Subrecipients and Successful Applicants to ensure that distribution and utilization of CDBG-DR funds meet NEPA requirements. This chapter:

- Identifies State and Federal regulations governing the Environmental Review;
- Describes standards, processes, and timeline for development of Environmental Review Records (ERRs) for each project;
- Provides guidance for the State of Nebraska to monitor Subrecipient and Successful Applicant compliance with the aforementioned standards, processes, and timeline; and
- Describes citizen participation and recordkeeping processes required as part of NEPA.

These procedures will be administered under the supervision of DED. These procedures support program implementation funded by HUD's CDBG-DR awards.

State agencies and units of local government can serve as REs, responsible for certifying NEPA Environmental Reviews in accordance with 24 CFR Part 58. Other Successful Applicants and non-governmental Subrecipients, including developers and their consultants may perform Environmental Reviews; however, they must work with an eligible RE that is ultimately responsible for the content of the ERR and must make an independent evaluation of the environmental issues, take responsibility for the scope and content of the compliance findings, and make the final environmental decision concerning project approval.

8.2 REGULATION

This chapter is structured to ensure compliance with Federal regulations set forth by HUD and the State of Nebraska for the Grantee (DED), Subrecipients, and Successful Applicants of CDBG-DR funds. Key regulations guiding Environmental Review processes are described below.

Applicable HUD environmental regulations are codified at 24 CFR Part 58. 24 CFR § 58.22 prohibits the Grantee (DED), Subrecipients, and Successful Applicants from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an Environmental Review once a project has become “Federal.” This prohibition on “choice-limiting actions” prohibits physical activity, including acquisition, rehabilitation, construction, and contracting for or committing to any of these actions prior to completion of the Environmental Review. It is therefore required that environmental information be made available *before* decisions are made and *before* actions are taken.

NEPA, as implemented by the Council on Environmental Quality (CEQ) via regulations at 40 CFR Parts 1500 to 1508, requires that Environmental Reviews be conducted such that the following requirements are met:

- Non-commitment of either public or private funds, including CDBG-DR, or execution of a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved;
- Avoid choice-limiting actions that preclude selection of alternatives before a final decision is made, that decision being based upon an understanding of the environmental consequences and actions that can protect, restore, and enhance the human environment (i.e., the natural, physical, social, and economic environment);
- No activities that have physical impacts or that limit the choice of alternatives prior to obtaining environmental clearance as evidenced by the Authority to Use Grant Funds (AUGF); and
- For the purposes of the CDBG-DR Environmental Review process, “commitment of funds” includes:
 - Execution of a legally binding agreement, such as a property purchase or construction contract for a project or activity using CDBG-DR;

- Expenditure of CDBG-DR funds;
- Use of non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating); and
- Use of non-CDBG-DR funds on actions that would be “choice-limiting” (e.g., acquisition of real property; leasing property; rehabilitating, demolishing, constructing, or relocating buildings or structures; and conversion of land or buildings/structures).

8.3 ROLES AND RESPONSIBILITIES

HUD regulations at 24 CFR Part 58 allow a RE to assume authority to perform Environmental Reviews. The RE can be the State, a unit of local government, or Tribe that exercises land use responsibility where the project is located. The first step in determining the roles and responsibilities is to determine which entity is the RE for that project. The RE is responsible for ensuring compliance with NEPA and the related Federal laws and authorities, for issuing the public notification, for submitting the RROF and certification, when required, and for ensuring the ERR is complete. In order to fulfill its obligations under 24 CFR Part 58, the RE should designate two (2) responsible parties, the Certifying Officer (CO) and the Environmental Officer.

The Action Plan also requires that the Subrecipient and Successful Applicant comply with State of Nebraska environmental rules and regulations. An overview of roles and responsibilities in performing an Environmental Review under HUD NEPA Guidelines per 24 CFR Part 58 is provided as **Table 1**.

Table 1: NEPA Roles and Responsibilities

Role	Key Responsibilities
DED*	<ul style="list-style-type: none"> • Ensure that the RE has identified a CO. • Approve the ERR as prepared and certified by RE.
Responsible Entity	<ul style="list-style-type: none"> • Identify CO. • CO is responsible for: <ul style="list-style-type: none"> ○ Reviewing and approving the ERR¹ and ○ Is authorized to execute the RROF and associated Certifications. • Identify an Environmental Officer responsible for performing (or overseeing) the project Environmental Review. • REs are responsible for obtaining permit approval, if necessary, to satisfy related environmental requirements.

* or HUD for programs where DED is acting as the RE.

8.4 ENVIRONMENTAL REVIEW

The purpose of the Environmental Review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

8.4.1 ENVIRONMENTAL REVIEW RECORD

The RE must prepare and maintain a written record of Environmental Review undertaken for each project to be assisted with CDBG-DR funds. The written record is referred to as the ERR. It is recommended that the Environmental Review process begin once the activity for a project is determined to be eligible and meet a National Objective pursuant to 24 CFR § 570.201 and 24 CFR § 570.208. The ERR will vary in length and content depending upon the level of review required for the categories of activities.

Per NEPA (and its implementing regulations in 40 CFR Parts 1500 to 1508) and 24 CFR Part 58, DED is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, 24 CFR Part 58 prohibits the

¹ This responsibility includes requirements of NEPA section 102, related provisions in 40 CFR Parts 1500 to 1508, and 24 CFR Part 58, including the related Federal authorities.

commitment or expenditure of Federal and non-Federal funds until the Environmental Review process has been completed.

To begin the Environmental Review process, the RE must determine the environmental classification of the project. The term “project” can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the Subrecipient or Successful Applicant. **If various project activities have different classifications, the RE must follow the review steps required for the most stringent classification.** To identify the Determination of Level of Review (DLR), the Subrecipient or Successful Applicant must first develop a good project description.

A project description is the foundation for the ERR, including the subsequent DLR, and for informing the public about the project. It is also the basis for monitoring compliance by DED and HUD.² Depending on the CDBG-DR program, Applicants for funding may be required to submit a project description and/or a complete ERR with their application. If applicable, this information would be detailed in the program guidelines and materials.

Regardless of the number of activities associated with a project, a single Environmental Review is required. Aggregating related activities ensures the RE adequately addresses and analyzes the separate and combined impacts of a proposed project.

Project aggregation (grouping “like” activities) in accordance with 24 CFR § 58.32 may be necessary and may require a tiered Environmental Review approach. Conditions under which project aggregation can occur include:

- Activities are in a concentrated area;
- Activities are within unspecified sites;
- Multi-year activities; or
- Special HUD initiatives.

In project aggregation, all of the individual activities that are related must be grouped together and evaluated as a single project. They may be related *geographically* or *functionally* or be logical parts of a group of contemplated actions (see **Table 2** below).

² For example, if funds are used for an activity not included in the project description, it could be a violation. Poor project descriptions can lead to failure to inform the public, incorrect level of Environmental Review, incorrect Environmental Review determinations leading to violations and sanctions, project activities being left out of review, requiring additional Environmental Review, and monitoring findings.

Table 2: Project Aggregation

	Description	Example
Location-based	<i>Geographically aggregated</i> or aggregated based on a set of contemplated actions to evaluate a range of activities occurring at a single location.	<ul style="list-style-type: none"> • New construction of an affordable housing apartment complex. • Three (3) phase development of a regional sewer system.
Activity-based	<i>Functionally aggregated</i> based on a discrete set of activities.	<ul style="list-style-type: none"> • Renter-occupied rehabilitation at scattered sites throughout a city. • Multi-year programmatic activities.

The RE should ensure that the record:

- **Describes** the project and each of the activities comprising the project, regardless of individual activity funding source;
- **Evaluates** the effects of the project or the activities on the human environment;
- **Documents** compliance with applicable statutes and authorities;
- **Documents** any site-specific reviews, as applicable for a Tiered Environmental Review; and
- **Records** the written determinations and other review findings required by 24 CFR Part 58. An overview of the necessary elements that must be included in the ERR is provided as **Table 3**. The State will ensure the RE has included the following when reviewing ERRs.

Table 3: Elements Required in an ERR

Elements Required in ERR	
Project Description	
1	<p>The description of all activities that are part of the project. The project description includes:</p> <ul style="list-style-type: none"> • HUD’s Action (e.g., providing a grant, loan, etc.). • Amount of HUD funds. This can be the estimated or anticipated amount based on the application for funding. • Location-specific information and geographic boundaries. Describe so the public can locate the proposed project (e.g., street address or map coordinates). • Purpose and Need for project. Describe what is being done and why it is necessary. RE may reference the program description here. • Project beneficiaries (i.e., affordable housing project, mixed-use housing project, etc.). • Activity description, including a delineation of all activities included in the scope of the project. Provide complete details about what will be done. <ul style="list-style-type: none"> ○ Type of project (e.g., new construction of multifamily housing). ○ Details of aggregated project. ○ Timeframe for implementation. ○ Size of the project (e.g., area coverage, disturbance footprint, number of units, population served, etc.). • Area Setting, including character, features, resources, and, in the absence of the proposed project, trends likely. • All other funding sources, if any. • All development partners, if any. <p>Other considerations for writing a good project description:</p> <ul style="list-style-type: none"> • Provide the maximum anticipated scope of the proposal, not just a single activity that the money is going toward. It should include all contemplated actions that are part of the project. Activities should be aggregated according to the regulations at 24 CFR § 58.32, which says that an RE must group together and evaluate as a single project all individual activities that are related either on the geographical or functional basis or both, or are logical parts of a composite of contemplated actions. • Description may not be identical to the description of the project and activities used by the funding program, as the project description in the Environmental Review may consider activities not financed by HUD. • If the project or Environmental Review contains information that can be considered sensitive, such as the location of a domestic violence shelter,

Elements Required in ERR	
	sacred site, or endangered species habitat, that information is omitted from the publicly reviewable ERR.
Determination of Level of Review (DLR)	
2	DLR or other form supplied by DED documents the level of review based on the HUD regulations found at 24 CFR Part 58. A copy of the DLR form is available on DED's website.
Evaluation	
3	<p>An evaluation of the effects of the project on the human environment and vice versa and record of written determinations and other review findings required by 24 CFR Part 58 as evidence of review, decision-making, and actions pertaining to a particular project, this includes:</p> <ul style="list-style-type: none"> Documentation of compliance with applicable statutes and authorities, including the applicable NEPA Statutory Checklist or other form(s) supplied by DED;³ All the applicable supplemental Environmental Review documents, this includes documentation of site reviews, letters to and from agencies, 8-step process, other supporting documentation, etc.; and Documentation of any mitigation actions, if required.⁴
Documentation of Public Participation	
4	<p>Public comments, concerns, and appropriate resolution by the RE.</p> <p>Public Notices and proof of their publication, including documentation of the RE's conformance with timing requirements of any published or posted public notices and associated comment period.</p>
Certification of Continued Environmental Compliance	
5	As applicable, a Certification of Continued Environmental Compliance, HUD Form 7015.15 (RROF/Certification), Finding of Exempt Activity, or other form(s) required by DED.

The ERR must be made available for public review upon request during the public comment period established under the program and upon finalization. The RE should start to establish the record as soon as the activity is approved by HUD or DED (depending on the specific CDBG-DR

³ ERR forms are available on DED's website.

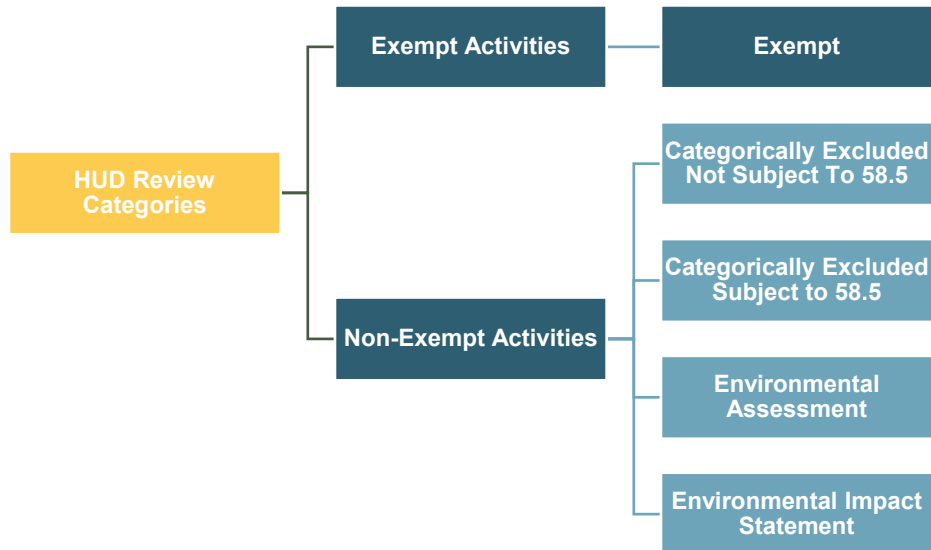
⁴ Mitigation documentation may not be available until after the project begins.

program). Public comments, concerns, and appropriate resolution by the RE are extremely important and must be fully documented in the ERR.

8.5 DETERMINE NECESSARY LEVEL OF REVIEW

8.5.1 HUD REVIEW CATEGORIES

Project activities fall into one of the below Environmental Review categories:



All Environmental Reviews, including Exempt and CENST to 24 CFR § 58.5, must comply with the laws and authorities of 24 CFR § 58.6, which includes reference to:

1. Airport Hazards, 24 CFR Part 51, Subpart D;
2. Coastal Barrier Resources Act (not applicable to Nebraska); and
3. Flood Insurance, Flood Disaster Protection Act of 1973, and National Flood Insurance Reform Act of 1994.

Higher level reviews (i.e., CEST 24 CFR § 58.5, Environmental Assessments (EAs), and Environmental Impact Statements (EISs)) also must comply with the laws and authorities referenced in 24 CFR § 58.5, including:

1. Air Quality according to the Clean Air Act (1970), as amended, particularly section 176(c) and (d); 40 CFR Parts 6, 51, 93;
2. Coastal Zone Management Act (not applicable to Nebraska);
3. Contamination and Toxic Substances according to 24 CFR § 50.3(i) and 24 CFR § 58.5(i)(2);

4. Endangered Species according to the Endangered Species Act of 1973, particularly section 7, and 50 CFR Part 402;
5. Explosive and Flammable Hazards according to 24 CFR Part 51, Subpart C;
6. Farmland Protection according to the Farmland Protection Policy Act (1981), particularly sections 1540(b) and 1541 and Farmland Protection Policy (7 CFR Part 658);
7. Floodplain Management according to the Floodplain Management EO 11988;
8. Historic Preservation according to the National Historic Preservation Act (1966), particularly sections 106 and 110, and 36 CFR Part 800;
9. The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974, particularly section 3;
10. Executive Order 11593, Protection and Enhancement of the Cultural Environment;
11. Noise and Abatement according to the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, and 24 CFR Part 51, Subpart B;
12. Sole Source Aquifers according to the Safe Drinking Water Act of 1974, as amended, particularly section 1424(e), and 40 CFR Part 149;
13. Wetlands Protection according to the Wetlands Protection EO 11990;
14. Wild and Scenic Rivers according to the Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c); and
15. Environmental Justice according to the Environmental Justice EO 12898.

8.6 EXEMPT ACTIVITIES

8.6.1 HUD EXEMPT ACTIVITIES

HUD exempt activities are not subject to NEPA or 24 CFR Part 58, except for the applicable requirements of 24 CFR § 58.6. These activities are highly unlikely to have any direct impact on the environment. A list of activities that are considered exempt can be found at 24 CFR § 58.34(a). These include, but are not limited to, the following:

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;

- Interim assistance (emergency) activities, if the assisted activities do not alter environmental conditions, and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to 24 CFR § 58.5 (as listed in 24 CFR § 58.35(a)), provided there are no circumstances that require compliance with any other Federal laws and authorities listed at 24 CFR § 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to 24 CFR § 58.5.

8.6.2 HUD PROCEDURES FOR EXEMPT ACTIVITIES

DED is required to document in writing that the project is exempt and must ensure that the Subrecipient or Successful Applicant conducts the steps outlined in **Table 4**. A template for documenting compliance with 24 CFR § 58.6 is provided in the [Finding of Exempt Activity \[24 CFR § 58.34\(a\)\] Template](#).

Table 4: HUD Procedures for Exempt Activities

HUD Procedures for Exempt Activities	
1	<p>Create and record in the ERR that the activity meets the conditions for exemption per 24 CFR § 58.34. The certification should include:</p> <ul style="list-style-type: none"> • A description of the activity/project; • A citation of the applicable subsection of 24 CFR § 58.34(a); and • Documentation of total estimated activity/project cost.
2	<p>Determine and document in the ERR whether the activity triggers any of the other requirements of 24 CFR § 58.6, which are:</p> <ul style="list-style-type: none"> • The Flood Disaster Protection Act; • The Coastal Barriers Resources Act; and • The requirements for disclosure of properties located in airport runway clear zones (further described in Section 8.5.1: HUD Review Categories above).
3	No RROF is needed.

8.7 NON-EXEMPT ACTIVITIES

8.7.1 CATEGORICALLY EXCLUDED AND SUBJECT TO 24 CFR § 58.5 COMPLIANCE

The following activities are categorically excluded from NEPA regulations but **are subject** to the regulations of 24 CFR § 58.5, per the list at 24 CFR § 58.35(a):

- 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%;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and their accessibility to elderly and handicapped persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For residential properties with one (1) to four (4) units, if:
 - The density is not increased beyond four (4) units; and
 - The land use is not changed.

- For multi-family residential buildings (with more than four [4] units), if:
 - Unit density is not changed more than 20%;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75% of the total estimated replacement cost after rehabilitation.
- For non-residential structures including commercial, industrial, and public buildings, if:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20%; and
 - The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- Individual Actions:
 - “Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation which is covered previously).
 - An individual action on up to four (4) family dwellings where there is a maximum of four (4) units on any one (1) site. The units can be four (4) one-unit buildings or one (1) four-unit building or any combination in between.
 - An individual action on a project of five (5) 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 (4) housing units on any one (1) site.
- Acquisition (including leasing) or disposition of, 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; and
- Any combinations of the above activities.

For projects that fall within the “CEST” category, additional documentation is required. A template for documenting compliance is provided in the ***NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template.***

8.7.2 CATEGORICALLY EXCLUDED, NOT SUBJECT TO 24 CFR § 58.5 COMPLIANCE

The following activities, listed at 24 CFR § 58.35(b), have been determined to be categorically excluded from NEPA requirements and are **not** subject to 24 CFR § 58.5 compliance determinations.

- Tenant-based rental assistance;
- Supportive 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;
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;
- Economic development activities, including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homebuyers with purchasing existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy-downs, and similar activities that result in the transfer of title to a property;
- Affordable housing predevelopment costs 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; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under 24 CFR Part 58, if the approval is made by the same RE that conducted the Environmental Review on the original project and re-evaluation of the environmental findings is not required under 24 CFR § 58.47.

For projects that fall within the “CENST” category, documentation is required. A template for documenting compliance is provided in the ***Finding of Categorical Exclusion, Not Subject to Related Federal Statutes and Authorities [24 CFR § 58.35(b)] Template***.

8.7.3 TIERED ENVIRONMENTAL REVIEW

Tiered reviews are broad-level, programmatic reviews intended to make the Environmental Review process more efficient by eliminating repetitive discussions of the same topics that are unlikely to have significant environmental impacts. A tiered review consists of two (2) stages: a broad-level review (Tier 1) and subsequent site-specific reviews (Tier 2).

The broad-level review should identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews.

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 complete Environmental Review addressing all required elements. Funds cannot be spent or committed on a specific site or activity until both the broad-level review and the site-specific review have been completed for the site.

Under Tier 1 (broad-level review), the RE must follow the steps defined in **Table 5**. DED will ensure they are conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 5: Procedures for Tier 1 Environmental Review

Number	Procedures for Tier 1 Environmental Review		
1	Create and file in the ERR written documentation of the determination to conduct a tiered review. The documentation should include:		
	<ul style="list-style-type: none"> • A description of the activity/project. 		
	<ul style="list-style-type: none"> • A citation of the applicable subsection of 24 CFR § 58.35(a). 		
	<ul style="list-style-type: none"> • Documentation of total estimated activity/project cost. 		
2	Complete NEPA Statutory Checklist (e.g., CEST or EA forms in the <u>NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template</u> and the <u>Environmental Assessment for HUD-funded Projects Template</u>).		
3	Determine and document in the ERR if there are any circumstances that require compliance with any other Federal laws and authorities, as cited in 24 CFR Part 58.		
4	Consult with the necessary regulatory agencies.		
5	If it is determined that compliance with other environmental laws and regulations is necessary, then proceed with the following in advance of the Tier 2 site-specific review steps in Table 6 :		
	<table border="1"> <tr> <td data-bbox="344 1184 418 1285">a</td> <td data-bbox="425 1184 1421 1285">Create Notice of Intent to Request for Release of Funds (NOI/RROF).</td> </tr> </table>	a	Create Notice of Intent to Request for Release of Funds (NOI/RROF).
	a	Create Notice of Intent to Request for Release of Funds (NOI/RROF).	
	<table border="1"> <tr> <td data-bbox="344 1293 418 1570" rowspan="2">b</td> <td data-bbox="425 1293 1421 1352">Publish or post NOI/RROF for public review:</td> </tr> <tr> <td data-bbox="425 1360 1421 1570"> <ul style="list-style-type: none"> • Should be available for a minimum of seven (7) days if published and 10 days if posted/mailed. • All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly. </td> </tr> </table>	b	Publish or post NOI/RROF for public review:
b	Publish or post NOI/RROF for public review:		
	<ul style="list-style-type: none"> • Should be available for a minimum of seven (7) days if published and 10 days if posted/mailed. • All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly. 		
<table border="1"> <tr> <td data-bbox="344 1579 418 1671">c</td> <td data-bbox="425 1579 1421 1671">After conclusion of the public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to HUD or</td> </tr> </table>	c	After conclusion of the public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to HUD or	
c	After conclusion of the public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to HUD or		

Number	Procedures for Tier 1 Environmental Review
	DED. DED will submit RROFs to HUD through HEROS. ⁵ Subrecipients and Successful Applicants will submit RROFs to DED.
d	A 15-day period commences for HUD or DED to receive objections to the release of funds.
e	HUD or DED issues authority to use grant funds and Environmental Review is complete.
f	It may also be possible that significant environmental impact is identified and additional steps for compliance with NEPA will be evoked.

Under Tier 2 (site-specific review), the RE must conduct the steps defined in **Table 6**. DED will ensure the following has been conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 6: Procedures for Tier 2 Environmental Review

Number	Procedures for Tier 2 Environmental Review
1	<p>Create and record in the ERR written documentation that the activity addresses the issues that were not resolved in the broad-level review. The documentation should include:</p> <ul style="list-style-type: none"> • A description of the activity/project. • A citation of the applicable subsection of 24 CFR § 58.35(a). • Documentation of total estimated activity/project cost.
2	Determine and document in the ERR environmental compliance measures for the NEPA categories that were not resolved in the Tier 1 review. This should include documentation of site-specific project review, including results of research and site inspections (including photographs).
3	No RROF is needed if it is determined that there are no extraordinary circumstances which would require completion of an EA or EIS, and that the project can remain CEST 24 CFR § 58.5.

⁵ HUD has directed that, effective December 31, 2021, DED is required to enter the environmental review into HUD Environmental Review Online System (“HEROS”) and submit all RROF forms via HEROS to HUD for review.

8.8 ENVIRONMENTAL ASSESSMENT AND IMPACT STATEMENT

An EA level of review, required for compliance with NEPA and 24 CFR Part 58, is applicable to all projects for activities not covered under a categorical exclusion or an exemption. This also applies when extraordinary circumstances exist that elevate the level of review. EAs are conducted to determine whether a project requires an EIS or a Finding of No Significant Impact (FONSI). A template for an EA in the format recommended by HUD can be found in the [Environmental Assessment for HUD-funded Projects Template](#).

The EA requires evaluation of all the HUD NEPA environmental impact categories listed in **Section 8.5.1: HUD Review Categories**, which are evaluated under a CEST review. Another component of the EA is an analysis of the project's impacts on land development, socioeconomic factors, community facilities and services, natural features, and climate and energy, known as the "EA Factors." Subrecipients and Successful Applicants must ensure that reliable documentation sources are cited for every item on the EA form.

Once the EA has been completed, including consultation with applicable agencies and persons, the RE must determine whether the project will or will not have a significant impact on the environment. This can be done once the review is complete and any comments have been addressed appropriately. The RE must select one of the following two findings/determinations:

- The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an EIS; or
- The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an EIS. Both the finding and the EA must be signed by the CO and included in the ERR.

An EIS is a detailed written statement required by Section 102(2)(c) of NEPA for a proposed major Federal action that significantly affects the quality of the human environment. An EIS is required for compliance with NEPA and 24 CFR § 58.37 under the following circumstances:

- An EA concludes a Finding of Significant Impact;
- The complexity of the project exceeds the scope of an EA;
- Extraordinary circumstances exist and elevate the review;
- Noise levels exceed into what is considered the unacceptable noise zone; or
- Project includes 2,500 or more housing units or beds.⁶

⁶ See 24 CFR § 58.37 for additional information.

An EIS should be a detailed analysis and document the environmental impacts of the proposed project. HUD does not provide a template for an EIS but does provide a recommended format and several examples of previous EIS reports on its HUD Exchange website.

The RE must use the EIS format recommended by the CEQ regulations (40 CFR § 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR § 1502.10.

8.9 ENVIRONMENTAL REVIEW PROCEDURES SUMMARY

The RE must conduct the steps defined in **Table 7** for projects that are neither exempt nor categorically excluded (under either category). DED will ensure they are conducted when reviewing Subrecipient and Successful Applicant compliance.

Table 7: Procedures for HUD NEPA Environmental Review

Number	Procedures for HUD NEPA Environmental Review
1	Complete NEPA Statutory Checklist (see <u>NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template</u>). The statutory checklist documents compliance with both the CEST and portions of the EA levels of review.
2	Complete NEPA Environmental Assessment Checklist form (see <u>Environmental Assessment for HUD-funded Projects Template</u>).
	Determination of Significant Impact:
3	If a FONSI is made to a Subrecipient or Successful Applicant RE:
	Publish or post the NOI/RROF and notice of FONSI for public review (see <u>Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds</u>).
	<ul style="list-style-type: none"> <li data-bbox="477 1520 1425 1598">• Must be available for a minimum of 15 days if published and 18 days if posted/mailed. <li data-bbox="477 1604 1425 1759">• All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the activity/project must be re-evaluated accordingly. <li data-bbox="477 1766 1425 1841">• After conclusion of public comment period and incorporation of comments, the RE sends the RROF and proof of public notice to DED.

Number	Procedures for HUD NEPA Environmental Review	
		<ul style="list-style-type: none"> • A 15-day period commences for DED to receive objections to the release of funds.
		<ul style="list-style-type: none"> • DED issues authority to use grant funds and the Environmental Review is complete.
	If a FONSI is made to DED as the RE:	
		<ul style="list-style-type: none"> • Must be available for a minimum of 15 days if published and 18 days if posted/mailed.
	b	<ul style="list-style-type: none"> • All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the activity/project must be re-evaluated accordingly.
	Finding of Significant Impact and Environmental Impact Statement	
4	If a Finding of Significant Impact is made:	
	a	An EIS details the RE’s final analyses and conclusions, related to potential significant environmental impact of the project. REs must follow prescribed steps in the course of preparing, filing, and reviewing an EIS (See 24 CFR Part 58, Subpart G and 40 CFR Parts 1500 to 1508).
	b	Prepare an Environmental Impact Statement (EIS) Notice of Preparation. Environmental Impact Statement Notice Requirements for Responsible Entities are provided on HUD’s website at https://www.hudexchange.info/resource/3192/environmental-impact-statement-notice-requirements/ .
	c	Prepare and publish the draft EIS.
d	Public comment period (minimum 45 days ⁷) on draft EIS and incorporation of comments into the final EIS.	

⁷ See <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>.

Number	Procedures for HUD NEPA Environmental Review
e	Prepare and publish the final EIS. Publication of the final EIS begins the minimum 30-day "wait period," in which agencies are generally required to wait 30 days before making a final decision on a proposed action.
f	Publish or post the NOI/RROF. The NOI/RROF should be available for a minimum of seven (7) days if published and 10 days if posted/mailed.
g	All comments based on the public notice must be considered and made a part of the ERR. If these comments require a revision to the RROF, then the activity/project must be re-evaluated accordingly.
	<ul style="list-style-type: none"> • After conclusion of public comment period, and incorporation of comments, the RE sends the RROF and proof of public notice to HUD⁸ and to DED (if DED is not the RE).
	<ul style="list-style-type: none"> • A 15-day period commences for HUD to receive objections to the release of funds. • HUD issues authority to release grant funds and the Environmental Review is complete.

8.10 REQUEST FOR RELEASE OF FUNDS

Following completion of a CEST level of Environmental Review, the RE must publish an NOI/RROF. A template for the NOI/RROF is provided as [**Notice of Intent to Request Release of Funds \(NOI/RROF\) Template**](#).

In most instances, an EA will result in a finding that the project is not an action that significantly affects the quality of the environment and, therefore, does not require an EIS. If this is the case, as described in **Table 7** above, the RE must complete the following:

- Publish and distribute a public notice called a combined/concurrent notice of FONSI and NOI/RROF.
- The RROF and Environmental Certification (made on the same form) must be submitted to DED or HUD (if DED is the RE) no sooner than 16 days after publishing and 19 days after posting the combined/concurrent notice. The Certification must be signed by the CO of the jurisdiction.
- DED or HUD (if DED is the RE) must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, DED or HUD (if

⁸ HUD has directed that, effective December 31, 2021, DED is required to enter the environmental review into HUD Environmental Review Online System ("HEROS") and submit all RROF forms via HEROS to HUD for review.

DED is the RE) sends back a signed Authorization to Use Grant Funds and the project may proceed.

HUD established HEROS for RROF submissions. Form 7015.15, the cover letter, the affidavit of publication, copy of the notice, and the copy of the distribution list are to be submitted via the HEROS online tool, which further provides guidance regarding the Environmental Review process. DED will submit these documents through HEROS for projects on which DED is acting as the RE. For projects where other entities (e.g., cities and counties) are acting as the RE, these documents will be submitted to DED, who will review them and provide an AUGF, if appropriate. The method for transmittal of these RROF documents to DED will be provided by DED's Program Manager for each program.

8.11 CITIZEN PARTICIPATION

Subrecipients and Successful Applicants are required to provide meaningful opportunities for public participation. For general guidance on the State of Nebraska's citizen participation, including information regarding notices of public hearings, methods of notice distribution, and public comment, refer to the State of Nebraska's CDBG-DR Citizen Participation Plan (CPP) available on DED's website.

Key opportunities for citizens to get involved in the NEPA process include:

- When the Subrecipient or Successful Applicant begins the NEPA analysis; and
- When a NEPA document is published for public review and comment.

The procedures outlined throughout this chapter determine the specific steps in the NEPA process where there are opportunities for public involvement.

8.12 NEPA PUBLIC PARTICIPATION REGULATION

NEPA regulation⁹ requires that Subrecipients and Successful Applicants conduct the steps defined in **Table 8** to ensure public participation. DED will review these elements to ensure compliance.

⁹ 40 CFR § 1506.6.

Table 8: Procedures for Public Participation

Number	Procedures for Public Participation
1	Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
2	<p>Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public involvement and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions. When selecting appropriate methods for providing public notice, agencies shall consider the ability of affected persons and agencies to access electronic media.</p> <p>In all cases, the RE shall notify those who have requested notice on an individual action.</p> <p>In the case of an action with effects of national concern, notice shall include publication in the Federal Register. HUD and the RE may notify organizations that have requested regular notice.</p> <p>In the case of an action with effects primarily of local concern, the notice may include:</p> <ul style="list-style-type: none"> • Notice to State, Tribal, and local governments and agencies that may be interested or affected by the proposed action. • Publication in local newspapers (in papers of general circulation rather than legal papers). This may include publications in Spanish and other languages to accommodate limited English proficiency persons. • Notice through other local media. • Notice to potentially interested community organizations including small business associations. • Publication in newsletters that may be expected to reach potentially interested persons. • Direct mailing to owners and occupants of nearby or affected property. • Posting of notice on- and off-site in the area where the action is to be located. • Notice through electronic media (e.g., a project or RE website, email, or social media).
3	Hold or sponsor public hearings, public meetings, or other opportunities for public involvement whenever appropriate or in accordance with statutory requirements applicable to the agency.

Number	Procedures for Public Participation
4	Solicit appropriate information from the public.
5	Explain in its procedures where interested persons can get information or status reports on EISs and other elements of the NEPA process.
6	Make EISs, comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 USC §552).

8.13 RECORDKEEPING

DED is required to provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and confidentiality. For additional information regarding recordkeeping requirements, see **Chapter 17: Recordkeeping and Data Management**.

Subrecipients and Successful Applicants must:

1. Ensure the CO certifies all ERRs.
2. Submit the certified ERRs, including all accompanying forms and reports (e.g., public notices, EAs, EISs, NOIs, and RROFs), for digital scanning and logging in a shared-access drive.
3. Store hard copies of the ERRs and ensure they remain accessible in a centralized located shared-access drive for availability.

To comply with NEPA regulation,¹⁰ Subrecipients and Successful Applicants must:

1. File EISs together with comments and responses with the EPA Office of Federal Activities, consistent with EPA procedures.
2. File statements with EPA no earlier than they are also transmitted to participating agencies and made available to the public. EPA may issue guidelines to implement its responsibilities.

¹⁰ 40 CFR § 1506.10.

TOOLKIT LIST

The following documents for **Chapter 8: NEPA** are available on the [Toolkit section of DED's website](#):

- Environmental Assessment for HUD-funded Projects Template
- Finding of Categorical Exclusion, Not Subject to Related Federal Statutes and Authorities [24 CFR § 58.35(b)] Template
- Finding of Exempt Activity [24 CFR § 58.34(a)] Template
- NEPA Statutory Checklist Form for Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 Template
- Notice of Intent to Request of Release of Funds (NOI/RROF) Template
- Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds

9 ENVIRONMENTAL REVIEW

9.1 POLICY OVERVIEW

Environmental reviews are required for all HUD-assisted projects, as HUD must comply with the National Environmental Policy Act (NEPA). The specific CDBG-DR programs are required to comply with the HUD environmental review requirements of 24 CFR Part 58. See also **Chapter 8: NEPA**, which describes the NEPA review process in more detail.

In addition to NEPA requirements, some projects may also require environmental permitting on the Federal, State, and local levels prior to and during implementation.¹

9.1.1 ENVIRONMENTAL REVIEW OF ACTION PLAN PROGRAMS

All programs funded through CDBG-DR require environmental review.² This section describes the environmental review process for each program under NEPA. DED has prepared Environmental Review Record forms for all levels of HUD NEPA review and these forms are available on DED's website. These forms will be utilized for all of the Action Plan programs described in this section.

Compliance with NEPA and HUD regulations at 24 CFR Part 58 allow a "Responsible Entity" (RE) to assume authority to perform environmental reviews. The RE can be the State, a unit of local government, or Native American Tribe that exercises land use responsibility where the project is located. In some cases of projects conducted under the Action Plan, DED may act as the RE, and in other cases, local governments will be the RE as described herein. Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

9.1.2 INFRASTRUCTURE MATCH PROGRAM

The Infrastructure Match Program focuses on designing and implementing projects that will strengthen and build more resilient communities driven by the needs, opportunities, and strategies to mitigate future disaster impacts throughout the state. DED will implement infrastructure activities that focus on benefitting LMI populations in order to meet the overall 70% LMI benefit level applicable to the entire grant.

The funds that will be "matched" will come from two Federal Emergency Management Agency (FEMA) grant programs: 1) Public Assistance (PA) funded projects that will directly address damage caused by DR-4420 and 2) Hazard Mitigation Grant Program (HMGP) funded projects that will mitigate hazards in the counties declared under DR-4420. For projects funded under these FEMA programs, FEMA will perform its own environmental review under FEMA's NEPA

¹ See **Section 9.3: Environmental Permitting Requirements** for more information.

² Should the needs of the State throughout the disaster recovery process change, DED may amend the Action Plan to most effectively use CDBG-DR funds.

regulations. To meet HUD's NEPA requirement, the existing FEMA environmental review can be "adopted" in accordance with the procedures outline in **Section 9.4: Adopting Previous Environmental Reviews**. The award Subrecipient (e.g., local government entity or state agency) would act as the RE, responsible for conducting these adoption procedures and maintaining the Environmental Review Record (ERR).

9.1.3 AFFORDABLE HOUSING CONSTRUCTION PROGRAM

DED will allocate CDBG-DR funds to increase the affordable housing supply in flood-impacted areas through the Affordable Housing Construction Program. This program will prioritize projects that address unmet needs in the HUD-defined MID areas, LMI populations, vulnerable populations, and public housing needs. Projects can either be new construction or rehabilitation.

The award Subrecipient will act as the RE, responsible for conducting environmental reviews and maintaining the ERR. Non-profit organizations and Successful Applicants that are awarded funding but do not qualify as a RE will need to partner with a local government organization that can act as the RE. All housing construction projects will be subject to NEPA review pursuant to 24 CFR § 58.5.

9.1.4 PLANNING PROGRAMS

The Risk Awareness Planning Program and the Housing Resiliency Planning Program will be exempt from the NEPA review in accordance with 24 CFR § 58.34(a)(1). The Risk Awareness Planning Program will target areas with risk exposure from private levees in counties that received a disaster declaration under DR-4420. The program will focus on flood hazard vulnerabilities that led to flood damage. DED has allocated CDBG-DR funds to support developing an outreach plan for risk communication and consultation on alternative flood mitigation activities. Funds may be used to better quantify the impacts of private levees on the damage from the 2019 disaster or the potential impacts of future disasters. Additionally, funds may be utilized for risk awareness plans at both a local and regional scale. These activities are exempt under the exemption specified under 24 CFR § 58.34(a)(1) for environmental and other studies, resource identification, and the development of plans and strategies.

The Housing Resiliency Planning Program will support local jurisdictions and economic development districts in developing plans for housing recovery, resilience, and affordability. The overarching goal of the program is to promote comprehensive community resilience. The program is intended to address flood vulnerabilities in counties that were declared under DR-4420. These activities are also exempt under the exemption specified under 24 CFR § 58.34(a)(1) for the development of plans and strategies.

DED forms for documenting exempt projects are available on its website as described at the beginning of **Section 9.1.1: Environmental Review of Action Plan Programs**.

9.2 PROGRAM ADMINISTRATION

Environmental review of the administration of the CDBG-DR Program under NEPA will be performed by DED by use of the Finding of Exempt Activity form provided on the DED website.

Table 1 is a summary of environmental review requirements for the CDBG-DR Program. In addition to the NEPA review requirements specified in **Table 1**, a summary of potential environmental permitting requirements is provided in **Section 9.3: Environmental Permitting Requirements**.

Table 1: Environmental Review for CDBG-DR Programs

CDBG-DR Program	Activity	NEPA Applicability
Administration	Grant administration and management by DED and its grant management consultant.	<p>Administrative and management activities are exempt activities per 24 CFR § 58.34(a)(3) and excluded from NEPA review but subject to applicable requirements of 24 CFR § 58.6. 24 CFR § 58.6, including Flood Insurance, Flood Disaster Protection Act of 1973, National Flood Insurance Reform Act of 1994, Coastal Barrier Resources Act, and runway clear zone requirements apply to all projects, regardless of the level of review.</p> <p>DED and its consultants will prepare appropriate environmental documents per HUD NEPA guidelines.</p>
Infrastructure Match Program	Infrastructure projects (e.g., public facilities and improvements) partially funded by FEMA PA and HMGP in disaster-affected areas, including activity delivery costs.	<p>Environmental review under NEPA to be performed by FEMA, adopted by Subrecipients and approved by DED. These may be completed as an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for individual construction projects depending on the potential for significant environmental impacts.</p> <p>DED and its consultant will review and approve environmental documents per HUD NEPA guidelines.</p> <p>NEPA review must be completed prior to Federal Funds being committed or dispersed.</p>
Affordable Housing Construction Program	Affordable housing construction, reconstruction, or rehabilitation in disaster-affected areas, including activity delivery costs.	<p>Environmental review under NEPA is the responsibility of the Subrecipient (acting as RE). Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role. The NEPA</p>

CDBG-DR Program	Activity	NEPA Applicability
		<p>environmental review will be performed by Subrecipients or others qualified to perform the RE role and approved by DED. The NEPA level of review will be determined by the project details and potential for significant environmental impacts. DED and its consultant will review and approve environmental documents per HUD NEPA guidelines prior to submittal to DED’s Certifying Officer. NEPA review must be completed prior to Federal funds being committed or dispersed.</p>
<p>Planning Programs</p>	<p>The Risk Awareness Planning Program will support developing an outreach plan for risk communication and consultation on alternative flood mitigation activities. The Housing Resiliency Planning Program will support local jurisdictions and economic development districts in developing plans for housing recovery, resilience, and affordability.</p>	<p>The Risk Awareness Planning Program and the Housing Resiliency Planning Program are exempt activities per 24 CFR § 58.34(a)(1) and excluded from NEPA review but subject to applicable requirements of 24 CFR § 58.6. 24 CFR § 58.6, including Flood Insurance, Flood Disaster Protection Act of 1973, National Flood Insurance Reform Act of 1994, Coastal Barrier Resources Act, and runway clear zone requirements apply to all projects, regardless of the level of review.</p> <p>For the Risk Awareness Planning Program, DED and its consultants will prepare appropriate environmental documents per HUD NEPA guidelines. For the Housing Resiliency Planning Program, DED and its consultants review and approve environmental documents per HUD NEPA guidelines.</p>

9.3 ENVIRONMENTAL PERMITTING REQUIREMENTS

Projects developed under CDBG-DR Programs may require environmental permitting in addition to the HUD NEPA environmental review described in **Section 9.1.1, Environmental Review of Action Plan Programs** and **Section 9.2: Program Administration**. For example, any project that requires a Nebraska state-issued permit, uses state funds, or is conducted by a state agency requires an environmental review for impacts on endangered and threatened species through the Nebraska Game and Parks Commission (see <http://outdoornebraska.gov/environmentalreview/>). DED will not be conducting in-depth reviews

of state and local permitting requirements as those are the responsibility of the individual award Subrecipients and Successful Applicants; however, DED will perform a general compliance check, documenting that the Subrecipient or Successful Applicant attests they have completed environmental requirements.

Additional permits may apply depending on the location and scope of a specific project.

Permitting requirements for individual projects may include:

- National Pollutant Discharge Elimination System (NPDES) construction permits for projects greater than 1 acre in area through the Nebraska Department of Environment and Energy (DEE) (US Clean Water Act [CWA] Section 402).
- CWA Section 401/404 permitting through the US Army Corps of Engineers and DEE (including potential wetland delineation) based on proximity to water.
- Endangered Species Act consultation with US Fish and Wildlife Service or Nebraska Game and Parks Commission (including potential biological surveys).
- National Historic Preservation Act (NHPA) consultation with State Historic Preservation Office (including potential cultural resources surveys).
- Native American Tribal consultation under the NHPA.
- Clean Air Act air quality permitting through the DEE. Local air permitting for construction equipment may be required.
- A Phase I Environmental Site Assessment (ESA) may be warranted to assess potential impacts from hazardous materials. Lead-based paint and asbestos surveys may also be warranted.
- HUD Noise Abatement and Control checklist and compliance with local noise ordinances.
- Consultation with the US Department of Agriculture under the Farmlands Protection Act.
- Consultation with the US Environmental Protection Agency (EPA) under the Safe Drinking Water Act.

9.4 ADOPTING PREVIOUS ENVIRONMENTAL REVIEWS

9.4.1 APPLICABILITY

The procedures for adopting previous environmental review documents are applicable for projects in any of the Action Plan programs for which a previously performed environmental review of the project occurred, or for which a current ongoing environmental review of the project is being conducted. These procedures are most likely to be used on projects under the Infrastructure Match Program, where NEPA environmental reviews will be completed by FEMA, and under the Affordable Housing Construction Program, where environmental reviews may have been performed for housing projects under different federal funding streams.

In accordance with 24 CFR § 58.14, a single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

The procedures described here are intended to standardize the steps for DED's review and approval of these existing environmental documents. Although award Subrecipients³ act as the RE for performing HUD's environmental review requirements under the Infrastructure Match and Affordable Housing Construction Programs, DED has the role of checking technical appropriateness of environmental documents to help ensure the Subrecipients and Successful Applicants can withstand a HUD audit and not risk losing funding.

9.4.2 PROCEDURES COMMON TO ALL PREVIOUS ENVIRONMENTAL REVIEW DOCUMENTS

24 CFR § 58.47 covers re-evaluation of EAs and other environmental findings. A RE must re-evaluate its environmental findings to determine if the original findings are still valid. Although DED may not be the RE for most CDBG-DR projects, it still has responsibility under its grant agreement with HUD for ensuring a sufficient level of environmental review has been completed. DED will perform a high-level review⁴ of all previous environmental documents submitted in support of a Subrecipient or Successful Applicant project's NEPA review.

The key first step is to confirm that the project actions covered by the original environmental review document and the proposed actions are the same. If different, the new document must be updated by the RE to include all the current proposed actions, describing any changes, to analyze the potential environmental impacts resulting from such changes.

The next key step is to check the date when the environmental review document was prepared. As a general guideline if the document is more than one (1) year old it should be updated to ensure site and surrounding conditions have not changed. As examples, conditions related to biological resources and hazardous materials are prone to changes. Phase 1 ESA has a legal "expiration date" of six (6) months after completion. The level of effort for an update may be a letter certifying the results are still valid or a new report updating multiple technical areas, contingent on the changes that have occurred. The previous environmental review document shall also be reviewed for technical adequacy by qualified DED personnel or contractors. The focus of that review is to determine sufficiency for NEPA compliance and to make a recommendation for any additional work based on that sufficiency determination.

³ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

⁴ DED's high-level review will be supported by an environmental review memo.

9.5 ADOPTION PROCEDURES FOR SPECIFIC SITUATIONS

9.5.1 NEPA DOCUMENT PREPARED UNDER HUD GUIDELINES FOR SAME RESPONSIBLE ENTITY

If the original environmental review document is adequate per the procedures described in **Section 9.4.2: Procedures Common to All Previous Environmental Review Documents**, then the Subrecipient⁵ should complete the Finding of CENST Activity form provided on DED's website to incorporate the new funding. The CENST process formalizes the review and use of the previous document. The DED file and RE's ERR should include the previously prepared environmental documents, Notice of Intent (NOI), Request for Release of Funds (RROF), Finding of No Significant Impact (FONSI), if appropriate, and Authority to Use Grant Funds (AUGF) from the original issuer, plus the Finding of CENST Activity form.

9.5.2 NEPA DOCUMENT PREPARED UNDER HUD GUIDELINES FOR A DIFFERENT RESPONSIBLE ENTITY

If the original environmental review document is adequate per the procedures described in **Section 9.4.2: Procedures Common to All Previous Environmental Review Documents**, it can be adopted by another RE via an adoption memo. The original RE must be notified that their environmental review is being adopted⁶ by sharing the adoption memo. DED can provide an adoption memo template for completion by the new RE.

The DED file and RE's environmental review record should include the previously prepared environmental documents, NOI, RROF, FONSI (if appropriate), and AUGF from the original issuer, plus the adoption memo. A new NOI/RROF must be prepared and put out for public notice (newspaper publication)⁷ by the new RE, followed by issuance of an AUGF.

9.5.3 NEPA DOCUMENT PREPARED UNDER ANOTHER AGENCY'S GUIDELINES

In accordance with 40 CFR § 1506.3, a Federal agency (in this case HUD or the RE acting as HUD) may adopt a Federal draft or final EIS, EA, or portion thereof, or categorical exclusion determination provided that the EIS, EA, portion thereof, or determination meets the standards for an adequate EIS, EA, or determination under the regulations.

83 Federal Register (FR) 5844 at 5859 states: "In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such

⁵ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

⁶ The original RE approval is not needed.

⁷ **Chapter 9: NEPA** provides additional information regarding public notice requirements.

environmental review, approval, or permit that is required by the [Housing and Community Development Act of 1974]. The grant recipient must notify HUD in writing of its decision to adopt another agency’s environmental review. The grant recipient must retain a copy of the review in the grantee’s environmental records.”

If the original environmental review is adequate per the procedures described in **Section 9.4.2: Procedures Common to All Previous Environmental Review Documents**, then the Subrecipient⁸ can adopt the environmental document, via an adoption memo. The RE should prepare an adoption memo and prepare the NOI/RROF, followed by issuance of an AUGF. There are some environmental criteria and standards that HUD requires a more in-depth analysis of than other agencies, including:

- Noise Abatement and Control, 24 CFR Part 51, Subpart B;
- Proximity to Explosives or Flammable Sites, 24 CFR Part 51, Subpart C;
- Proximity to Airport Runway Protection Zones, 24 CFR Part 51, Subpart D; and
- Proximity to Toxic Hazards, 24 CFR § 50.3(i) and § 58.5(i)(2).

If the previous environmental review document does not specifically meet HUD’s standards, then the document should be updated to address them and any other HUD impact categories. **Table 2** summarizes adoption of previous environmental documents for NEPA compliance.

Table 2: Adoption of Environmental Documents for NEPA compliance

Type of Environmental Review Document to be Adopted	DED High-level Technical Review	Documents Required	AUGF
HUD NEPA Document prepared by same Responsible Entity	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age 	<ul style="list-style-type: none"> • Previously prepared environmental documents • Finding of CENST Activity form • Utilize same NOI/FONSI/RROF • AUGF from previous funding source 	No new AUGF required if previous environmental review determined to be current and adequate.

⁸ Some Subrecipients, such as non-profit organizations, and other Successful Applicants may not qualify as a RE but can partner with a local government organization that can perform the RE role.

Type of Environmental Review Document to be Adopted	DED High-level Technical Review	Documents Required	AUGF
<p>HUD NEPA Document prepared by different Responsible Entity</p>	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age 	<ul style="list-style-type: none"> • Previously prepared environmental documents • NOI, RROF, FONSI (if appropriate) from original issuer • Adoption memo to previous RE, project file • New NOI/FONSI/RROF (public notice) • AUGF from previous funding source 	<p>New AUGF from DED required if from a different funding source.</p>
<p>NEPA Document prepared under different Federal agency's guidelines (permissible under 40 CFR § 1506.3)</p>	<ul style="list-style-type: none"> • Prepare environmental review memo • Check project description match and document age • Confirm all HUD categories have been addressed 	<ul style="list-style-type: none"> • Previously prepared environmental documents • Adoption memo to file 	<p>AUGF from DED required for Infrastructure Match and Affordable Housing Construction Program.</p>

10 GREEN BUILDING STANDARDS

10.1 POLICY OVERVIEW

The US Department of Housing and Urban Development (HUD) requires that all residential housing assisted with Community Development Block Grant Disaster Recovery (CDBG-DR) funding comply with certain green building requirements. There are two tiers of requirements laid out in Federal Register notices from February 9, 2018 (83 FR 5844) and February 19, 2019 (83 FR 4836). The first is applicable to any project involving new construction (including replacement or reconstruction) and substantial rehabilitation (i.e., where the cost of rehabilitation exceeds 75% of the replacement cost) of residential buildings. For all other housing projects, that is those involving rehabilitation that is less than “substantial,” a different standard is applied.

Green buildings are designed, constructed (or retrofitted), and operated with a goal of minimizing their environmental footprint. In both new construction and renovation, the building and its site are designed in an integrated manner using environmentally preferable practices and materials from start to finish. Many green features also carry direct consumer benefits, such as lower monthly utility bills, increased occupant comfort, reduced maintenance (labor and costs), greater resilience, and increased value.¹ A holistic practice, green building recognizes the effect of the built environment (e.g., homes, buildings, open space, sidewalks, roads, water and sewer, power lines, etc.) on the health and welfare of its communities.

In the case of **housing projects involving new construction, replacement, or substantial rehabilitation**, HUD requires compliance with one of the green building standards listed below.² Rather than selecting a single technical standard, to provide flexibility DED has elected to permit the use of any of the following comprehensive standards:

- **ENERGY STAR** (Certified Homes or Multifamily High-Rise);
- **Indoor airPLUS**;³
- **Enterprise Green Communities (EGC)**;

¹ Adapted from the National Association of Home Builders' (NAHB) Preface to the *ICC 700-2020 National Green Building Standard*.

² The Federal Register notices also allow for the use of “any other green building program approved by HUD.” HUD has not specifically identified additional acceptable standards, and DED does not anticipate proposing an alternative standard for HUD’s consideration. However, if HUD subsequently approves additional green building standards, DED will update this guidance.

³ Applicants pursuing the Indoor airPLUS qualification must first design and build their project to achieve the ENERGY STAR rating.

- **International Council Code (ICC)-700 National Green Building Standard (NGBS)**; and
- **Leadership in Energy and Environmental Design (LEED)** (New Construction, Homes, Existing Buildings Operations and Maintenance, and Neighborhood Development).

Given the magnitude of the green building industry and the plethora of methodologies potentially employed to achieve certification, this overview is not intended to be comprehensive. Rather, DED has developed this guide with the intent of providing a measure of additional clarity on each of HUD's five approved Green Building Standards with the expectation that Applicants will take a "deeper dive" based on the standard most appropriate for their respective project.

The overview includes a basic description of:

- How each comprehensive standard works (i.e., "what" it was meant to achieve);
- Identifies the entity or agency responsible for developing and monitoring the standard(s); and
- Summarizes any professional licensures or accreditations that may assist a project team in meeting or exceeding the requirements of each standard (i.e., "who" is needed to help do the work).

In addition, this overview provides links to useful online resources associated with each of the five methodologies (as well as the Green Building Retrofit Checklist) as potential starting points for additional research.

Providing confidence that the performance of the project will exceed "standard" development practices, Subrecipients and Successful Applicants should understand that meeting these Green Building Standards or adherence to the Green Building Retrofit Checklist will require:

- Inclusion of various design features at the time of application to the program; and
- Third-party verification and testing at project completion.

Projects involving residential rehabilitation that is not "substantial" (i.e., less than 75% of replacement cost) must adhere to **HUD CPD's Green Building Retrofit Checklist** in its entirety and apply all measures within the checklist to the extent applicable to the project's building type (i.e., single-family, multifamily, low-rise, mid-rise, etc.).

10.2 NEW CONSTRUCTION, RECONSTRUCTION & SUBSTANTIAL REHAB STANDARDS

All new construction, replacement, and substantially rehabilitated housing assisted with CDBG-DR funding from DED must comply with one of the comprehensive standards described in this section. This requirement is triggered by any level of CDBG-DR funding.

10.2.1 ENERGY STAR

ENERGY STAR is a US government-backed symbol for energy efficiency. To earn the ENERGY STAR rating, certified homes and apartments (i.e., multifamily rental) must be designed to be at least 15% more energy efficient than those built to standard building code requirements. Subrecipients and Successful Applicants of participating projects must provide program-specific submittals that a licensed professional validates and demonstrate the program's requirements (including prerequisites) have been met and that each energy conservation measure is installed to specification. Following certification, owners must commit to benchmarking the building's performance metrics for a period of at least two years using Portfolio Manager®, a secure, online, interactive resource management tool used for benchmarking a building's energy use.

The US Environmental Protection Agency (EPA) established ENERGY STAR in 1992, under the authority of Section 103(g) of the Clean Air Act. EPA administers and monitors the ENERGY STAR® program in partnership with thousands of private and public sector partners nationwide. Licensed professionals, including professional engineers, registered architects, and Certified Home Energy Raters ("HERS" or "RESNET" Raters), work closely with Subrecipients and Successful Applicants to ensure that all program requirements are met including design and verification submittals.

Useful links for additional information regarding ENERGY STAR certification:

- [ENERGY STAR® Program Requirements](#)
 - [New Construction Multifamily](#)
 - [New Construction Single-Family](#)
- [Energy Benchmarking with Portfolio Manager](#)

10.2.2 INDOOR AIRPLUS

Indoor airPLUS is a voluntary partnership and labeling program designed to help homebuilders improve indoor air quality through the implementation of construction practices and specification of products that reduce exposure to airborne pollutants and contaminants. To receive the Indoor airPLUS label, a project must first earn an ENERGY STAR certification. Thereafter, additional

home design and construction specifications are made to require the installation of moisture control systems, HVAC systems, combustion venting systems, radon-resistant construction, and low-emitting building materials (e.g., VOCs).

The EPA created the Indoor airPLUS label to build on the foundation established by ENERGY STAR requirements for new homes. Prior to designation as an Indoor airPLUS labeled home, an independent third party must inspect the home to ensure compliance with EPA standards. Both the project builder (i.e., contractor) and a third-party HERS/RESNET Rater must agree to, and execute, a partnership agreement and complete a series of ENERGY STAR trainings. After the project is built, the third-party rater inspects and verifies compliance with EPA specifications. An Accredited Provider then reports these results to the EPA quarterly.

Useful links for additional information regarding Indoor airPLUS qualification:

- [Indoor airPLUS Program Overview](#)
- [Indoor airPLUS Construction Specifications](#)
- [Indoor airPLUS Resource Library for Builders, Raters, & Providers](#)
- [Indoor airPLUS Rater & Partner Locator Tool](#)

10.2.3 ENTERPRISE GREEN COMMUNITIES

EGC is a comprehensive, national green building program created with and for the affordable housing development community to address the impacts of climate change while focusing on resident health and well-being. To achieve EGC certification, Subrecipients and Successful Applicants of affordable housing must meet or exceed Green Communities Criteria standards in eight categories:

- Integrative design;
- Location and neighborhood fabric;
- Site improvement;
- Water;
- Operating energy;
- Materials;
- Healthy living environments; and
- Operations, maintenance, and resident engagement.

EGC certification involves a two-step online submission and review process. All projects must achieve compliance with mandatory measures applicable to a project's construction type. The number of optional points earned (in addition to mandatory measures) determines the level of certification—EGC Standard (35 points) or EGC Plus (40+ points).

EGC was developed in 2004 by Enterprise Community Partners (Enterprise), a national nonprofit focused on housing and community development initiatives including technical assistance, capital investment, and policy. Enterprise EGC staff administers the program and works in concert with project teams—developers, professional engineers, and registered architects—to ensure requirements are met while providing recommendations and resources for achieving certification during both “Prebuild” and “Postbuild” submission and review processes.

Useful links for additional information regarding Enterprise Green Communities certification:

- [2020 Enterprise Green Communities Criteria Resources](#)
 - [2020 Enterprise Green Communities Criteria Manual](#)
 - [Enterprise Green Communities Certification Templates](#)
- [Enterprise e360 Green Certification Community Registration Portal](#)

10.2.4 ICC-700 NATIONAL GREEN BUILDING STANDARD

The NGBS was developed to provide a uniform national platform for recognizing and advancing green construction and development for residential (or primarily residential) buildings. The NGBS uses a point-based system designed to accommodate varying climates, market conditions, construction types, and owner preferences. All projects must meet NGBS's mandatory provisions as well as incorporating a minimum number of features from each of six categories:

- Lot development;
- Resource efficiency;
- Energy efficiency;
- Water efficiency;
- Indoor environmental quality; and
- Homeowner education.

Depending on the amount of points a project chooses to pursue, homes or buildings can attain a rating of Bronze, Silver, Gold, or Emerald. Alternatively, any new single-family homes, townhome, or duplex can earn a rating of “Certified” by completing a mandatory checklist of green practices.

The NAHB and the ICC jointly developed the NGBS in 2007 and received approval from the American National Standards Institute (ANSI) in 2008. Over the past decade, NGBS has evolved to incorporate advances in building science and monitoring, model code improvements, and to accommodate more choices for compliance. NGBS certification is monitored and administered by Home Innovation Research Labs (HIRL), an independent, third-party product testing laboratory and market research facility for the housing industry. HIRL provides training and accreditation for individuals as NGBS Green Verifiers who inspect and verify compliance with a given NGBS version (e.g., NGBS 2020).

Useful links for additional information regarding NGBS certification:

- [ICC-700 National Green Building Standard](#)
- [NAHB Overview of NGBS and Supplemental Resources](#)
- [HIRL Certification Resources](#)
- [HIRL “Find a Verifier” Tool](#)

10.2.5 LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN

LEED is a series of green building project and performance management systems used worldwide to deliver a comprehensive framework for design, construction, operations, and performance. To receive LEED certification, Subrecipients and Successful Applicants must meet or exceed a rigorous set of criteria based on project type and certification path selected (new construction multifamily, single-family, neighborhood development, etc.). All projects must comply with prerequisite measures applicable to a project’s construction type in addition to earning points for optional criteria across nine basic categories that address key aspects of green building:

- Integrative Process;
- Location and Transportation;
- Sustainable Sites;
- Water Efficiency;
- Energy and Atmosphere;
- Materials and Resources;
- Indoor Environmental Quality;
- Innovation; and

- Regional Priority.

The number of optional points earned determines the rating level: Certified (40-49 points), Silver (50-59 points), Gold (60-79 points), or Platinum (80+ points).

LEED certification for new construction was initially developed in 1993 as a joint venture of the Natural Resources Defense Council (NRDC) and the U.S. Green Building Council (USGBC). The certification process, rigor, and scope of LEED has since evolved—with consensus-based input from nonprofits, government agencies, registered architects, professional engineers, developers, builders, and product manufacturers—into the comprehensive standard it is today, providing ratings for both residential and commercial buildings. LEED certification is now administered by Green Business Certification Inc. (GBCI), a subsidiary of USGBC that monitors registration, submittals, review, and certification while providing independent verification of a building or neighborhood’s green features. In addition, GBCI offers professional accreditations to people who demonstrate knowledge of the LEED rating system(s) including the LEED AP, LEED GA, and LEED Fellow. While not compulsory, projects seeking LEED certification often include professionals with LEED accreditations as members of their project teams to help guide the process.

Useful links for additional information regarding LEED certification:

- [Overview of LEED and LEED Rating Systems](#)
- [USGBC LEED Resources Guide](#)
- [LEED Reference Guide: Building Design and Construction](#)
- [LEED Reference Guide: Homes](#)
- [LEED Reference Guide: Operations + Maintenance](#)
- [LEED Reference Guide: Neighborhood Development](#)

10.3 STANDARDS FOR OTHER REHAB

For other residential projects involving rehabilitation that does not rise to the level of “substantial,” the use of **HUD CPD’s Green Building Retrofit Checklist** is required. This requirement is triggered by any level of CDBG-DR funding.

The goal of the Green Building Retrofit Checklist is to promote and encourage the use of energy efficiency and green building practices by helping program participants seamlessly incorporate these practices into their residential rehabilitation programs. It identifies certain items that must always be included in the scope of work (e.g., retrofitting of plumbing fixtures) and minimum specifications for such items. It also provides minimum specifications for other elements of the

scope of work that may not be included in every project (e.g., replacement of domestic hot water heaters) that must be used when applicable.

11 AFFIRMATIVELY FURTHERING FAIR HOUSING POLICY

11.1 POLICY OVERVIEW

Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act, requires HUD Grantees (i.e., DED), Successful Applicants, and Subrecipients of Federal funds from HUD to affirmatively further the policies and purposes of the Fair Housing Act, also known as “affirmatively furthering fair housing.” The obligation to affirmatively further fair housing requires Grantees of HUD funds to take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity, including housing choices or the availability of housing choices, based on protected characteristics, which are: race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability. Fair housing is not only about combating discrimination; it also includes enabling individuals and families to make fair choices. A fair housing choice has three (3) features:

1. **Actual choice:** Realistic housing options exist;
1. **Protected choice:** Individuals and families can access housing without discrimination; and
2. **Enabled choice:** Individuals and families have realistic access to information about options in order to make informed choices.¹

Affirmatively furthering fair housing is conducted in compliance with the Affirmatively Furthering Fair Housing (AFFH) rule and the Assessment of Fair Housing (AFH) approach. The Action Plan further articulates additional affirmative marketing requirements and programmatic structures under Action Plan Section 6.2.2.8 that apply to all CDBG-DR programs. This chapter is not restrictive to housing program projects, but rather any project implemented using CDBG-DR funding.

11.1.1 POLICY OBJECTIVES

The goal of the AFFH rule and this chapter is to ensure that, eligible persons from all racial, ethnic, national origin, religious, familial status, persons with disabilities or “special needs,” gender groups, and other populations least likely to apply, are:

- Fully informed of available disaster recovery funds and projects in their communities;

¹ AFFH Rule Guidebook, pg. 4. Available at <https://www.hud.gov/AFFH>.

- Fully informed of housing units available for sale and rent;
- Encouraged to apply for purchase, rehabilitation, or rent under housing programs; and
- Given the opportunity to buy or rent the unit of their choice under housing programs.

11.1.2 POLICY REQUIREMENTS

The following non-exhaustive Federal nondiscrimination and equal opportunity guidelines apply to all CDBG-DR housing related projects and affect both development and operation of assisted housing:

- The requirements of the Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR Part 100; EO 11063, as amended by EO 12259 (3 CFR § 1958 B1963 Comp., P. 652 and 3 CFR § 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 USC 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 USC 6101-07) and implementing regulations at 24 CFR Part 146;
- The requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and implementing regulations at 24 CFR Part 8;
- The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR § 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60; and
- The requirements of 24 CFR § 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting Subrecipients, owners, Successful Applicants, or their agents from inquiring about the sexual orientation or gender identity of a beneficiary (i.e., prospective tenant), or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

11.1.3 PROCESS FOR AFFIRMATIVELY FURTHERING FAIR HOUSING

In July 2015, HUD established a final rule on AFFH, called the AFFH rule,² which established a process that Grantees, Subrecipients, and Successful Applicants for HUD funding must use to

² 80 FR 42271.

meet their long-standing obligations. The new process requires each program Grantee (i.e., DED), Subrecipient, and Successful Applicant to, among other things:

- Analyze data and other information and engage the community in planning for fair housing;
- Identify and prioritize significant contributing factors for each fair housing issue identified;
- Set fair housing goals for overcoming the effects of the prioritized contributing factors and related fair housing issues;
- Integrate the goals and priorities for HUD funds (e.g., Consolidated Plans, annual action plans, and PHA Plans) consistent with the statutory requirements and goals governing such programs; and
- Certify that the program participant will take meaningful actions to further the goals and take no action materially inconsistent with its obligation to affirmatively further fair housing.³

11.2 ROLES AND RESPONSIBILITIES

DED as a recipient of HUD funds through the CDBG-DR program and pursuant to the Federal Register Notice published January 27, 2020 (85 FR 4681), DED shall ensure that programs are developed and implemented with the objective of **addressing inequity among protected class groups, promoting integration, and transforming racially or ethnically concentrated areas of poverty into areas of opportunity**. The State of Nebraska has further articulated in its Action Plan the intent to prioritize vulnerable populations as a cross-cutting element in all activities.

Should Successful Applicants and Subrecipients experience housing-related discrimination, complaints can be filed directly with DED by contacting the CDBG-DR Program Manager through the following means of communication.

To the Nebraska Department of Economic Development	
Phone	800-426-6505
Postal Mail	Nebraska Department of Economic Development Attn: CDBG-DR Program Manager PO Box 94666 245 Fallbrook Blvd, Suite 002 Lincoln, NE 68521

³ AFFH Rule Guidebook, pg. 5-6. Available at <https://www.hud.gov/AFFH>.

11.3 TARGET POPULATIONS FOR OUTREACH

11.3.1 MOST-IMPACTED AND DISTRESSED AREAS

For CDBG-DR allocations, HUD identifies the “most impacted and distressed” (MID) areas.

Pursuant to the federal requirements for DR-4420 (85 FR 4681), a minimum of 80% of these funds must be invested in HUD-defined MID areas. As such, many of the affirmative marketing strategies articulated within this document prioritize outreach within the HUD-defined MID areas.

11.3.2 PRIORITIZING VULNERABLE POPULATIONS

Within the State Action Plan, DED specifically highlighted maintaining awareness of vulnerability as characterized by several data points.

Table 1: Vulnerability Data Points

Data Points ⁴
Poverty areas
School proficiency
Labor market engagement
Jobs proximity
Transportation costs
Transit trips index
Environmental health indicator

This data can help inform the identification of vulnerable populations, particularly those that can be categorized as low- and moderate-income (LMI). All program applications shall be evaluated using scoring criteria that specifically prioritize vulnerable populations in alignment with Fair Housing requirements.

DED has seven (7) populations who should be prioritized through affirmative marketing strategies.

⁴ DED, 2020. State of Nebraska 2020 Analysis of Impediments to Fair Housing Choice. Retrieved at: https://opportunity.nebraska.gov/wp-content/uploads/2021/12/Nebraska_AI_2020_Final.pdf

Table 2: Priority Populations

Priority Populations
Racially/Ethnically Concentrated Areas of Poverty (R/ECAP)
Veterans
Elderly (age 65 and older)
Limited English Proficiency (LEP) individuals
Persons with disabilities, including self-reported special access and functional needs (AFN) or persons with a hearing, vision, cognitive, ambulatory, self-care, or independent living difficulty
Persons experiencing homelessness
Individuals requiring supportive housing, as characterized in 24 CFR § 91.315(e)

As Subrecipients and Successful Applicants develop affirmative marketing plans and implement outreach strategies, both their approaches and reporting should reflect prioritization of these populations.

Subrecipients and Successful Applicants of Affordable Housing Construction Program funding under CDBG-DR shall be further prioritized based on their efforts to address the following populations and circumstances:

- Persons with serious/chronic mental illness, persons with physical or developmental disabilities, persons with substance abuse issues, and persons experiencing homelessness;⁵ or
- Housing developments in response to settlement agreements or consent decrees relating to housing deficiencies, housing discrimination or other housing issues.

11.4 SUBRECIPIENT AND SUCCESSFUL APPLICANT REQUIREMENTS

11.4.1 APPLICABILITY

⁵ At least 30% of the units served under the CDBG-DR Affordable Housing Construction Program must serve one or more of these populations.

Policies and procedures set forth relating to affirmatively furthering fair housing are applicable to both Subrecipients and Successful Applicants, including both for-profit and non-profit developers. Unless otherwise specified, all requirements are applicable for any entity conducting local implementation under the CDBG-DR program.

11.4.2 OVERVIEW OF REQUIREMENTS

Subrecipients and Successful Applicants must maintain compliance with this chapter to be considered eligible for CDBG-DR funding. For all Housing Programs, Subrecipients and Successful Applicants must complete the following:

1. Analyze data and other information and engage the community in planning for fair housing;
2. Identify and prioritize significant contributing factors for each fair housing issue identified;
3. Set fair housing goals for overcoming the effects of the prioritized contributing factors and related fair housing issues;
4. Integrate the goals and priorities for HUD funds (e.g., Consolidated Plans, annual action plans, and PHA Plans) consistent with the statutory requirements and goals governing such programs; and
5. Certify that the program participant will take meaningful actions to further the goals and take no action materially inconsistent with its obligation to affirmatively further fair housing.⁶
6. Develop an Affirmative Fair Housing Marketing Plan (AFHMP).
7. Take actions to meet fair housing requirements including:
 - a. Certifying that they will affirmatively further fair housing in the community, including some form of action to be taken, not just passive compliance;
 - b. Identifying a local contact as the community Fair Housing representative; and
 - c. Proposing a specific action to affirmatively further fair housing.
8. Use the HUD-approved Equal Housing Opportunity logo⁷ or slogan in all signs, ads, brochures, and written communications. Advertising media includes, but is not limited to, any local, regional, ethnically targeted newspaper, radio or television station and brochures, leaflets, bulletin boards, project signs, websites, or other housing organizations.

⁶ AFFH Rule Guidebook, pg. 5-6. Available at <https://www.hud.gov/AFFH>.

⁷ Equal Housing Opportunity Graphics for Printing via:
<https://www.hud.gov/library/bookshelf11/hudgraphics>.

9. Display the HUD Fair Housing poster⁸ in all offices and locations accessible to potential program beneficiaries.
10. Post in a conspicuous position on all project sites a sign displaying prominently either the HUD-approved Equal Housing Opportunity logo or slogan or statement.
11. Maintain a nondiscriminatory hiring policy and at a minimum annually instruct all employees and agents in writing and verbally of this policy and in fair housing rules.

Failure to comply with the above requirements shall result in the following non-compliance actions by DED.

Table 3: Actions for Non-Compliance with AFFH Requirements by Project Status

Project Status	AFFH Requirements Non-Compliance Action by DED	Required Action by Subrecipient or Successful Applicant
Application	Ineligible for funding	N/A
Implementation/ In progress	Monitoring Finding ⁹	Projects that are in progress may provide direction and feedback to meet these requirements no less than 30 days after issuance of the Monitoring Report.
Closeout/Termination	Monitoring Finding Or Monitoring Finding + Termination* *Cancellation of program activities or recapture of funds in whole or in part.	Repayment of Funds

11.4.3 AFFIRMATIVE MARKETING PLAN

All Subrecipients and Successful Applicants under the CDBG-DR Housing Programs funds must develop an AFHMP based on HUD regulations, which must be submitted to DED for approval.

⁸ HUD Fair Housing Poster: https://www.hud.gov/sites/documents/FAIR_HOUSING_POSTER_ENG.PDF.

⁹ See also **Chapter 16: Monitoring and Compliance Plan**.

The AFHMP, pursuant to Federal regulations, must outline strategies to inform the public about the housing opportunities, requirements, and practices that the awarded entity must adhere to in executing the AFHMP. All AFHMPs also must include:

- Procedures that will be followed and a description of records that will be maintained and made available for review;
- Prohibition of income requirements for prospective tenants with Housing Choice Vouchers or similar vouchers;
- Elimination of local residency preferences;
- Access to leasing offices for individuals with disabilities;
- Flexible application and office hours to allow working families and individuals to apply;
- Encouragement of credit references and testing that take into account the needs of individuals with disabilities or special needs; and
- Meaningful access to project information for LEP families and individuals.

DED requires that Subrecipients and Successful Applicants develop their AFHMP using the HUD-provided version of the plan via the link here: [**Affirmative Fair Housing Marketing Plan \(AFHMP\) Multifamily Housing**](#).

11.4.4 LEP REQUIREMENTS

Nebraska is committed to ensuring that individuals with LEP are able to participate and benefit from the CDBG-DR programs. Applications and forms shall be offered in English and other languages prevailing in the region when requested. In addition, every effort will be made to assist such applicants in the application process. More information regarding this accommodation is available in the Citizen Participation Plan (CPP).

11.4.5 ACCESSIBILITY REQUIREMENTS

Nebraska is committed to ensuring that individuals with disabilities are able to participate and benefit from the CDBG-DR programs. Individuals with disabilities can request accommodation, including those that require modification of policies and programs or exceptions, unless doing so would be a fundamental alteration of the program.

Measures will be taken to make the program accessible to persons who are considered members of a protected class under the Federation of Housing Associations (FHA) by holding informational meetings in buildings that are ADA compliant, providing American Sign Language (ASL)

assistance when requested, and providing special assistance for those who are blind or have low vision when requested. More information regarding this accommodation is available in the CPP.¹⁰

11.5 OUTREACH APPROACH

11.5.1 AFFIRMATIVE MARKETING PARTNERS

The affirmative marketing approach shall anchor on the creation and use of collaborative partnerships with community members and other key stakeholders. DED shall leverage opportunities through the Governor's Task Force for Disaster Recovery, town meetings, or other effective means to ensure that regular contact and working arrangements are created and maintained with:

- **Fair Housing Organizations:** Fair housing organizations, including human relations commissions and voluntary, nonprofit organizations focusing on fair housing problems;
- **Local Governments (and Tribes):** Local governments and tribes in the disaster declared areas;
- **Advocacy Groups:** Advocacy groups and organizations that have among their concerns the needs (including housing needs) of particular segments of the population, such as people with disabilities; families with children; immigrants and homeless persons; and specific racial or ethnic groups (African Americans, Hispanics, Native Americans, Asian Americans, and Alaskan Natives);
- **Housing Providers:** Housing provider representatives, in particular those who are aware of, and can speak to, the problems of providing moderate- and low-cost housing in the community; and representatives of landlords and/owners;
- **Banks and Other Financial Institutions:** Banks and other financial institutions can provide loans (including residential) and other financial support to improve homes or areas of the community where living conditions have deteriorated;
- **Educational Institutions:** Educational institutions and their representatives, including the administrators and teachers or professors who can assist in conducting studies and developing educational activities for delivery in formal and informal settings;
- **Other Organizations:** Other organizations and individuals, such as neighborhood organizations and representatives, that can provide information, ideas, or support in identifying impediments to Fair Housing Choice at the neighborhood or other geographic level and in developing and implementing actions to address these problems; and

¹⁰ CDBG-DR State Action Plan: CPP: https://opportunity.nebraska.gov/wp-content/uploads/2021/10/ CPP-rev08312021_clean-StateofNebraskaDR-4420.pdf.

- **General Public:** Communication with the general public is essential. HUD encourages State and Entitlement jurisdictions to follow the citizen participation and consultation procedures identified in Subpart B of the Consolidated Plan regulation for communicating with the public on Fair Housing Planning (FHP). Additionally, jurisdictions should encourage the participation of diverse population groups and take steps to ensure that communications and activities are accessible to persons with disabilities.

Stakeholder partners who have already played a critical role in recovery efforts—and whose role will expand during the implementation period of the CDBG-DR program—include the Nebraska League of Municipalities membership and the State’s economic development districts. DED shall also engage the broader community. Community participation should include engagement with residents of a community or geographic area; populations affected by housing and fair housing decisions, investments, and challenges; and other interested parties in implementing AFFH. The community does not have to have experience in housing or fair housing issues to participate. Community participation has many benefits, including:

- **Cost effectiveness:** community engagement bridges the gap between current local needs and decisions about where and how to invest public dollars. Community participation leads to better, more effective, and longer-lasting solutions to complex fair housing issues.
- **Ownership and support:** especially in the first round of application submissions, engagement builds crucial support for the resulting actions as community members take ownership of the outcomes, which gives fair housing planning legitimacy and longevity.
- **Building trust and relationships:** by understanding the history, context, and needs of a community, especially groups that have not previously been involved in planning and decision making, local officials can avoid unintended consequences and build trust.¹¹

Dependent upon the outcomes of different outreach methods, DED and its partners may develop alternate approaches or lean into more successful, productive methods. Specific methods of conducting outreach are articulated in **Section 11.7: Affirmative Marketing Strategies**.

11.6 STATE-LED OUTREACH

DED is responsible for conducting outreach activities as per the HUD-approved CPP. This includes raising awareness of the CDBG-DR program, eliciting applications for program funds, and ensuring clear understanding of CDBG-DR requirements. General State-led outreach shall be conducted using a range of strategies identified below in **Section 11.7: Affirmative Marketing Strategies**, with the explicit goal of reaching and supporting eligible Subrecipients and Successful Applicants.

¹¹ AFFH Rule Guidebook, pages 23-24. Available at <https://www.hud.gov/AFFH>.

11.6.1 PROJECT OUTREACH

Subrecipients and Successful Applicants are responsible for meeting requirements as articulated in **Section 11.4: Subrecipient and Successful Applicant Requirements** as well as conducting outreach to ensure that vulnerable populations are aware of program services available through CDBG-DR dollars. In addition to conducting direct beneficiary outreach, Subrecipients and Successful Applicants are responsible for maintaining records and reporting to show who is a direct beneficiary of the program (see also **Section 11.8: Reporting** below).

11.6.2 CROSS-JURISDICTIONAL COLLABORATION

Subrecipients and Successful Applicants are encouraged to reach out to other local communities to collaborate on AFFH because issues tend to cross jurisdictional boundaries. Collaboration can include sharing data and local knowledge and building cross-jurisdictional strategies. Additionally, Subrecipients and Successful Applicants may choose to create joint outreach or communication plans to reach populations that cross jurisdictions. Program participants may collaborate on efforts even if they are not contiguous or adjacent.

11.6.3 ITERATIVE OUTREACH APPROACH

Pursuant to the final rule,¹² outreach should be an iterative community exercise, enabling community members the opportunity to respond to and participate in the process.

Ongoing outreach efforts may include use of webinars, in-person planning and discussion sessions; publishing fact sheets and other educational brochures (e.g., digital or print media), leveraging traditional (e.g., newspaper, television, and radio) and emerging marketing tools (e.g., social media); etc. Evaluation of outreach activities and applications received is necessary to determine whether outreach is successful and that applications accurately reflect the vulnerable populations identified in the Action Plan and these policies and procedures. Evaluation should be an ongoing process that begins no later than one (1) month after the program begins accepting applications.

11.7 AFFIRMATIVE MARKETING STRATEGIES

This section outlines different affirmative marketing strategies for the purpose of both describing State approaches for conducting outreach and for providing guidance to Subrecipients and Successful Applicants regarding affirmative marketing strategies they can use for CDBG-DR program implementation. Several strategies listed within this section are also included in the Ongoing Outreach & Engagement section of the CPP.¹³

¹² AFFH Rule Guidebook available at <https://www.hud.gov/AFFH>.

¹³ CDBG-DR State Action Plan: CPP: https://opportunity.nebraska.gov/wp-content/uploads/2021/10/PPP-rev08312021_clean-StateofNebraskaDR-4420.pdf.

11.7.1 ONLINE ENGAGEMENT

DED has made available a public CDBG-DR website regarding all disaster recovery activities at <https://opportunity.nebraska.gov/programs/community/cdbg-dr/>. This website is dedicated to hosting the content related to the state's CDBG-DR program, including recovery program information, citizen participation resources, and the status and information related to specific program contracts. The full list of available resources is available in the CPP.

Subrecipients and Successful Applicants must provide access to the State website to all program beneficiaries in program materials. Subrecipients and Successful Applicants implementing project activities that require affirmative marketing and outreach are recommended to provide information regarding their CDBG-DR program on their local website.

11.7.2 ELECTRONIC COMMUNICATION TOOLS

DED uses email communication to target specific audiences based on the subscriber's chosen preferences. In addition to offering notification to the broader audience, users may subscribe to CDBG-DR-related information and DED can analyze the effectiveness of its communications with real-time analytics, including delivery and open rates, and click-throughs to websites.

Additionally, DED is committed to leveraging state, federal, and community partners to disseminate CDBG-DR program information. DED shall utilize these partners' networks to encourage participation in the CDBG-DR program mailing list. For example, via email, the HUD Omaha CPD Field Office has indicated they would disseminate information on DED's behalf to their network of contacts.

Program Subrecipients and Successful Applicants are recommended to leverage the State's network to gain access to information and outreach necessary for the success of their specific projects.

11.7.3 FIELD STAFF, SURVEYS, AND TOUCHPOINTS

Field Staff are positioned throughout the State, where their first-hand knowledge of Nebraska's diverse economic climate is matched only by their expertise at building productive partnerships. Field Staff are the "eyes and ears" of DED and a resource to assist communities, established business owners, new entrepreneurs, and everyday citizens in any aspect of economic development—from support for business expansions to disaster recovery, workforce housing development, and more.

In addition to regularly meeting with the Long-Term Recovery Groups (LTRGs), DED's ongoing connection with each of these community groups shall be used to maintain a pulse of the "situation on the ground" and provide a channel for stakeholder organizations to ask questions and provide comments throughout CDBG-DR program design. This continuous flow of information—feedback from the field and answers to questions—has established effective two-way communication that can serve as a benchmark for the grant implementation phase. DED shall continue to leverage

these groups to develop robust application and program guidelines to best serve impacted communities.

Program Subrecipients and Successful Applicants are recommended to leverage the State's network to gain access to information and outreach necessary for the success of their specific projects.

11.7.4 COMMUNITY MEETINGS AND PUBLIC HEARINGS

Community meetings shall be held as part of the planning, program design, and implementation processes. These meetings may assume a variety of formats, including in-person meetings and online webinars. The purpose of these meetings is to provide stakeholders with an opportunity to learn more about the CDBG-DR activities in their area and provide input on programs and activities.

At a minimum, all meetings shall be announced online 15 days prior to the date of the meeting. The announcement should include the date, time, and location of the meeting. Efforts should also be made to advertise meetings through other means like social media and CDBG-DR email lists, elected officials of the HUD-defined MID communities, the State's economic development districts representing the HUD-defined MID area, and representatives of community groups and stakeholders.

Meetings shall be held at an ADA-accessible location and outside of business hours when possible. Interpretation services shall be provided for Spanish and ASL for in-person, web-based, or hybrid meetings. Additional accommodations may be made available upon request. For information about where to direct these requests, refer to the Equal Access section of the CPP.¹⁴

Program Subrecipients and Successful Applicants are encouraged to hold or leverage local community meetings to share program activities and available resources in order to raise awareness of those opportunities within their communities.

11.7.5 TELEVISION AND RADIO

Local public access television stations may be utilized where possible to familiarize residents and community ambassadors with the CDBG-DR program and to provide regional information, including the Nebraska CDBG-DR website address and online application. Multiple demographic populations can be reached through free public access television, including LMI homeowners, Deaf and hard of hearing individuals, and persons with LEP.

Like television, radio may be used where possible to familiarize residents and community ambassadors with the CDBG-DR program. Regional information, such as upcoming scheduled intake sessions and key dates (online application acceptance period, etc.) may also be advertised using radio. Multiple demographic populations can be reached through radio, including LMI

¹⁴ CDBG-DR State Action Plan: CPP: https://opportunity.nebraska.gov/wp-content/uploads/2021/10/PPP-rev08312021_clean-StateofNebraskaDR-4420.pdf.

homeowners, those who are blind or have low vision, and persons with LEP (through Spanish language stations).

11.7.6 BILLBOARDS AND OTHER SIGNAGE

Out-of-home paid media includes billboards and printed signs for general marketing. Billboards and other signage also include public buses, bus stops, and other forms of print and digital ads in public spaces frequented by our targeted groups.

Billboard marketing may be used to reinforce the broadcast messaging in the marketplace. Permanent and digital panel locations target drivers travelling to and through the targeted zip codes. Additionally, interior public bus placards can potentially target lower income residents who rely on public transportation.

11.7.7 SOCIAL MEDIA

Social media advertising provides the opportunity to hyper-target and localize messaging to exclusively reach target audiences on desktop and mobile devices. DED may use existing social media platforms (Facebook, Twitter, LinkedIn) to place local messaging into personal news feeds, providing communities with information on how, when, and where they can participate in the CDBG-DR program. Subrecipients and Successful Applicants are similarly encouraged to use their social media accounts to share information with target program beneficiaries.

11.7.8 DIGITAL AND PRINT ADVERTISEMENTS

Digital and printed advertising can leverage a variety of content types and online channels to place specific messaging in front of target audiences. Digital display ads (banner ads), video ads, and email ads shall primarily be placed in the most affected targeted areas. Supplemental ads may also be placed to encourage participation from HUD-defined MID and LMI areas.

11.7.9 EARNED MEDIA

Earned media is an opportunity to build trust with potential beneficiaries by delivering excellent results through existing programs. It includes the usage of public service announcements through local television and radio stations, interviews on morning news and radio affiliates, and letters to the editor of local newspapers. Each of these mediums may be used to discuss the CDBG-DR program and its benefit to the State of Nebraska. Once these interviews have taken place, they can be shared via social media outlets or through other forms of communication (e.g., text message, email, etc.) to inform others.

11.8 REPORTING

Subrecipients and Successful Applicants must complete quarterly reports as a part of regular program activities (see **Chapter 16: Monitoring and Compliance Plan**). Quarterly reports must include a comprehensive summary of all outreach and marketing activities by county, along with data regarding outreach efforts in project areas. Reports will be evaluated on the basis of

expected activity at the time of submission (i.e., DED acknowledges that there may not be significant activity during the first 30-60 days of development and construction).

Documentation of outreach and marketing activities, including copies of all advertisements and announcements, must be retained and made available at DED's request. For each program activity requiring a direct application by an individual or non-institutional entity, Subrecipients and Successful Applicants must maintain and report the following information:

- Beneficiary household's income;
- Household's income as a percentage of AMI as defined by HUD;
- The race and ethnicity of the head of household;
- The household's familial status; and
- The presence or non-presence of a household member with a disability.

For each activity providing housing or housing assistance that is not directly linked to a specific beneficiary, Subrecipients and Successful Applicants must maintain and report the following information:

- The cost of the housing unit to the beneficiary and the occupant;
- The maximum qualifying household income as a percentage of AMI as defined by HUD;
- Restrictions regarding the age or familial status of occupants; and
- The presence or absence of designs or services that make the housing unit accessible to an individual with a disability and the number of fully accessible units.

Once a project is leased under the Affordable Housing Construction Program, AFFH reporting requirements will shift from a quarterly to annual requirement for Subrecipients and Successful Applicants. A new AFHMP must be submitted not less than every five (5) years.

11.8.1 RECORDKEEPING

DED must establish and maintain sufficient records for HUD to determine whether they met the requirements of the AFFH rule. At a minimum, DED will use Subrecipient and Successful Applicant reporting to maintain the following records:

- Records demonstrating compliance with the consultation and community participation requirements of 24 CFR § 5.150 and applicable program regulations;
- Records demonstrating the actions DED and its Subrecipients and Successful Applicants took to affirmatively further fair housing;

- Documentation where courts or an agency of the US Government or of a State government found that DED had violated any applicable nondiscrimination and equal opportunity requirements;
- Documentation relating to DED's efforts to ensure housing and community development activities are in compliance with applicable nondiscrimination and equal opportunity requirements;
- Records demonstrating that consortium members, units of general local government receiving allocations from a State, or units of general local government participating in an urban county have conducted their own or contributed to the jurisdiction's assessment and documentation demonstrating their actions to affirmatively further fair housing; and
- Any other evidence relied upon by the program participant to support its affirmatively furthering fair housing certification.

For more information, refer to ***Chapter 17: Recordkeeping and Data Management.***

12 ONE FOR ONE REPLACEMENT HOUSING, RELOCATION, AND REAL PROPERTY ACQUISITION

12.1 POLICY OVERVIEW

The Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (The Uniform Act or URA),¹ is a federal law that establishes minimum standards for Federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms.²

Additionally, Section 104(d) of the Housing and Community Development Act of 1974³ provides minimum requirements for certain United States (US) Department of Housing and Urban Development's (HUD) funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than Low to Moderate Income (LMI) dwellings.

The purpose of this chapter is to outline the Federal requirements associated with acquisition, replacement, and relocation for activities funded with Community Development Block Grant-Disaster Recovery (CDBG-DR) funds in alignment with the State of Nebraska's existing Relocation Plan, as detailed in Chapter 11 of the [CDBG Administration Manual](#). This chapter will minimize displacement and ensure compliance with applicable Federal relocation requirements when displacement occurs in the context of infrastructure and housing projects assisted with CDBG-DR funds. It includes considerations and procedures for the following:

- Residential and non-residential displacements;
- Temporary relocation; and
- Process of acquiring property, including the appraisal process, use of eminent domain authority, and the rights of the property owner.

The Nebraska Department of Economic Development (DED) generally expects that CDBG-DR funded projects will **not** trigger URA and residential Anti-Displacement and Relocation Assistance Plan (RARAP) requirements pursuant to this chapter. Projects that do trigger these requirements due to unit removal are expected to be reconstruction efforts. However, for purposes of covering

¹ 42 USC Chapter 61.

² Note that DED does not expect Nebraska's CDBG-DR funded projects to trigger URA and Residential Anti-Displacement and Relocation Assistance Plan (RARAP) requirements.

³ 42 USC § 5304(d).

any circumstance that does trigger these requirements, this chapter will be administered under the supervision of DED.

12.2 UNIFORM RELOCATION ASSISTANCE (URA)

URA is a federal law that establishes the minimum requirements for the acquisition of real property for Federally funded programs and projects, and for the relocation of persons who must move from their homes, businesses, or farms as a direct result of acquisition, rehabilitation, or demolition for a Federally funded program or project. 49 CFR Part 24 is the government-wide regulation that establishes basic policies for the URA and ensures that property owners are treated fairly, consistently, and equitably when effected by federally assisted projects.⁴

Pursuant to the URA, DED and Subrecipients or Successful Applicants of the CDBG-DR program are required to provide relocation benefits to all eligible displaced persons who are temporarily or permanently displaced by a rehabilitation program or development project. This includes providing relocation assistance to:

- Persons displaced by the demolition or rehabilitation of housing or by the conversion of an income eligible household dwelling to another use as a direct result of assisted activities; and
- Persons temporarily relocated as a direct result of activities funded by CDBG programs.

In cases where it may be necessary, DED and Subrecipients or Successful Applicants of the CDBG-DR program are further required to follow procedures for real property acquisition, either voluntary or involuntary, by agreement and without coercion, as outlined below (see **Section 12.6: Acquisition Procedures**).

12.2.1 POLICY OBJECTIVES

URA objectives are as follows:

- Provide uniform, fair, and equitable treatment for persons whose real property is acquired or who are displaced in connection with Federally funded projects;
- Ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- Ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- Help improve the housing conditions of displaced persons living in substandard housing; and

⁴ See also 24 CFR § 570.606.

- Encourage and expedite acquisition by agreement and without coercion.

12.2.2 APPLICABILITY

URA applies to the whole project if federal financial assistance is used in any phase of a project involving:

- Acquisition;
- Rehabilitation;
- Demolition; or
- Infrastructure.

There are three situations under which relocation may be required pursuant to URA, including:

- Real property acquisition;
- Residential displacements; and
- Non-residential displacements.

Under these circumstances, DED requires that Subrecipients and Successful Applicants provide proper notices with counseling and referral services to occupants so that they understand their relocation rights and receive the proper benefits. When necessary, Subrecipients and Successful Applicants must further assist permanently displaced persons to find alternate housing in the neighborhood. To minimize displacement, Subrecipients and Successful Applicants are recommended to stage rehabilitation of assisted households to allow occupants to remain during minor rehabilitation. If relocation is necessary, DED will make CDBG-DR funds available through the programs to pay moving costs and provide the associated relocation or displacement payments to households displaced by assisted activities. This includes the following eligible benefits:

- Temporary Relocation;
- Permanent Relocation; and
- Replacement Housing.

12.3 SECTION 104(D)

Section 104(d) provides minimum requirements for certain HUD-funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than LMI dwellings. Section 104(d) is implemented in HUD's regulatory structure

at 24 CFR Part 42.⁵ Further guidance is provided by HUD’s Tenant Assistance, Relocation, and Real Property Acquisition Handbook (1378.0).⁶

Section 104(d) requires:

- Replacement, on a one-for-one basis, of all occupied and vacant occupiable LMI dwelling units that are demolished or converted to a use other than LMI housing in connection with an activity assisted under the HCD Act, and
- Provision of certain relocation assistance to any lower income person displaced as a direct result of the following activities in connection with Federal assistance:
 - Demolition of any dwelling unit, or
 - Conversion of a low- or moderate-income dwelling unit to a use other than a LMI residence

12.3.1 POLICY OBJECTIVES

Section 104(d) objectives are as follows:

- Minimize displacement by meeting the requirement for DED to create and follow a RARAP.
- Provide relocation assistance to displaced Lower-Income Persons as an alternative to URA payments.
- Replace lower-income dwelling units demolished or converted to a use other than lower-income housing in connection with a CDBG or HOME assisted activity.⁷

12.4 ROLES AND RESPONSIBILITIES

12.4.1 GRANTEE (DED)

DED is responsible for overseeing and managing all activities pursuant to URA and Section 104(d) in connection with CDBG-DR funds awarded to the State of Nebraska, including the development and maintenance of the State RARAP. DED will further be responsible for procedures related to broad engagement with the public (e.g., public notices) and will oversee the implementation of activities related to specific projects (e.g., individual building notices, support for relocation).

⁵ See also 24 CFR § 570.488 and 24 CFR § 570.606.

⁶ “Tenant Assistance, Relocation, and Real Property Acquisition Handbook (1378.0).” See https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

⁷ 42 USC § 5304(d).

12.4.2 SUBRECIPIENTS AND SUCCESSFUL APPLICANTS

Subrecipients and Successful Applicants are responsible for implementing rehabilitation and construction programs and activities with CDBG-DR funds. As part of implementation, Subrecipients and Successful Applicants are responsible for providing proper notices with counseling and referral services to all tenants and owner-occupants so that they understand their relocation rights and receive the proper benefits. When necessary, Subrecipients and Successful Applicants must further assist displaced persons to find alternate housing in the neighborhood.

This guidance conveys relocation and acquisition requirements applicable to Subrecipients and Successful Applicants when implementing programs and activities with CDBG-DR funds. These policies are applicable to all rehabilitation and construction activities funded by the CDBG-DR program. Subrecipients or Successful Applicants are responsible for the following:

- **Minimizing Displacement:** HUD requires that all reasonable steps be taken to minimize displacement as a result of a HUD assisted project;
- **Budgetary Implications:** Planning is essential to ensure that sufficient funds are available to comply with all applicable requirements. Plan early so that project budgets will include realistic estimates for acquisition and relocation expenses;
- **Coordination of the Project:** Subrecipients or Successful Applicants should take steps to coordinate activities and facilitate cooperation among local government agencies, neighborhood groups, and persons affected by the project. This will ensure that the project can proceed efficiently and with minimal duplication of effort;
- **Determining Resource Needs:** During the planning stage, HUD recommends that DED and its Subrecipients or Successful Applicants review applicable relocation policies, staffing needs, and training or other capacity building needs to anticipate any issues that may hinder the acquisition and relocation process, which will be incorporated into this chapter as identified;
- **Administrative Requirements:** Subrecipients or Successful Applicants must adhere to HUD administrative requirements involved in the planning for acquisition and relocation projects; and
- **URA Triggering:** URA/Section 104(d) can be triggered when the following actions take place:
 - Acquisition of property (voluntary and involuntary);
 - Relocations: moving people from their homes or businesses (permanent or temporary); or
 - Demolition, rehabilitation, or conversion of affordable housing units.

12.5 DISPLACEMENT PROCEDURES

A residential displacement occurs when a residential household is displaced due to a rehabilitation program or development project.

Non-residential displacements are applicable to businesses, farms, non-profit organizations, mixed-use buildings, etc. that are impacted by a rehabilitation program or development project. Non-residential relocation can be extremely complex and expensive.

It is recommended that potential applicants seeking to acquire and/or rehabilitate property occupied by residential or non-residential tenants seek guidance and assistance from persons with this expertise prior to submitting an application for CDBG-DR .

For both residential and non-residential displacements, DED requires that Subrecipients and Successful Applicants provide a minimum 90-days written notice to vacate prior to requiring possession (see [90-Day Notice](#)), as well as relocation advisory services to displaced tenants and owner-occupants.

Support shall further include reimbursement for moving expenses and payment of any added cost for renting or purchasing comparable replacement housing, including:

- Payment for the actual, reasonable moving costs and related expenses; and
- Payment for actual, reasonable reestablishment expenses or a fixed payment "in lieu of" moving and reestablishment costs.

12.5.1 DETERMINE MOVING AND RELATED EXPENSES

Displaced persons are eligible for two types of relocation payments: moving costs and replacement housing payment. DED's [CDBG Administration Manual: Chapter 11 – Relocation](#) provides a detailed list of eligible relocation payments.

12.6 ACQUISITION PROCEDURES

12.6.1 REAL PROPERTY ACQUISITION

In cases of real property acquisition, Subrecipients and Successful Applicants should, before negotiations, complete the following steps:

1. Follow the guidelines outlined in [Acquisition Guidelines and Checklist to Execute Real Property Acquisitions](#).
2. Notify the property owner of the decision to appraise the property (see [Notice of Decision to Appraise Letter Template](#))
3. Request appraisal from the property owner (see [Appraisal Request Template](#)).

4. After receiving approval for appraisal, invite the property owner to accompany the appraiser during the property evaluation and appraise the property.
5. Allow the property owner to review the offer, ask questions, accept or reject the offer, or make a counteroffer.
6. Based on the appraisal, Subrecipients and Successful Applicants should provide the owner with a written offer of just compensation and a summary of what is being acquired and pay for the property before taking possession (see [Offer Package Letter and Appraisal Summary Template](#)).
7. The property owner shall also be reimbursed all expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.

Real property acquisition can either be voluntary or involuntary, as described below. For further guidance on property acquisitions by a public agency, refer to [Information Booklet for the Acquisition of Property by a Public Agency](#).

12.6.2 VOLUNTARY ACQUISITION

As early as feasible in the acquisition/relocation process, Subrecipients and Successful Applicants should identify individuals or businesses to be relocated and determine if the transaction is voluntary or involuntary.

If DED or its Subrecipient or Successful Applicant does not have eminent domain authority, a transaction is voluntary if the:

- Subrecipient or Successful Applicant notifies the owner in writing of the property's market value (see [Offer Package Letter and Appraisal Summary Template](#)); and
- Subrecipient or Successful Applicant notifies the owner prior to making an offer that it will not acquire property if an amicable settlement cannot be reached.⁸

Pursuant to the HUD waiver provided under the Federal Register Notice,⁹ the requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under the Notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. If these above conditions are not met, and the abovementioned waiver does not apply, the case may be considered an involuntary acquisition (see **Section 12.6.3: Involuntary Acquisition**).

⁸ 49 CFR § 24.101(b)(2).

⁹ 83 FR 5844.

Pursuant to HUD waivers provided under the Federal Register Notice¹⁰ related to Winter Storm Ulmer (DR-4420), voluntary acquisitions shall proceed as per the process described for real property acquisition.¹¹ If DED or its Subrecipient has eminent domain authority (see [Eminent Domain Code Excerpt](#)), a transaction is voluntary if all of the following are true:

If DED or its Subrecipient has eminent domain authority, a transaction is voluntary if:

- No specific site is needed and any of several properties could be acquired for project purposes;
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits;
- Subrecipient informs the owner in writing of the property's market value;
- Subrecipient also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement; and
- Any tenants that are displaced are provided relocation assistance.¹²

If DED or its Subrecipient has eminent domain authority, a transaction is considered involuntary if any of the above are not met.

12.6.3 INVOLUNTARY ACQUISITION

If the transaction is considered involuntary, DED or a Subrecipient may acquire property through the exercise of eminent domain powers and must take the following steps:¹³

1. Notify owner with a minimum of 90 days' notice of the DED or a Subrecipient's intentions to acquire the property and their protections under the URA (see [Notice of Decision to Appraise and Notice of Land Acquisition Letter Template](#)).¹⁴
2. Appraise the property and invite the owner to accompany the appraiser.
3. Review the appraisal.
4. Establish just compensation for the property.¹⁵

¹⁰ 83 FR 4681 at 4686.

¹¹ 83 FR 5844 at 5858.

¹² 49 CFR § 24.101(b)(1).

¹³ 49 CFR § 24.102.

¹⁴ 49 CFR § 24.203(c).

¹⁵ 49 CFR § 24.102(d). Just compensation is derived from the appraisal process. Typically, the approved appraisal's estimate of fair market value is the basis for the amount of just compensation offered for the property to be acquired. Just compensation cannot be less than the approved appraisal's estimate of fair market value of the property being acquired.

5. Provide owner with written offer and summary statement for property to be acquired (see [Offer Package Letter and Appraisal Summary Template](#)).
6. Negotiate with owner for the purchase of property.
7. If negotiations are successful, complete the sale and reimburse property owner for related incidental expenses.
8. If negotiations are unsuccessful, consider an administrative settlement¹⁶ to complete the sale.
9. If negotiations are still unsuccessful, DED or Subrecipient may acquire the property through use of eminent domain.

12.7 RELOCATION PROCEDURES

12.7.1 REQUIREMENTS FOR TEMPORARY RELOCATION

Sometimes a project may require persons to be displaced from their dwellings for only a short period of time. Although temporarily displaced persons do not receive the same relocation assistance and payments as persons permanently displaced under the URA, they do have certain rights and protections.

When necessary or appropriate, residential tenants who will not be required to move permanently may be required to relocate temporarily for the project. Temporary relocation should not extend beyond one (1) year before the person is returned to their previous unit or location. Any residential tenant who has been temporarily relocated for more than one year must be offered all permanent relocation assistance which may not be reduced by the amount of any temporary relocation assistance previously provided.¹⁷

All conditions of temporary relocation must be reasonable. At a minimum, the tenant shall be provided the following:

¹⁶ When negotiations result in a purchase price exceeding the agency's estimate of just compensation, it is called an administrative settlement. Administrative settlements are made for administrative reasons that are considered to be in the best interest of the public. Authorized agency officials may approve administrative settlements if they are:

- Reasonable;
- Prudent; and
- In the public interest.

Agency files should include proper documentation to justify and support the decision for an administrative settlement.

¹⁷ 49 CFR Appendix A of § 24.2(a)(9)(ii)(D).

- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent or utility costs at such housing.
- Appropriate advisory services, including reasonable advance written notice of the following (see [Disclosure to Occupants of Temporary Relocation Benefits Template](#)):
 - Date and approximate duration of the temporary relocation;
 - Address of the suitable DSS dwelling to be made available for the temporary period;
 - Terms and conditions under which the tenant may lease and occupy a suitable DSS dwelling in the building/complex upon completion of the project; and
 - Provisions of reimbursement for all reasonable out of pocket expenses incurred in connection with the temporary relocation as noted above.¹⁸

12.7.2 HOUSING OF LAST RESORT¹⁹

The URA requires that comparable DSS housing within a person's financial means be made available before that person may be displaced. When such housing cannot be provided by using replacement housing payments, the URA provides for "housing of last resort."

Housing of last resort may involve the use of replacement housing payments that exceed the URA maximum amounts. Housing of last resort may also involve the use of other methods of providing comparable DSS housing within a person's financial means.

Subrecipients and Successful Applicants have broad flexibility in the use of housing of last resort. It is intended to enable Subrecipients and Successful Applicants to respond to difficult or special displacements, but it should not be used as a substitute for lack of time or lack of relocation advisory services. It is crucial to identify potential housing of last resort situations early so that they may be addressed in a proper manner.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

12.7.3 PERMANENT RELOCATION

DED's CDBG-DR program and its associated projects will not typically trigger permanent displacement. Additionally, permanent displacement activities fall outside of the scope of this chapter. If a case of permanent displacement is encountered, then the Subrecipient or Successful

¹⁸ 49 CFR Appendix A of § 24.2(a)(9)(ii)(D).

¹⁹ 49 CFR § 24.404. See also "CDBG Administration Manual: Chapter 11 – Relocation." Nebraska Department of Economic Development.

Applicant staff responsible for the program or project should consult with DED to decide if they have the capacity to conduct the permanent displacement activity. If Subrecipient or Successful Applicant staff does not have the capacity, then a professional relocation consultant must be hired to do the counseling and benefit determination and implementation. If Subrecipient or Successful Applicant staff does wish to do the permanent displacement activity, then they may also consult and follow the [HUD Relocation Handbook 1378](#) and [Other Relocation/Displacement Notices Template](#).

12.7.4 NON-RESIDENTIAL RELOCATION

Nonresidential relocation can be extremely complex and expensive. Subrecipients and Successful Applicants should be cautious when conducting nonresidential displacements under the URA.

Non-residential displaced persons are entitled to advisory services and may be eligible for other relocation benefits (including relocation payments for moving expenses and reestablishment) under the URA. To qualify for benefits, the business must meet the definition of a “displaced person.” It must move permanently as a direct result of a HUD-assisted project involving acquisition, rehabilitation, or demolition. The URA provides coverage for business owners (whether they are on-site or not), for owner-occupants of a business, and for tenants operating a business in rented space.

12.8 LEAD-BASED PAINT MITIGATION²⁰

The Final Rule for Lead Based Paint Hazard Control (LHC), now the Lead Safe Housing Rule, requires that Federally funded rehabilitation must use safe work practices so that occupants and workers can be protected from lead hazards. The rules are as follows:

- At no time should the tenant(s) or owner-occupant(s) be present in work areas or designated adjacent areas while LHC activities are taking place in any dwelling unit interior, common area, or exterior.
- As such, occupants may not be allowed to remain in their units during the time that LHC are being created or treated.
- Once work that causes lead hazards has been completed, and the unit passes clearance, the occupants can return.
- The tenant(s) or owner-occupant(s) may not reoccupy a work area or adjacent area until post-lead hazard reduction clearance standards have been achieved and verified with laboratory results.

²⁰ 24 CFR Part 35.

The Lead Safe Housing Rule allows for certain exceptions:

- The work will not disturb lead-based paint or create dust-lead or soil-lead hazard; or
- The work is on exterior only and openings are sealed to prevent dust from entering the home, the work area is cleaned after the work is completed, and the residents have alternative lead-free entry; or
- The interior work will be completed in one period of less than eight daytime hours and the work site is contained to prevent the release of dust into other areas of the home; or
- The interior work will be completed within five (5) calendar days; the work site is contained to prevent the release of dust; the worksite, and areas within ten (10) feet of the worksite are cleaned at the end of each day to remove any visible dust and debris; and the residents have safe access to kitchen, bath, and bedrooms.

If temporary relocation benefits are not provided because the Subrecipient or Successful Applicant believes that the project meets one of the above criteria, then proper documentation must be provided in the program/project file to show compliance. All documentation must be provided to DED for review and verification.

It is up to the Subrecipient or Successful Applicant to ensure that the occupants in the project are not impacted by lead-based paint mitigation efforts. In most cases where lead-based paint mitigation is taking place, occupants (tenants or owner-occupants) are strongly encouraged to relocate even for just a few days until a certified lead-based paint assessor can issue a final lead clearance. Tenant-occupants who are temporarily relocated because of lead-based paint mitigation are entitled to the same relocation benefits as those relocated because of substantial rehabilitation or reconstruction activities (see [Disclosure to Occupants of Temporary Relocation Benefits Template](#)).

12.8.1 ELIGIBILITY FOR RELOCATION

Occupants (tenants and owner-occupants) are prohibited from staying in units that are hazardous environments during lead-based paint mitigation. Occupants will be eligible for temporary relocation benefits which will be provided as a grant when:

- Lead-based paint mitigation work done will not make it safe to live in the unit;
- Lead-based paint work will not allow the tenant or owner-occupant to access a bath or kitchen facility; or
- The unit is being demolished and reconstructed.

The amount of the benefit to be paid should be cost appropriate to the conditions. Owner-occupants are encouraged to move in with family or friends during the course of rehabilitation, since they are voluntarily participating in the program.

Subrecipient or Successful Applicant staff (i.e., the housing rehabilitation loan specialist or the rehabilitation construction specialist) will complete a temporary relocation benefits form to document that the tenant or owner-occupant understands that they must relocate during the course of construction and what benefits they wish to be reimbursed for as part of their relocation.

12.9 REPLACEMENT HOUSING

Typically, if a State of Nebraska CDBG-DR program or project assists a property where one or more units are eliminated, then Section 104(d), as amended, applies and DED must replace those lost units. An example of this would be a duplex unit that is converted into a single-family unit.

However, one-for-one replacement requirements at Section 104(d)²¹ and 24 CFR § 42.375 are waived in connection with Winter Storm Ulmer (DR-4420) funds pursuant to the Federal Register Notice published on February 9, 2018 (see 83 FR 5844 at 5858) for Lower-Income Dwelling Units that are damaged by the disaster and not suitable for rehabilitation. The Section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable Lower-Income Dwelling Units. The February 9, 2018 waiver exempts disaster-damaged units that meet the Subrecipient's or Successful Applicant's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. DED has defined "not suitable for rehabilitation" in its Action Plan governing these activities, as required by HUD.

Except as described above, where activities reduce the number of housing units in the jurisdiction, DED must document that any lost units are replaced, and any occupants of reduced units are given permanent relocation benefits.

Replacement housing will be provided within three (3) years after the commencement of the demolition or conversion.²² Before entering into a contract committing DED to provide funds for an activity that will directly result in demolition or conversion of Lower-Income Dwelling Units or the conversion of Lower-Income Dwelling Units to another use, the Subrecipient or Successful Applicant will make this activity public (through a noticed public hearing and/or publication in a newspaper of general circulation) and submit to DED the following information in writing:

- A description of the proposed assisted activity;
- The location on a map and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as Lower-Income Dwelling Units as a direct result of the assisted activity;
- A time schedule for the commencement and completion of the demolition or conversion;
- The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

²¹ 42 USC § 5304(d)(2)(A)(i) and (ii) and (d)(3).

²² 24 CFR § 42.375(b)(4).

- The source of funding and a time schedule for the provision of the replacement dwelling units;
- The basis for concluding that each replacement dwelling unit will remain a Lower-Income Dwelling Unit for at least ten (10) years from the date of initial occupancy; and
- Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two-bedroom unit with two one-bedroom units) is consistent with the housing needs of Lower-Income households in the jurisdiction.²³

The Subrecipient or Successful Applicant and DED are responsible for tracking the replacement of housing and ensuring that it is provided within the required period. The Subrecipient or Successful Applicant is responsible for ensuring requirements for notification and provision of relocation assistance are met to any Lower-Income group displaced by the demolition of any dwelling unit or the conversion of a Lower-Income Dwelling Unit to another use in connection with an assisted activity.²⁴

12.10 OTHER RELOCATION BENEFITS

12.10.1 RELOCATION ADVISORY SERVICES

In addition to being required by law, relocation advisory services are the single most important part of a successful relocation program. Relocation advisory services are required to be provided to all eligible displaced or relocated persons, including nonresidential displaced persons. When providing relocation advisory services, DED and its Subrecipients or Successful Applicants must:

- Determine the needs and preferences of displaced persons;
- Explain available relocation assistance;
- Explain a person's right to appeal if they are not satisfied with Subrecipients or Successful Applicants decisions;
- Offer and provide transportation to locate replacement housing;
- Offer other assistance (e.g., social services or financial referrals, housing inspection, etc.);
- Provide current and ongoing listings of comparable dwellings for residential displacements and replacement sites for businesses;
- Supply information on other Federal and State programs offering assistance;
- Provide counseling and other assistance to minimize hardship in adjusting to relocation;

²³ 24 CFR § 42.375(c)(7).

²⁴ 24 CFR § 570.606.

- And other required and appropriate assistance.

12.10.2 MOVING PAYMENT ASSISTANCE

In addition to relocation advisory services, displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses²⁵ and replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling (see **Section 12.10.3: Replacement Housing Payments**). In cases where a Subrecipient or Successful Applicant performs a displaced person's move at no cost to the person, the displaced person should receive a \$100 expense and dislocation allowance.²⁶

12.10.3 REPLACEMENT HOUSING PAYMENTS²⁷

The URA provides for different replacement housing payments (RHPs) based on a displaced person's occupancy status and length of occupancy. Tenant occupants may be eligible for a rental assistance payment to supplement the costs of leasing a comparable replacement dwelling or down payment assistance payment to purchase a replacement dwelling. Owner-occupants may be eligible for a price differential payment, mortgage interest differential payment, or incidental payments to supplement the costs of purchasing a comparable replacement dwelling.

In addition to being DSS, a comparable replacement dwelling must also be "functionally equivalent" to the displacement dwelling means that it must perform the same function, and provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling. Further, the referral units must be

²⁵ 24 CFR § 24.301.

²⁶ 86 FR 40228 (also containing the URA Residential Moving Expense and Dislocation Allowance 2021 Payment Schedule).

²⁷ 49 CFR § 24.401. See also "CDBG Administration Manual: Chapter 11 – Relocation." Nebraska Department of Economic Development.

within the financial means of the displaced persons. This is determined by the “make whole” financial means test, as follows:

- 90-Day Homeowner: The test is met if the homeowner receives the price differential, increased mortgage interest cost and all reasonable incidental expenses, not to exceed \$31,000.²⁸
- 90-Day Tenant: The test is met if a person receives assistance equal to 42 times the increase in rent and utility costs that he or she is required to pay because of the displacement.²⁹ For Section 104(d) the tenant receives up to 60 times the increase.³⁰

Pursuant to 49 CFR Part 24, a tenant or owner-occupant who has been in the home for at least a 90-day period who is displaced from a dwelling is entitled to a payment as defined within the Federal statute (i.e., base monthly rental for displaced dwelling or down payment assistance, generally not exceeding \$7,200 for tenants),³¹ as updated by the CPD-14-09 Notice.³⁵

12.10.3.1 For Tenant-Occupants of Ninety (90) Days or More

A rental assistance payment is based on the difference, if any, between the cost of the monthly rent and utilities of the displacement dwelling and a comparable DSS replacement dwelling, as determined by the Subrecipient or Successful Applicant. The URA established a 42-month period for supplementing this payment difference, for a total amount up to \$7,200,³² as updated by the [CPD-14-09 Notice](#).

It is important to note that a rental assistance payment should be based on income for low-income persons.³³ Furthermore, tenant occupants may be eligible to use their rental assistance payment as a down payment for the purchase of a replacement dwelling.

12.10.3.2 For Owner-Occupants of Ninety (90) Days or More

A price differential payment is based on the difference, if any, between the acquisition price of the acquired dwelling and the purchase price of a comparable replacement dwelling, as determined by the Subrecipient or Successful Applicant.³⁴ The URA established a maximum amount of \$31,000 for an RHP for 90-day owner-occupants. Residential displaced persons may be eligible for moving expenses and replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling.

²⁸ 49 CFR § 24.401(b). See also <https://www.hudexchange.info/resource/3853/notice-cpd-14-09-effective-date-for-map-21-changes-to-ura/>.

²⁹ 49 CFR § 24.402(b).

³⁰ Pursuant to the waiver set forth 83 FR 5844, DED, Subrecipients, and Successful Applicants must calculate the rental assistance payment based on 42 months in order to provide for uniform and equitable treatment across all tenants.

³¹ 49 CFR § 24.402.

³² 49 CFR § 24.402.

³³ See 49 CFR § 24.402(b)(2)(ii).

³⁵ See also <https://www.hud.gov/sites/documents/14-09CPDN.PDF>.

³⁴ See 49 CFR § 24.401 for more information.

12.10.4 PROCESS CLAIMS AND MAKE PAYMENTS³⁵

Relocation claims may be filed up to eighteen (18) months following the completion of a move.³⁶ This means that claims can be filed months after the conclusion of the CDBG-DR award. Therefore, if there are unsettled relocation cases at the time of closeout of the award, the Subrecipient or Successful Applicant should show maximum payments for each potential claimant as unpaid costs on the closeout documents; otherwise, DED may cancel the funds remaining in the award and the Subrecipient or Successful Applicant would be financially liable for relocation costs. This also highlights the need to try and expedite relocation.

Relocation Claim Forms (for all forms identified below, refer to the following HUD website: https://www.hud.gov/program_offices/comm_planning/relocation/forms):

- Claim for Moving Costs and Related Expenses (Families and Individuals); and
- Claim for Replacement Housing Payment for 90-Day Homeowner; or
- Claim for Rental Assistance Payment or Down Payment Assistance

12.10.5 PAYMENT RESPONSIBILITY

The Subrecipient or Successful Applicant is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within thirty (30) calendar days following submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce a hardship.³⁷ When advance payments are made, the Subrecipient or Successful Applicant must document that the payment was used for the purpose intended. The Subrecipient or Successful Applicant should have the beneficiary sign a letter acknowledging receipt of relocation payments and services (see [Sample Letter Acknowledgment of Services Rendered and Payments Received](#)).

12.10.6 USE OF RELOCATION PAYMENTS

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses.³⁸ Payments for rental assistance to tenants need not be applied to housing costs. The rental assistance payment may be made in a lump sum or in installments. The Subrecipient or Successful Applicant has no right to question the use to which that payment is put; it need not be accounted for beyond receipt by the claimant.

³⁵ See also “CDBG Administration Manual: Chapter 11 – Relocation.” Nebraska Department of Economic Development.

³⁶ 49 CFR § 24.207(d).

³⁷ 49 CFR § 24.207(c).

³⁸ 49 CFR § 24.402(c).

12.10.7 DOCUMENTATION OF NON-PAYMENT

In any instance in which payments are not made, the Subrecipient or Successful Applicant must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible. The regulations mandate that any claim for payment be submitted to the locality within a period of eighteen (18) months after displacement.³⁹ The Subrecipient or Successful Applicant should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

12.10.8 WAIVER OF RELOCATION

In a voluntary acquisition (see **Section 12.6.2: Voluntary Acquisition**), owners are advised in writing that 1) the buyer does/does not have eminent domain—will not use if negotiations fail; and 2) the fair market value of the property. The Subrecipient or Successful Applicant provides a form to the owner to sign indicating they understand what their relocation rights and benefits are. Relocation benefits almost always apply for tenant occupants.

If relocation has not been completed within six (6) months of the date of issuance of the Notice of Relocation Eligibility (see **Section 12.11.5: Notice of Relocation Eligibility**), the Subrecipient or Successful Applicant must provide in its files a written explanation of delay and plan for timely completion.

12.11 DOCUMENTATION & REPORTING

12.11.1 RECORDKEEPING

Each project that dictates temporary, permanent, or replacement activities will have a project description and documentation of assistance provided. The Relocation File Checklist (see [Relocation File Checklist](#)) identifies all documents to be maintained and copied. For further information regarding recordkeeping, see **Chapter 17: Recordkeeping and Data Management**.

12.11.2 RELOCATION NOTICES

The URA regulation requires five (5) notices to be issued to eligible persons. These notices provide important information about the project, the affected persons' resulting rights, their protections, and their eligibility for relocation assistance and payments under the URA. It is critical for Subrecipients or Successful Applicants to issue appropriate notices to affected persons at the appropriate time.

One of the most important URA notices is the Ninety (90) Day Notice. No person shall be required to move without a minimum of ninety (90) days' written notice of the required date of the move.

³⁹ 49 CFR § 24.207(d)(1).

HUD has specific requirements relating to the five (5) URA notices and also requires additional notices be issued when conducting acquisition and relocation activities for HUD-funded programs and projects.

12.11.3 REQUIRED NOTICES

- **General Information Notice (GIN):** Informs affected persons of the project and that they may be displaced by the project (see ***General Information Notice (GIN) Template***).
- **Notice of Relocation Eligibility:** Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments (see ***Notice of Relocation Eligibility***).
- **Ninety (90) Day Notice:** Informs displaced persons of the earliest date by which they will be required to move. This notice may not be issued unless a comparable replacement dwelling is available and the displaced person is informed of its location and has sufficient time to lease or purchase the property (see ***90-Day Notice***).
- **Notice of Non-Displacement:** Informs persons that they are not permanently displaced and that they are eligible for temporary relocation benefits (see ***Notice of Non-Displacement Template***).
- **Disclosure to Occupants of Temporary Relocation Benefits:** Documents that the Subrecipient and Successful Applicant is following its adopted temporary relocation plan for tenants (see ***Disclosure to Occupants of Temporary Relocation Benefits Template***).

12.11.4 GENERAL INFORMATION NOTICE (GIN)

As soon as feasible when an owner or investor is applying for Federal financing for rehabilitation, reconstruction, or demolition, the tenant of a housing unit must be mailed or hand delivered a GIN that the project has been proposed and that the tenant will be able to occupy their present house upon completion of rehabilitation. The tenant will be informed that the rent after rehabilitation will not exceed current rent or 30% of their average monthly gross household income. The tenant will be informed that if they are required to move temporarily so that the rehabilitation can be completed, suitable housing will be made available, and they will be reimbursed for all reasonable extra expenses. The tenant will be cautioned that they will not be provided relocation assistance if they decide to move for personal reasons. To develop a GIN, refer to ***General Information Notice (GIN) Template***.

12.11.5 NOTICE OF RELOCATION ELIGIBILITY⁴⁰

The Notice of Relocation Eligibility establishes eligibility for relocation payments and assistance, and it must:

1. Identify the project and inform the person of their eligibility for relocation payments and other assistance and the effective date of that eligibility.
2. Generally describe the relocation payment(s) for which they may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
3. Inform them that they will be given other help (e.g. housing referrals) to facilitate the move.
4. State a specific date as the earliest date the occupant may be required to move or indicate a thirty (30) day advance notice of the date to vacate.

In the **Notice of Relocation Eligibility**, it is important for the Subrecipient or Successful Applicant to emphasize that the notice is not a notice to vacate. The notice should indicate that no one will be forced to move until and unless they have been referred to at least one DSS comparable house and that the occupants will have a minimum of ninety (90) days' notice to vacate after comparable housing has been located and referred. The notice should also contain a grievance procedure, which outlines the appeals process including the grounds for filing an appeal, to whom appeals should be filed with the Subrecipient or Successful Applicant, appropriate time limits, and the right of appeal to DED. This notice and all other notices to displaced persons must be written in plain, understandable language. They may be either hand-delivered or sent by certified mail. Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other needed assistance. Keep in mind that mailed notices are appropriate for beneficiaries able to read and understand. If there is any reason to believe the person is functionally illiterate or senile, hand-delivery is preferable. If a displaced person does not speak or read English, notices must be available in appropriate translations. Copies of all notices and evidence of their delivery should be retained in the relocation case files (refer to Site Occupant Record in **Section 12.11.11.1: Contact Displaced Persons to Provide Information and Determine Replacement Housing and Social Service Needs**).

12.11.6 NINETY (90) DAY NOTICE⁴¹

The 90-day Notice shall not be given before the displaced person is issued a notice of relocation eligibility (or notice of ineligibility) for relocation assistance (see **Section 12.11.5: Notice of Relocation Eligibility**). The date provided in this notice may be different for each person or group

⁴⁰ See also “CDBG Administration Manual: Chapter 11 – Relocation.” Nebraska Department of Economic Development.

⁴¹ 49 CFR § 24.203(c). See also “Tenant Assistance, Relocation and Real Property Acquisition (1378.0): Chapter 2.” at <https://www.hud.gov/sites/dfiles/OCHCO/documents/1378c2CPDH.pdf>.

of persons in a project area based on whether or not the project will be phased, the location of the occupied building(s), or the project schedule.

The 90-day Notice need not be issued if:

- There is no structure, growing stock, or personal property on the real property;
- The occupant made an informed decision to relocate and vacated the property without prior notice to the property owner;
- In the case of an owner-occupant who moves as a result of a voluntary acquisition described in 49 CFR § 24.101(b)(1) or (2), the delivery of possession is specified in the purchase contract; or
- The person is an unlawful occupant.

The urgent need provisions described in 49 CFR § 24.203(c)(4) permit Subrecipients and Successful Applicants to require an occupant to vacate in less than 90 days' notice. However, Subrecipients and Successful Applicants may not artificially create an "urgent need" (e.g., by issuing a notice to proceed to a demolition contractor, then using the imminent demolition to substantiate a danger to the resident's health and safety in order to cut short the notice period which is otherwise required).

State or local law may dictate the form and timing of a moving notice to be issued to an unlawful occupant, if any.

HUD also recommends that Subrecipients and Successful Applicants provide a minimum of 30 days' notice to move to persons who will not be displaced but who need to be temporarily relocated. Longer notice may be appropriate for persons who will be relocated for an extended period of time (over six (6) months) or if the move will include all personal property on site. Shorter notice periods may be appropriate based on an urgent need due to danger, health, or safety issues or if the person will be temporarily relocated for only a short period of time.

The URA regulation prohibits Federal participation in relocation payments or relocation advisory services to aliens not lawfully in the US but does not prohibit notices (see 49 CFR § 24.208). Often illegal aliens and legal residents reside together. Giving every lawful occupant these notices (see definition of an unlawful occupant at 49 CFR § 24.2(a)(29)) will assure compliance with the URA.

12.11.7 NOTICE OF NON-DISPLACEMENT

As soon as feasible when the rehabilitation application has been approved, the tenant or owner-occupant will be informed that they are not permanently displaced and advise them of their right to appeal. Tenants who are not qualified as a displaced person may be eligible for temporary relocation benefits because of lead-based paint mitigation or substantial rehabilitation or reconstruction of their unit. The tenant will also be cautioned not to move for personal reasons

during rehabilitation or risk losing temporary relocation assistance. To develop a Notice of Non-Displacement, refer to ***Notice of Non-Displacement Template***.

12.11.8 DISCLOSURE TO OCCUPANTS OF TEMPORARY RELOCATION BENEFITS

This form is completed to document that the Subrecipient and Successful Applicant is following its adopted temporary relocation plan for tenants. To develop a Disclosure to Occupants of Temporary Relocation Benefits, refer to ***Disclosure to Occupants of Temporary Relocation Benefits Template***.

12.11.9 OTHER RELOCATION/DISPLACEMENT NOTICES

The General Information Notice (see ***Section 12.11.4: General Information Notice (GIN)***), Notice of Non-Displacement (see ***Section 12.11.7: Notice of Non-Displacement***), and Disclosure to Occupants of Temporary Relocation Benefits (see ***Section 12.11.8: Disclosure to Occupants of Temporary Relocation Benefits***) are required for temporary relocation. If permanent relocation is involved, then other sets of notices, noticing processes, and relocation benefits must be applied (see [HUD Relocation Handbook 1378](#) for those forms and procedures).

Subrecipient or Successful Applicant staff will refer to ***Other Relocation/Displacement Notices Template*** and consult HUD's Relocation Handbook 1378 and ensure that all the proper notices are provided for persons who are permanently displaced as a result of housing rehabilitation activities funded by CDBG-DR or other Federal programs.

12.11.10 REQUIRED INFORMATION IN ADVISORY NOTICES

Appropriate advisory services will include reasonable advance written notice.

- The notice will include the following:
 - Date and approximate duration of the temporary relocation (if applicable);
 - Address of the suitable DSS dwelling to be made available for the temporary period (if applicable); and
 - Terms and conditions under which the tenant may lease and occupy a suitable DSS dwelling (if applicable).
- Notices shall be written in plain, understandable primary language of the persons involved, to account for Limited English Proficiency (LEP) persons.
 - Persons who are unable to read and understand the notice (e.g., illiterate, foreign language, or blind or low vision) will be provided with appropriate translation/communication.

- Each notice will indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

12.11.11 PROCEDURES FOR SURVEYS⁴²

12.11.11.1 Contact Displaced Persons to Provide Information and Determine Replacement Housing and Social Service Needs

As soon as the initial notice (see **Section 12.11.4: General Information Notice (GIN)**) is delivered or sent out, the Subrecipient or Successful Applicant must interview each displaced person to determine their need for assistance. A sample interview format is provided to show the type of information that is required (see [Interview Template](#)). This survey format generally forms the basis of the Site Occupant Record.

The Site Occupant Record includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); veteran status of family members; description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The people conducting these surveys and having personal contact with the individuals to be relocated should be patient and capable of understanding the distress of the displaced persons and of dealing with them in a non-threatening, helpful manner.

Some displaced persons may be elderly with a huge emotional investment in their present home. In the Subrecipient's or Successful Applicant's view, it may be a substandard dwelling unit; to the owner or tenant, it is a home which contains a lifetime's memories and mementos. Many will not want to relocate. The counseling and assistance required to serve these people adequately is substantial.

Depending upon the size and experience of the relocation staff, it may be appropriate to provide some counseling and assistance themselves while other social service needs will be best met through referral to public or private agencies. A single family may require a number of social service contacts. Physical and psychological problems may range from alcoholism to nervous breakdown, from unemployment to child abuse.

For this reason, the assigned staff must be aware of the kinds of services available. Staff should also develop the ability to distinguish serious problems which require outside professional assistance. Kinds of services and counseling commonly provided during the relocation process include the following counseling relocation services:

⁴² See also "CDBG Administration Manual: Chapter 11 – Relocation." Nebraska Department of Economic Development.

- Mortgage counseling and Fair Housing Laws;
- Help in completing or understanding forms or documents such as a purchase contract;
- Housekeeping and home maintenance practices;
- Budgeting and money management guidance;
- Recommendations concerning packing and moving;
- Family and personal counseling;
- Assistance in obtaining medical care;
- Help in obtaining clothing, food, furniture or appliances;
- Advice concerning social security, food stamps, welfare or veterans' benefits;
- Transportation assistance;
- Assistance with childcare or school adjustment;
- Employment counseling and job training;
- Senior citizen assistance;
- Family planning;
- Legal aid; and
- Financial assistance.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing appropriate relocation plans for the person. Some relatives will contribute money to the purchase of a dwelling, others will have special skills (e.g., lawyer, realtor) which can facilitate rehousing transactions. Sometimes, relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewer is conducting the family survey, they should review the relocation process with the displaced persons and ensure they understand the process.

Special attention must be given to:

- The assistance to be provided by the Subrecipient or Successful Applicant;
- The benefits available;
- The fact that replacement housing payments cannot be made unless the household relocates into a standard unit;

- The importance of keeping in touch with the Subrecipient or Successful Applicant; and
- The need to notify the Subrecipient or Successful Applicant before they move.

12.11.11.2 Identify Replacement Housing and Social Services Resources, Make Referrals

The primary purpose of the family survey is to provide the data needed to determine replacement housing needs. All replacement housing must be DSS. The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define DSS are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Housing Quality Standards define DSS. The unit should also be free of lead-based paint hazards and of architectural barriers, if serving a handicapped person.

12.11.11.3 Inventory Housing

Having identified the replacement housing needs, the Subrecipient or Successful Applicant must begin taking an inventory of available housing resources. In doing this, Subrecipients or Successful Applicants must be aware of affirmative action criteria that must be met when relocating low-income and minority persons.

The regulations require that the Subrecipient or Successful Applicant make comparable replacement housing available to low-income or minority displaced persons in areas that do not have concentrations of either low-income or minority households if such opportunities are available.⁴³

This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority displaced persons must be given replacement housing choices in those areas before the Subrecipient or Successful Applicant can give such displaced persons a 90-day notice to vacate. Furthermore, the regulations require that the Subrecipient or Successful Applicant make available to low-income and minority families specific assistance and services (e.g., assistance for moving expenses or interim living costs).⁴⁴

In inventorying available resources, the Subrecipient or Successful Applicant will be contacting lessors, realtors, and movers. It will read classified ads and tour neighborhoods looking for “For Rent” and “For Sale” signs. Eligible displaced persons may refuse to apply for public housing, either because they simply do not want to live in it or because they object to the investigation necessary to qualify them (the investigation of their incomes, in particular).

The process of finding suitable housing will involve continuous contact with displaced persons to solicit information, establish rapport, provide referrals to housing resources, accompany displaced persons to inspect possible dwellings and the like. Up-to-date information on the availability and

⁴³ 24 CFR § 42.350(a).

⁴⁴ 24 CFR § 42.350.

prices of comparable for-sale and rental housing must be provided. All units must be inspected and certified as being DSS before being placed on a referral list.

12.11.11.4 Displaced Persons Risk Compensation

Some displaced persons will not wait for the Subrecipient or Successful Applicant to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled. This can happen because:

1. The occupants do not know they are entitled to benefits and fail to apply.
2. The Subrecipient or Successful Applicant is unable to trace them to their new quarters.
3. The new quarters are substandard (in which case the displaced persons still receive moving expenses). Displaced persons who do not inform the Subrecipient or Successful Applicant of their plans forgo a pre-move inspection of their new quarters.
4. An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs.

12.11.11.5 Replacement Units Meet Standards

If an individual locates or moves into a replacement unit that is substandard, the Subrecipient or Successful Applicant must make every effort to upgrade the unit to DSS standards in order to entitle displaced persons to benefits. This can include making a rehabilitation grant or loan, emergency repairs and the like with HOME/CDBG funds or securing comparable assistance from other sources.

In the event remedial action to bring the unit to code is not available, the Subrecipient or Successful Applicant must inform such displaced persons that if they remain in or move to a substandard unit, they will be eligible only for moving expenses and not for replacement housing payments.

The Subrecipient or Successful Applicant must also inform them that if they move into standard housing within one (1) year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within eighteen (18) months, they will be eligible for a replacement housing payment.

TOOLKIT LIST

The following documents for **Chapter 12: One-for-One Replacement** are available on the [Toolkit section of DED's website](#):

- 90-Day Notice
- Acquisition Guidelines and Checklist to Execute Real Property Acquisitions
- Appraisal Request Template
- Disclosure to Occupants of Temporary Relocation Benefits Template
- Eminent Domain Code Excerpt
- General Information Notice (GIN) Template
- HUD Relocation Handbook 1378
- Information Booklet for the Acquisition of Property by a Public Agency
- Interview Template
- Notice of Decision to Appraise and Notice of Land Acquisition Letter Template
- Notice of Decision to Appraise Letter Template
- Notice of Non-Displacement Template
- Notice of Relocation Eligibility
- Offer Package Letter and Appraisal Summary Template
- Other Relocation/Displacement Notices Template
- Relocation File Checklist
- Sample Letter Acknowledgment of Services Rendered and Payments Received

13 SECTION 3

13.1 POLICY OVERVIEW

As a Grantee of HUD CDBG-DR funds, DED will comply with Section 3 Final Rule requirements set forth at 24 CFR Part 75, effective November 30, 2020.

Section 3 is intended to direct employment and other economic opportunities to low and very low-income persons to the greatest extent feasible for activities that are funded by HUD. This chapter corresponds to the information set forth in 24 CFR Part 75, subparts A (General Provisions), C (Additional Provisions for Housing and Community Development Financial Assistance), and D (Provisions for Multiple Funding Sources, Recordkeeping, and Compliance). Subpart B contains additional information not set forth herein regarding provisions for public housing financial assistance.

13.2 SECTION 3 POLICY

Section 3 is a provision of the Housing and Urban Development Act of 1968 and is intended to ensure that preference for employment, training, and contracting opportunities generated from the expenditure of Federal financial assistance be directed to local low- and very low-income persons, particularly those who receive federal housing assistance, and businesses that are owned by or substantially employ such persons. Section 3 specifically provides guidance to providing opportunities to:

Section 3 Business Concerns:¹ A Section 3 Business Concern is a business concern meeting at least one (1) of the following criteria, documented within the last six-month period:

- It 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 prior three-month period are performed by Section 3 workers; or
- It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 worker:² A Section 3 worker is any worker who currently fits or when hired within the past five (5) years fit at least one (1) 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;⁴²
- The worker is employed by a Section 3 business concern; or

¹ 24 CFR § 75.5.

² 24 CFR § 75.5.

- The worker is a YouthBuild participant.

Targeted Section 3 worker:³ A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

- A worker employed by a Section 3 business concern; or
- A worker who currently fits or when hired fit at least one (1) of the following categories, as documented within the past five (5) years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
 - A YouthBuild participant.

On April 4, 2019, HUD proposed a new rule to update the Section 3 regulations. HUD published the Final Rule on September 29, 2020. The Final Rule became effective on November 30, 2020 and is codified at 24 CFR Part 75. It is intended to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide program-specific oversight, and clarify the obligations of entities that are covered by Section 3.

DED will manage non-compliance with the Section 3 policy in accordance with the regulations set forth in 24 CFR § 570.496 and 2 CFR § 200.339. Specific monitoring and compliance practices are set forth in **Chapter 16: Monitoring and Compliance Plan**.

13.3 APPLICABILITY

Section 3 applies to housing and community development financial assistance expended for housing rehabilitation, housing construction, and other public construction⁴ projects assisted under HUD programs. Projects must exceed a threshold of \$200,000 for Section 3 to be considered applicable.⁵

The \$200,000 threshold is inclusive of total HUD assistance provided at the project level, not just the HUD assistance that is overseen by DED. For example, if a project is funded with \$101,000 of HOME funds and \$100,000 of CDBG funds, then it exceeds the applicability threshold of \$200,000 and the Section 3 requirements apply. However, if a project is funded with \$100,000 of CDBG funds and \$100,000 of state funds, Section 3 is not applicable.

³ 24 CFR § 75.21.

⁴ Public construction may include infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

⁵ 24 CFR § 75.3. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 USC § 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 USC § 4801 et seq.); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC § 4851 et seq.).

The project is the site or sites together with any buildings and improvements located on the site(s) that are under common ownership, management, and financing. The requirements apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.⁶ Subrecipients and Successful Applicants must make all entities that they contract with aware of the need to comply with Section 3 requirements.

Section 3 requirements do not apply to projects assisted with housing and community development financial assistance that do not include housing rehabilitation, housing construction or other public construction (e.g., funds used for direct homebuyer assistance or tenant-based rental assistance). Additionally, Section 3 requirements do not apply to material supply contracts.⁷ Subrecipients and Successful Applicants not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

13.4 BENCHMARKS

For Section 3 projects, Subrecipients and Successful Applicants must report in a manner prescribed by DED the following (see also **Section 13.10: Reporting**):

- The total number of labor hours worked;
- The total number of labor hours worked by Section 3 workers; and
- The total number of labor hours worked by targeted Section 3 workers.

HUD established Section 3 benchmarks for the number of hours Section 3 workers and targeted Section 3 workers work on a project. The Section 3 benchmarks are key targets for DED, Subrecipients, and Successful Applicants. Additionally, Subrecipients and Successful Applicants are required to provide DED with a list of the qualitative efforts undertaken to remain compliant. DED will complete a report to HUD describing the qualitative efforts done to try and meet those standards per 24 CFR § 75.25(b). Examples of qualitative efforts are identified below in **Section 13.10: Section 3 Examples of Qualitative Efforts**.

⁶ 24 CFR § 75.3.

⁷ 24 CFR § 75.3.

Benchmark	Target
<p>The benchmark for Section 3 workers is currently⁸ 25% or more of the total labor hours for grant-assisted projects each year.</p>	<p>The number of labor hours worked by Section 3 workers is divided by the total number of labor hours worked by all workers on a Section 3 project in the Subrecipient or Successful Applicant’s program year.</p> $\frac{\text{Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 25\% \text{ or more}$
<p>The benchmark for targeted Section 3 workers is currently⁹ 5% or more of the total labor hours for grant-assisted projects each year.</p>	<p>The number of labor hours worked by targeted Section 3 workers is divided by the total number of labor hours worked by all workers on a Section 3 project in the Subrecipient or Successful Applicant’s program year. <i>Note this figure is included in the overall 25% numeric goal for the project (see above).</i></p> $\frac{\text{Targeted Total Section 3 Labor Hours}}{\text{Total Labor Hours (Project)}} = 5\% \text{ or more}$

13.5 ROLES AND RESPONSIBILITIES

DED and its Subrecipients and Successful Applicants will be the primary entities responsible for ensuring compliance with Section 3 requirements.

13.5.1 DED

DED maintains overall responsibility for ensuring that projects for which Section 3 is applicable are conducted in compliance with the requirements set forth in this chapter. To this effect, DED will serve the following functions to support Section 3 compliance:

- DED will lead and establish a process to support Subrecipients and Successful Applicants with completing quarterly reports that effectively capture Section 3 reporting;
- DED will lead Section 3 management for applicable programs managed directly by the State; and

⁸ HUD established the threshold set forth in the Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Federal Register Notice (September 29, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183.pdf>.

⁹ HUD established the threshold set forth in the Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Federal Register Notice (September 29, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183.pdf>.

- DED will review Section 3 reporting to ensure Subrecipient and Successful Applicant compliance.

DED has also developed a range of resources to support training and technical assistance for all cross-cutting policies and procedures, including Section 3. The methodology and delivery of these resources can be found in the [CDBG-DR Toolkit](#) and primarily focuses on delivery via the DED website.

13.5.2 SUBRECIPIENT AND SUCCESSFUL APPLICANT

Subrecipients and Successful Applicants are responsible for maintaining compliance with the requirements set forth in this chapter. This includes the following:

- Review, understand, and operate in compliance with the requirements set forth in this chapter, as described in **Section 13.6: Requirements**.
- Identify and practice best practices, as applicable, as set forth in **Section 13.10: Section 3 Examples of Qualitative Efforts**.
- Complete regular Section 3 reporting, as set forth in this chapter and **Chapter 17: Recordkeeping and Data Management**.

13.6 REQUIREMENTS

The following Section 3 requirements will be followed by DED, Subrecipients, and Successful Applicants for all projects where Section 3 is applicable (see **Section 13.3: Applicability**). DED will review Subrecipient and Successful Applicant compliance and the compliance of their contractors and subcontractors with 24 CFR Part 75 via the review process described in **Chapter 17: Monitoring and Compliance Plan**. Support will also be provided pursuant to DED's forthcoming [Section 3 Plan](#), which will provide additional detail regarding opportunities across the service areas for different projects. This chapter will be updated with additional information regarding the [Section 3 Plan](#) once it is made available.

13.6.1 CONTRACT PROVISIONS

Pursuant to 24 CFR § 75.27, DED will:

- Include language applying Section 3 requirements and regulatory documentation and terms for reporting requirements and frequency of submission in any Subrecipient Agreement, Funding Agreement, or contract for a Section 3 project (see **Chapter 13 Addendum: Section 3 Clause**); and
- Require Subrecipients, Successful Applicants, contractors, and subcontractors to meet the requirements of 24 CFR § 75.19, regardless of whether Section 3 language is included in Subrecipient Agreements, program regulatory agreements, or contracts.

13.6.2 SECTION 3 WORKER AND TARGETED SECTION 3 WORKER

DED, Subrecipients, and Successful Applicants will ensure that employment and training opportunities in connection with Section 3 projects are provided to Section 3 workers and targeted Section 3 workers (see Appendix B: Definitions). These efforts will seek to meet the benchmarks set forth in Section 13.4: Benchmarks. See DED's [Section 3 webpage](#) and the CDBG-DR Toolkit for additional information and resources to support in Section 3 compliance.

13.6.3 WORKER CERTIFICATION

For both Section 3 and Targeted Section 3 workers, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will utilize the appropriate Certification Form to document the status of the worker (see **Section 13.12: Recordkeeping**). Nothing in 24 CFR Part 75 shall be construed to require the employment of someone who meets either of the above definitions Section 3 workers or targeted Section 3 workers (see **Section 13.2: Section 3 Policy**). Such workers are not exempt from meeting the qualifications of the position to be filled and shall not be negatively affected by a prior arrest or conviction.¹⁰

13.6.4 EMPLOYMENT AND TRAINING

Pursuant to 24 CFR § 75.19, "To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients... shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located."

Regulations specifically prioritize opportunities and training to Section 3 workers residing within the Section 3 service area or the neighborhood of the project¹¹ and participants in YouthBuild programs.

13.6.5 PROFESSIONAL SERVICES

Professional Services hours are excluded from the reporting requirement for Section 3 and targeted Section 3 workers.¹² The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) should not include labor hours worked for professional services jobs in the total labor hours worked on the project. However, if employees in the professional services roles meet the definition of a Section 3 worker or targeted Section 3 worker, Subrecipients and Successful Applicants can report their labor hours in the applicable worker hour category. The effect of this reporting structure is to give a Subrecipient or Successful Applicant a bonus if they can report Section 3 labor hours in the professional services context.

13.7 SECTION 3 BUSINESS CONCERN

To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will ensure contracts for work awarded in connection with Section 3 projects are provided to business

¹⁰ 24 CFR § 75.5.

¹¹ See **Manual Appendix B: Definitions**, for a description of the service area or the neighborhood of a Section 3 project.

¹² 24 CFR § 75.23.

concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located. Where feasible, priority for contracting opportunities described herein should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the Section 3 service area or the neighborhood¹³ of the project and YouthBuild Programs.¹⁴

Businesses may seek Section 3 preference for contracts where Section 3 is applicable. HUD's Section 3 Business Registry is a registry of businesses that have self-certified their status as a Section 3 business. Businesses who self-certify that they meet one (1) of the regulatory definitions of a Section 3 business are included in a searchable online database.¹⁵ The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the notification about HUD-funded contracts to eligible firms. Section 3 workers are also encouraged to use the registry to identify businesses that may have HUD-funded employment opportunities.

The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) will perform due diligence by verifying Section 3 eligibility before awarding contracts to businesses that are self-certified as a Section 3 business. The status of a Section 3 business concern will not be negatively affected by a prior arrest or conviction of its owner(s) or employees.¹⁶ Nothing in 24 CFR Part 75 will be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.¹⁷

Qualifying as a Section 3 business does not mean that the business is selected if it meets the technical requirements of the bid, regardless of the bid price. Section 3 businesses must still compete for local HUD-funded contracts. Section 3 requirements at 24 CFR Part 75 provide a preference for contracts and subcontracts to these firms but not a guarantee.

13.8 CONTRACTOR REQUIREMENTS

As provided in 2 CFR § 200.318, contract awards will only be made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed contract. These requirements are provided in additional detail under **Chapter 16: Monitoring and Compliance Plan**. Section 3 recordkeeping requirements for DED and its Subrecipients and Successful Applicants are found at 24 CFR § 75.31 (see **Section 13.12: Recordkeeping**). The hiring authority (i.e., DED, Subrecipient, or Successful Applicant) must maintain documentation or ensure that a contractor maintains documentation to demonstrate compliance with the regulations (see **Section 13.12.1: Documentation**). A contractor is responsible for requiring their subcontractors to maintain or provide any documentation that assists Subrecipients and Successful Applicants in demonstrating compliance, including documentation that shows hours worked by Section 3 workers and targeted Section 3 workers.

¹³ See **Manual Appendix B: Definitions**, for a description of the service area or the neighborhood of a Section 3 project.

¹⁴ 24 CFR § 75.19.

¹⁵ Section 3 Business Registry may be accessed at: <https://hudapps.hud.gov/OpportunityPortal/>.

¹⁶ 24 CFR §75.5.

¹⁷ 24 CFR § 75.5.

13.9 BIDDING

During the bidding process for activities associated with the CDBG-DR Program, the hiring authority (i.e., DED, Subrecipient, or Successful Applicant) must perform due diligence by verifying Section 3 eligibility and collect and maintain documentation related to Section 3 certification.

13.10 REPORTING

Section 3 requirements apply to housing rehabilitation, housing construction or other public construction funded by CDBG-DR or other applicable Federal sources. Once the project is complete, the Section 3 requirements no longer apply to subsequent contracts using funding from other sources.

Section 3 requires tracking and reporting of labor hours performed by Subrecipients, Successful Applicants, contractors, and subcontractors on a Section 3 project, including the total number of labor hours worked, the total number of labor hours worked by Section 3 workers, and the total number of labor hours worked by targeted Section 3 workers. Labor hours must be tracked for all persons who are working on an assisted project.

Where Section 3 is applicable to a particular project (see **Section 13.3: Applicability**), Subrecipients and Successful Applicants must report Section 3 labor hours as a part of quarterly reporting in DED's grants management system, AmpliFund (see **Section 3 Compliance Report Form**). DED utilizes the Subrecipient and Successful Applicant reporting information to report Section 3 data in HUD's Disaster Recovery Grant Reporting (DRGR) system.

Section 13.12: Recordkeeping further describes the documentation Subrecipients and Successful Applicants are required to collect as a part of Section 3 compliance.

13.11 SECTION 3 EXAMPLES OF QUALITATIVE EFFORTS

Subrecipients and Successful Applicants must adequately document the qualitative efforts taken to meet the numerical goals. Such qualitative efforts may include, but are not limited to, the following:¹⁸

- Engage in outreach efforts to generate job applicants who are targeted Section 3 workers, including:
 - Engagement via online platforms such as Subrecipient and Successful Applicant websites and social media platforms;

¹⁸ 24 CFR § 75.25.

- Announcing opportunities related to Section 3 jobs in community meetings and public hearings;
 - Posting notices in public buildings and in high traffic areas; and
 - Posting advertisements through traditional methods such as television, radio, billboards, and other signage.
- Provide training or apprenticeship opportunities.
 - Provide technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
 - Provide or connect Section 3 workers with assistance in seeking employment including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
 - Hold one or more job fairs.
 - Provide or refer Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
 - Provide assistance to apply for, or attend, community college, a four-year educational institution, or vocational or technical training.
 - Assist Section 3 workers to obtain financial literacy training and coaching.
 - Engage in outreach efforts to identify and secure bids from Section 3 business concerns.
 - Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
 - Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns.
 - Provide bonding assistance, guarantees, or other efforts to support viable bids from Section 3 business concerns.
 - Promote the use of business registries, designed to create opportunities for disadvantaged and small businesses.
 - Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.¹⁹

HUD's Section 3 Opportunity Portal found at: <https://hudapps.hud.gov/OpportunityPortal> is available to support Grantees (i.e., DED), Subrecipients, and Successful Applicants with meeting

¹⁹ Section 121(e)(2) of WIOA, Public Law No. 113-128 (2014).
<https://www.congress.gov/113/plaws/publ128/PLAW-113publ128.pdf>

their Section 3 benchmarks. Section 3 workers, targeted Section 3 workers, or employers may also use the website to identify jobs and training and contracting opportunities.

As a rule, it is important to document all actions taken to comply with requirements: if an activity is not documented, it is difficult to conclude that it ever happened. Documenting who, what, when, why, and how is helpful when capturing details of qualitative efforts, including dates, events, print or e-communication advertisements.

13.12 RECORDKEEPING

13.12.1 DOCUMENTATION

Pursuant to 24 CFR § 75.31, documentation must be retained by the Subrecipient or Successful Applicant or its contractor to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

- A worker's self-certification that their income is below the income limit from the prior calendar year (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#));
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#));
- Certification from a PHA, 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;
- 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 (see [Contractor Permanent Workforce Certification Form](#)); or
- An employer's certification that the worker is employed by a Section 3 business concern (see [Section 3 Business Concern Certification](#)).

For a worker to qualify as a Targeted Section 3 worker for housing and community development financial assistance:

- An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one 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 (see [Contractor Permanent Workforce Certification Form](#));
- An employer's certification that the worker is employed by a Section 3 business concern (see [Section 3 Business Concern Certification](#)); or

- A worker's self-certification that the worker is a YouthBuild participant (see [Section 3 Worker and Targeted Section 3 Worker Self-Certification Form](#)).

The above documentation must be maintained for the time period required for record retentions in accordance with the terms provided in the Subrecipient Agreement or contract for a Section 3 project and applicable program regulations or, in the absence of applicable program regulations, in accordance with 24 CFR § 570.490 and applicable provisions of 2 CFR Part 200.

13.12.2 ACCESS

HUD and DED will have access to all records, reports, and other documents or items of the Subrecipient and Successful Applicant that are maintained to demonstrate compliance with the requirements of 24 CFR Part 75 or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed.

TOOLKIT LIST

The following documents for **Chapter 13: Section 3** are available on the [Toolkit section of DED's website](#):

- Section 3 Business Concern Certification
- Section 3 Compliance Report Form
- Section 3 Contractor Permanent Workforce Certification Form
- Section 3 Worker and Targeted Section 3 Worker Self-Certification Form

CHAPTER 13 ADDENDUM: SECTION 3 CLAUSE

**THIS CLAUSE MUST BE INCLUDED IN ALL SECTION 3 COVERED RFPs, RFQs, BIDS
AND CONTRACTS**

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

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

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.

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

The contractor agrees to submit appropriate Section 3 documentation of total labor hours performed per contractor/subcontractor, certification of Section 3 worker eligibility, and confirmation of Section 3 business concerns and Youthbuild participants.

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

14 DAVIS-BACON AND RELATED ACTS (DBRA)

14.1 POLICY OVERVIEW

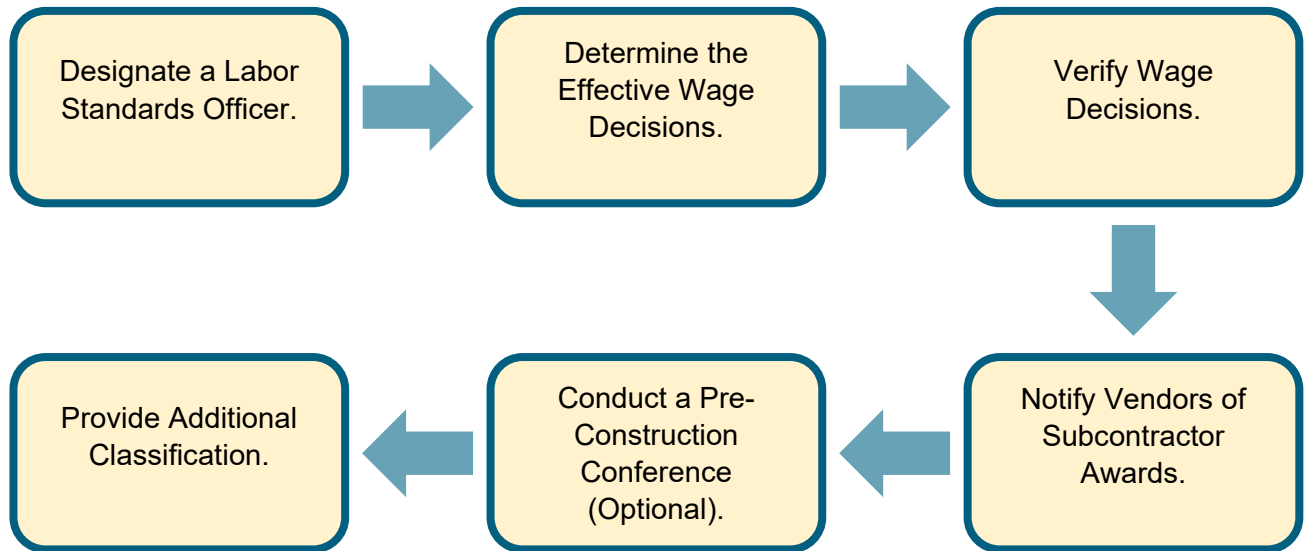
The State of Nebraska's Department of Economic Development (DED) is responsible for ensuring compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (CWHSSA), Fair Labor Standards Act (FLSA), and the Copeland (Anti-Kickback) Act, as well as Related Acts imposing Davis-Bacon wage and reporting requirements (i.e., Davis-Bacon and Related Acts or DBRA), across all construction contractors and subcontractors performing construction, alteration, or repair (including painting or decorating) of public buildings or public works for federally funded or assisted contracts using CDBG-DR funds.

Pursuant to Federal and State regulations, this chapter addresses Subrecipient and Successful Applicant responsibilities for ensuring compliance with labor regulations, including:

- Bidding and contract requirements to comply with the United States (US) Department of Housing and Urban Development (HUD) standards;
- Enforcement of DBRA, CWHSSA, FLSA, and the Copeland Act's requirements during project implementation;
- Restitution for underpayment of wages and non-compliance with DBRA; and
- Documentation and reporting processes to demonstrate compliance.

The Davis-Bacon Act (40 USC 3141, et seq., as implemented by 29 CFR Part 5) provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with Federal funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. An overview of the steps for Subrecipients and Successful Applicants to carry out Davis-Bacon requirements is provided in **Figure 1**.

Figure 1: Davis-Bacon Compliance Overview



Section 110 of the Housing and Community Development Act of 1974 (HCDA) applies the Davis-Bacon Act to components of the CDBG program, including CDBG-DR, and, as a result, the HCDA is a “Related Act” for purposes of the Davis-Bacon Act. To determine if Davis-Bacon is applicable to a specific project activity, see the [Davis-Bacon Project Applicability Cheat Sheet](#).

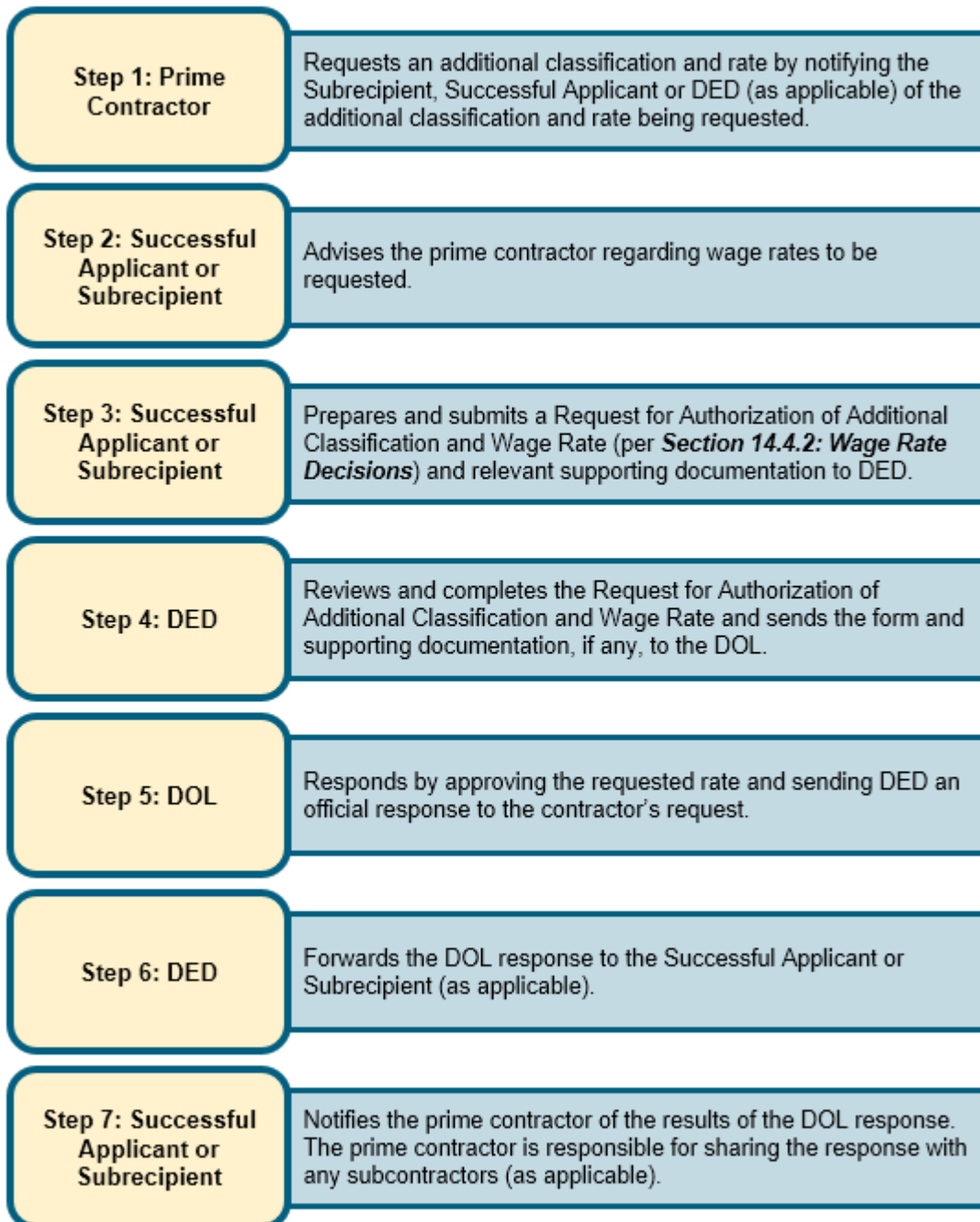
Unless an exception as further described herein applies, construction contracts in excess of \$2,000 awarded by DED under the CDBG-DR program shall include a provision for compliance with Davis-Bacon and associated Department of Labor (DOL) and HUD regulations. The principal requirements are:

- Subrecipients and Successful Applicants must include a copy of the current Prevailing Wage rate decision in each Invitation For Bid (IFB), Request For Proposal (RFP), and Purchase Order (PO) when applicable;
- Subrecipients and Successful Applicants 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 comply with other labor standards;
- Contractors must pay laborers the wage rate that DOL determines is the prevailing wage in that labor market;
- Contractors must submit weekly payrolls; and
- Subrecipients and Successful Applicants are required to report all suspected, reported, or confirmed violations to DED.

A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If a worker(s) will be

employed to work on the project but is part of a particular class of laborers that is not listed in the wage decision, the contractor must request an additional classification. The steps to complete an additional classification are summarized below in **Figure 2** (see also **Section 14.4.2: Wage Rate Decisions**).

Figure 2: Steps to Complete an Additional Classification



HUD has published a contractor's guide to prevailing wage requirements for federally assisted construction projects. Subrecipients and Successful Applicants may use this "Making Davis-Bacon Work" guidebook to obtain a better understanding of Davis-Bacon laws and regulations and to determine how to comply with these laws and regulations.¹

All Subrecipients and Successful Applicants must follow HUD and DOL reporting requirements. DED will monitor and enforce completion of the following reports:

- Weekly Statement of Compliance (a.k.a. a Certified Payroll Report [CPR]) that certifies compliance with DBRA requirements (see Optional Form WH-347);
- Report of any violations that occurred that week; and
- Reports must be kept by each contractor or subcontractor for at least three (3) years from the date of the HUD/DED grant closeout.

HUD also requires quarterly performance reports (QPRs) from DED in addition to the CPRs that Subrecipients and Successful Applicants send to DOL via DED. DED will use information generated from standard quarterly program reporting generated by Subrecipients and Successful Applicants to complete QPRs to HUD (for further details, see **Chapter 16: Monitoring and Compliance Plan**).

DED will have an established Labor Standards Compliance Officer (LSCO) to manage monitoring and compliance for all Subrecipients and Successful Applicants funded through the CDBG-DR program. Subrecipients and Successful Applicants are required to appoint and maintain a Labor Standards Officer (LSO) for all Subrecipient Agreements (SRAs) and Funding Agreements involving construction activities.

LSOs are appointed using the DED Appointment of Labor Standards Officer Designation Form (see [Appointment of Labor Standards Officer Form Template](#)) as submitted to DED. The LSO may be an employee of a Subrecipient or Successful Applicant or may be a third party retained for the purpose. The primary qualification of an LSO is an understanding of HUD's overall compliance requirements with the Federal prevailing wage obligations applicable to HUD-funded CDBG programs and regular attendance at HUD and DOL trainings.

The LSOs are responsible for the regulatory administration and enforcement of the Federal labor standards provisions on all SRAs and Funding Agreements covered by DBRA requirements. These activities will be conducted with support from DED's LSCO.

¹ The guidebook is located at: <https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>.

14.1.1 HUD GUIDANCE WAIVING CERTAIN DBRA REQUIREMENTS²

HUD has provided additional guidance on how to interpret DBRA applicability for previous work, work in progress, and future work where DBRA applies for 2015-2019 CDBG-DR Grants and CDBG-MIT Grants. HUD's guidance has impacts on completed and ongoing projects under DED's Infrastructure Match Program as described below.

1. DBRA requirements do **not** apply to construction work completed and performed prior to DED and HUD's grant agreement date (July 7, 2021).
2. DBRA requirements apply **prospectively** to construction work that began before the DED and HUD's grant agreement date (July 7, 2021), but was still ongoing at the time of grant agreement.
3. DBRA requirements **apply** to prospective construction work not yet begun as of DED and HUD's grant agreement date (July 7, 2021).

For any questions regarding DBRA applicability, please reach out to DED.

14.2 ADDITIONAL FEDERAL REQUIREMENTS

This chapter is structured to ensure compliance with Federal wage and labor relations statutes and regulations applicable to Grantees (i.e., DED), Subrecipients, and Successful Applicants of CDBG-DR funds, including the following:

- Davis-Bacon and Related Acts, as described above in **Section 14.1: Policy Overview**;
- The Copeland Act (18 United States Code (USC) 874 and 40 USC 3145, as implemented in 29 CFR Part 3) "applies to any contract which is subject to Federal wage standards" to ensure that any person working on a federally funded or assisted construction project is not forced to "give up any part of compensation to which he is entitled under his employment contract."³
- The CWHSSA (40 USC 3701 et seq., as implemented in 29 CFR Part 5) requires that contracting officers ensure compliance of "any contract in an amount in excess of \$100,000 and subject to the overtime provisions," including associated requirements including liability for unpaid wages, withholding for unpaid wages and liquidated damages, and the applicability of such rules to subcontracts.⁴

² See <https://www.hudexchange.info/trainings/courses/davis-bacon-and-related-acts-for-2015-2019-cdbg-dr-grants-and-cdbg-mit-grants/> for additional information regarding Davis Bacon and Related Acts for 2015-2019 CDBG-DR Grants and CDBG-MIT Grants.

³ 29 FR 97.

⁴ 48 FR 19540.

- The FLSA (29 USC § 201) establishes standards for employment and employee pay by business organizations and is especially applicable to construction activities. A business in the construction industry must have two (2) or more employees and have an annual gross sales volume of \$500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states (“interstate commerce”).⁵

Exceptions to DBRA, CWHSSA, FLSA, and the Copeland Act include:⁶

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into individual contracts below \$2,000 in order to circumvent Federal requirements is not permitted;
- Rehabilitation or construction of residential properties containing seven (7) or fewer units (single-family homeowner properties are typically excluded from DBRA compliance requirements);
 - If the residential property has eight (8) or more units, DBRA compliance may be applicable. For example:
 - Five (5) side-by-side townhouses consisting of two (2) units each.
 - Three (3) apartment buildings each with five (5) units located on one (1) tract.
 - Eight (8) single-family (not homeownership) houses located on contiguous lots.
- Simple water and sewer line extensions without pumps, tanks, etc.;
- Contracts solely for demolition when no federally funded construction is anticipated on the site; and
- Wage requirements shall not apply to any individual who:
 - Performs services for which the individual volunteered;
 - Does not receive compensation for such services;
 - Is paid expenses, reasonable benefits, or a nominal fee for such services; or

⁵ Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

⁶ HUD, 2013. “HUD Handbook 1344.1, Federal Labor Standards Requirements in Housing and Urban Development Programs.” See <https://www.hud.gov/sites/dfiles/OCHCO/documents/Work-Schedule-Request.pdf>.

- Is not otherwise employed at any time in the construction work.

All construction contractors (including CDBG-DR-funded construction contracts where special conditions or permits apply due to the specific project description or location) are required to comply with DBRA.

14.3 ROLES AND RESPONSIBILITIES

14.3.1 DED

As the Grantee, DED is responsible for overseeing and monitoring Subrecipients and Successful Applicants for compliance with DBRA and submitting QPRs to HUD through DRGR. DED will require Subrecipients and Successful Applicants using CDBG-DR funds to adopt these policies and procedures and to include labor standards and wage determination clauses in all construction contracts subject to labor standard provisions. DED shall establish an LSCO to manage monitoring and compliance for all Subrecipients and Successful Applicants.

The LSCO acts as DED's liaison for possible labor standard and compliance issues and completes the following, but not limited to, activities:

- Confirming the specific labor standards provisions applicable to the project (e.g., Davis-Bacon wage and reporting requirements, CWHSSA, Copeland Act, FLSA) and communicating such requirements to Subrecipients and Successful Applicants;
- Processing additional classification requests and reconsidering them when necessary, as described in **Section 14.1: Policy Overview**, and **Section 14.4.5: Additional Classification Request Process**;
- Documenting the wage decision before the award of the contract using the CDBG-DR Manual for verification and maintaining the form in DED's labor files;
- Receiving notification from the Subrecipient or Successful Applicant before a contractor begins to work on a project;
- Signing off on contractor clearance;
- Creating and submitting the semi-annual report;
- Maintaining contact with HUD's Regional Labor Enforcement as necessary to determine assistance or support on decisions;
- Providing training and technical assistance to Subrecipient and Successful Applicant LSOs;
- Maintaining policies and procedures such as this chapter, forms, and records that demonstrate Subrecipients, Successful Applicants, and contractors are informed or have been provided technical assistance regarding labor standards;

- Ensuring compliance with requirements by performing periodic “spot-check” reviews of certified payroll submissions and related submissions, including comparison of on-site interview data against CPRs for compliance with the labor standards and requesting additional information when needed or rejecting submitted payrolls as needed;
- Enforcing the referral of potential criminal/complex investigations, debarment, or CWHSSA liquidated damages to HUD by providing HUD with a summary of the findings, schedule of back wages due, issued notices to the contractor, and notice of intent to assess liquidated damages and implementing the final order of liquidated damages;
- Receiving and transmitting labor standard enforcement reports (“Enforcement Reports”) from Subrecipients and Successful Applicants to provide to DOL;
- Identifying potential willful violations through spot-check reviews or employee interviews and following up on potential willful violations through employee questionnaires and other techniques to identify cases for investigation; and
- Enforcing corrective actions for identified errors including, but not limited to:
 - Misclassification of laborers and mechanics;
 - If the actual pay is less than full prevailing wage, including fringe benefits for all hours worked (including overtime);
 - Copy or Fax Statement of Compliance (a.k.a. CPR);
 - Inadequate recordkeeping, such as not counting all hours worked by an individual or not recording hours worked in two (2) or more classifications in one (1) day;
 - Incomplete Payroll Information;
 - Failure to submit weekly payrolls – including for weeks of no work;⁷
 - One (1) Statement of Compliance (a.k.a. CPR) for multiple work weeks;
 - Other deduction authorizations not completed
 - Unauthorized signature on Statement of Compliance (a.k.a. CPR); and
 - Apprenticeships or trainees not properly documented.

The LSCO will also oversee the LSOs and support communications between Subrecipient or Successful Applicant LSOs and HUD, DOL, or other Federal agencies.

⁷ For additional information, see **Section 14.11.4: Certified Payroll Report (CPRs)**.

14.3.2 SUBRECIPIENTS AND SUCCESSFUL APPLICANTS

Each Subrecipient or Successful Applicant shall designate an LSO responsible for tracking records and monitoring compliance with the requirements described in this chapter. The activities to be completed by the LSO include, but are not limited to, the following:

- Ensuring that the current applicable Davis-Bacon wage decision and contract standards are incorporated into the contract for construction (e.g., construction specifications);
- Searching the SAM website⁸ no more than 10 days prior to a bid opening to ensure that the wage decision in the bid package is current and notifying DED of the package's status;
- Submitting contractors for clearance to DED receiving approval prior to beginning work on a project;
- Submitting quarterly reports to DED to inform the semi-annual report;
- Researching and resolving labor violations;
- Assessing liquidated damages;
- Conducting on-site interviews;
- Setting up wire transfers to liquidated damages and unfound workers;
- Reviewing payrolls for restitution;
- Resolving special issues;
- Conducting a pre-construction kickoff conference with prime contractors and subcontractors (optional);
- Conducting field inspections at the job site to establish compliance with labor requirements, including:
 - Ensuring the wage decision and required posters are posted prominently; and
 - Interviewing employees to determine payroll accuracy and compliance with DBRA requirements. The LSO must interview prime contractors, subcontracts whose contract is \$100,000 or greater, at least one (1) of every job classification on site, and any subcontractors with a large number of payroll problems.
- Ensuring that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs by implementing methods for verification of contract signing, execution, and updates from other DED programmatic areas;

⁸ See <https://sam.gov/content/wage-determinations>.

- Receiving and transmitting Enforcement Reports to DED for transmission to DOL (see [**Labor Standards Enforcement Report Template**](#)).
- Providing standard quarterly reports for program activities to DED in order to inform QPR reporting to HUD.
- Communicating to DED the referral potential criminal/complex investigations, debarment, or CWHSSA liquidated damages for routing to HUD by providing DED a summary of the findings, schedule of back wages due, issued notices to the contractor, and notice of intent to assess liquidated damages and implementing the final order of liquidated damages;
- Establishing a complaints process and assure worker complaints are addressed promptly;
- Preparing reports on all enforcement activities;
- Disposing of deposit/escrow accounts established for labor standards purposes; and
- Establishing and maintaining full documentation of all labor standards administration and enforcement activities in accordance with **Section 14.11: Documentation and Reporting**.

Details needed for the appointment of an LSO are provided in ***Appointment of Labor Standards Officer Form Template***.

Implementation of the activities described here shall also be the responsibility of any implementing department, contractor, Successful Applicant, or any other Subrecipient agency overseeing project work funded by CDBG-DR.

If they use apprentices or trainees, Subrecipients and Successful Applicants are responsible for providing them on-the-job training opportunities. In addition, Subrecipients and Successful Applicants are responsible for writing and enforcing labor policies and procedures that specify how they will administer, at a minimum, the following:

- Additional classifications;
- Liquidated damages;
- Recordkeeping and retention;
- CPR reporting;
- Unfound worker accounts; and
- Submitting contractors for disbarment.

14.3.3 CONTRACTORS

Contractors must record new employees using the [**New Employee Information Form Template**](#) and using E-Verify on federal funded projects. However, three (3) special classes of employees

may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon prevailing wages. These classes are:

- **Apprentices:** Provided they are individually registered in a bona fide apprenticeship program in which the contractor participates and that DOL approves. Apprentices must also satisfy other conditions as specified in the labor standards provisions in the construction contract between the Subrecipient or Successful Applicant and the contractor;
 - Registered Apprenticeship Programs (RAP) must have five (5) components:
 - Paid job
 - On-the-job learning
 - Classroom learning
 - Mentorship
 - Credentials
- **Trainees:** Provided they are in a DOL-approved training program, as documented by formal certification by the DOL, Employment and Training Administration,⁹ and they satisfy other conditions as specified in the labor standards provisions in the construction contract between the Subrecipient or Successful Applicant and the contractor; and
- **Volunteers:** The use of volunteers on CDBG-DR projects must meet the criteria found in 24 CFR Part 70. Subrecipients and Successful Applicants must contact DED if they intend to use volunteers on projects to ensure compliance with these criteria.
 - Contractors must obtain a HUD waiver to use volunteers for construction in which they indicate that the volunteers are volunteering for the purposes of lowering costs of construction and information sufficient for HUD to make a determination that any amounts saved through the use of volunteers are fully credited to the agency or organization undertaking the construction and that any payments to volunteers are expenses, reasonable benefits, or nominal fees.¹⁰

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 Subrecipients and Successful Applicants to determine that there is compliance with the Davis-Bacon wage rate determination.

⁹ 29 CFR § 5.5(a)(4)(ii).

¹⁰ For more information regarding obtaining a HUD waiver, please reach out to DED.

14.4 BIDDING AND CONTRACTING

14.4.1 OUTREACH

Pursuant to 2 CFR § 200.321, Subrecipients and Successful Applicants must take steps to affirmatively assure Historically Underutilized Businesses (HUBs), small and minority-owned businesses, women’s business enterprises, Section 3 businesses, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.

Subrecipients and Successful Applicants must ensure that clauses implementing DBRA, CWHSSA, FLSA, and the Copeland Act, as well as the appropriate wage determination language are included in all construction contracts. At the application stage, DED will review the procurement policies of Applicants for all programs. DED will review all primary contracts procured by Subrecipients and Successful Applicants for adherence to DBRA and associated requirements outlined in this chapter. For Infrastructure Match projects already in progress, this review will happen at the application stage. For other projects, DED may require submission of a proposed contract before it is signed by the Subrecipient or Successful Applicant for review. Subrecipients and Successful Applicants must not approve any payment, advance, grant, loan, or guarantee of funds after the beginning of construction unless there is on file a certification by the contractor and subcontractors that they have complied with DBRA.

14.4.2 WAGE RATE DECISIONS

Subrecipients and Successful Applicants must verify all wage decisions for contractors prior to contract award and execution and submit to DED for review. Wage rates must be determined in compliance with Davis-Bacon prevailing wages (see [Prevailing Wages Template](#)). The SAM website¹¹ contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. These classifications and wage rates are binding.

14.4.3 GENERAL WAGE DECISION

Most Davis-Bacon wage decisions are “General Wage Decisions,” also referred to as “area decisions.” DOL publishes general wage decisions and may modify or supersede them throughout the year. The SAM website¹² is the official website for publications of general wage decisions and modifications.

14.4.4 PROJECT WAGE DECISION

If an appropriate wage decision (by location, character of work, or specific trade required) is not published in the general wage decisions, DED will order a “project” wage decision from DOL. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180

¹¹ See <https://sam.gov/content/home>.

¹² See <https://sam.gov/content/home>.

days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified. It should be noted that a project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example, a project involves only roof replacement on a four (4)-story apartment building and the only classification needed for the work is a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

Project wage decisions must be ordered on a case-by-case basis from DOL. To request a project wage decision, the Subrecipient or Successful Applicant will submit a completed **DBRA Standard Form (SF)-30831, Request for Determination and Response to Request**¹³ to DED. DED will review the request and transmit to DOL.

If wage determination or modifications questions arise, Subrecipients and Successful Applicants should contact DED's LSCO.

14.4.5 ADDITIONAL CLASSIFICATION REQUEST PROCESS

If a worker classification does not appear on the general wage decision, a Subrecipient or Successful Applicant must request an additional classification from DED, in writing. When requesting an additional wage classification, the following criteria must be met:

- Provide classification being requested;
- Description of work performed by the requested classification; and
- Proposed rate for the requested classification.

A Subrecipient's or Successful Applicant's LSO can notify DED of a necessary change by submitting **SF-1444, Request for Authorization of Additional Classification and Rate**¹⁴ to DED's LSCO for review and processing. The form must include:

- Subrecipient or Successful Applicant name;
- Project name;
- Contract number;
- Contractor name;

¹³ See <https://www.dol.gov/agencies/whd/government-contracts/construction/forms/sf-308>.

¹⁴ See <https://www.dol.gov/agencies/whd/government-contracts/construction/forms>.

- Bid open date;
- Contractor contract award date;
- Construction work started;
- Project description;
- Location of the project;
- Classification being requested;
- Description of duties performed by the requested classification;
- Proposed rates and any fringe benefits; and
- Appropriate signatures where requested.

DED will track all additional wage classification requests and maintain any associated documents. DED's LSCO will review the request to ensure it meets the requirements of mechanic, which is a skilled worker on-site, or laborer, which is an unskilled worker on site.

Once received, DED has three (3) options:

- If the classification meets the description of laborer or mechanic and is not on the general wage decision, DED's LSCO will submit the additional classification request to DOL for review and rate approval (see [**DOL Additional Classification Request Letter Template**](#)).
- If the position does not meet the standards for laborer or mechanic, DED's LSCO will not submit it to DOL.
- If the DED LSCO is unsure whether the classification qualifies, they submit the request to DOL regardless.

The Subrecipient or Successful Applicant can expect to receive a Notification of Classification Submission or a Notification of Rejection of Submission from DED within (30) days. To ensure a timely response, DED will review the status of submissions marked "pending" or "submitted" biweekly.

If DED does not receive a decision regarding the additional wage classification within thirty (30) days, DED's LSCO will continue to demonstrate compliance with labor standards by documenting all submissions to DOL. DED will also submit the classification request to DOL staff and copy the appropriate parties to support the completion of the additional classification request. If necessary, DED can contact HUD's Labor Specialist for assistance. DED should also record when phone calls to DOL or HUD about classification requests were made and keep relevant emails.

14.5 PRE-CONSTRUCTION PROCEDURES

14.5.1 PRE-CONSTRUCTION CONFERENCE

Once the contract is executed and necessary documentation is submitted and meets Subrecipient or Successful Applicant and DED requirements, Subrecipients or Successful Applicants may schedule a Pre-Construction Conference (optional) with the contractor and any selected subcontractors. A representative from the selected contractor and any subcontractors, including bookkeeping/payroll staff, must attend this meeting if it is scheduled by the Subrecipient or Successful Applicant. Subrecipients and Successful Applicants should provide notice of the Pre-Construction Conference to DED.

During the Pre-Construction Conference, Subrecipients or Successful Applicants should review all Federal labor standards requirements, including but not limited to DBRA. Subrecipients and Successful Applicants should utilize and reference the Pre-Construction Conference Checklist to ensure all required documents are provided to the contractor and ensure these requirements are met and understood by the contractor (see [Pre-Construction Conference Checklist](#)). Subrecipients and Successful Applicants must provide DBRA forms that the contractor completes during the meeting or before commencing construction.

During the Pre-Construction Conference, Subrecipients and Successful Applicants should provide the contractor a copy of the “Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.”¹⁵

During the Pre-Construction Conference, the LSO should also review the prime contractor’s responsibility to:

- Obtain and review payrolls and Statements of Compliance (a.k.a. CPRs) from all subcontractors;
- Submit weekly payrolls and Statements of Compliance (a.k.a. CPRs) signed by an officer of the company or authorized individual on behalf of the company. The signer must have signatory authority (see [Signatory Authority Form](#));
- Confirm that paid wages conform to wage rate decisions included in the contract. Subrecipients and Successful Applicants will confirm the job classifications and discuss if additional classifications are needed;
- Confirm that employee interviews will be conducted periodically during the project;
- Confirm that a copy of the wage rate decision must be posted at the job site;

¹⁵ See <https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>.

- Confirm that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the DOL. If apprentices or trainees are to be used, the contractor must provide Subrecipients and Successful Applicants with a copy of the certification of their program;
- If the contract is \$100,000 or greater, workers must be paid overtime if they work more than 40 hours in one (1) week, and failure to pay workers at least time and a half violates CWHSSA. In addition to restitution, noncompliance with CWHSSA makes the contractor liable for liquidated damages as prescribed in 29 CFR § 5.8 per day for every day each worker exceeded 40 hours a week without being paid time and a half;
- Any payroll deductions that are not specifically listed in the Copeland Act provisions require the contractor to obtain written permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments; and
- Posters¹⁶ are required to be posted at the job site, (e.g., “Notice to All Employees Working on Federal or Federally Financed Construction Projects.”);

Subrecipients and Successful Applicants should provide an overview of labor standards provisions and confirm that labor standards and technical specifications are legally binding. Failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially in restitution, liquidated damages, and/or recommendation for debarment.

The Subrecipient or Successful Applicant and their LSO should document and retain Pre-Construction Conference minutes, including a list of attendees and an outline of the required Federal/State labor requirements discussed during the Pre-Construction Conference before issuing a Notice to Proceed.

14.5.2 NOTICE TO PROCEED

Upon contract execution and completion of the optional Pre-Construction Conference, Subrecipients and Successful Applicants will issue a Notice to Proceed to the prime contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

14.6 MONITORING DURING CONSTRUCTION

Subrecipients and Successful Applicants are responsible for ensuring labor standards requirements are adhered to during construction. This includes adherence to best practices in

¹⁶ These posters and others are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.

construction management (e.g., pre-construction conferences, payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

14.6.1 PAYROLL REVIEW

Once construction is underway, the prime contractor must complete weekly payroll reports for his employees and sign the Statement of Compliance (a.k.a. CPR) (see [Filling out a Weekly CPR](#)). The prime contractor must also obtain weekly payrolls (including signed Statements of Compliance (a.k.a. CPRs) from all subcontractors as they work on the project.

The prime contractor must submit CPRs (including [Payroll Deduction Authorization Form Template](#)) to Subrecipients and Successful Applicants within a reasonable timeframe to ensure compliance, which is typically no more than 10 business days, following the end of the payroll period. Subrecipients and Successful Applicants will then submit to DOL via DED.

The prime contractor is responsible for the full compliance of all subcontractors on the project and is held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and liquidated damages that may be assessed for overtime violations. The prime contractor must review payroll documentation to ensure there are no discrepancies or underpayments.

Discrepancies or falsification indicators shall be immediately reported to DED, along with the steps being taken by Subrecipients and Successful Applicants to resolve the discrepancies. Red flags that indicate possible falsification include:

- **Greater than 1:1 ratio of laborers to mechanics:** This could indicate that some workers labeled laborers are doing the work of a mechanic, which requires a higher wage.
- **Less than 40 hours per week for all or certain employees:** This erratic work schedule could indicate that hours were reduced to give the appearance of wage compliance.
- **Round or otherwise discrepant wage calculations:** Round numbers, such as \$400/week, computed from uneven hourly rates (e.g., \$15.67/hour) are unlikely to occur and indicate employees may be working on a piece rate basis or lower wage. The falsification could involve hours worked, rate of pay, or both.
- **Extraordinary deductions:** Large or unexplained deductions could indicate employees are kicking back some of their wages, which, while a willful violation, is not necessary a falsification. However, it should be investigated.
- **Submitting excess documentation:** Some contractors attempt to appear more compliant by submitting excess documentation that is neither required nor requested.
- **Ghost workers:** Some contractors hide individual or teams of workers who simply never appear on CPRs but perform work on-site. These ghost workers cannot be spotted on a CPR alone but an LSO and/or LSCO may notice them during workplace interviews.

- **Wages paid in cash:** Contractors may write the full payment on the CPR but pay employees a lower rate in cash. In this case, the reported amount on the CPR does not matter, only what employees are actually receiving.
- **Contractors who cash paychecks:** The contractor may issue payroll checks at the right amount but insist employees cash them with the employer for a lower amount instead of with a bank.
- **Contractor facilitates cashing paychecks:** Contractors may issue the correct checks but then instruct employees to cash them at a bank and return a certain portion of each check to the contractor, lowering the real wage.

Note that an indicator of a falsification does not mean a falsification occurred. More investigation is required to determine willful falsification.

Where underpayments of wages have occurred, the Subrecipient's or Successful Applicant's LSO is responsible for ensuring the correct wages are paid and that the contractor pays wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. If the parties are not willing to adhere to the LSO's directions, the LSO and Subrecipient or Successful Applicant should involve DED and DED's LSCO to ensure compliance and restitution.

14.6.2 ON-SITE INTERVIEWS

Subrecipients' and Successful Applicants' LSOs are required to conduct job site interviews at least twice during the construction phase of each project. DED reserves the right to require more job site interviews or have the LSCO conduct additional unscheduled interviews. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform, and the wage they receive.

Interviews will include:

- All contractors;
- All subcontractors with an award \$100,000 or more;
- At least one (1) of every job classification on site; and
- Subcontractors with a history of payroll inconsistencies or issues.

The Subrecipient or Successful Applicant, or its LSO, is responsible for comparing the interview forms with corresponding payrolls to ensure employees are paid no less than prevailing wages.

The LSOs will use HUD’s Record of Employee Interview form (HUD-11) for on-site interviews (see also [Record of Employee Interview](#)).¹⁷

Interviews follow the below guidelines:

Number	Task
1	Interviews are conducted on the job site and privately (this is a one-on-one process).
2	The interviewer observes the duties of workers before initiating interviews.
3	Employees of both the prime contractor and subcontractors are interviewed.
4	To initiate the interview, the I interviewer shall:
	a Properly identify themselves.
	b Clearly state the purpose of interview.
	c Advise the worker that information given is confidential and their identity will be disclosed to the employer only with the employee’s written permission.
5	When conducting employee interviews, the interviewer pays particular attention to:
	a The employee’s full name.
	b The employee’s permanent mailing address.
	c The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and no other work.
6	The employee’s hourly rate of pay, to determine if the worker is being paid at least the minimum required by the wage decision. The interviewer ensures the worker is not quoting their net hourly rate or “take-home” pay.

¹⁷ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/11.pdf>. A Spanish language version of the form can be found at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/11SP.pdf>

Number	Task
	<p>a If it appears the individual may be underpaid, the interviewer closely questions the worker by asking for any records and arranging to re-interview the employee.</p>
7	Enter the worker’s statement of their classification.
8	Observe duties and tools used:
	<p>a If worker’s statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.</p> <p>b If there are discrepancies, detailed statements are necessary.</p>
9	Enter any necessary comments.
10	Enter interview date.

The Record of Employee Interview form (see [Record of Employee Interview](#)) must be compared to the corresponding contractor and subcontractor payroll information.

- If no discrepancies appear, “None” should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person in charge of the job site; and
- If discrepancies do appear, appropriate action should be initiated. When a necessary action has been completed, the results must be noted on the Record of Employee Interview form.

Interview forms should be kept as part of project records and shared with DED for recordkeeping purposes.

If there are wage complaints, the interviewer should complete the [Federal Labor Standards Complaint Intake Form \(HUD Form 4731\)](#),¹⁸ investigate the complaint and resolve it when possible (see [Complaint Intake Form](#)). If there are outstanding issues, consult DOL for clarification.

¹⁸ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.pdf>.

14.7 REVIEW PRIOR TO PAYMENT

14.7.1 PROGRESS PAYMENT

Upon receipt of requests for payment during construction, Subrecipients and Successful Applicants shall monitor compliance with labor regulations and ensure compliance by confirming:

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

Subrecipient and Successful Applicants will share the compliance determination and accompanying documentation with DED. The compliance reviews and determinations made by Subrecipients and Successful Applicants shall be completed in a timely manner to ensure payments to contractors are made by the contractual payment deadline.

14.7.2 FINAL PAYMENT

When construction work has been completed, the contractor will submit a final request for payment. Before making the final payment, Subrecipients and Successful Applicants must ensure that:

- All weekly payrolls and Statements of Compliance (a.k.a. CPRs) have been received and any discrepancies have been resolved;
- All discrepancies identified through job site interviews have been resolved; and
- All files are complete.

Subrecipient and Successful Applicants will share final determination and accompanying documentation with DED.

14.8 RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayments of wages have occurred, the contractor is required to pay wage restitution to the affected employees. Underpayment may be identified through regular monitoring or by an employee who is underpaid (for the latter, see [Complaint Intake Form](#)). Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

If underpayment is identified, Subrecipients and Successful Applicants shall notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed thirty (30) days to correct

the underpayments. Any potential non-compliance with labor standards should be reported to DED via [Labor Standards Enforcement Report Template](#), including the corrective actions and restitution paid to address the violation.

The contractor is required to report the restitution paid on a corrected certified payroll. The correction payroll reflects the period for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

- Each employee to whom restitution is due and their work classification;
- The total number of work hours;
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid);
- The gross amount of restitution due;
- Deductions; and
- The net amount to be paid.

A signed Statement of Compliance (a.k.a. CPR) must be attached to the corrected payroll form. Each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.

Subrecipients and Successful Applicants shall review the corrected payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within thirty (30) days. Subrecipients and Successful Applicants will share determination and accompanying documentation with DED.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor must place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. Subrecipients and Successful Applicants should notify DED and continue to attempt to locate the unfound workers for two (2) years after the completion of the project or three (3) years if there is a willful violation involved (as opposed to general recovery for error).¹⁹

Subrecipients and Successful Applicants should require contractors to provide reports on all funds placed in deposit or escrow accounts and activities completed to attempt to locate unfound workers. After two (2) or three (3) years, as appropriate, any amount remaining in the account for unfound workers is returned to DED.

¹⁹ <https://www.hud.gov/sites/documents/13441C9SECH.PDF>.

14.9 LIQUIDATED DAMAGES

Liquidated damages are the monetary penalties that may be assessed against an employer for failing to pay employee wages in a timely manner. Under the CWHSSA, liquidated damages shall be computed for each individual employed as a laborer or mechanic as prescribed in 29 CFR § 5.8 for each calendar day on which the individual was required or permitted to work in excess of the standard workweek without payment of the overtime wages. Liquidated damages are levied in addition to restitution of missed or reduced wages.

Liquidated damages are levied as a result of the investigative process. An investigation may begin as a result of a complaint (including a confidential complaint), high violation rates, employment of vulnerable workers, rapid changes in the industry, or an undisclosed reason. If a Subrecipient, Successful Applicant, or DED determines there was a violation, they will determine whether back pay or liquidated damages are owed.

14.9.1 ASSESSING LIQUIDATED DAMAGES

To determine the amount of liquidated damages due, DED's LSCO or the Subrecipient's or Successful Applicant's LSO first determines the number of impacted workers and days the overtime restitution was earned. Each person receives damages per day and per violation.

For example: In 2021, John received \$26.00 an hour. He worked three (3) days where overtime was earned but not paid:

- 5 hours on Wednesday
- 2.5 hours on Friday
- 1.75 hours on Saturday.

Per day, the missed wage calculations are:

$$\textit{Wednesday: } (\$26.00 \textit{ per hour} * 1.5) * 5 \textit{ hours} = \$195$$

$$\textit{Friday: } (\$26.00 \textit{ per hour} * 1.5) * 2.5 \textit{ hours} = \$97.50$$

$$\textit{Saturday: } (\$26.00 \textit{ per hour} * 1.5) * 1.75 \textit{ hours} = \$68.25$$

$$\textit{Total overtime wages} = \$195 + \$97.50 + \$68.25 = \$360.75$$

The missing wages are not the liquidated damages. DED's LSO or the Subrecipient's or Successful Applicant's LSO must also calculate these damages. Because the violation took place in 2021, the penalty assessment is \$27.00.²⁰

²⁰ See 29 CFR § 5.8 for the most current liquidated damages amount.

$$3 \text{ violation days} * 1 \text{ worker} * \$27.00 = \$81.00$$

14.9.2 PROCESSING LIQUIDATED DAMAGES

After calculating liquidated damages, the LSO sends a letter of Intent to Assess Liquidated Damages and Right to Appeal to the contractor. This letter must include the total amount of liquidated damages accrued for all workers impacted and state the total amount of overtime, or other restitution accrued (see [Letter of Intent to Assess Liquidated Damages and the Right to Appeal Template](#)). The LSO must include DED’s LSCO and any additional party associated with the noncompliant contractor in the Letter of Intent to Assess Liquidated Damages and the Right to Appeal.

A spreadsheet with the overtime restitution and assessed liquidated damages must accompany the Letter of Intent to Assess Liquidated Damages and the Right to Appeal (described above) and the letter to HUD for the recommendation of waiver or denial as further described below (see [Recommendation to Waive or Deny Liquidated Damages Template](#)).

14.9.3 DETERMINATION OR WAIVER PROCESS

The amount of liquidated damages determines who is responsible for handling the determination or waiver process. DED’s LSCO or the Subrecipient’s or Successful Applicant’s LSO should begin the process but may need to include others at this stage, according to [Table 1](#).

Table 1: Responsible Individuals and Actions in Liquidated Damages Cases

Damages	Process
Between \$1.00 and \$99.99	<p>DED’s LSCO handles this process. They do not need to send a recommendation letter to HUD and may waive this amount of money without official approval when appropriate.</p> <p>Reasons for approval include:</p> <ul style="list-style-type: none"> • The error is due to a genuine lack of knowledge on overtime rules. In this case, the LSCO should recommend training for the contractor to prevent a future occurrence; • The inconsistency was due to an accidental miscalculation or other mathematical error; • The LSCO discovered the liquidated damages after the project was complete and overtime restitution occurred on an insignificant number of CPRs; and • The contractor or subcontractor caught the error early and restitution was quickly made to impacted workers. <p>Reasons for denial include:</p> <ul style="list-style-type: none"> • Worker complaints or reports to the LSCO or LSO; • Other instances of labor violations;

Damages	Process
	<ul style="list-style-type: none"> • Multiple occurrences; • Reports of false CPR reporting; and • A DOL investigation related to worker payments.
<p>Between \$100 and \$499.99</p>	<p>The HUD regional specialist of the Labor Enforcement Section should handle this process. DED’s LSCO should send a letter to them with their recommended action, including a reason (which can be found in the \$1.00 to \$99.99 section above). The letter must include supporting documentation, including:</p> <ul style="list-style-type: none"> • Assessment of liquidated damages spreadsheet; • Letter of Intent to Assess Liquidated Damages and Right to Appeal; and • Any other support documentation the LSCO deems necessary. <p>The LSCO should email this letter to HUD’s regional specialist.</p>
<p>\$500 or more</p>	<p>The HUD regional supervisor of the Labor and Enforcement Section must handle these issues. DED’s LSCO should send a letter to them with their recommended action, including a reason (which can be found in the \$1.00 to \$99.99 section above). The letter must include supporting documentation, including:</p> <ul style="list-style-type: none"> • Assessment of liquidated damages spreadsheet; • Letter of Intent to Assess Liquidated Damages and Right to Appeal; and • Any other support documentation the LSCO deems necessary. <p>The LSCO should email this letter to HUD’s regional specialist (to be forwarded to the regional supervisor).</p> <p>At this level of damages, the LSCO must also draft a Determination of Liquidated Damages Penalty Letter (see Determination of Liquidated Damages Penalty Letter Template). This letter should state the amount of liquidated damages or amount waived, if applicable, in a certified letter sent to the contractor and all appropriate parties. The letter should include required actions for resolution. The LSCO should also provide HUD’s determination to be included in the Determination of Liquidated Damages Penalty Letter.</p>

14.9.4 PAYMENT PROCESS

Depending on the determination, there may be more required financial actions, such as a wire transfer letter. Where appropriate, the HUD regional specialist in the Labor Enforcement Section drafts this letter and it should include:

- Information laid out in the wire transfer instructions;

- DED's TIN number (where appropriate); and
- Any specific wire instructions.

14.10 FORCE ACCOUNT LABOR

Force account labor refers to the use of laborers or mechanics who are employed by the Subrecipient and who serve as contractors for a CDBG-DR construction project. In these cases, the Subrecipient does not have to pay the DBRA prevailing wage but can, instead, 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 Program.

If the Subrecipient wishes to use force account labor, they must obtain prior approval from DED's LSCO. To use force account labor, Subrecipients must meet three (3) criteria:

- There should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors;
- The Subrecipient has the equipment, supervisory skills, a substantial portion of the required work force, and recordkeeping system; and
- The legal counsel of the Subrecipient must make a finding that the project is permissible in accordance with Nebraska's laws and does not constitute a major project nor include construction of a building.

14.10.1 LABOR AND EQUIPMENT REQUIREMENTS FOR FORCE ACCOUNT LABOR

The Subrecipient may hire some employees to work on the specific project to complement existing employees. The cost of equipment, including the cost of maintenance, operations, and minor field repairs is allowed. For example, the cost to replace a radiator punctured accidentally is an allowable CDBG-DR cost. However, the cost to replace the engine of a diesel bulldozer on a short-term street project is not allowable because equipment may not be purchased with CDBG-DR funds.

The equipment cost allocated to the CDBG-DR project can be determined using allowance or depreciation value. DED must approve such allocations of cost. In rare instances, such as the breakdown of a primary piece of equipment during a street project, the cost of renting a replacement piece of equipment may be allowed with special written approval from DED.

The costs of materials, including transportation and storage, are eligible costs under the CDBG-DR Program. See **Chapter 5: Procurement** for additional information on procurement requirements.

14.11 DOCUMENTATION AND REPORTING

14.11.1 DOCUMENTATION

Subrecipients and Successful Applicants shall provide all necessary documentation to DED for review and approval. Subrecipients and Successful Applicants shall maintain documentation in accordance with **Chapter 17: Recordkeeping and Data Management** to demonstrate compliance with labor standards requirements including, but not limited to:

- Bid and contract documents with the labor standards clause and wage decisions for both Federal and State;
- Payroll forms from the contractor and subcontractors, including signed Statements of Compliance (a.k.a. CPRs);
- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
- Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and
- Enforcement Reports (see [Labor Standards Enforcement Report Template](#)).

Labor standards compliance documents contain highly sensitive and confidential information; therefore, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected is not unduly exposed to financial or personal risk.

DED must ensure Subrecipients and Successful Applicants follow the guidelines outlined in Labor Relations Letter 2006-02,²¹ to minimize risk of improper and/or unnecessary disclosure. Guidelines include:

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

For more information, see **Chapter 17: Recordkeeping and Data Management**.

²¹ https://www.hud.gov/sites/documents/LR_LETTERS_POLICY.PDF.

14.11.2 FORCE ACCOUNT RECORDKEEPING

Generally, Subrecipients and Successful Applicants are required to maintain records for all professional services, construction, rehabilitation, repair, or demolition services. The Subrecipient and Successful Applicant must maintain thorough documentation of all costs; for Subrecipients, this includes those associated with force account labor described herein. All force account labor costs charged to the project must apply to a particular line item of the CDBG-DR contract budget. Related recordkeeping must include, at a minimum, evidence of the following:

- The project meets the standards under which force account labor is allowable;
- Employee personnel policies delineate paid leave, overtime, equal employment, travel, terms of employment policies, compliance with the FLSA, and Section 504;
- If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees;
- A personnel cost calculation that is signed and approved by either the employee's supervisor or other authorized personnel that determined the hourly cost for each employee;
- Timesheets documenting the workers and work performed;
- All timesheets should correspond to the Subrecipient's regular employee timesheets to the extent that no one should be charged to the project if they are not in attendance (the Subrecipient may be required to supplement certified timesheets with the corresponding Subrecipient payroll records);
- An equipment cost calculation that is signed and approved by authorized personnel that determines the hourly cost for each piece of equipment;
- Documentation of the use of the equipment and operator. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost. Leased equipment must be supported by a copy of the lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA rate for the equipment; and
- Invoices and canceled checks for all construction materials and supplies.

Specific information that must be tracked is detailed in [**Force Account Recordkeeping**](#) should include labor cost records, equipment use, materials procurement, and project execution and administration provided by Subrecipients.

14.11.3 MONITORING

DBRA compliance is regularly assessed by DED through monitoring, and any findings related to compliance will be reported through a Monitoring Report issued after on-site or remote monitoring visits (see **Chapter 16: Monitoring and Compliance**).

Typical monitoring findings may include:

- Inappropriate use of the apprentice and trainee classifications;
- Use of a classification that is not in the wage decision or is vague (i.e., “operator”);
- Failure to obtain subcontractor payrolls;
- Lack of signed authorizations from workers with “other” deductions;
- Lack of interviews, including not covering enough classifications or not interviewing subcontractors;
- “Salaried” workers covered by DBRA not treated as hourly workers for regular and overtime purposes;
- Using one (1) wage decision when two (2) are required based on the type of work in each category; and
- Payrolls failing to reflect which wage decision(s) is applicable to which worker, particularly if two (2) wage decisions are used, and workers are not paid the highest hourly rate possible for that classification.

14.11.4 CERTIFIED PAYROLL REPORT (CPRS)

Subcontractors must submit CPRs to the prime contractor starting the first week they work on a project and continuing every week afterwards until work is complete. If there is a temporary break in work, the subcontractor can do one (1) of the following:

- Submit a “no work” payroll;
- Inform the prime contractor in advance when no work will take place; or
- Number each CPR consecutively.

Subcontractors may use Optional Form WH 347, though this is not the only acceptable way to submit this information. However the CPR is submitted, it must be signed and contain language certifying the information is true and correct.

The prime contractor must review subcontractor’s CPRs for compliance before submitting them to the Subrecipient or Successful Applicant. In addition to submitting CPRs to the Subrecipient or Successful Applicant, contractors must also keep their own copies and other basic records available for review or copying by an authorized DED, HUD, or DOL representative.

14.11.5 COMMON ERRORS AND CORRECTIONS

Subrecipients and Successful Applicants must review CPRs to ensure workers are being paid no less than the prevailing wages, that there are no unauthorized withholdings, and that there are no other falsifications. At a minimum, LSOs will review CPRs for:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee more than 40 hours per week is being compensated at rates not less than one and one-half times the basic rate of pay;
- Apprentice and trainee information;
- Review of deductions for any non-standard deductions, many of which require a Payroll Deduction Authorization Form (see [Payroll Deduction Authorization Form](#)) as confirmation; and
- The Statement of Compliance (a.k.a. CPR) has been signed by the owner or an officer of the firm.

If they find discrepancies or errors, the Subrecipient or Successful Applicant notifies the contractor or subcontractor about the inconsistencies and what steps must be taken to correct them.

The CPR Review Log (see [CPR Review Log](#)) should be used to review the submitted CPRs for accuracy, completeness, and compliance with prevailing wages and labor standards requirements.

Typical errors and corrections include:

- **Inadequate payroll information:** When contractors use alternative payroll formats, they may not include all necessary information. In this case, the Subrecipient or Successful Applicant will ask them to resubmit the CPR in an acceptable form.
- **Missing identification numbers:** If the first CPR on which a specific employee appears does not include their individually identifying number, the contractor must supply that information on the next CPR or resubmit the CPR with a correction.
- **Incomplete payrolls:** If the CPR information is not complete, the contractor will be asked to submit a correction.
- **Classifications:** If classifications are missing from the CPR, the contractor will be asked to reclassify the employees. If this results in underpayment, the contractor will owe wage restitution.
- **Wage rates:** If the CPR wage rates are less than the rates on the wage decision, the contractor must pay wage restitution to affected employees.
- **Apprentices and trainees:** If registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the contractor must resubmit each apprentice's or trainee's registration.

- **Overtime:** If employees did not receive at least time and a half for overtime, the contractor will pay restitution (if the project is subject to CWHSSA) or be notified of the possible FLSA violation (if not subject to CWHSSA).
- **Computations:** If there are mathematical errors, the contractor will be asked to take greater care and pay wage restitution if necessary.
- **Deductions:** If deductions are not identified or are very high, the contractor may be asked to identify them, provide employee authorization, and explain the atypicality.
- **Fringe benefits:** If fringe benefits are included but payroll does not indicate how employees were paid, the contractor may be asked to submit a correction.
- **Signature:** If the CPR is not signed, the contractor must resubmit with a signed CPR.
- **On-site interview comparisons:** If there are discrepancies between CPRs and interviews, the contractor will be asked to submit a correction.
- **Correction certified payroll:** When there are changes to a submitted CPR, the contractor must report them on a certified correction payroll.

14.11.6 SEMI-ANNUAL REPORTING

In addition to weekly CPRs, contractors must provide DOL, through DED, with semi-annual labor standards enforcement reports (see [Labor Standards Enforcement Report Template](#)). These are submitted twice a year in two (2) periods: a report for October 1 through March 31 and a second report for April 1 through September 30.

The report must include information such as:

- Contracting activities:
 - Number and dollar amount of prime contracts subject to DBRA or CWHSSA;
 - Project name and number for each contract; and
 - Wage decision number and lock-in date for each contract.
- Enforcement activities, including contractors who and projects that received complaints; and
- Number of restitution incidents, employees affected, and amount collected and disbursed during the period.

TOOLKIT LIST

The following documents for **Chapter 14: Davis-Bacon** are available on the [Toolkit section of DED's website](#):

- Appointment of Labor Standards Officer Form Template
- Complaint Intake Form
- CPR Review Log
- Davis-Bacon Project Applicability Cheat Sheet
- Determination of Liquidated Damages Penalty Letter Template
- DOL Additional Classification Request Letter Template
- Filling out a Weekly CPR
- Force Account Recordkeeping
- Labor Standards Enforcement Report Template
- Letter of Intent to Assess Liquidated Damages and the Right to Appeal Template
- New Employee Information Form Template
- Payroll Deduction Authorization Form Template
- Pre-Construction Conference Checklist
- Prevailing Wages Template
- Recommendation to Waive or Deny Liquidated Damages Template
- Record of Employee Interview
- Signatory Authority Form

15 MINORITY AND WOMEN-OWNED BUSINESSES (MBE/WBE)

15.1 POLICY OVERVIEW

The State of Nebraska is required by Federal statute to conduct outreach to minority- and women-owned businesses (MBE/WBE) for activities conducted under the Community Development Block Grant – Disaster Recovery (CDBG-DR) program. The Nebraska Department of Economic Development (DED) will conduct activities and oversee Subrecipient and Successful Applicant compliance as per the policies and procedures described in this chapter, which includes:

- An overview of the policy to conduct outreach to MBE/WBE;
- The Federal and State regulations governing MBE/WBE outreach efforts, as per the Federal Register Notice(s), State Action Plan, and Federal law;
- Associated requirements for DED and its Subrecipients and Successful Applicants; and
- Methods for conducting outreach to obtain diversity in the entities contracted to implement activities under the CDBG-DR program.

DED is committed to making a good faith effort to utilize MBE/WBEs in contracts for construction, services (including professional and consulting services), and commodities purchases. This effort is related to – but separate – from a similar set of standards set forth under **Chapter 13: Section 3**. To be an eligible MBE or WBE, a firm must be at least 51 percent owned, controlled, and managed by individual(s) who are minorities and/or women.

“MBE/WBE Utilization” is the percentage of project funds spent on MBE/WBE firms. The State of Nebraska does not use specific percentage targets or requirements, but encourages the use of MBE/WBE firms as appropriate.

Section 281 of the National Affordable Housing Act requires that participating jurisdictions in the CDBG-DR program develop procedures acceptable to establish and oversee a minority outreach program. HUD’s minimum standards¹ require that MBE/WBE outreach efforts be:

- Supported by a statement of public policy and commitment published in the print media of widest local circulation;

¹ HUD provides guidance regarding this requirement via the HUD Exchange website. See https://files.hudexchange.info/resources/documents/MBE-WBE_Outreach.pdf.

- Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector resources.

These policies and procedures and associated plans must make a good faith, comprehensive, and continuing endeavor to include minority and woman-owned businesses in all contracting activities under the Nebraska CDBG-DR program.

15.2 FEDERAL REQUIREMENTS

MBE/WBE requirements are set forth in Section 281 of the National Affordable Housing Act, which requires that, “Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women.”²

This requirement is further articulated in 2 C.F.R. § 200.321. Under 2 C.F.R. § 200.321, “The non-Federal entity will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.” Affirmative steps must include:³

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

15.3 POLICY OBJECTIVES

² National Affordable Housing Act, 42 U.S.C. § 12831.

³ 2 C.F.R. § 200.321.

The goal of the MBE/WBE outreach requirement and this chapter is to address disparities in access to business opportunity by administering outreach efforts that promote equity in opportunities for MBE/WBEs. These efforts ensure that DED, Subrecipients, and Successful Applicants:

- Promote full and equal access to business opportunities for all businesses within the program's procurement needs;
- Give MBE/WBEs the opportunity to increase contracting opportunities with DED;
- Provide subcontracting opportunities to MBE/WBEs whenever possible; and
- Provide MBE/WBEs resources to successfully pursue contracts and business opportunities.

Per this statutory requirement, all Subrecipients and Successful Applicants must develop an MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors, including a process to complete the above-described activities. DED will review all MBE/WBE plans after signature of the Subrecipient Agreement or Funding Agreement, and before the first payment of the project. For purposes of the Infrastructure Match Program, projects completed prior to the HUD/DED grant agreement date (July 7, 2021) do not require a MBE/WBE plan. For any questions, please contact DED.

15.4 ROLES AND RESPONSIBILITIES

As a Grantee of HUD funds through the CDBG-DR program, DED will ensure that programs are developed and implemented with the objective of **addressing inequity among protected class groups, promoting integration, and transforming racially or ethnically concentrated areas of poverty into areas of opportunity**. This includes implementation and oversight to ensure compliance with this chapter. The State of Nebraska has further articulated in its Action Plan the intent to prioritize vulnerable populations as a cross-cutting element in all activities.

15.5 SUBRECIPIENT AND SUCCESSFUL APPLICANT REQUIREMENTS

15.5.1 APPLICABILITY

Policies and procedures set forth relating to MBE/WBE outreach are applicable to both Subrecipients and Successful Applicants, including both for-profit and non-profit developers. Unless otherwise specified, all requirements are applicable for any entity conducting local implementation under the CDBG-DR program.

15.5.2 OVERVIEW OF REQUIREMENTS

Subrecipients and Successful Applicants must maintain compliance with these policies and procedures to be considered eligible for CDBG-DR funding. The Nebraska Department of Administrative Services, Materiel Division, State Purchasing Bureau maintains MBE/WBE designation forms and an “Application for Inclusion on Bid List” form. Section 281 of the National Affordable Housing Act encourages the program Grantee (i.e., DED), Subrecipients, and Successful Applicants, among others:

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

The plan to carry out these activities must be articulated in a MBE/WBE outreach plan that is approved by DED, with clear demonstration of a good faith effort to complete planned activities via reporting in quarterly reports to DED. The MBE/WBE outreach plan should be approved by DED as soon as possible after the Subrecipient or Funding Agreement signature, or before a new contract is put out for bid. Failure to comply with the above requirements may result in the following non-compliance actions by DED.

Table 1: Actions for Non-Compliance with MBE/WBE Requirements by Project Status

Project Status	MBE/WBE Requirements Non-Compliance Action by DED	Required Action by Subrecipient or Successful Applicant
Application	Ineligible for funding	N/A
Implementation/ In progress	Monitoring Finding ⁴	Projects that are in progress may provide direction and feedback to meet these requirements no less than 30 days after issuance of the Monitoring Report.
Closeout/Termination	Monitoring Finding Or Monitoring Finding + Termination* *Cancellation of program activities or recapture of funds in whole or in part.	Repayment of Funds

15.6 MBE/WBE OUTREACH PLAN

All Subrecipients and Successful Applicants must develop a MBE/WBE Plan based on HUD regulations, which must be submitted to DED for approval. The MBE/WBE Plan, pursuant to Federal regulations, must outline strategies to inform the opportunities, requirements, and practices that the awarded entity must adhere to in executing the MBE/WBE outreach.

DED requires that Subrecipients and Successful Applicants develop their MBE/WBE Plan using the Plan template provided by DED (see [MBE/WBE Outreach Plan](#)).

15.7 MBE/WBE OUTREACH AND ENGAGEMENT STRATEGIES

This section outlines different MBE/WBE outreach and engagement strategies for the purpose of both describing State approaches for conducting outreach and for providing guidance to Subrecipients and Successful Applicants regarding what they can use for CDBG-DR program implementation. Efforts are characterized under two main categories:

- Efforts to award contracts to MBE/WBEs; and

⁴ See also the **Chapter 16: Monitoring and Compliance Plan**.

- MBE/WBE outreach.

15.7.1 EFFORTS TO AWARD CONTRACTS TO MBE/WBES

Subrecipients and Successful Applicants will draft and DED will review their Outreach Plan. The following non-exhaustive list is provided as examples of acceptable types of efforts which should be documented as it relates to efforts to award contracts to MBE/WBES:

- Make frequent and timely advertisements in newspapers and periodicals that market to MBE/WBES;
- Maintain a log of dates of advertisements and the name of the publication and/or maintain copies of the advertisement itself;
- Record copies of responses made by certified MBE/WBES to the advertisement and/or make timely follow ups to responses received by MBE/WBES;
- Log responses from MBE/WBES. If a Subrecipient or Successful Applicant received responses to solicitations but did not select the MBE/WBES, they should maintain records describing why a response from a certified MBE/WBE was not selected;
- Advertise requirements via available websites, including references to DED's website, where applicable;
- Maintain a log of all communications, including names, contacts, and dates, as well as maintain records including copies of notices/solicitations, dates of contact, letters, etc.;
- Conduct pre-bid, pre-award, or other meetings to inform MBE/WBES of available opportunities and maintain a record of the names of companies, dates, and locations of meetings attended;
- Contact community organizations that provide support in the recruitment and placement of MBE/WBES;
- Send written notification to MBE/WBES and trade associations located within the region where the work will be performed;
- Provide documents/plans/bid specifications to certified MBE/WBES, and allow adequate time for them to respond to bids;
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE/WBES;
- Establish delivery schedules which encourage participation by MBE/WBES;

- Undertake specific steps to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from MBE/WBEs;
- Make efforts to solicit certified MBE/WBEs located outside the region where the scope of work is to be performed and evaluate their ability to participate;
- Document the evaluation conducted to determine eligibility for participation;
- Provide the same subcontract terms and conditions to certified MBE/WBEs as the ones offered to other subcontractors in the ordinary course of business; and
- Document the terms and conditions being offered to both entities and make efforts to engage in either telephone or direct, in-person negotiations with MBE/WBEs whose quotes were too high.

15.7.2 MBE/WBE OUTREACH

DED, Subrecipients and Contractors should adopt and implement affirmative steps for implementing MBE/WBEs Utilization:

- When economically feasible, structure procurement solicitations so that the total requirements are divided into subsets consisting of smaller tasks or quantities for the purpose of retaining multiple firms or to facilitate subcontracting opportunities within the larger contract that would be suitable for small MBE/WBEs;
- When feasible, establishing delivery schedules within procurements to encourage participation by small and MBE/WBEs; and
- The Subrecipient or Successful Applicant is responsible for taking the affirmative steps and implementing the requirements of this chapter.

15.8 REPORTING

Subrecipients and Successful Applicants must complete quarterly reports as a part of regular program activities (see also **Chapter 16: Monitoring and Compliance Plan**). Quarterly reports must include a comprehensive summary of all outreach and marketing activities by county, along with data regarding outreach efforts in project areas.

Reports will be evaluated based on expected activity at the time of submission (i.e., DED acknowledges that there may not be significant activity during the first 30-60 days of development and construction). Invoices submitted by Subrecipients or Successful Applicants will not be paid until all reporting is up to date.

15.8.1 HUD FORM 2516

DED, Subrecipients, and Successful Applicants are also required to complete [HUD Form 2516](#) for reporting contract and subcontract activities of \$10,000 or more under CDBG-DR. Contracts and subcontracts of less than \$10,000 need to be reported only if such contracts represent a significant portion of the total contracting activity.

The information from HUD Form 2516 is used by HUD to monitor and evaluate MBE/WBE activities against the total program activity and the designated MBE/WBE goals. DED requires the information to provide guidance and oversight for programs for the development of MBE/WBEs. If the information is not collected, HUD would not be able to establish meaningful MBE/WBE goals nor evaluate performance against these goals.

15.8.2 RECORDKEEPING

DED must establish and maintain sufficient records for HUD to determine whether they met the requirements of the program. At a minimum, DED will use Subrecipient and Successful Applicant reporting to maintain the following records:

- MBE/WBE Outreach Plan;
- Quarterly Reporting;
- Documentation of Efforts; and
- Other Supporting certifications needed on file, as identified by DED.

Documentation of efforts should capture the number and dollar value of all contracts awarded to businesses and, in particular, MBE/WBEs during the fiscal year, a description of the best efforts made to award contracts to MBE/WBEs; and the mechanisms by which contractors and subcontractors complied with the MBE/WBE preferences for training, employment, and contract awarding. For further information related to recordkeeping and data management, refer to ***Chapter 17: Recordkeeping and Data Management***.

TOOLKIT LIST

The following documents for **Chapter 15 – MBE/WBE** are available on the [Toolkit section of DED's website](#):

- HUD Form 2516
- Outreach Plan Template

16 MONITORING AND COMPLIANCE PLAN

VERSION 16-1.1

16.1 CHAPTER 16 RECORD OF CHANGES

CDBG-DR Program Manual – Chapter 16, Monitoring and Compliance Plan

The table summarizes changes by version. Version numbers include the chapter number to indicate which chapter was revised. This identifier is also located immediately above, on the cover page of the full Manual, and included in the Record of Changes table below.

Version	Date	Description of Change
16-1.0	09/2022	Initial Publication.
16-1.1	11/2023	Clarifying processes and updating toolkit items; expanding risk assessment to include both Applicant and Project Risk Assessments; and incorporating a record of change to acknowledge and track revisions.

16.2 POLICY OVERVIEW

As the Grantee of CDBG-DR funds, DED is responsible for the day-to-day operations of the CDBG-DR program. This includes the ongoing monitoring of all CDBG-DR programs to ensure that Federal funds are expended in accordance with program requirements. This Monitoring Plan describes how DED oversees Program Implementation Contractors, Subrecipients, Successful Applicants, and other monitored entities in the implementation of the CDBG-DR program funded by grant(s) from HUD.

Monitoring as an activity is designed to ensure that programs are operating efficiently and effectively and that CDBG-DR funds are being used appropriately. HUD requires monitoring and evaluation of program performance for compliance with CDBG-DR statutory and regulatory requirements. Pursuant to 24 CFR § 570.501(b), DED is responsible for ensuring that “CDBG funds are used in accordance with all program requirements.” This includes responsibility for all Subrecipients, Successful Applicants, and Program Implementation Contractors. Further, DED is

also responsible for, “determining the adequacy of performance under Subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise....”¹

This Plan allows program monitoring to be tailored for monitoring any programs or projects directly implemented by any Subrecipient, Successful Applicant, or a Program Implementation Contractor. The Plan utilizes checklists which include compliance areas applicable to all program/project types; however, all sections of the checklists may not apply to every program or project. Guidance related to the topics is covered within each of the monitoring tools (see **Section 16.14: Monitoring Tools**).

This Plan will be maintained in accordance with emerging State and Federal regulations and guidance. The Plan will be reviewed semiannually to verify that all Action Plan amendments are up to date. Additional updates may be conducted on an as needed basis (e.g., if a substantial Action Plan amendment is approved or if a new Subrecipient, Successful Applicant, or Program Implementation Contractor is added/changed affecting the Plan). The updated version of the Plan will be maintained on DED’s CDBG-DR webpage.

16.3 PURPOSE

The primary purpose of this Plan is to ensure that CDBG-DR funds are used for authorized purposes, in compliance with State and Federal statutes and regulations and any terms and conditions set forth in HUD’s Grant Agreement(s) with the State of Nebraska. Effective monitoring and compliance also determines the status of activities funded by CDBG-DR, identifies implementation issues and needs, provides technical assistance (TA), informs quarterly reporting on CDB G-DR activities, and evaluates financial management systems.

The monitoring process has the following objectives:

1. Gauge the overall program progress and effectiveness of the State’s Program Implementation of Contractors, Subrecipients, Successful Applicants, and other monitored entities in meeting the program objectives, goals, and requirements over time.
2. Provide information about program participants that is critical for making informed judgements about program effectiveness and management efficiency.
3. Serve as a management tool to identify issues that may compromise program integrity, funding, and/or service delivery for corrective action and resolution.
4. Serve as a TA tool to identify areas in which to program capacity and quality of service delivery can be strengthened.

¹ 24 CFR § 570.501(b).

5. Identify instances of fraud, waste, and abuse.

This Plan, however, does not describe DED's internal auditing process which separately uses DED's internal audit staff.

Subrecipients and Successful Applicants may be monitored multiple times through desktop and on-site monitoring over the course of their agreement, depending on factors such as the complexity of their activities and implementation timeline. As further described below (see **Section 16.13: Contractor Monitoring***Error! Reference source not found.*), Program Implementation Contractors will be monitored under a separate process to ensure contractor management and compliance.

16.4 FEDERAL STATUTES AND REGULATIONS

This Monitoring and Compliance Plan is informed by HUD's regulations and requirements for all CDBG-DR programs, including but not limited to the following:

- Title I of the Housing and Community Development Act of 1974;
- Public Law 116-20, Additional Supplemental Appropriations for Disaster Relief, 2019 – Title IX, Department of Housing and Urban Development, which appropriated funds for Nebraska's CDBG-DR award related to Winter Storm Ulmer (DR-4420);
- 24 CFR § 570, as applicable;
- 2 CFR Part 200, as applicable, which establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities";²
- 24 CFR Part 58, which dictates that states must "monitor compliance with any environmental conditions included in the award";³
- Federal Register Notice published on February 9, 2018 (83 FR 5844), which describes the basic requirements applicable to Nebraska's CDBG-DR award;
- Federal Register Notice published on June 20, 2019 (84 FR 28836), which describes Duplication of Benefits (DOB) requirements for CDBG-DR grants received in response to disasters declared between January 1, 2015 and December 31, 2021;
- Federal Register Notice published on January 27, 2020 (85 FR 4681), which allocates CDBG-DR funding "appropriated by the Additional Supplemental Appropriations for

² 2 CFR § 200.100(a)(1).

³ 24 CFR § 58.18(a)(1).

Disaster Relief Act, 2019” and “clarifications on waivers and alternative requirements,” which apply “unless expressly limited to certain Grantees”;⁴

- Federal Register Notice published on August 17, 2020 (85 FR 50041), which “provides waivers and establishes alternative requirements and extensions for grants... as [CDBG-DR Grantees] continue their disaster recovery efforts while also responding to the Coronavirus Disease 2019 (COVID-19)”;⁵
- All current Action Plans, as amended, and grant agreements as amended with HUD;
- HUD’s CPD Monitoring Handbook (Handbook 6509.2); and
- HUD’s CDBG-DR Monitoring Checklist.

16.5 ROLES AND RESPONSIBILITIES

The following section provides roles and responsibilities for entities included under the scope of this Plan. Note that the responsibilities defined below may not be an all-inclusive list, as additional duties may be required as the Programs evolve during the grant.

16.5.1 NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT (DED)

16.5.1.1 OVERVIEW

As the lead agency for implementing the State of Nebraska’s CDBG-DR Program, DED leads all monitoring efforts. Specifically, DED is responsible for all monitoring and compliance activities by Program Implementation Contractors, Subrecipients, and Successful Applicants to the CDBG-DR program.

Using documents and reports submitted by its Program Implementation Contractors, Subrecipients, and Successful Applicants, DED inspects and monitors grant activities to determine compliance with Federal and State laws, regulations, rules, and guidelines relative to use of the CDBG-DR grant funds for administrative, financial, and programmatic operations, as well as to ensure that they achieve performance objectives on time and within budget.

DED operates under a team approach to promote a good working environment and allows for redundancies in roles and responsibilities to ensure continuity of programs, meeting of goals and objectives, etc. The CDBG-DR Team will principally work with the Compliance, Operations, Finance, and Data/Research Teams to administer and implement the CDBG-DR programs but

⁴ 85 FR 4681.

⁵ 85 FR 50041.

will also collaborate and coordinate with Field Services, Housing, and Community Development Team members (for further details, see **Chapter 3: Program Management Guide**).

While the CDBG-DR Team will take the lead in implementing CDBG-DR programs, other internal DED teams will be tapped to assist with grants management, policy and planning, financial management, data systems and reporting, compliance and monitoring, communications and outreach, and program operations. DED's operational structure incorporates considerable collaboration between teams to ensure efficiencies and efficacies in the delivery of programs.

16.5.1.2 DISASTER RECOVERY TEAM PROGRAM STAFF

CDBG-DR Team program staff are responsible for overseeing the administration and implementation of CDBG-DR programs and projects, including the initial capacity assessment of Subrecipients and Successful Applicants, and serve as DED's primary contacts for CDBG-DR program questions.

As part of monitoring CDBG-DR programs and projects, the Compliance Team may require specific information from Subrecipients, Successful Applicants, or Program Implementation Contractors to complete their monitoring functions. Instances could arise where CDBG-DR Team program staff will initiate certain processes (e.g., document collection, site visits, and other training and TA activities) prior to any monitoring initiatives.

Because of their active participation with Subrecipients, Successful Applicants, and Program Implementation Contractors, CDBG-DR Team program staff may have initial knowledge of events the Compliance Team does not. This may include, but not be limited to, the following examples:

- Specific observations noticed by CDBG-DR Team program staff before or during project implementation,
- Changes in Subrecipient, Successful Applicant, or Program Implementation Contractor contact information, or
- Pending SRA or funding agreement changes under review/consideration and not previously known to the Compliance Team.

CDBG-DR Team program staff may share verbal information under an informal process and may provide that verbal knowledge in support of the Compliance Team's monitoring activities. Information to support the Compliance Team's monitoring activities may also be shared by email, including through the Compliance Team's DED Compliance Inquiry Program by sending information to DED.ComplianceRequests@nebraska.gov. The Compliance Team can reach out to CDBG-DR Team program staff for – or CDBG-DR Team program staff may notify the Compliance Team of – specific information which is not fully recorded in DED's files and grants management system to avoid duplicative efforts or requests to Subrecipients, Successful Applicants, or Program Implementation Contractors.

CDBG-DR Team program staff responsibilities include, but are not limited to, the following:

- Support TA and training activities as needed per the TA plan (e.g., assist in conducting portions of training or TA to Program Implementation Contractors, Subrecipients, or Successful Applicants and ensure a Subrecipient's or Successful Applicant's program compliance and performance metrics are being adhered to within daily programmatic and operational tasks).
- Coordinate program-led or other ad hoc TA and training activities which are conducted outside of the published TA plan.⁶

Other responsibilities include, but are not limited to, the following:

- Alert the Disaster Recovery Manager and the Compliance Team Lead of any situation that may require the Compliance Team to perform a level of monitoring (on-site or desktop).
- Assist in the appeals review process, as applicable.

16.5.2 DISASTER RECOVERY MANAGER

As a member of the CDBG-DR Team, the Disaster Recovery Manager is responsible for compliance and policy work associated with the CDBG-DR program. The Disaster Recovery Manager's role is to ensure that the CDBG-DR program remains in compliance with:

- HUD grant agreement(s);
- CDBG-DR grant conditions;
- Federal Register Notices (FRNs);
- Regulatory requirements; and
- State requirements, where applicable.

This requires the Disaster Recovery Manager to regularly review appropriate Federal and State resources for the latest updates, discuss with appropriate HUD Regional Field Specialists (as necessary), and support the Compliance Team and CDBG-DR Team program staff, respectively.

The Disaster Recovery Manager will assist the Compliance Team in completing the Annual Risk Assessment (see **Section 16.8: Annual Risk Assessment**) and establishing regular monitoring of CDBG-DR-funded Program Implementation Contractors, Subrecipients, and Successful

⁶ Subrecipient or Successful Applicant onboarding and potential initial site visits may serve as TA measures around the execution of SRAs and funding agreements to discuss program and cross-cutting requirements, contract performance, and other Federal and award requirements. This may also address or resolve a potentially noncompliant issue which arose suddenly or unknowingly within the Subrecipient's, Successful Applicant's, or Program Implementation Contractor's program or project.

Applicants. Additionally, the Disaster Recovery Manager and the Compliance Team Lead will maintain regular trainings for staff for knowledge and capacity development with any changing regulations, FRNs, and HUD guidance – to include any changes in program management standards – regarding CDBG-DR program/grant compliance.

The Disaster Recovery Manager responsibilities include, but are not limited to, the following:

- Support the Compliance Team Manager and Compliance Team in completing Annual Risk Assessments, consisting of the Applicant Risk Assessment and the Project Risk Assessment. Assist the Compliance Team Manager in creating the official Desktop and On-Site Monitoring Schedule and alter the monitoring schedule as the need arises.
- Review recommendations of finding(s) or concern(s) provided by the Compliance Team after a monitoring (on-site or desktop) is completed.
- Review Monitoring Report and Letter (MR), if necessary.
- Track finding(s) or concern(s), and resolutions of identified issues, as a result of the monitoring.
- Review recommendation(s) made by the Compliance Team staff of the Subrecipient, Successful Applicant, or Program Implementation Contractor response to the MR.
- Review Corrective Action Incomplete Letter (CAIL) or Monitoring Report Clearance Letter (MRC), if necessary.
- Provide status updates to Disaster Recovery Division Director.

16.5.3 COMPLIANCE TEAM

The Compliance Team inspects and monitors grant activities to determine compliance with Federal and State laws, regulations, rules, and guidelines relative to the use of CDBG-DR grant funds including regulations governing administrative, financial, programmatic operations, and that they achieve performance objectives on time and within budget.

To determine the frequency of monitoring activities (which may include a focus on TA and capacity building within the first year of the monitoring activities),⁷ the DED Compliance Team coordinates with the Disaster Recovery Manager to complete an Annual Risk Assessment, including a Project Risk Assessment, and an Applicant Risk Assessment (collectively “Annual Risk Assessments”) of all DED’s CDBG-DR Subrecipients and Successful Applicants, as covered in **Section 16.8: Annual Risk Assessment**

⁷ CDBG-DR Team program staff provide support regarding TA and capacity building.

After the DED Compliance Team and the Disaster Recovery Manager have completed the annual risk assessment process *Error! Reference source not found.* they record the Annual Risk Assessment results. The Compliance Team Lead and Disaster Recovery Manager use this information to set up the yearly monitoring schedule. DED Compliance Team staff will conduct a monitoring activity (e.g., desktop or on-site) based on this schedule, on an on-going basis.

The Compliance Team Manager and Compliance Team's responsibilities include, but are not limited to, the following:

- Act as the lead for the completion of the Annual Risk Assessment.
- Communicate the results of the Annual Risk Assessment and Monitoring Schedule to the Disaster Recovery Manager, program staff, and the Subrecipients, Successful Applicants, and Program Implementation Contractors.
- Conduct a level of monitoring in accordance with the Annual Risk Assessment upon DED entering into a CDBG-DR funding agreement.
- Conduct Exit Conference (Conference Call or On-site) to discuss issues identified during the desktop or on-site monitoring.
- Prepare, sign, and disseminate the MR to the Subrecipient, Successful Applicant, or Program Implementation Contractor.
- Prepare, sign, and disseminate CAIL or MRC, if necessary.
- Update Subrecipient, Successful Applicant, and Program Implementation Contractor file to complete/close monitoring.

16.5.4 PROGRAM IMPLEMENTATION CONTRACTORS, SUBRECIPIENTS, AND SUCCESSFUL APPLICANTS

For the purpose of this Plan, if a Program Implementation Contractor, Subrecipient, or Successful Applicant has entered into agreements with other entities to execute projects, DED recognizes this as a relationship between the Program Implementation Contractor, Subrecipient, or Successful Applicant and the said entity.

Program Implementation Contractors, Subrecipients, and Successful Applicants are responsible for carrying out their projects and programs in a way that meets compliance requirements, including monitoring their program and project administrators, contractors, and subcontractors. DED serves in an oversight monitoring role when this type of relationship exists.

16.5.5 PROGRAM IMPLEMENTATION CONTRACTORS

Through a competitive procurement process, DED may retain contractors to support program implementation. Contractor management and compliance will be conducted in accordance with statutory requirements set forth in 2 CFR Part 200.

The Program Implementation Contractor is responsible for complying with all requirements set forth in the contract between the Program Implementation Contractor, DED and applicable HUD requirements. The Program Implementation Contractor must have a working knowledge of CDBG-DR programmatic requirements and demonstrate adequate capacity in the administration of all DED's HUD funded programs.

At a minimum, Program Implementation Contractors will be responsible for:

- Complying with the terms and conditions of their agreement with DED.
- Monitoring construction contractors for equal opportunity, Federal and State labor standards, Section 3, and other federal and state requirements, where applicable.
- Performing sufficient financial controls to ensure CDBG-DR costs are eligible, allowable, reasonable, and allocable.

16.5.6 SUBRECIPIENTS

Subrecipients are responsible for the administration of HUD funded grant activities described in the SRA. Subrecipients must identify a Recipient Grant Manager in DED's grant management system, AmpliFund, as the point of contact for day-to-day grant administration and for coordination on monitoring efforts. Subrecipient staff will organize grant files in preparation for the monitoring and provide documentation requested from DED staff for monitoring purposes (e.g., desktop or on-site).

Subrecipients must have a working knowledge of CDBG-DR programmatic requirements and demonstrate adequate capacity in the administration of all DED's HUD funded programs. Some Subrecipients have multiple activities with varying levels of complexity, and monitoring requirements will be adapted accordingly.

At a minimum, Subrecipients are responsible for:

- Complying with the terms and conditions of the SRA with DED, specifically anti-fraud, waste, and abuse.
- Following procurement processes in accordance with 2 CFR Part 200 or local standards, if higher.
- Monitoring any Sub-subrecipients for Federal compliance standards.
- Monitoring construction contractors for equal opportunity, Federal and State labor standards, Section 3, and other federal and state requirements, where applicable.

- Performing sufficient financial controls to ensure CDBG-DR costs are eligible, allowable, reasonable, and allocable.
- Documenting national objective compliance for all activities.

16.5.7 SUCCESSFUL APPLICANTS

Successful Applicants are responsible for the administration of HUD funded grant activities described in their funding agreement. Successful Applicants must identify a Recipient Grant Manager in DED's grant management system, AmpliFund, as the point of contact for day-to-day administration and for coordination on monitoring efforts. Successful Applicant staff must organize files in preparation for the monitoring and provide documentation requested from DED staff for monitoring purposes (e.g., desktop or on-site).

Successful Applicants must have a working knowledge of CDBG-DR programmatic requirements and demonstrate adequate capacity in the administration of all DED's HUD funded programs. Some Successful Applicants have multiple activities with varying levels of complexity, and monitoring requirements will be adapted accordingly.

At a minimum, Successful Applicants are responsible for:

- Complying with the terms and conditions of the funding agreement with DED, specifically anti-fraud, waste, and abuse.
- Monitoring construction contractors for equal opportunity, Federal and State labor standards, Section 3, and other federal and state requirements, where applicable.
- Performing sufficient financial controls to ensure CDBG-DR costs are eligible, allowable, reasonable, and allocable.
- Documenting national objective compliance for all activities.

16.5.8 STATE PARTNERS

While DED is the lead agency and HUD grantee, certain CDBG-DR program operations are managed in collaboration with State partners, including:

- Nebraska Investment Finance Authority (NIFA)
- Nebraska Emergency Management Agency (NEMA)
- Nebraska Department of Natural Resources (NeDNR)
- University of Nebraska – Lincoln (UNL)

DED will coordinate with other State partners as necessary in order to gain information, TA, or ensure coordination on program goals. DED and its State partners define their collaborative

efforts through memorandums of understanding (MOUs), Interagency Agreements (IAs), or Subrecipient Agreements (SRAs), collectively “Instruments of Signing and Clarification”, that are agreed to by both State partners.

The monitoring processes defined within this Plan are applicable to activities that directly impact the implementation of CDBG-DR programs, as well as compliance with the MOUs, IAs, and SRAs. This includes verification that:

- all invoices paid by the program align with CDBG-DR rules and regulations,
- compliance documents are completed,
- quarterly performance reports are submitted, and
- budgets are managed.

MOUs and interagency agreements will be enforced, particularly for the Infrastructure Match (“Match”) Program and the Affordable Housing Construction Program (AHCP), which each anchor on close collaboration and compliance between State partners. Additional details about program implementation for AHCP and Match, and coordination between State partners is included in the respective program guides.

16.5.8.1 NEBRASKA INVESTMENT FINANCE AUTHORITY (NIFA)

DED is partnering with NIFA in connection with the CDBG-DR Affordable Housing Construction Program to increase the affordable housing supply in flood-impacted areas. The Affordable Housing Construction Program includes an application in partnership between DED and NIFA, where Low-Income Housing Tax Credit (LIHTC)/ Affordable Housing Tax Credit (AHTC) Program funding will be leveraged to fund affordable rental housing in disaster-impacted areas.

The MOU, agreed to by both State partners, further details DED and NIFA’s relationship regarding the implementation of the Affordable Housing Construction Program.

16.5.8.2 NEBRASKA EMERGENCY MANAGEMENT AGENCY (NEMA)

DED is partnering with NEMA in connection with the CDBG-DR Infrastructure Match (“Match”) Program to alleviate the burden for local communities in meeting local match requirements for the Federal Emergency Management Agency (FEMA) Public Assistance (PA) and Hazard Mitigation Grant (HMGP) programs. DED, administrator of the Infrastructure Match Program, and NEMA, administrator of the FEMA PA Program and HMGP, intend to coordinate program efforts to support long-term recovery throughout the State of Nebraska.

DED and NEMA's relationship regarding the implementation of the Match Program is formalized via a MOU/IA and SRA. The latter was entered due to the implementation model for PA projects.

16.6 CAPACITY AND RISK ASSESSMENT PROCEDURES

As further described below, each monitoring approach is tailored based on the entity's relationship to DED. This section outlines the methodology and tools DED utilizes to help inform monitoring and evaluation of Subrecipients and Successful Applicants.⁸

16.6.1 METHODOLOGY OVERVIEW

To provide effective oversight for all Subrecipients and Successful Applicants, DED takes a multi-layered approach to ensure there is adequate capacity to administer and implement the CDBG-DR Programs.

- **Initial Capacity Assessment:** For Subrecipients and Successful Applicants, DED engages in an initial capacity assessment during the initial program stages to evaluate Subrecipient or Successful Applicant program documentation and qualifications, as applicable, and identify potential high risk Subrecipients or Successful Applicants.
- **Annual Risk Assessment:** DED's monitoring is performed by the Compliance Team, which is driven by an Annual Risk Assessment that determines the frequency and type of monitoring to be performed, based on the level of risk. The risk-based approach identifies programs and projects that could be at potential risk of non-compliance with applicable Federal, State, and contractual requirements. Subrecipients and Successful Applicants will be prioritized based upon the most current information and staffing resources available, and this prioritization is utilized to generate the monitoring schedule.
- **Quarterly Progress Review:** On a quarterly basis, Subrecipients and Successful Applicants must submit project status reports (PSRs) to DED pertaining to the activities undertaken as a result of the SRA or funding agreement to ensure appropriate use of funds. CDBG-DR Team program staff conduct a review of these PSRs quarterly.⁹

⁸ **Section 16.8: Monitoring Procedures**, describes the monitoring procedures informed by the methodology and tools described in this section. **Section 16.11: Contractor Monitoring**, specifically outlines the methodology for DED's approach to monitoring and evaluating Program Implementation Contractors.

⁹ As the HUD grantee, DED is responsible for reporting progress on all activities via DRGR. These reports are called Quarterly Performance Reports (QPRs); the applicable reporting schedule is set by HUD and included in **Chapter 17 Recordkeeping and Data Management**. Note that DED may set a parallel schedule for its awardees to help ensure it meets QPR due dates.

16.6.2 INITIAL CAPACITY ASSESSMENT

The initial capacity assessment can fulfill one or more of the following purposes:

1. Provides a due diligence review of Subrecipients' or Successful Applicants' initial program documents;
2. Provides an evaluation review of Subrecipient or Successful Applicant qualifications for programs which utilize a state-issued NOFO or NOI; and
3. Informs DED on the potential level of Subrecipient or Successful Applicant program compliance with Federal, state, and CDBG-DR requirements.

Within initial program stages (awarding, SRA or funding agreement, and early implementation phases), the initial capacity assessment primarily serves as a determination of Subrecipients' or Successful Applicants' readiness to execute an SRA or funding agreement and implement the respective program or project for which it is receiving funding. It also advises DED of those high risk Subrecipients or Successful Applicants who require direct administrative oversight in the form of intensive TA and capacity training.

As programs progress into full project implementation, the initial capacity assessment shifts to provide DED with understanding and prioritization of potential Subrecipient or Successful Applicant areas to focus compliance and monitoring activities on, which also still considers the components in which TA and training were initially provided. In this sense, the capacity assessment serves as the foundation from which DED records and documents both its TA and monitoring efforts to ensure regulatory compliance as responsible and effective stewards of HUD funding.

Additional functional results of the initial capacity assessment process include determinations on scheduling, frequency, and types of TA, training, and monitoring activities.

16.6.3 DOCUMENT COLLECTION

The Initial Capacity Assessment Document Collection Checklist (see **Appendix A: Initial Capacity Assessment Document Collection Checklist**) outlines specific documentation which DED staff uses to inform the analysis completed within the Initial Capacity Assessment Worksheet (see **Appendix B: Initial Capacity Assessment Worksheet**). These documents may include:

- Capacity and experience documents (staffing charts, job descriptions, etc.);
- Program design documents (draft applications, project budgets, and timelines);
- Scope design documents (draft vendor contract, work plan, contract budget estimate);
- Program implementation documents (draft agreement, program budget); and

- Prior compliance history (monitoring and audit reports, including single audit reports required under 2 CFR Part 200 Subpart F).

DED program staff will coordinate in the collection of this documentation from Subrecipients and Successful Applicants. DED program staff, with the advice from the Compliance Team, is responsible for ensuring that they have sufficient documentation from the Subrecipient or Successful Applicant in completing the Initial Capacity Assessment Worksheet (see ***Initial Capacity Assessment Worksheet***).

It is vital to initially utilize this see the ***Initial Capacity Assessment Document Collection Checklist*** as a document guide for the ***Initial Capacity Assessment Worksheet*** prior to determining what additional information is still needed.

16.6.4 INITIAL CAPACITY ASSESSMENT PROCESS

CDBG-DR Team program staff collects information necessary to populate the SRA or funding agreement and confirm authority to execute the SRA or funding agreement. Subrecipients and Successful Applicants are required to provide documents and information to facilitate DED's initial capacity assessment as required in Federal Register Notice (83 FR 5867) and 2 CFR 200.332(b) (see ***Initial Capacity Document Collection Checklist***).

CDBG-DR Team program staff collect basic organizational capacity information and relevant policies and procedures for the program area from the implementing entity. Additionally, CDBG-DR Team program staff review the documents to determine the potential for risk of noncompliance with regulatory or grant requirements.

Where key policies do not exist, CDBG-DR Team program staff identify a plan to develop the policies. Subrecipients or Successful Applicants may request TA or CDBG-DR Team program staff may provide TA for policy development.

This initial capacity assessment may result in the inclusion of specific conditions in the SRA or funding agreement, if warranted. These conditions require that the Subrecipient or Successful Applicant meet certain standards. Depending on the specific condition, such condition may need to be resolved before project-specific funds may be used, following issuance of a Release of Funds (ROF). For example, a situation that would elevate to the level requiring a grant condition to be satisfied prior to ROF may be to establish program guidelines for the operation of a Subrecipient program under the Homeowner Assistance Program. Details surrounding specific conditions will be further detailed in the SRA or funding agreement.

The initial capacity assessment should be completed, and risks should be fully communicated to all applicable DED teams to inform them of potential risk and noncompliance areas, prior to the expenditure of any HUD funding by the Subrecipient or Successful Applicant. The Subrecipient or Successful Applicant must agree to comply with the requirements, requests, and results of DED's initial capacity assessment and maintain the capacity to carry out disaster recovery activities in a timely manner.

In the unlikely event where CDBG-DR Team program staff did not perform an initial capacity assessment for Subrecipients or Successful Applicants prior to the expenditure of grant funding, the basis for determining specific SRA or funding agreement conditions, TA, or training must still be documented. DED will also document justification for why an initial capacity assessment was not previously conducted in this instance.

16.6.5 INITIAL CAPACITY ASSESSMENT RESULTS

CDBG-DR Team program staff will identify within the Initial Capacity Assessment Worksheet the completion of program policies, procedures, and critical documents necessary to confirm a Subrecipient's or Successful Applicant's readiness for program or project launch. The CDBG-DR Team program staff make determinations as to whether a review of documents, or lack thereof, result in the Subrecipient or Successful Applicant meeting a minimum standard of program or project readiness.

In those instances in which the minimum standard is not met, CDBG-DR Team program staff will utilize written conditions within the SRA or funding agreement to enforce additional controls on the Subrecipient or Successful Applicant to enact prior to receiving authorization to move forward in program or project implementation as outlined in the SRA or funding agreement (e.g., ROF, processing of initial request for payment, etc.).

Subrecipients and Successful Applicants will be informed about findings under the initial capacity assessment.

16.7 ANNUAL RISK ASSESSMENT

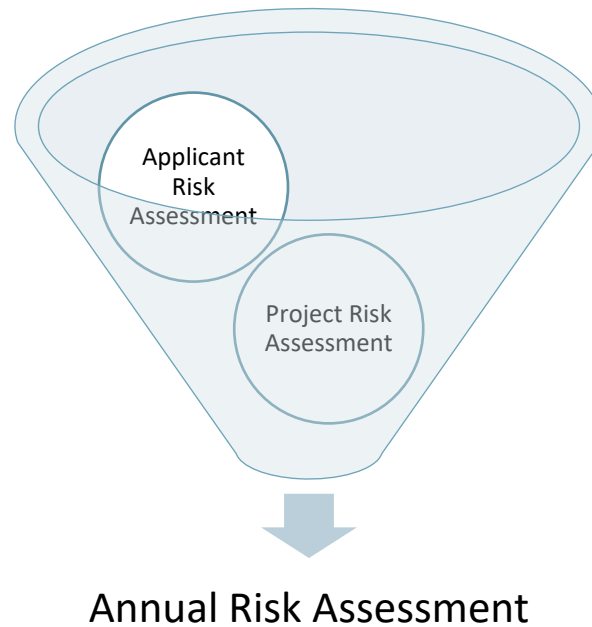
16.7.1 ANNUAL RISK ASSESSMENT PURPOSE

DED's monitoring process is conducted based upon priority, which is primarily determined by the results of an Annual Risk Assessment. Subrecipients and Successful Applicants are prioritized based upon the most current information and staffing resources available, and this prioritization is utilized to generate the monitoring schedule. Additional Subrecipients or Successful Applicants may be added to the monitoring schedule to accommodate changing monitoring priorities.

16.7.2 ANNUAL RISK ASSESSMENT PROCESS

All Subrecipients and Successful Applicants are subject to review over the life of the CDBG-DR program. The priority of each review is determined through the Annual Risk Assessment, which is performed annually based on the fiscal year of the State of Nebraska (June-July). The Compliance Team Manager and Compliance Team, conduct the Annual Risk Assessment using the **Sample Annual Risk Assessment Worksheets**. The Annual Risk Assessment process includes two components: an Applicant Risk Assessment and a Project Risk Assessment. Each component assessment results in a risk rating of High, Medium, or Low, with the higher of the two component results serving as the final Annual Risk Assessment result. The process is outlined below in **Figure 1**.

Figure 1: Annual Risk Assessment Components



The data utilized to generate the analytics for the criteria is derived from the Disaster Recovery Grants Reporting System (DRGR) and DED's records. While the results of the Annual Risk Assessment are the primary driver to determine prioritization, input from DED's finance, program, and field staff can also be taken into consideration as factors.

At the conclusion of the Annual Risk Assessment process, the Disaster Recovery Manager and the Compliance Team staff will discuss the Annual Risk Assessment results that may impact the risk level assessed. Based on these results of the Annual Risk Assessment, the Disaster Recovery Manager will coordinate with the Compliance Team Lead to develop a monitoring schedule for all Subrecipients and Successful Applicants. With the steps outlined above, Compliance Team staff will prepare annual strategies on how to effectively manage risks and increase compliance among all CDBG-DR funded programs. The Disaster Recovery Manager may also coordinate with CDBG-DR Team program staff to develop TA plans and training activity schedules for higher risk Subrecipients and Successful Applicants based on the results of the Annual Risk Assessment Worksheet.

Records regarding the Annual Risk Assessment Worksheet are maintained by the Compliance Team and shared with the Disaster Recovery Manager and Disaster Recovery program staff in the appropriate Subrecipient or Successful Applicant files.

16.7.2.1 COMPLIANCE AND MONITORING

Once the Annual Risk Assessment Worksheet is complete, official monitoring planning and scheduling can begin. The Compliance Team Lead and the Disaster Recovery Manager coordinate to develop a quarterly monitoring schedule (see **Section 16.9: Monitoring Schedule**).

The priority of reviews is based upon the results of the most recent Annual Risk Assessment—those Subrecipients and Successful Applicants identified as having the highest relative risk are considered priority. While the results of the Annual Risk Assessment are the primary driver to determine prioritization, input from DED’s finance, program, and field staff can also be taken into consideration as factors by the Compliance Team Lead and the Disaster Recovery Manager.

The Compliance Team Lead and the Disaster Recovery Manager reserve the right to edit the official monitoring schedule as needed to address an immediate concern or issue of noncompliance or high risk which may occur outside of the Annual Risk Assessment process.

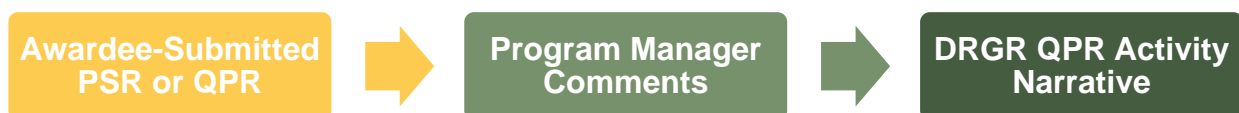
16.7.2.2 TRAINING AND TECHNICAL ASSISTANCE

The Disaster Recovery Manager will coordinate with CDBG-DR Team program staff to develop TA plans and training activity schedules for higher risk Subrecipients and Successful Applicants based on the results of the Annual Risk Assessment Worksheet. CDBG-DR Team program staff may undertake a further review of higher risk Subrecipients and Successful Applicants to determine common risk areas where TA and training could assist in reducing the same concerns across multiple entities. This may allow for coordinated TA and training for both individual and multi-entity events.

16.8 QUARTERLY PROJECT STATUS REPORTS

Subrecipients and Successful Applicants must submit Project Status Reports (PSRs) quarterly to DED pertaining to the activities undertaken as a result of the SRA or funding agreement. PSRs, or Quarterly Performance Reports (QPRs), identify accomplishments that have been achieved during the applicable reporting period, beneficiary data regarding CDBG-DR national objectives, and project activity progress. CDBG-DR Team program staff review these quarterly PSRs to ensure programs and projects are on track to meet performance plan and project milestones as identified in the SRA or funding agreement. This informal process allows DED to maintain an ongoing pulse of program implementation activities and supports DED’s reporting responsibilities in the DRGR QPRs.

Figure 2: Quarterly Reporting Process Flow



CDBG-DR Team program staff typically do not issue the Subrecipient or Successful Applicant a formal response in connection with to quarterly PSRs. However, if any deficiency is found in a

PSR, the CDBG-DR Team program staff relay any issues to the Disaster Recovery Manager and the Compliance Team Lead. The Disaster Recovery Manager and Compliance Team Lead will determine whether the identified deficiencies should prompt a desktop or on-site monitoring review.

Similarly, DED Finance regularly runs a report on financial activity (or inactivity) for all CDBG-DR-funded activities. The goal of this report is to identify slow expenditures or inactive projects. CDBG-DR Team program staff will follow up with such Subrecipients or Successful Applicants to determine the cause and assess the ability to draw funds. As described in **Table 1** above, percentage of total funds expended informs the Annual Risk Assessment and impacts a Subrecipient's or Successful Applicant's risk level for purposes of monitoring.

16.9 MONITORING PROCEDURES

16.9.1 MONITORING PURPOSE

As indicated in the prior section, the monitoring process follows the monitoring schedule for DED's monitoring of its Subrecipients and Successful Applicants. This routine represents the key method of oversight which DED directs toward those Subrecipients and Successful Applicants charged with implementing all or parts of its CDBG-DR projects and programs to ensure compliance. It is both an integral management control technique and an ongoing process to assess quality of performance over time. More specifically, monitoring ensures that the State manages the Federal awards in compliance with Federal statutes, regulations, and the terms and conditions through monitoring and reporting of program performance.¹⁰

This section of the Plan describes the monitoring process in detail from the initial notification to a Subrecipient or Successful Applicant to reporting results, corrective actions, and the eventual clearance of any findings of non-compliance. It covers two types of monitoring:

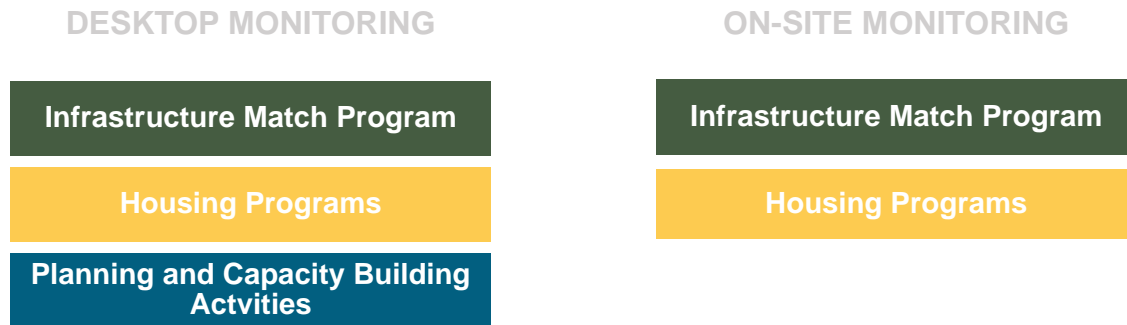
- Desktop Monitoring
- On-site Monitoring¹¹

Grants administered under the Infrastructure Match Program, Housing Programs, and activities funded to support Planning and Capacity Building are monitored through the desktop monitoring process. Grants administered under the Infrastructure Match Program and Housing Programs are also monitored through the on-site monitoring process.

¹⁰ As noted, the State must manage the awards in compliance with terms and conditions of the award. This includes any special conditions or information contained in HUD communications and/or applicable Federal Register Notices. Such guidance may vary with each award and can either sharpen or alter the focus of DED's monitoring activities each year.

¹¹ On-site monitoring may be conducted remotely, at the discretion of DED, due to extenuating circumstances, including but not limited to, the ongoing COVID-19 pandemic.

Figure 3: Programs and Monitoring Process



16.10 MONITORING SCHEDULE

4. The monitoring schedule is based on the results of the Annual Risk Assessments.
5. The Project / Program Population of assessed Subrecipients/Successful Applicants is defined according to **Section 16.9.1: Project Selection**.
6. A sample of projects is selected to review for the Subrecipient or Successful Applicant by the Compliance Team based on the information supplied by the Project Manager.
7. Quarterly compliance and monitoring reviews are scheduled according to staff resources and the schedule is distributed to DED's Compliance and CDBG-DR Teams.

16.10.1 PROJECT SELECTION

16.10.1.1 DEFINING THE PROJECT POPULATION

For any given review cycle, the Compliance Team Lead may limit the total population. Additional criteria may be employed to either limit or expand the total project population for a particular Subrecipient or Successful Applicant. In these cases, the rationale for inclusion or exclusion of a project area, certain project, or group of projects in the population is documented accordingly.

16.10.1.2 SAMPLE SELECTION

In selecting project areas, projects, and programs for review, the Compliance Team Lead may consider a diverse cross-section of project types that meet the expenditure threshold to ensure a representative sample selection of activities, with special consideration given to higher risk activities, including construction, acquisition, relocation, etc.

Additional reviews of projects and/or programs requiring follow-up review and/or outstanding corrective actions identified in prior reviews generally take precedence over those that do not have outstanding issues to be addressed. Any individual risks imposed by a particular project or program are also taken into account when scheduling additional reviews or determining review frequency overall.

16.11 EXECUTING THE MONITORING REVIEW

The monitoring review is executed in three stages (see 4). Detail regarding each of these stages is provided in the subsections below.

Figure 4: Monitoring Review Execution



16.11.1 MONITORING NOTIFICATION LETTER

16.10.1.1 SUBRECIPIENT AND SUCCESSFUL APPLICANT COMMUNICATION

Prior to a notification letter being disseminated to the Subrecipient or Successful Applicant, the DED Compliance Team member conducting the visit (i.e., the “Monitor”) must reach out to the Subrecipient or Successful Applicant via a **Monitoring Notification Letter (MNL)**. There are two types of notification letters based on whether the Monitor is conducting desktop or on-site monitoring.

A pre-notification communication between the Monitor and Subrecipient or Successful Applicant should be made via phone or email. The purpose of this communication is to alert the Subrecipient or Successful Applicant that either a desktop or onsite monitoring has been scheduled, discuss potential dates for the monitoring, and discuss any monitoring logistics required to execute the monitoring.

16.10.1.2 DESKTOP MONITORING NOTIFICATION LETTER

A MNL and **Document Request Checklist** will be sent by the Monitor notifying the Subrecipient or Successful Applicant no later than thirty (30) calendar days prior to the start of the desktop monitoring. The letter states the purpose of the desktop monitoring and the Subrecipient’s or Successful Applicant’s responsibilities related to the desktop monitoring effort. The letter also identifies the activity and compliance standards to be monitored, the documentation to be delivered to the appropriate Compliance Team staff, and the method(s) for providing the documentation to DED.

The timeframe from notification letter to the commencement of desktop monitoring allows a sufficient period for the Subrecipient or Successful Applicant to organize documentation, review their policies and procedures, and initiate internal controls they determine to be appropriate in advance of the monitoring.

Once the Subrecipient or Successful Applicant returns the completed **Document Request Checklist** with supporting documentation, the Monitor will perform a preliminary review to determine that all requested documentation has been provided.

16.10.1.3 ON-SITE MONITORING NOTIFICATION LETTER

A MNL and Document Request Checklist will be sent by the Monitor notifying the Subrecipient or Successful Applicant no later than thirty (30) calendar days prior to the start of the on-site monitoring. The letter states the purpose of the on-site monitoring, length of time the Monitor will be on-site, and the Subrecipient's or Successful Applicant's responsibilities in assisting the Monitor's onsite monitoring activities. The letter must clearly identify areas to be monitored and State that appropriate Subrecipient or Successful Applicant staff and any applicable consultants must be on-site to provide clarification and/or take part in interviews as determined necessary by the Monitor. The letter must also emphasize that the Monitor be provided suitable space – away from Subrecipient or Successful Applicant staff – in order to conduct the monitoring.

The timeframe from MNL to the commencement of the on-site monitoring allows a sufficient period for the Subrecipient or Successful Applicant to organize program documentation (specifically those items noted in the **Document Request Checklist**, review their policies and procedures, and to ensure required individuals are available – onsite – to assist Compliance Team staff. This will also afford the Monitor sufficient time to start the preparation work for the on-site visit.

If during the 30-day notification period something occurs that may require an on-site monitoring visit to be postponed/rescheduled, the Subrecipient or Successful Applicant must reach out to the Monitor in writing (via email) and discuss justification for a request to reschedule a monitoring visit. The Monitor should review the request and conduct any follow-up discussions necessary to gather all necessary information regarding justification, suggested dates, etc.

After the Monitor has collected all the information, a discussion between the Monitor, the Compliance Team Lead, in consultation with the Disaster Recovery Manager, should take place to determine if the justification is reasonable and if the requested dates are acceptable. Once the Compliance Team Lead has provided approval to reschedule the monitoring, the Monitor must follow up via email to notify the Subrecipient or Successful Applicant of the determination and agreed upon dates. This should be maintained in the file for record keeping purposes.

If there has not been a request to postpone the monitoring visit, the Monitor must contact the Subrecipient's or Successful Applicant's point of contact within fourteen (14) calendar days prior to the visit to serve as a reminder of the agreed upon date(s), time, and location of the on-site monitoring (if applicable). There should also be discussion on any arrival logistics required, e.g. parking restrictions, construction issues, etc.

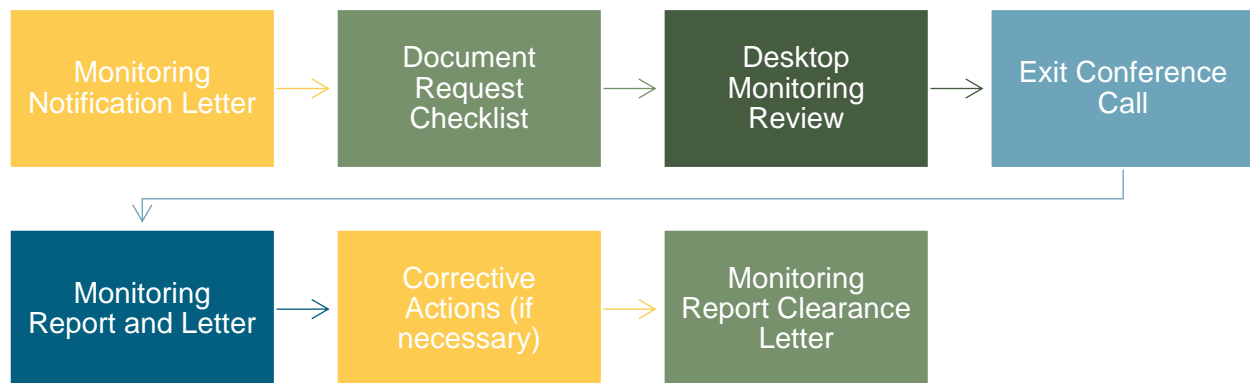
In emergency circumstances, DED can send the notice on the business day prior to the visit.

16.11.2 MONITORING LEVELS

16.10.2.1 DESKTOP MONITORING

The steps illustrated in the diagram below and described in the subsequent sections provide a high-level process for executing a desktop monitoring review (see 5).

Figure 5: Desktop Monitoring Process Flow



The desktop monitoring commences thirty (30) calendar days after the Subrecipient or Successful Applicant is notified of the monitoring via the MNL. During the thirty (30)-day notification period, the Subrecipient or Successful Applicant will provide the Monitor with any documentation requested in the **Document Request Checklist** contained in the MNL. Desktop monitoring is conducted at the DED office regardless of the location of the Subrecipient's or Successful Applicant's office.

A desktop monitoring can either be area specific (e.g., Procurement and Contract, Environmental, Section 3) or a comprehensive review of the CDBG-DR project or programs administered by the Subrecipient or Successful Applicant. The desktop monitoring also serves to assess Subrecipient or Successful Applicant compliance and potential training/TA needs in order to become compliant and maintain proper administration within acceptable compliance standards as set in Federal and State regulations, rules, and applicable guidance (provided either by DED or HUD, or other Federal Agencies).

Prior to the start of the desktop monitoring, the Monitor should review the following, in order to get a better understanding of the project(s) and any special conditions:

- The requirements of the CDBG-DR program;
- FRN requirements applicable to the CDBG-DR program and any applicable waivers;
- Other Federal regulatory guidance, such as Uniform Administrative Requirements, cost principles, and audit requirements outlined in 2 CFR Part 200;

- Specific conditions as stated in 2 CFR § 200.206 and § 200.208 respectively to mitigate the risk of the grant;
- The SRA or funding agreement, including amendments if applicable;
- The Annual Risk Assessment; and
- Results of any quarterly progress report reviews conducted by CDBG-DR Team program staff and any previous monitoring reviews conducted by the Compliance Team.

Typically, desktop monitoring is only conducted for low risk to medium risk Subrecipients or Successful Applicants who pose the least amount of risk to DED and its grant with HUD. At DED's discretion, the desktop monitoring process may be used to satisfy HUD's monitoring requirement in lieu of on-site monitoring for Subrecipients and Successful Applicants identified as low and medium risk.¹²

During the desktop monitoring, the Monitor will review the requested documents and test for compliance with all applicable requirements. The Monitor will utilize the **General Monitoring Checklist** and any relevant supplemental checklists to complete the review.

A desktop monitoring typically takes up to thirty (30) calendar days to complete following receipt of all documentation requested in the **Document Request Checklist**. The actual length of desktop monitoring is dependent upon organization and completeness of the documentation received and any necessary follow-up with the Subrecipient or Successful Applicant.

16.10.2.2 ADDITIONAL ACTION – FINDING

A desktop monitoring may identify a finding in either a particular area(s) of project management or identify a systematic deficiency that needs further investigation. If a finding is identified during a desktop monitoring, the Monitor is to halt all monitoring review activities – this includes if the monitoring review is incomplete – and arrange for discussion with management to determine the most appropriate next steps. The next steps can result in either continuing the desktop monitoring or require an on-site monitoring.

If the determination is that an on-site monitoring must be conducted, the following actions should be taken:

- Notate the decision on the draft monitoring report;
- Explain the next step is an on-site monitoring and process;

¹² Special circumstances may arise that require a special desktop monitoring for a high risk Subrecipient or Successful Applicant, e.g. a news report related to a CDBG-DR funded project where actions may require a special on-site monitoring.

- Request tentative dates with appropriate Subrecipient or Successful Applicant staff;
- Expand sample and request additional documents for further review prior to the on-site monitoring;
- The Compliance Team Lead and Disaster Recovery Manager amend the official monitoring schedule to reflect the change from desktop monitoring to on-site monitoring; and
- Notify the appropriate Program Manager, including the DR Division Director, of the changes.

After the above actions are taken, the on-site monitoring process should be followed.

16.10.2.3 EXIT CONFERENCE CALL

The Exit Conference Call is conducted after the desktop monitoring is complete and the **Exit Conference Agenda** is created. The purpose of the exit conference agenda is to assist the Monitor in moving smoothly through the discussion and to inform the Subrecipient or Successful Applicant what points will be covered. This will help the Subrecipient or Successful Applicant discuss internally any questions they may have for discussion.

The Exit Conference Agenda should contain the following:

- Start Date and Time of the Exit Conference Call;
- Notations on attendance – names and positions;
- Preliminary results and tentative conclusions, including any identified deficiencies, concerns, and findings;
- Identification of the next stage in the monitoring process; and
- Placeholder for questions and discussion.

A copy of the exit conference agenda should be emailed to the Subrecipient or Successful Applicant staff when the date of the conference call is scheduled. The Monitor must contact the Subrecipient or Successful Applicant and schedule the conference call within fourteen (14) calendar days of the conclusion of the desktop monitoring. The Subrecipient or Successful Applicant staff and leadership, as appropriate, should be in attendance on the conference call.

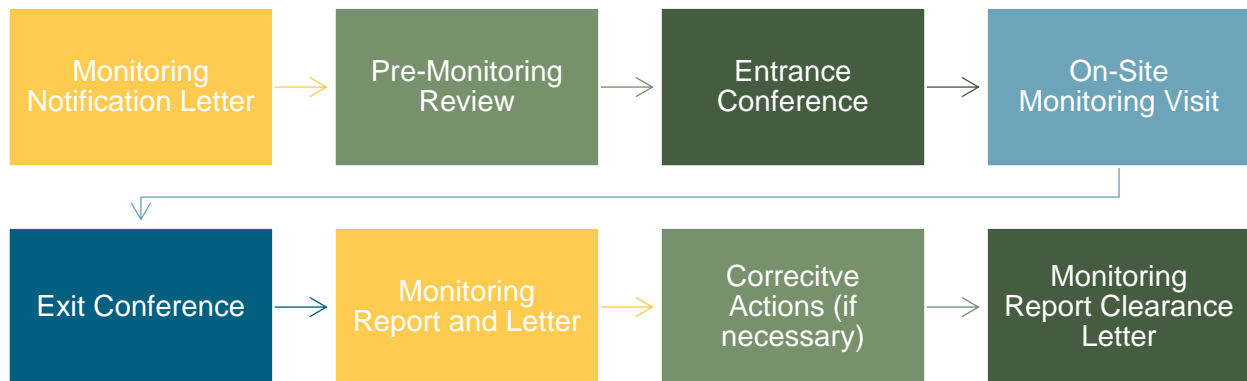
Recommended Best Practice: Make detailed notes from the conference call and any clarifying statements made by the Subrecipient or Successful Applicant. After the conference call, email a copy of the agenda and notes taken from the conference call and allow the Subrecipient or Successful Applicant two (2) calendar days to either confirm the notes accurately reflect the conversation or recommend note changes. After the Subrecipient or Successful Applicant agrees

with the notes (this is no more than a three (3)-day activity), the notes and agenda should be saved to the monitoring file.

16.10.2.4 ON-SITE MONITORING

The steps illustrated in the diagram below and described in the subsequent sections provide a high-level process for executing an on-site monitoring review.

Figure 5: On-site Monitoring Process Flow



Typically, on-site monitoring is reserved for medium to high risk Subrecipients and Successful Applicants. This group of Subrecipients and Successful Applicants present the greatest risk to DED's compliance with HUD's grant requirements. On-site monitoring is intended to be a more comprehensive assessment of the Subrecipients' or Successful Applicants' management of the CDBG-DR projects and programs in compliance with applicable Federal, state, and local regulations and requirements. This level of monitoring is typically performed at the Subrecipient's or Successful Applicant's location and is more formal than a desktop monitoring.¹³

As a general policy, DED conducts on-site monitoring visits **at least once** prior to closeout.

16.10.2.5 PRE-MONITORING REVIEW

The pre-monitoring review process is performed in order to:

- Reduce DED's use of time and resources in conducting on-site monitoring;
- Ensure the Monitor is adequately prepared and familiar with the program and project(s) in order to accurately determine compliance; and
- Reduce the impact of an on-site monitoring's use of staff time and resources of the Subrecipient or Successful Applicant.

¹³ On-site monitoring may be conducted remotely, at the discretion of DED, due to extenuating circumstances, including but not limited to, the ongoing COVID-19 pandemic.

In order to facilitate the pre-monitoring review, the Monitor should review documents contained within AmpliFund, SRA or funding agreement, and program application.

Pre-monitoring review(s) are performed during the thirty (30)-day period between when the MNL is sent to the Subrecipient or Successful Applicant and the date(s) scheduled for the on-site monitoring. The Monitor will use the pre-monitoring activity to assess areas where additional clarification and/or documents are necessary in order to accurately assess compliance in applicable areas of project management. Additionally, when the Monitor goes on-site, the documents should be reviewed – high level – to DED’s records in order to reflect the most recent and official version of documents. If it is determined that the documentation DED maintains is not the most recent version, the Monitor is to make copies of any document(s) and bring back to DED to update applicable records.

Recommended Best Practice: For efficiency, the Monitor should write out any questions that arise from the pre-monitoring review and notate specific documents to request. The Monitor can request the documents during the entrance conference.

16.10.2.6 ENTRANCE CONFERENCE

The entrance conference is the official start of an on-site monitoring. A successful entrance conference will include the following activities:

- Introduction of Monitor(s);
- Providing a high-level overview of the on-site monitoring process and confirm scope of monitoring activities;
- Obtaining contact information of the appropriate staff members for the areas of review;
- Discussion of general logistics, e.g. fire escape, restrooms, copier, etc.;
- Scheduling – preliminary – interviews, additional interviews maybe required later in the monitoring visit. The **Appointment Log** should be filled out; and
- Ensuring the Subrecipient or Successful Applicant has an understanding – high level – of the onsite monitoring and needs of the Compliance Team staff.

Both DED and the Subrecipient or Successful Applicant must agree per the SRA or funding agreement at the outset that it is DED’s responsibility to monitor the Subrecipient’s or Successful Applicant’s activities and determine whether their use of CDBG-DR funds is appropriate and meets applicable CDBG-DR regulations, even if the Subrecipient or Successful Applicant finds monitoring inconvenient and unwelcome.

Prior to the monitoring visit, the Monitor should create an **Entrance Conference Agenda**. The purpose of the entrance conference agenda is to assist the Monitor in moving smoothly through the discussion and to inform the Subrecipient or Successful Applicant what points will be covered.

The Monitor must record an accurate attendance record – **Monitoring Contact Sheet** – and take notes of any necessary information provided during the entrance conference.

16.10.2.7 CONDUCTING THE ON-SITE MONITORING VISIT

At the conclusion of the Entrance Conference, the Monitor will excuse the Subrecipient or Successful Applicant representatives and any additional attendees from the room and begin conducting the monitoring. While on-site, the Monitor will review the Subrecipient or Successful Applicant documents, complete the relevant monitoring checklists,¹⁴ and make notes during the review. The majority of the visit is time spent on documentation, data acquisition, note-taking, interviews, and analysis. For housing activities, on-site monitoring must include a review of the property on-site for property standards compliance and assessment of the quality of the work; reasonableness of cost; and compliance with applicable laws and requirements. The Monitor also verifies that the number and location of units agree with the application.

The Monitor keeps a clear written record of the steps followed and the information reviewed during the visit.¹⁵ This documentation is invaluable for analyzing information, developing conclusions from the monitoring visit, and explaining the basis for any findings that appear in the monitoring report. Being able to identify the sources of the information used to arrive at conclusions is particularly important if the Subrecipient or Successful Applicant disputes any of the findings.

During the on-site monitoring, the Monitor may conduct interviews with the appropriate staff or appropriate Subrecipient's or Successful Applicant's contractors/vendors. The interviews allow for the Monitor to question any initial observations from the review and obtain additional clarification, as necessary, in order to make an assessment of compliance. Any conversations or interviews with the Subrecipient's or Successful Applicant's staff or contractors/vendors must be documented.

16.10.2.8 EXIT CONFERENCE

The Monitor concludes the on-site monitoring visit with an Exit Conference. Subrecipient or Successful Applicant staff and leadership, as appropriate, should be in attendance at the exit conference. The on-site exit conference is conducted much like the desktop monitoring Exit

¹⁴ Specific areas of review include, but are not exclusive of, the following: national objective/eligible activity; program or project progress, performance, and capacity; general files; environmental review, including any mitigation, Tier II review, etc.; financial management, including internal controls, cash management, and accounting records; procurement; professional services and contract management; and civil rights and fair housing.

¹⁵ A feasible method for this is to annotate a monitoring checklist or handbook and the Subrecipient's or Successful Applicant's written policies that DED obtains from the file reviews, on-site inspection of projects, or discussions with Subrecipient or Successful Applicant representatives with notes about particular case numbers, statistics, or financial figures.

Conference Call, as in the areas of weakness are discussed and the next steps in the monitoring process are explained to the Subrecipient or Successful Applicant. The on-site exit conference should cover the following actions:

- Thanking the Subrecipient or Successful Applicant for their time and assistance;
- Explaining next steps in the monitoring process;
- Covering the questions and documents that remain outstanding and giving the Subrecipient or Successful Applicant a deadline for response;
- Provide an opportunity for the Subrecipient or Successful Applicant to correct any misconceptions or misunderstandings on DED's part;
- Secure additional information from Subrecipient or Successful Applicant staff to clarify or support their position;
- Preliminary results and tentative conclusions, including any identified deficiencies, concerns and findings; and
- Responding to any questions by Subrecipient or Successful Applicant staff and/or leadership.

Once the Exit Conference has concluded, both the Subrecipient or Successful Applicant representative and the Monitor must sign the **Exit Conference Agenda**. Once the agenda is signed a copy must be given to the Subrecipient or Successful Applicant for its records. The purpose of signing the Exit Conference agenda confirms both parties understand all areas discussed and to record any requested information that may result in corrective actions.

Recommended Best Practice: The Monitor takes detailed notes of questions asked by the Subrecipient or Successful Applicant and any responses made while discussing any weaknesses identified during the exit conference.

16.11.3 MONITORING REPORT AND LETTER

Upon completion of the monitoring, the Monitor will begin composing the Monitoring Report and Letter (MR). The MR concisely details:

- Areas of Review
- Areas of Weaknesses (Finding or Concern)
- Areas of Merit
- Recommendations
- Areas of TA

DED uses the MR to create a permanent written record of the monitoring review’s findings. Any required corrective actions must be detailed in a manner that allows the Subrecipient or Successful Applicant to clearly understand the requirements that must be met and the importance of future compliance. If any areas of merit were discovered during the monitoring, this should also be mentioned in the MR along with the areas of noncompliance.

DED has sixty (60) calendar days following the Exit Conference in order to provide the Subrecipient or Successful Applicant staff with the MR. During the sixty (60)-day timeframe, the Subrecipient or Successful Applicant has the ability to provide DED with necessary documents or other means of resolutions that were discussed during the Exit Conference. Submitting the documents prior to when the MR is sent out will help resolve minor issues. Even though the issue is resolved, it will still appear on the MR, but no actions will be required on resolved issues.

The MR can also inform further adjustment to other DED records relating to the project to ensure accuracy and visibility for future monitoring and auditing purposes.

Conclusions from monitoring processes may result in the Subrecipient or Successful Applicant being evaluated as falling under one of the three categories described below and further discussed in **Section 16.10.3.1: 16.10.3.1 Corrective Action** and **Section 16.10.4: Monitoring Report and Letter Response Review**.

Determination	Description
Satisfactory Performance	No identifiable issues.
Concern	An issue is identified but does not involve a statute, regulation or requirement, such as a management issue.
Finding	Clear violation of a statute, regulation, or requirement and a remedy is required.

16.10.3.1 CORRECTIVE ACTION

Findings or concerns identified in a MR must be addressed with a corrective action as described in the MR. DED allows the Subrecipient or Successful Applicant thirty (30) calendar days to respond with a written corrective action to a finding(s) and/or concern(s) as described in the MR. The corrective action should not only correct the immediate problem but also create future controls that prevent the situation from recurring.¹⁶ Corrective action deadlines may be extended at DED’s discretion or if a time extension is requested and supported by the Subrecipient or

¹⁶ Subrecipients and Successful Applicants will submit regular PSRs that include information responsive to any corrective actions based on the findings and concerns identified.

Successful Applicant. Any Subrecipient and Successful Applicant requests for extension must be made in writing to the Monitor.

In the corrective action, the Subrecipient or Successful Applicant must describe the steps taken to resolve each finding and/or concern and/or provide new process information or clarification on resolving the compliance issue.

The Monitor reviews the Subrecipient's or Successful Applicant's corrective action and compares the response to the findings or concerns noted during the monitoring to determine next steps. If additional revisions are needed to the corrective action before clearance, the Monitor will issue a **Corrective Action Incomplete Letter** (CAIL) to the Subrecipient or Successful Applicant. All findings and concerns from monitoring reviews must be cleared prior to project closeout. For additional information regarding corrective actions, see **Section 16.10.4: Monitoring Report and Letter Response Review**.

16.10.3.1.1 Corrective Action – Finding

Findings are deficiencies in CDBG-DR performance for which there is clear noncompliance with a statutory, regulatory, or CDBG-DR-specific requirements. Findings identified during monitoring must be addressed with an appropriate course of action, known as a corrective action plan. Further, when a violation of a Federal or State regulation is identified, the Monitor must perform additional activities in order to assess the extent of the finding (systemic or outlier). In order to make an assessment, the Monitor must expand the review sample of area where the finding(s) was identified.

Findings are recorded with a specific regulatory citation of the requirement that is not being adhered to, as well as a description of the condition which is causing the finding. Where possible, references should be made to specific dates, documents, payments, costs, or activities, rather than general operations.

16.10.3.1.2 Corrective Action – Concern

Concerns are identified issues but do not involve a specific statute, regulation or requirement, such as a management issue. Concerns may be more broadly described than a finding and not specifically cite a requirement. Concerns may reference a deficient process and not a deficient item. Subrecipients and Successful Applicants must address the concerns with details of remedy actions. DED may also provide recommendations and has the right to approve or reject the action.

Concerns may lead to future findings if deficiencies are not corrected.

16.10.3.1.3 Technical Assistance Delivery During Monitoring Process

During an on-site monitoring, the Monitor may discover an action or document that shows the Subrecipient or Successful Applicant may have a weak understanding of an area of CDBG-DR program management that could lead to a concern or finding. If the Monitor identifies a situation like this during a monitoring, they can provide on-site TA. This TA can either be conducted at the time the issue is identified during the review or during the Exit Conference. When providing this – proactive – TA, the Monitor should cover the documentation reviewed and where there appears

to be a weak understanding of requirements and/or regulations. It should be explained so that the Subrecipient or Successful Applicant staff understands the issue and has examples of best practices to help guide future actions in the correct manner.

When composing the MR, this on-site TA must be identified in the letter. The MR should provide a brief overview of what was identified, a summary of the assistance provided, and statements providing additional resources. It is important to record TA provided during the monitoring; in the event the issue is not corrected.

Where appropriate, the Monitor will engage CDBG-DR Team program staff to provide additional TA and training to Subrecipients and Successful Applicants.

16.11.4 MONITORING REPORT AND LETTER RESPONSE REVIEW

16.10.4.1 INCOMPLETE CORRECTIVE ACTION

The Subrecipient or Successful Applicant has thirty (30) calendar days from the date the MR is issued to respond to any findings and/or concerns identified therein. After the Compliance Team receives the Subrecipient's or Successful Applicant's response to the MR, it is reviewed to determine if the response satisfies the required corrective actions as stated in the MR. During this review period, the Monitor will assess the actions that have been put in place to avoid future occurrence of noncompliance. During this assessment period, the Monitor will determine if the actions are sufficient or insufficient. If it is determined that the official response is insufficient, the Monitor will make recommendations to the Compliance Team Lead and Disaster Recovery Manager on next steps, which can include DED taking more severe actions against the Subrecipient or Successful Applicant.

The Compliance Team Lead and the Disaster Recovery Manager will review the recommendations submitted by the Monitor. During this review, the Compliance Team Lead and Disaster Recovery Manager will either approve the recommendation – in part or in full – or will reject the recommendation – in part or in full – and will respond to the Monitor, instructing on next steps. If the Compliance Team Lead and Disaster Recovery Manager agree with the recommendations submitted by the Monitor, a CAIL will be generated by the Monitor. The CAIL will follow the letter review process as covered in the MR process. The CAIL process will continue until all issues have been satisfied and a Monitoring Report Clearance Letter (MRC) can be generated.

16.10.4.2 CORRECTIVE ACTION COMPLETE

After a Subrecipient or Successful Applicant has been provided with the MR, the Subrecipient or Successful Applicant must work on completing the corrective actions stated in the MR. During this part of the process, DED Compliance Team and CDBG-DR Team program staff and the Subrecipient or Successful Applicant will work towards satisfying all issues identified to improve internal processes or other actions that were required, based on the issues identified. Once all

issues have been satisfied the corrective actions will be considered complete and monitoring closed and a MRC is generated.

16.10.4.3 SANCTION

If a finding remains uncorrected, one or more sanctions may be imposed. The severity of the sanction(s) is governed by the type and seriousness of deficiency including violation of the SRA or funding agreement and DED policies and procedures. Possible sanctions include, but are not limited to:

- Reporting Subrecipient in Federal debarment system;
- Suspension of payments;
- Termination of award;
- Disallow cost recovery for costs incurred under the award;
- Disqualification from consideration for other CDBG funds; and
- Legal action pursued by the Nebraska Attorney General.

If the Subrecipient or Successful Applicant is uncooperative, does not comply with the MR requirements, and does not act to clear the findings and concerns, DED may consider this a violation of the SRA or funding agreement and DED will determine the consequences for such inaction. Such consequences shall be based on the severity of the deficiency, the State and Federal rules and regulations governing the area(s) of noncompliance, the impacts to the community, and consequences to DED. It is important to note, however, that Compliance Team staff, with the support of CDBG-DR Team program staff, must consider and are encouraged to provide targeted guidance and capacity building events to assist a Subrecipient or Successful Applicant, to create or develop the required documentation or information from the corrective action which is needed to resolve a finding and/or potential sanction.

As mentioned above, if those efforts do not resolve in resolution, additional DED actions may include, but are not limited to:

- Issuing a letter of warning that additional action(s) will be taken if deficiencies are not corrected or are repeated;
- Advising the Subrecipient or Successful Applicant that additional information or assurances will be required before additional funding is provided;
- Suspending or terminating the expenditure of funds for a deficient activity or grant;
- Refraining from extending any further assistance to the Subrecipient or Successful Applicant until full compliance has been met; or

- Requiring recapture of funds in question.

Additionally, if the Subrecipient or Successful Applicant does not address the deficiencies after being sanctioned, additional sanctions may be imposed. DED shall notify the Subrecipient or Successful Applicant of the decision to impose sanctions by official letter. The Subrecipient or Successful Applicant shall have the ability to appeal the decision following the process described on the CDBG-DR website.

16.10.4.4 APPEAL PROCESS

As further detailed on the CDBG-DR website, if a Subrecipient or Successful Applicant disagrees with a finding, the fact specific requirement of the finding, or the accompanying corrective actions or sanction(s) – that appears in the MR – that follow, therefrom, the Subrecipient or Successful Applicant may appeal the disputed decision no later than twenty (20) calendar days from the date of issuance of the MR unless the 20th calendar day falls on a weekend or State or Federal holiday, in which case, Subrecipient's or Successful Applicant's request for appeal is due by 5pm CST the next business day.

A Subrecipient or Successful Applicant may not appeal the methodology and standards found within the applicable laws, regulations, policies and procedures, which are used to identify the finding(s) of noncompliance and establish the resulting corrective action(s) and/or sanction(s).

The Compliance Team Lead, with the support of the Disaster Recovery Manager, will have thirty (30) calendar days to review the Subrecipient's or Successful Applicant's request for appeal and supporting evidence to determine if the original determination will stand or be repealed. The Compliance Team Lead may consult with DED's Legal team or the Disaster Recovery Division Director, where appropriate.

16.11.5 MONITORING REPORT CLEARANCE LETTER

Once the Compliance Team has determined that all corrective actions have been satisfied by the Subrecipient or Successful Applicant, a **Monitoring Report Clearance Letter** (MRC) will be generated. After this letter is generated and provided to the Subrecipient or Successful Applicant, the monitoring will be officially closed out. After the MRC has been provided to the Subrecipient or Successful Applicant, the Compliance Team Lead and Disaster Recovery Manager will update the file with the MRC. The MRC will state the date of the monitoring and address the number of findings and/or concerns, date of final response, and state that all identified issues have now been resolved and the monitoring is now complete.

Depending on the status of project activities, this MRC may also include additional instructions for final reporting or other required documentation (e.g., second public hearing documentation or final planning product) necessary to initiate closeout process and prior to issuance of certificate of closeout.

16.11.6 RECORDKEEPING

DED's policies on recordkeeping are further described in **Chapter 17: Recordkeeping and Data Management**. Specifically, DED and its Subrecipients and Successful Applicants are required to meet – at a minimum – the requirements covered in 24 CFR § 570.490 (a) and (b) and 2 CFR § 200.334, as well as CDBG-DR program specific requirements. Accurate and detailed records must be maintained in a manner that allows for easy access and provides enough information to make an accurate assessment on performance and compliance with all applicable regulations and requirements, either at the Federal or State level.

DED and its Subrecipients and Successful Applicants are required, at a minimum, to:

- Retain all books, records, accounts, documentation, and all other materials required by the SRA or funding agreement for a minimum period of three (3) years after DED notifies the Subrecipient or Successful Applicant that the HUD/DED grant(s) are closed.
- Permit applicable Federal and/or State entities and its representative(s) – as applicable – access to all files upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the SRA or funding agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

16.10.6.1 TRACKING FINDINGS AND CONCERNS

After monitoring activities are complete and the MRC is sent to the Subrecipient or Successful Applicant, the Compliance Team Lead and Disaster Recovery Manager must track findings and concerns identified and the required and/or recommended corrective action. The corrective actions or any Subrecipient and Successful Applicant appeals should be maintained until the corrective actions have been deemed satisfactory and the monitoring process has been completed. This will maintain a detailed compliance history to support records requirements in 24 CFR § 570.490(a).

16.10.6.2 SUBRECIPIENT OR SUCCESSFUL APPLICANT FILE

DED is required to maintain accurate monitoring records to support compliance with monitoring requirements of HUD Grantees. At the conducting of the Annual Risk Assessment and creation of the yearly monitoring schedule, the Compliance Team Lead and Disaster Recovery Manager will create a file that breaks down monitoring into:

- Award Year;
- Quarter (1, 2, 3, and 4);
- Within each quarter should be a Subrecipient or Successful Applicant specific file that maintains all correspondence and documented activities performed by the Compliance Team and CDBG-DR Team program staff.

These files should at a minimum contain:

- Notification Letters
- Entrance Conference Agenda – if applicable
- Checklist(s)
- TA – if applicable
- Exit Conference Agenda
- Monitoring Report and Letter
- Follow-up Monitoring Report and Letters (e.g., CAILs) – as applicable
- Monitoring Report Clearance Letter
- Any applicable communication between Monitor and Subrecipient or Successful Applicant

16.12 CONTRACTOR MONITORING

When considering contractors, the same federal, state, local, and CDBG-DR administrative and monitoring requirements that apply to Subrecipients and Successful Applicants may not apply to a contracted entity. Therefore, the checklist used to monitor Subrecipients and Successful Applicants may not be suitable to fulfill DED's contractor monitoring responsibilities. With that in mind, a **Contractor Monitoring Checklist** was developed to help DED fulfill its responsibility for monitoring Program Implementation Contractors.

The Contractor Monitoring Checklist is tailored based upon the particular contract executed between DED and the Program Implementation Contractor. This would include updating the checklist to include all requirements and deliverables associated with the contract scope of work as well as any relevant areas of concern.

The Contractor Monitoring Checklist includes a review of the following areas:

1. Contractual requirements
 - a. Administrative requirements
 - b. Scope of Work
 - c. Deliverables
2. Areas of Concern (as identified by the Monitor)
3. Labor

4. Civil Rights
5. Environmental
6. Financial Management
7. Property Management
8. Other Legal/Regulatory Requirements

16.12.1 SELECTING A DOCUMENTATION SAMPLE TO REVIEW

Using the Contractor Monitoring Checklist as a guide, the Monitor pulls samples of specific documentation to draw conclusions about an activity, process, or function. Samples are obtained through coordination with the particular entity being monitored and may consist of listings of projects, case files, program activities/transactions, or financial information. The actual sample items may consist of specific records and information as requested and/or data or reports that are provided by the Program Implementation Contractor as part of ongoing reporting or other production requirements.

According to Appendix A of HUD Handbook 2000.04 REV-2 CHG-7,¹⁷ there are minimum sample sizes for attribute testing. The Monitor uses the guidance set forth in Appendix A of HUD Handbook 2000.04 REV-2 CHG-7 to determine the appropriate sample size for monitoring contractor activities.

16.13 MONITORING TOOLS

DED utilizes several monitoring tools to assist in the monitoring process of Subrecipients, Successful Applicants, and Program Implementation Contractors. Monitoring Tools are comprised of several documents, including:

- **General Monitoring Checklist**
- **Contractor Monitoring Checklist**

The **General Monitoring Checklist** is completed by DED to support the process of desktop and on-site monitoring. While completing this checklist, DED acknowledges it is important to make sure Subrecipients and Successful Applicants comply with all regulations governing their administrative, financial, and programmatic operations. It is also important to make sure

¹⁷ See <https://www.hudoig.gov/library/single-audit-guidance/hud-consolidated-audit-guide>.

Subrecipients and Successful Applicants achieve their performance objectives on schedule and within budget.

The Contractor Monitoring Checklist is further described in **Section 16.11: Selecting a Documentation Sample to Review**.

16.14 OTHER OVERSIGHT ACTIVITIES

As explained in section 1, this Plan, describes how DED oversees its Subrecipients and Successful Applicants in the implementation of the CDBG-DR Program funded by HUD grants. While monitoring is an integral management control technique, it is not the only ongoing process that DED uses to assess program progress, benefits, and other qualities of performance or compliance over time. Other oversight activities also enable the State to fulfill its oversight responsibilities.

These oversight responsibilities begin with a package of certifications and assurances the State makes to HUD about its continuing capacity to perform at the start of the grant cycle, especially with respect to grant management. They include internal and external reviews of the CDBG-DR Program progress toward recovery and resilience with appropriate attention to cross-cutting Federal requirements along the way. The topics of the Subrecipient and Successful Applicant reviews either correspond to the monitoring process described in the preceding sections or result from ongoing efforts, including periodic reporting from Subrecipients and Successful Applicants, DED program or financial reconciliation, and compilation of information for the Grantee (i.e., DED) QPRs.¹⁸

Additionally, this oversight involves independent, internal reviews by an auditor within DED, as well as a single audit for each Subrecipient and non-profit Successful Applicant conducted by an independent CPA firm exceeding the threshold set forth in 2 CFR § 200.501.

Consequently, this section is divided into three parts. The first broadly covers oversight of grant administration and overall program performance; the second relates to the wide range of cross-cutting Federal requirements; and the third involves independent auditing.

16.15 GRANT ADMINISTRATION AND COMPLIANCE

16.15.1 CERTIFICATIONS

A prerequisite to authorization to spend an awarded CDBG-DR grant is completion of a Certifications Package that seeks to establish that the Grantee possesses the wherewithal to manage a relatively large Federal award. The State typically completes this package as it plans use of a CDBG-DR grant(s), and it must update the contents as circumstances change. A required

¹⁸ As the HUD grantee, DED is responsible for reporting progress on all activities via DRGR QPRs. See also **Section 16.5 Capacity and Risk Assessment Procedures**.

checklist is usually provided in connection with each Congressional appropriation that covers grant allocation. An example of this checklist appears [here](#). DED must ensure that the accompanying assurances the State makes to HUD remain valid, including the involvement of Subrecipients and Successful Applicants which assist in carrying out the CDBG-DR Programs.

16.15.2 PROGRAM MANAGEMENT

As previously mentioned, the State has made assurances to HUD that it will responsibly manage its grant programs. Part of the Certification Package includes a plan for implementation which designates DED as the lead entity for coordinating Nebraska's CDBG-DR Program. For additional information, see **Chapter 3: Program Management Guide**. To properly manage the program, DED has adopted a wide range of policies and procedures for each program component (Affordable Housing Construction, Infrastructure, Homeowner Assistance, and Planning), as well as Federal cross-cutting policies and procedures.

DED periodically verifies that such overall program and grant management policies and procedures are in place to ensure its continuing capacity to implement grant programs. Likewise, DED takes similar steps to determine that those Subrecipients and Successful Applicants, which assist DED in carrying out the program, can properly perform their roles.

Although it has not assigned responsibility for program management to any department or agency other than DED, the State recognizes that Grantees may need to work with staff at other agencies outside of their own to administer and/or implement various aspects of programs or projects. Other public agencies, commissions, or authorities that are independent of DED (as the administrating agency for the State) are public agencies. If they were to undertake HUD-assisted activities in cooperation with DED they would be subject to the same requirements as are applicable to the State's Subrecipients unless otherwise stated in a Federal Register Notice.

16.15.3 PROGRAM PROCESS

Among the assurances that the State provides is that DED has "proficient procurement processes" in place to prevent fraud, waste and abuse. The State must follow those processes as outlined in their Certifications or submit updated Certifications if/when they are no longer valid. As part of its oversight, DED must periodically compare the content of the Certification Package with current program processes during implementation of the CDBG-DR program. Likewise, for Subrecipients and Successful Applicants, the schedule of performance (i.e., the performance plan and project milestones) contained in the SRA or funding agreement must be compared to the actual progress to date (both in actual results and funds expended) to ensure the program is progressing in accordance with the time frame established. Such information is also used for DED to update QPRs submitted to HUD within the DRGR system, including, but not limited to, the following:

- Activity Progress
- Expenditures

- Actual accomplishments by performance measure
- Beneficiary data

The Disaster Recovery Division Director and the Disaster Recovery Manager provides oversight on the DRGR monitoring module content and entries, and the Disaster Recovery Division Director is responsible for coordinating submission of QPRs.

16.15.4 PROGRAM BENEFIT

All CDBG-DR program(s) activities must meet a need and address an impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must:

- Be CDBG-eligible (or eligible under a waiver or alternative requirement);
- Meet a national objective; and
- Meet an unmet recovery need that addresses a direct or indirect impact from an eligible disaster in a presidentially declared county.

Eligible activities generally fall into one of the following categories: housing; restoration of infrastructure; economic revitalization; or administration and planning.

As described above, to qualify for CDBG-DR funding, activities must meet one of three national objectives set forth in section 104(b)(3) of the HCD Act:

- Benefit low-and-moderate-income persons;
- Aid in the prevention or elimination of slums or blight; or
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs (Urgent Need).

DED reviews program files to ensure the appropriate CDBG national objective has been met and the methodology of determining eligibility was sound. As part of oversight, the State reviews PSRs submitted by the Subrecipient or Successful Applicant to determine how many beneficiaries have been served and compares the actual number to the number projected in the approved funding application, SRA, or funding agreement for a wide range of projects. Activities that do not meet the defined national objective may be determined to be ineligible and a repayment of funds may be required as defined in the SRA or funding agreement.

16.15.5 ELIGIBLE ACTIVITIES

In accordance with 24 CFR Part 570 and HCDA section 105(a), DED must utilize HUD funding on eligible activities. Under DED's programs, such eligible activities may include, but are not limited to, the following:¹⁹

- Housing activities (rehabilitation and construction)
- Acquisition of real property
- Public facilities and improvements
- Public services
- Clearance
- Code enforcement
- Planning and capacity building
- Down payment and closing cost assistance
- Gap financing
- Housing counseling
- Activities carried out through nonprofit development organizations

With each eligible activity, the Compliance Team and CDBG-DR Team program staff will review applicable project costs paid with HUD grant funding to ensure it was an eligible cost under the activity as well as confirm that certain performance measures and project functionality requirements were documented and verified in order to meet an eligible activity. This may include site photos of the completed project, other permitting certificates indicating project completion, or other measurable documentation indicating an activity was carried out to completion.

For housing activities, the review may include on-site visits to DED-selected properties. On-site inspections include a review of the rehabilitated unit for property standards compliance, and assessment of the quality of the work, reasonableness of cost, and compliance with applicable laws and requirements. The Compliance Team also verifies that the number and location of units agree with the application.

¹⁹ Not all activities listed herein may be eligible under the DED CDBG-DR programs. Consult the most current version of the of the State's Action Plan for a list of eligible activities under DED's CDBG-DR Programs.

For all other non-housing projects, DED will monitor Subrecipient or Successful Applicant records to ensure projects funded are compliant with the related regulations for eligible costs and project completion. Additionally, a Subrecipient's or Successful Applicant's contractor or vendor will need to maintain similar records to ensure the services they provide are in compliance with the related regulations.

16.16 CROSS-CUTTING FEDERAL REQUIREMENTS

The second part of the oversight activities relate to the wide range of crosscutting Federal requirements. The topics arise in respect to Subrecipient and Successful Applicant reviews which correspond to the monitoring process described in the preceding sections or result from periodic reporting from Subrecipients and Successful Applicants and compilation of information for the Grantee QPRs. The Compliance Team monitors Subrecipient and Successful Applicant compliance with applicable cross-cutting Federal requirements by utilizing the Monitoring Tools outlined in **Section 16.8: Monitoring Procedures**.

16.16.1 FINANCIAL MANAGEMENT

DED personnel determine compliance with the financial management requirements outlined in **Chapter 4: Financial Management**. In particular, the review determines if records are maintained in compliance with 2 CFR Part 200 and 24 CFR Part 570, unless modified by waivers and alternative requirements issued by HUD via applicable Federal Register Notices, and applicable State requirements. DED personnel review ledgers, invoices, cancelled checks, bank statements, and funds requests to verify that all Subrecipients and Successful Applicants use grant funds for eligible expenses and to ensure costs are reasonable and necessary. Subrecipient and Successful Applicant financial management systems are evaluated for compliance with applicable regulations under both 24 CFR Part 570 and 2 CFR Part 200. Key requirements under these regulations include but are not limited to:

- Having accurate, current, and complete disclosure of the financial results of each award;
- Identifying all awards received and expended under the program where they were received;
- Identifying the source and application of funds; and
- Maintaining records to include information related to authorizations, obligations, unobligated balances, assets, income, and interest.

For CDBG-DR, DED uses three management systems to track and report grant expenditures: DRGR, the State's accounting system, EnterpriseOne, and the system of record, AmpliFund. Further details on financial management are referenced in **Chapter 4: Financial Management**.

16.16.2 PROGRAM INCOME

DED is required to treat any funds received and retained before closeout of the grant that generated them as program income; consequently, such program income is subject to all applicable requirements of 24 CFR Part 570. Program income is any gross income a Subrecipient or Successful Applicant receives that is generated from the use of CDBG funds. Where program income is produced, DED will handle said program income in accordance with **Chapter 7: Program Income**.

16.16.3 ENVIRONMENTAL REVIEW

Every HUD-assisted project must be in compliance with the National Environmental Policy Act (NEPA), HUD's implementing regulations at 24 CFR Part 58, and other related Federal and State environmental laws. Pursuant to 42 USC § 5304(g)(1) and 24 CFR § 58.4, the State of Nebraska assumes the responsibility for environmental reviews, decision-making, and actions that would otherwise be carried out by HUD under NEPA and other statutes.

DED is responsible for ensuring compliance with environmental review responsibilities under NEPA. Responsible entities must complete the environmental review prior to obligating any funds to the project, regardless of the source. This review includes determining the level of review that applies; completing the required procedures, finding forms, applicable supporting documentation, and necessary notices; and ensuring public participation and actions are part of the ERR and available at the local government office for public review. DED personnel make sure that required mitigation or follow-up actions triggered by the environmental review as indicated by DED correspondence have been carried out.

Further details on environmental review are referenced in **Chapter 8: NEPA Policies and Procedures**.

16.16.4 PROCUREMENT

Procurement and contract activities taken in relation to programs under the HUD grant agreement are to be in compliance with 2 CFR Part 200 and relevant State law and local procurement laws. DED and its Subrecipients and non-profit Successful Applicants are required to have controls and policies regarding how procurement will be conducted and allowable contract activities. When the Compliance Team conducts compliance reviews, the procurement and contract portion will focus on:

- Conflicts of Interest;
- Procurement type is the most appropriate method performed for goods and services procured;
- Contract is in compliance with applicable regulatory standards and appropriate for the services and/or goods procured; and

- All federally required contract provisions are contained within the contract.

Procurement and contract activity will be reviewed during monitoring to ensure all standards were met and to ensure the overall procurement and contract process ensures systematic compliance.

Further details on procurement are referenced in **Chapter 5: Procurement**.

16.16.5 LABOR STANDARDS AND SECTION 3

Construction contracts that meet the requirements for Davis Bacon and Related Acts (DBRA) are subject to labor compliance standards. Labor activities must meet the minimum requirements set in 29 CFR Part 5, applicable HUD labor standards, and any CDBG-DR program specific labor requirements. When the Compliance Team conducts reviews of projects that trigger DBRA requirements, Monitors will review all activities conducted during the construction services bid process and contract. The Monitors will review activities to ensure:

- Appropriate Prevailing Wage Rates were used;
- Workers are appropriately classified;
- Review of certified payrolls; and
- Applicable processes were followed, e.g. restitution and liquidated damages.

In addition to labor standards, Monitors will also ensure that Subrecipients and Successful Applicants have complied with Section 3 requirements set forth at 24 CFR Part 75 and are actively complying with Federal, State, and CDBG-DR program requirements and the Subrecipient's or Successful Applicant's Section 3 policy and plan.

Further details on Davis-Bacon and Section 3 are referenced in **Chapter 13: Section 3** and **Chapter 14: Davis-Bacon**.

16.16.6 EQUAL OPPORTUNITY AND FAIR HOUSING

Subrecipients and Successful Applicants of CDBG-DR Housing Programs must develop an Affirmative Fair Housing Marketing Plan. Subrecipient and Successful Applicant records must include an assessment of the effectiveness of the program's marketing and outreach efforts to ensure equal access to and non-discrimination in all program benefits. This includes a comparison between the Subrecipient's or Successful Applicant's general population, program applicants, and beneficiaries that received assistance or services. Applicants and beneficiaries that do not mirror the general population may indicate inadequate outreach. Compliance Team staff will review the documentation of actions taken.

Compliance Team staff also review hiring practices to see if they are exclusionary. If there are any outstanding complaints or lawsuits related to equal employment, then the Compliance Team staff will require additional details on the Subrecipient's or Successful Applicant's hiring practices.

Further details on equal opportunity and fair housing are referenced in **Chapter 11: Affirmatively Furthering Fair Housing**.

16.16.7 SECTION 504

DED personnel determine compliance with Section 504 of the Rehabilitation Act of 1973 regarding non-discrimination against qualified applicants and employees on the basis of disability and accessibility to program benefits, facilities, and services.

In accordance with Section 504 of the Rehabilitation Act of 1973, DED is required to have a Section 504 Plan for all HUD programs. Additionally, DED will provide grievance procedures that provide resolution to complaints for any action prohibited by Section 504. The Plan will be developed to protect qualified individuals with disabilities from discrimination, such as physical or mental impairment, including hearing, speaking, and visual impairments. It also ensures reasonable accommodations to the disabled.

16.16.8 UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT

As described in **Chapter 12: One-for-One Replacement Housing, Relocation, and Real Property Acquisition**, all federally funded property acquisition or other activities which involve displacement or relocation (temporary or permanent) of low-income households or which involve the demolition or conversion of residential units occupied by low income households must adhere to the requirements of two Federal laws – Section 104(d) of the Housing and Community Development Act of 1974, as amended, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) as amended – and their implementing regulations.

The URA further contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program in which HUD financial assistance is provided. The implementing regulations, 49 CFR Part 24, include steps which must be taken with tenant occupants, including those who will not be impacted by the HUD assisted activity. DED will monitor any project that includes acquisition and relocation to ensure the Subrecipient or Successful Applicant is in compliance with the regulations under the URA and Section 104(d).

Further details on Section 104(d) and the URA are referenced in **Chapter 12: One-for-One Replacement Housing, Relocation, and Real Property Acquisition**.

16.16.9 DUPLICATION OF BENEFITS

As outlined in **Chapter 18: Duplication of Benefits**, many Federal and State agencies are involved in responding to major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). The Stafford Act includes a provision addressing duplication of benefits (DOB) that applies to all Federal agencies administering financial assistance for emergency response and long-term recovery. CDBG-DR awards are subject to these requirements. Under the requirements of Section 312 of the Stafford Act (42 USC

5155), CDBG-DR Grantees must consider certain aid received by Subrecipients and Successful Applicants in determining the amount of assistance that can be granted.

DED will monitor CDBG-DR programs and projects to ensure compliance with the rules and regulations surrounding DOB. Further details on DOB are referenced in **Chapter 18: Duplication of Benefits**.

16.16.10 RECORDKEEPING AND DATA MANAGEMENT

As further described in **Chapter 17: Recordkeeping and Data Management**, in accordance with 24 CFR § 570.490, DED and its Subrecipients and Successful Applicants must establish and maintain such records as may be necessary to facilitate review and audit by HUD. DED personnel will review all program recordkeeping, timeliness of reporting, program files, Subrecipients' and Successful Applicants' ability to work within a designated time frame, and the effectiveness of the Subrecipient's or Successful Applicant's management system (see **Section 16.10.6: Recordkeeping**).

Further details on recordkeeping and data management are referenced in **Chapter 17: Recordkeeping and Data Management**.

16.17 AUDITING

16.17.1 NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

The Nebraska Auditor of Public Accounts (APA) is charged with providing independent, accurate, and timely audits, reviews, or investigations of the financial operations of Nebraska State and local governments. The APA provides information to all policymakers and taxpayers through written reports and budget and audit databases.

16.17.2 INTERNAL AUDIT OF DED

DED has an Internal Auditor within the Compliance Team. The Internal Auditor will conduct ongoing audits of internal processes to ensure the grant meets all Federal compliance standards as well as to determine the internal controls are operating effectively and efficiently and are designed to detect and deter fraud, waste, and abuse. The Compliance Team conducts audit engagements in accordance with applicable Federal and State laws and regulations that include, but are not limited to, 2 CFR Part 200 and Federal Register Notices. In addition, the Compliance Team audits follow International Standards for the Professional Practice of Internal Auditing by the Institute of Internal Auditors and Generally Accepted Government Auditing standards (GAGAS) when applicable. This ongoing internal DED audit process ensures that the Federal and State compliance standards are met, and that DED follows standard operating procedures for grant implementation.

16.17.3 SINGLE AUDIT REQUIREMENTS

As further described in **Chapter 6: Auditing**, in accordance with 2 CFR Part 200, Subpart F, non-federal entities are required to track Federal funds awarded to Subrecipients and non-profit Successful Applicants each year. Subrecipients and non-profit Successful Applicants who spend \$750,000 or more in Federal awards during a fiscal year are required to have an audit conducted in accordance with 2 CFR § 200.501. Subrecipients and non-profit Successful Applicants who spend less than \$750,000 are exempt from the audit requirements, however, must submit written notification of exempt status to DED and records must be available for review or audit.

Expenses must be reported on a Schedule of Expenditures of Federal Awards (SEFA), submitted as a supplemental schedule to the entity's financial statements, listed separately by federal program. Each federal program must be identified by the CFDA or Assistance Listing number, or other unique identifier. This determines whether the entity meets the threshold for single audit.

TOOLKIT LIST

The following documents for **Chapter 16: Monitoring and Compliance Plan** are available on the [Toolkit section of DED's website](#):

- Appointment Log
- Sample Annual Risk Assessment Worksheets
- Contractor Monitoring Checklist
- Corrective Action Incomplete Letter
- Document Request Checklist
- Entrance Conference Agenda
- Exit Conference Agenda
- General Monitoring Checklist
- Initial Capacity Assessment Document Collection Checklist
- Initial Capacity Assessment Worksheet
- Monitoring Contact Sheet
- Monitoring Notification Letter
- Monitoring Report Clearance Letter

17 RECORDKEEPING AND DATA MANAGEMENT

17.1 POLICY OVERVIEW

The State of Nebraska’s Department of Economic Development (DED) is responsible for ongoing oversight and monitoring of all programs funded by the CDBG-DR program. Pursuant to federal and state regulations, this chapter addresses responsibilities regarding recordkeeping and data management.

This chapter is written as an extension of the policy articulated in the Certification of Proficient Controls, Processes, and Procedures for CDBG-DR Public Law 116-20 Grant. This chapter provides additional detail to expand upon the processes described within the certifications and supersedes the procedures articulated within said certifications. These procedures are designed to ensure transparency, accountability, and compliance for data collection across the CDBG-DR programs and set clear expectations for federal, state, and local stakeholders on what information will be gathered throughout the lifecycle of program activities.

17.2 FEDERAL REQUIREMENTS

Recordkeeping requirements are articulated in the Federal Register (FR) published on February 9, 2018 (83 FR 5844) regarding the State of Nebraska’s responsibility to, “maintain records about each activity funded” through CDBG-DR funds.¹ Specifically, to comply with the FR regulation, the Grantee (i.e., DED) must:

- “Provide reasonable and timely access to information and records relating to the Action Plan and to the Grantee’s use of grant funds;”²
- “Maintain a public website that provides information accounting for how all grant funds are used and managed/administered;” and
- “Establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG-DR funds.”

Additional recordkeeping requirements directly related to maintaining environmental review records, as described in 24 CFR § 58.38. This includes:

¹ 83 FR 5844 at 5851.

² See **Chapter 17 Addendum: Federal Register References** and 83 FR 5844 at 5854.

- “The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR) and shall be available for public review;”
- “The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision-making and actions pertaining to a particular project of a recipient;” and
- “The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents.”³

These recordkeeping requirements are consistent with the policies articulated within **Chapter 8: National Environmental Policy Act** for the CDBG-DR program.

DED manages data collection and recordkeeping in accordance with the FR and applicable Federal and state requirements. As it relates to locally implemented projects, Successful Applicants and Subrecipients are required to report specific data to DED as a part of regular program activities, as well as when requested by DED during monitoring (see also **Chapter 16: Monitoring and Compliance Plan**).

DED makes all records available to local stakeholders (see above reference to 83 FR 5844), as well as HUD, the Office of Inspector General (OIG), and the General Accounting Office, which have the right to access any pertinent books, records, accounts, documents, papers, and other property that is relevant to the CDBG-DR grant, upon request.

17.2.1 FEDERAL REPORTING REQUIREMENTS

DED’s recordkeeping requirements are required to comply with records requirements pursuant to 24 CFR § 570.490 which include:⁴

- “Establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG funds under 24 CFR § 570.493.”
- “Keep records to document its funding decisions reached under the method of distribution described in 24 CFR 91.320(j)(1).”
- “Make entries into [DRGR system] in a form prescribed by HUD to accurately capture the state’s accomplishment and funding data, including program income, for each program year.”

DED’s standard practices for record retention and access must be maintained per the regulations set forth in 24 CFR § 570.490 and 2 CFR Part 200, Subpart D.

³ 24 CFR § 58.38.

⁴ 24 CFR § 570.490.

HUD further specifies reporting requirements for CDBG-DR Grantees in 83 FR 5844 at 5853, specifically, that Grantees (i.e., DED) must:

- “Submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter;”
- Within 3 days of submission to HUD, [post] each QPR ... on the grantee’s official website. In the event the QPR is rejected by HUD, the grantee must post the revised version;” and
- The Federal Funding Accountability and Transparency Act (FFATA) requires recipients to report Subrecipient and Successful Applicant information to the FFATA Subaward Reporting System (FSRS).

For additional information about DRGR and FFATA see **Section 17.10.2: Disaster Recovery Grant Reporting System**, and **Section 17.11: Federal Funding Accountability and Transparency Act**, respectively.

17.3 STATE REQUIREMENTS

DED’s recordkeeping, data management, and information sharing practices are conducted in compliance with the State of Nebraska’s Freedom of Information Act (FOIA) laws, including:

- Nebraska Open Meetings Act (Nebraska Statutes § 84-1407 et seq.); and
- Nebraska Public Records Law (Nebraska Statutes § 84-712.01 et seq.).

DED requires that records be transferred to the State Records Center and be maintained for a minimum of ten (10) years. This is a more stringent requirement than what is set forth in 2 CFR 200 regarding record retention, which requires record maintenance for a three (3) year period. DED will maintain compliance with the more stringent ten-year standard for long-term document retention.

In order to maintain this standard without putting undue burden on Subrecipients and Successful Applicants, DED will facilitate the file transfer to the State Records Center no later than three (3) years after grant closeout with HUD. By doing so, Subrecipients and Successful Applicants will be held to the HUD-defined three (3)-year standard, and DED will then carry out the State’s ten-year requirement (see also **Section 17.8: Retention**).

These laws are relevant to public meeting conduct and public access to records maintained on the part of all CDBG-DR program activities.

17.4 ROLES AND RESPONSIBILITIES

Recordkeeping and data management will be administered by DED, with support from partner agencies supporting program implementation. The Nebraska CDBG-DR program will work

collaboratively with state implementation partners to support consistent delivery and progress in recovery efforts. DED expects direct data and information sharing to be used as a component of all programs, and particularly the Infrastructure Match Program, Affordable Housing Construction Program, and Risk Awareness Planning Program. Specific requirements relating to each of these partnerships are described in the appropriate agreements. General Recordkeeping and Data management

DED is responsible for regular information and data collection for programs implemented directly by the State. DED will also manage centralized recordkeeping across Successful Applicants and Subrecipients, who are responsible for collecting data directly from program beneficiaries. DED stores, evaluates, and shares all data and records in compliance with HUD, State, and Federal requirements, as described herein.

Regular activities and data collection will be primarily managed through AmpliFund, DED's system of record.

DED will conduct regular monitoring of Successful Applicant and Subrecipient activities to ensure CDBG-DR programs:

- Maintain a clearly defined process for acquiring, organizing, storing, retrieving and reporting information about CDBG-DR funded activities; and
- Have a clearly identified person(s) who is properly trained and supported to maintain responsibility for recordkeeping and reporting tasks as articulated in this chapter.

Data will be used to inform regular reporting to HUD and, upon request, the OIG and General Accounting Office. DED is responsible for regular quarterly performance report (QPR) submission to HUD through DRGR, which HUD uses to monitor data and applications.

17.4.1 SUBRECIPIENT AND SUCCESSFUL APPLICANT RESPONSIBILITIES

In order to meet federal and state requirements, Successful Applicants and Subrecipients are required to maintain a full and current set of all program-related documents at their primary office location and available upon request. This includes maintaining compliance with the following:

- Successful Applicants and Subrecipients are responsible for maintaining all CDBG-DR files on-site at the Subrecipient's or Successful Applicant's customary place of business, available for review upon request by DED or other entities. Successful Applicants and Subrecipients must be familiar with and adhere to all regulations of FOIA, as appropriate.
- Successful Applicants and Subrecipients must designate a person responsible for records management. If the Subrecipient or Successful Applicant relies on an electronic recordkeeping system, contingency plans for data recovery and access must be part of their policies and procedures.

Successful Applicants and Subrecipients are required to maintain records as required by 24 CFR § 570.506. Additional details regarding specific documents and recordkeeping systems that should be maintained are provided below in **Section 17.12: Record Types**.

Although the specific documentation maintained may vary depending on the type of project or activity (e.g., infrastructure, housing), Subrecipients and Successful Applicants must maintain comprehensive, up-to-date project files. The files should cover all aspects of the project, beginning with application, eligibility, and cost allowability and ending with program closure. Subrecipients and Successful Applicants must keep files that contain Personally Identifiable Information (PII) and sensitive PII, such as social security numbers, in a secure place.

17.4.2 PROGRAM-SPECIFIC RESPONSIBILITIES

For all CDBG-DR programs, specific data collection and reporting guidance are provided to Successful Applicants and Subrecipients in the relevant Program Guides, which can be referenced below:

- Infrastructure Match Program Guide
- Affordable Housing Construction Program Guides
 - CDBG-DR LIHTC Gap Financing
 - Small/Non-LIHTC Rental Production
 - Homeownership Production
- Homeowner Assistance Program Guide
- Risk Awareness Planning Program Guide
- Housing Resilience Planning Program Guide

17.5 PROCEDURES FOR DATA AND RECORD MANAGEMENT

Accurate recordkeeping and data management are crucial to the successful management of CDBG-DR funded activities. This section describes the processes and systems that will be used to manage data and recordkeeping in four phases:

1. **Collection and Creation:** Successful Applicants and Subrecipients create and submit application information. Documentation associated with a project or activity should tell a complete story of project eligibility, from application to closeout. Data is used to inform reporting to HUD.

2. **Maintenance and Sharing:** DED uses AmpliFund to organize and collect all relevant documents and safeguard PII and other sensitive information from unnecessary disclosure.
3. **Retention:** DED retains all documents for at least ten (10) years following HUD's grant closeout, according to the relevant laws.
4. **Disposition:** DED safely disposes of documents after they no longer need to be maintained.

17.6 COLLECTION AND CREATION

17.6.1 DATA COLLECTION

DED will collect data through two primary methods:

1. Data and information sharing with state partners; and
2. Direct data collection from Successful Applicants and Subrecipients. Data will be maintained in AmpliFund, which is the CDBG-DR program's primary system of record.

17.6.2 PERFORMANCE REPORTS



DED requires Subrecipients and Successful Applicants submit quarterly PSRs to DED giving updates on every open project. The **Sample Project Status Report (PSR) Template** gives the range of information to be submitted, though actual questions will depend on the program and what stage the project is in that quarter. All PSRs will be submitted in AmpliFund.

HUD requires submission of performance reports that are due on a quarterly basis, which are predominantly managed through Quarterly Performance Reports (QPRs) to capture the progress of CDBG-DR grant activities. As Grantee, DED reports on activities it directly administers and uses data collected and submitted by Subrecipients and Successful Applicants in their PSRs to submit QPRs through the DRGR system on a set, quarterly schedule. Much of the data in a QPR is automatically generated by AmpliFund, but each report requires the DED Program Manager to write one or two sentences for the Activity Progress Narrative.

The QPR must relate back to the activities expressed in the CDBG-DR approved application. The QPR must accomplish the following:

- Update Subrecipient/Successful Applicant race/ethnicity and income data, if applicable;
- Report baselines (one time only) and update values per the frequency outlined in the Action Plan (Outcome Value Activities⁵ only);
- Update performance measures as accomplishments are made;
- Report CDBG-DR expenditures;
- Report direct leverage expenditures;
- Report supporting leverage expenditures;
- Enter progress narrative; and
- Enter the actual completion date (when the activity is completed).

DED submits DRGR QPRs on the following schedule:

Reporting Period	Subrecipient/Successful Applicant Submission Deadline to DED	DED Submission Deadline to HUD
January 1 – March 31	April 15	April 30
April 1 – June 30	July 15	July 30
July 1 – September 30	October 15	October 30
October 1 – December 31	January 15	January 30

17.7 MAINTENANCE AND SHARING

Well-managed records help entities assess the impact of programs, reduce redundant efforts, and share knowledge within and across the organization. Records support the principles of transparency. As a Grantee, DED will comply with applicable Federal, state, and local rules and regulations related to record management.

⁵ Outcome Value Activities refer to quantitative metrics that show how the project is impacting a community goal articulated by the community, such as expected reduction in damage expenses from a 100-year flood event.

17.7.1 RECORDS

Records are kept to document compliance with program requirements and Federal, State, and local regulations—including 24 CFR § 570.490 or as required by applicable laws and regulations under 24 CFR § 570.487, 24 CFR § 570.488, and 24 CFR § 570.502(a)(7)—and to facilitate audit reviews by HUD. CDBG-DR records are subject to FOIA.

For each CDBG-DR-funded activity, records must contain reliable and up-to-date information. At a minimum, the records must include:

- Copy of the associated Subrecipient Agreement (SRA) between DED and the Subrecipient or Funding Agreement between DED and the Successful Applicant;
- Full description of activities undertaken assisted with CDBG-DR funds;
- Documentation that all activities undertaken meet at least one of the criteria for National Objectives, as set forth in 24 CFR § 570.208;
- Documentation of determination of eligibility of all activities;
- Documentation of compliance with citizen participation requirements, where applicable;
- Documentation of acquisition, improvement, use, or disposition of real property acquired or improved with CDBG-DR assistance;
- Documentation of compliance with all applicable HUD cross-cutting requirements (such as Environmental Review, Davis-Bacon, Section 3);
- Financial records as required by 2 CFR Part 200, 24 CFR § 570.502, and State requirements, which include:
 - Current authorizations and obligations of CDBG-DR funds;
 - Unobligated balances (funds remaining available for distribution);
 - Assets and liabilities;
 - Program income, if any;
 - Actual outlays or expenditures, with a breakdown of the grant program the funds were derived from;
 - Clear evidence indicating the use of program funds belongs to the eligible activity; and
 - Evidence each expenditure is necessary, reasonable, and directly related to the project;

Furthermore, for each CDBG-DR funding award, each organization must have the accounting records:

- Chart of accounts, which includes general assets, liabilities, expenses and revenues;
- Cash receipts and disbursement journal;
- Payroll journal;
- General ledger; and
- Original contracts and procurements.

In addition to the above requirements, construction project files must also contain the following information:

- Full description of the project;
- Project budget;
- Evidence of obligated and committed funding (all sources);
- Work specifications;
- Bid documents, including the RFP, cost estimate, evidence of contractor solicitation, scoring, evidence of non-debarment, and selection;
- Davis-Bacon prevailing wage determination;
- State prevailing wage determination;
- Weekly payroll certifications and back up documentation;
- Payroll deduction authorizations;
- Employee field interviews;
- Progress and final inspections, including documentation of the Subrecipient's or Successful Applicant's periodic on-site inspections and final inspection;
- Change orders, including evidence of necessity and approval prior to work being completed;
- All correspondence related to construction; and

- Progress and final disbursements records. Files must contain documentation that payments were paid only for completed work, and data in the project file must agree with the project financial records.

Each project or case file should include documentation of the National Objective being met, the characteristics and location of beneficiaries, the eligibility of the activity, the compliance with special program requirements, the allowability of the costs, and the status of the case/project.

17.7.2 WEBSITE MAINTENANCE

DED has a webpage with CDBG-DR information on DED’s website, located at <https://opportunity.nebraska.gov/>. The program-specific page is at <https://opportunity.nebraska.gov/programs/community/cdbg-dr/>.

At a minimum, the website is maintained to include:

Section	Required Information
Program Information	<ul style="list-style-type: none"> • Unmet Needs Assessment; • Action Plans and their amendments; • Current approved DRGR Action Plan and amendments; • Activity or program information for activities described in the Action Plan (high-level descriptions with links to program pages); • Press releases on programs and projects; • Citizen Participation Plan; • Link for Citizen Complaints, which DED receives via the CDBG-DR Citizen Complaint Form, ded.cdbgdr@nebraska.gov, or as described under the citizen participation section of its DR website; • Announcements of Public Hearings; • QPRs, posted first for public comment and then archived for the life of the grant; • Instructions for requesting information under the Nebraska Public Records law; • Anti-Fraud, Waste, and Abuse Policy; and • Names of all staff and their responsibilities and contact information.
Procurement Information	<ul style="list-style-type: none"> • State of Nebraska Procurement Manual; • DED’s CDBG-DR procurement policies and procedures; • Notice of services and goods the Grantee is procuring currently;

	<ul style="list-style-type: none"> • A summary of all procured contracts, including those procured by the Grantee or Successful Applicants and Subrecipients. Contract summary should include: <ul style="list-style-type: none"> ○ Contractor name; ○ Nebraska contract number; ○ Unique Entity ID;⁶ ○ Contracted by office; ○ Contract execution date; ○ Contract end date; ○ Total contract amount; ○ Amount of CDBG-DR funds; and ○ Brief description of the contract scope of work. • Information on HUD goals using Section 3 and minority- and women-owned businesses and a link to HUD's Section 3 Business Registry.
<p>Homeowner Assistance Program Information</p>	<ul style="list-style-type: none"> • List of Subrecipients who will implement the programs; • Links to those programs and contract information; • Details about who is eligible for assistance; • Timeline for receiving assistance; • Conditions of receiving funds; • Program overview, including goals and geographical focus of the program; • Instructions for applying for assistance; and • Appeals procedures for homeowners who do not receive assistance for which they believe they are eligible.
<p>Affordable Housing Construction Program</p>	<ul style="list-style-type: none"> • List of Subrecipients and Successful Applicants who will implement the programs; • Links to those programs and contract information; • Details about who is eligible for assistance; • Timeline for receiving assistance; • Conditions of receiving funds;

⁶ Consistent with HUD guidance, an active registration in the System for Award Management (SAM) is required to apply for an award and for DED to make a payment with HUD funds. Any entity applying for funds from DED (whether government, for-profit or nonprofit) must have a Unique Entity Identifier (UEI) (formerly known as a DUNS number). An entity must maintain an active listing on sam.gov to be eligible for an award, and throughout the term of any associated Subrecipient Agreement or Funding Agreement involving CDBG-DR funds. It is recommended that entities maintain a public (not private) listing. Entities not listed as public may experience application and payment processing delays.

	<ul style="list-style-type: none"> • Program overview for implementation in conjunction with the LIHTC program application, including goals and geographical focus of the program; • Program overview for implementation in conjunction with the program application managed by DED, including goals and geographical focus of the program; • Instructions for applying for assistance; and • Appeals procedures for homeowners who do not receive assistance for which they believe they are eligible.
Infrastructure Program	<ul style="list-style-type: none"> • Description of the program, including FEMA PA and HMGP Match; and • Overall budget, including the projects and their timelines.
Risk Awareness Planning Program	<ul style="list-style-type: none"> • Description of the program and its implementation in collaboration with NeDNR, NEMA, and, as applicable, other partner agencies; and • Overall budget and timeline.
Housing Resilience Planning Program	<ul style="list-style-type: none"> • Description of the program; • Data and information sharing for Subrecipients applying to and/or implementing the program; and • Overall budget, including awardees and associated timelines for plan development.
Contact Information	<ul style="list-style-type: none"> • Direct all inquires related to the CDBG-DR Program to the DED DR Team via ded.cdbgdr@nebraska.gov.

DED updates the website monthly or as necessary based on content the CDBG-DR team compiles and coordination with other DED teams. DED has a schedule to receive information for the website in a timely manner from the appropriate staff and Subrecipient and Successful Applicant points of contact.

17.8 RETENTION

Retention is a crucial piece of the overall information management strategy. Files must be complete, accurate, and orderly and should portray the program’s life, from its inception to its completion. DED maintains all records CDBG-DR Successful Applicants and Subrecipients do not manage. Successful Applicants and Subrecipients maintain project-related documentation, including financial records, supporting documents, and statistical records associated with grant funds as established in this chapter, for three (3) years after DED closes the contract with HUD. The record retention period for Subrecipients and Successful Applicants does *not* begin when the SRA or funding agreement between the Subrecipient and/or Successful Applicant and State is closed.

Because this required record retention period is not an exact date or time period, DED notifies Successful Applicants and Subrecipients when the program has been closed with HUD and includes the end date of the record retention period. As described within **Section 17.3: State Requirements**, DED will facilitate data and records transfer to the State Records Center no later than three (3) years after grant closeout to support long-term record retention in compliance with the 10-year retention requirements set forth by the State. See **Section 17.7.1: Records** for a list of retention requirements.

17.9 DISPOSITION

A records disposition schedule documents the timeframe a record must be retained or preserved and provides the authority by which final disposition of a record may occur. DED maintains detailed accounting records to form the basis for the grant reports. The records will be retained and available for audit through DED for a period of three (3) years after grant closeout with HUD, after which records will be transferred to the State Records Center and retained for a minimum of an additional seven (7) years; a minimum of ten (10) years in total from the HUD grant closeout date. For purposes of the CDBG-DR grant, files are retained for ten years from grant closeout.

17.9.1 FILE TRANSFER AT CONTRACT CLOSEOUT

To ensure DED retains a complete record of information related to the CDBG-DR Program, DED will orchestrate file transfers from the Subrecipient and Successful Applicant to DED. DED will articulate the standard processes for file transfer within the SRA or Funding Agreement. File transfer will be conducted throughout program implementation, as Subrecipients and Successful Applicants will be required to provide supporting documentation and related contracts in order to complete draw requests. Ongoing file transfer will also be reviewed during the QPR process and associated monitoring process, which captures aspects of programmatic implementation and compliance.

Subrecipients and Successful Applicants are required to transfer files in the form of electronic files (e.g., pdf, docx, xlsx) to an online location prescribed by DED. While file transfer is ongoing throughout program implementation, Successful Applicants and Subrecipients are responsible for record retention during the agreement or contract period and as further described herein. Further, their obligations do not end until all closeout requirements are completed. Important aspects of agreement/contract closeout activities include:

- Determining how files are transferred from the Subrecipient and Successful Applicant to DED at the end of the agreement/contract period;
- Providing guidance outlining closeout requirements, six (6) months prior to the agreement/contract closeout; and
- Turning over programmatic records, reports, documents, or any other material resulting from CDBG-DR funded programs, projects, or activities to DED at the conclusion or termination of the agreement or contract, or earlier, at DED's discretion.

DED will conduct two (2) checks on Subrecipient and Successful Applicants records to ensure that all files have been successfully transferred prior to the end of the three-year Subrecipient and Successful Applicant retention period after DED's grant closeout with HUD: 1) first, at the end of the individual project, DED will request any miscellaneous files that have not yet been transferred to be provided; 2) second, at the end of the three-year period after the DED's grant closeout with HUD, DED will conduct a second request for files that have not yet been shared. At this stage, DED will then facilitate final transfer of those files to the State Record Center. (See also **Section 17.8: Retention.**)

17.10 DATA MANAGEMENT SYSTEMS

DED uses AmpliFund, a grants management system (GMS), to conduct the following tasks:

- Receive and award applications;
- Intake data for financials or reporting through custom forms and fields;
- Monitor projects for compliance;
- Maintain proper records at the grant, program, project, and Applicant level; and
- Provide standard file management and recordkeeping guidance as needed or requested for Subrecipients and Successful Applicants.

DED has created AmpliFund User Guides, which are policy and procedure documents, that detail how the department uses AmpliFund to manage data. These User Guides will provide specific instructions and guidance to Successful Applicants and Subrecipients on how they should use AmpliFund for CDBG-DR.

In accordance to federal requirements, DED uses the Disaster Recovery Grant Reporting (DRGR) System and the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).

Subrecipients and Successful Applicants may elect to supplement the use of their AmpliFund record with another electronic file management system. However, files requiring submission to DED must be submitted via AmpliFund or as otherwise prescribed by DED (e.g., Sharefile).

17.10.1 AMPLIFUND (GRANTS MANAGEMENT SYSTEM)

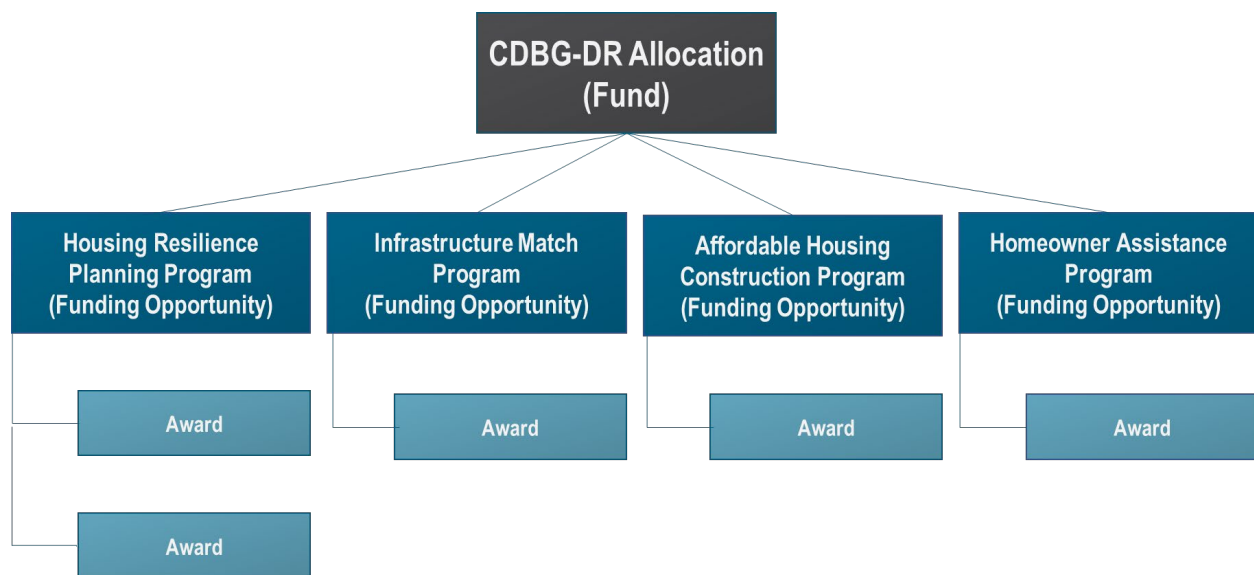
DED will use AmpliFund as its GMS to administer CDBG-DR funded activities. DED's AmpliFund GMS is a purpose-built, out-of-the-box, SaaS (Software as a Service) grants management software. It is specifically designed to capture pertinent data and provide the comprehensive, flexible, end-to-end grants management functionality needed by States and State Agencies to manage their grants.

DED uses the GMS’s default functionality to standardize data collection across all grant programs in certain aspects. By standardizing the collection of data associated with grant records, budgets, and project plans, DED can more efficiently monitor the status of its entire grant portfolio. More specifically, this data standardization allows DED to quickly report across all aspects of its grant portfolios and also gain insight into aspects of grant performance that are only available because of this form of data collection.

However, to meet program-specific requirements, DED configures AmpliFund by building unique applications for each program, creating custom fields and building custom forms. DED will configure the CDBG-DR in the GMS to collect and store data required by HUD from our Subrecipients and Successful Applicants. This data can then be accessed through the GMS’s reporting tools. DED will build reports that mimic DRGR’s screens to allow DED staff to enter necessary information into DRGR. Applicable reports, such as the QPR, will be built within the GMS and then reconciled or entered, as necessary, into DRGR.

DED’s first-step in managing CDBG-DR in their GMS will be to create a “fund” for each part of the CDBG-DR allocation: Administration, Action Plan, Risk Awareness Planning and Aid to Subrecipients and Successful Applicants. These “funds” can then be tied to a “Funding Opportunity”. The Funding Opportunity will be customized to each activity and will intake applications from potential Subrecipients and Successful Applicants. An “Award” will be created for selected applications. Subrecipients and Successful Applicants will then use the award to submit payment requests and report on progress.

Figure 1: Funding Structure



Each Subrecipient or Successful Applicant to a CDBG-DR activity will create an account (or use a previously existing account) in AmpliFund, which will be used throughout the lifecycle of their application or award. Within their account, Subrecipients and Successful Applicants will manage their staff as users and segment their roles to restrict their access to necessary information associated with their award. The Subrecipient and Successful Applicant will submit data to DED

using their account. DED staff can then view and process that information as needed. For example, the GMS will be used to intake and review applications; create award records for funded applications; intake and process disbursement requests; intake and process amendment requests; and for Subrecipient and Successful Applicant reporting and compliance. DED will also use AmpliFund to monitor its CDBG-DR funds, including administration funds and to compile data for entry into DRGR for HUD reporting.

Users will interact with AmpliFund on one of two sides:

- Applicant Portal, or the pre-award side, which houses applications for funding; and
- Recipient Portal, or post-award side, where Successful Applicants and Subrecipients submit payment requests and report on project progress. DED personnel can access and review Subrecipient and Successful Applicant submissions.

17.10.1.1 Applicant Portal

Applications are built on the pre-award side of AmpliFund, called the Applicant Portal. Each application has a project information page that includes key application information such as primary contact information, award ceiling (i.e., maximum award amount), and open and close dates.

Applicants use an existing account or register a new account to submit application information in the Applicant Portal. Depending on the Program, Applicants are required to fill out or upload specific forms or documents (e.g., project location map) to AmpliFund. There is a dedicated component of all applications for the Applicant to enter budget information. At any time in the process, Applicants can print and download the forms in their AmpliFund application.

User guides and how-to videos are available at <https://opportunity.nebraska.gov/amplifund/>, including program specific guides and FAQs.

17.10.1.2 Recipient Portal

After an award is made, DED creates the award in the Recipient Portal. Every award record has a standard award details page that provides key award information (e.g., amount of award, required matching contribution, matching contribution to date, approved invoices to date, grant manager, award start and end date, etc.). The award details page will also show the remaining grant funds available to request and remaining match requirement.

DED will create custom fields on the award details page, as necessary to collect pertinent information. DED will also create custom forms tied to the award record that the Subrecipient or Successful Applicant must complete.

To fulfill HUD requirements (e.g., NEPA/ERR, Davis-Bacon, or Section 3 requirements), Successful Applicants and Subrecipients must complete required reporting forms and upload any supplemental documentation to AmpliFund. Once completed and uploaded, DED can pull these HUD-required forms into a report to share with HUD or maintain as State records.

Subrecipients or Successful Applicants and DED will closeout and monitor awards through the GMS.

17.10.1.3 Submitting Expenses

Expense submission is described in general terms in **Chapter 4: Financial Management** and step-by-step within the AmpliFund User Guides. As defined within this chapter and associated SRAs and Funding Agreements, Successful Applicants and Subrecipients must submit expenses to DED using the following process:

- The Subrecipient and/or Successful Applicant submits an expense in AmpliFund, attaching all necessary supporting documentation;
- The DED Program Manager and Finance Team review documentation to ensure it refers to an eligible expense and is within the activity and project budget;
- Subrecipients or Successful Applicants will coordinate with DED staff for reimbursement through draws working through AmpliFund; and
- DED Finance validates these expenses against the total budget and requests payment from HUD.

For additional details, see **Chapter 4: Financial Management** and the applicable program's AmpliFund User Guide(s).

17.10.2 DISASTER RECOVERY GRANT REPORTING SYSTEM

HUD requires DED to use the online Disaster Recovery Grant Reporting (DRGR) system to set up the grant program. DRGR allows Grantees to access grant funds and report performance accomplishments for grant-funded activities. HUD staff can review activities, prepare reports to Congress and other parties, and monitor program compliance. HUD interacts with DED's data and program applications through DRGR.

HUD uses DRGR data to search for anomalies or performance problems that suggest fraud, abuse of funds, or duplication of benefits (DOB); to reconcile budgets, obligations, fund draws, and applicable administrative and public service limitations and the overall percent of benefit to LMI persons; and as a basis for risk analysis in determining a monitoring plan. Performance reporting in DRGR are called Quarterly Performance Reports (QPRs).

DED must set up each project and eligible activity, submit draw requests, provide QPRs, provide updates on monitoring actions, and report data on approved outcome metrics. Pursuant to the Grant Agreement between HUD and DED, DED will track oversight activities in DRGR, including summary information on its oversight of its CDBG-DR program related to:

- Monitoring visits and reports (e.g., indicating the number of Grantee oversight visits and reports),
- Audits, and
- Technical Assistance.

No PII shall be reported in DRGR. Successful Applicants and Subrecipients do not have DRGR access.

17.11 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

FFATA requires most recipients of new Federal funds awarded on or after October 1, 2010 to report on subawards/subcontracts/consortiums equal to or greater than \$30,000. This includes awards that are initially below \$30,000 but subsequent grant modifications result in an award equal to or greater than \$30,000. As the prime recipient of federal funds, DED will be responsible for reporting on behalf of Subrecipients and Successful Applicants to the FFATA Subaward Reporting System (FSRS), though these entities will be required to provide the necessary information to support FFATA reporting.

The FSRS can be accessed directly at www.fsr.gov, and will serve as the collection tool for data which will ultimately be distributed for publication and display on USASpending.gov. Grantees (i.e., DED) are required to register with FSRS, collect the necessary data from Subrecipients or Successful Applicants, and file subaward reports by the end of the month following the month in which the prime grantee awards any subaward greater than \$30,000.

FFATA requires a prime awardee (i.e., DED) to provide, for their Unique Entity ID and the Unique Entity ID of their sub-awardee(s), the names and total compensation of the five (5) most highly compensated officers of the entity if 1) the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards and 2) the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. All requirements must be met prior to DED's first payment to the Subrecipient or Successful Applicant.

Additional detail regarding these requirements is provided at the FFATA website.

17.12 RECORD TYPES

DED and its associated Subrecipients and Successful Applicants should establish and maintain at least five major categories of records:

- Administrative;

- Financial;
- Project;
- Reports; and
- Close-Out.

Questions and points of clarification regarding these recordkeeping systems should be directed to DED. Detailed information on recordkeeping can also be found in their respective Program Guides.

17.12.1 ADMINISTRATIVE RECORDS

Administrative files and records involve the overall administration of DED's and its Subrecipient's or Successful Applicant's CDBG-DR activities. They include:

- Description, geographic location, and budget of each activity;
- Eligibility and National Objective determinations for each activity;
- Personnel files and Subrecipient or Successful Applicant information, such as an organizational chart;
- For DED specifically, HUD monitoring correspondence;
- Pass-through entity agreements and monitoring;
- Fair Housing and Equal Opportunity records;
- Civil rights and citizen participation documentation, including documentation of Limited English Proficiency (LEP) initiatives and records; and
- Project files including environmental review records (ERR) and documentation of compliance with cross-cutting requirements (e.g., Davis-Bacon, Uniform Relocation Act, Section 3), as required by the applicable program.

17.12.2 SPECIAL POLICIES FOR SUBRECIPIENTS AND SUCCESSFUL APPLICANTS

Subrecipients and Successful Applicants are specifically required to maintain, at a minimum, the following files:

- Executed SRAs or Funding Agreements (as applicable);

- Documentation of compliance with cross-cutting requirements in project files (e.g., Davis-Bacon, Uniform Relocation Act, and Section 3), as described in applicable policies and procedures; and
- DED monitoring correspondence.

17.12.3 FINANCIAL RECORDS

Subrecipients and Successful Applicants are required to certify via the SRA or Funding Agreement that they will maintain proper financial records. Documentation for examination can include but is not limited to:

- Records;
- Papers;
- Documents; and
- Other materials related to the use of grant funds.

To ensure State and Federal compliance with audit requirements, a Notification of Annual Audit (NAA) Form must be completed summarizing all Federal expenditures within an organization's fiscal year.

Subrecipients and Successful Applicants are required to maintain documentation in AmpliFund through which all payment requests will be processed, as described in the Request for Payment User Guide. In order to process payment requests, a completed invoice package must be submitted containing, but not limited to the following, documents:

- Invoice package forms;
- Certifications; and
- Other supporting documentation.

Before payments can be received the following documentation must also be submitted through AmpliFund:

- Depository/Authorized Signatures Form; and
- State of Nebraska W-9 & ACH Enrollment Form.

17.12.4 PROJECT RECORDS

DED and its Subrecipients and Successful Applicants are required to maintain project files for all activities funded through CDBG-DR. Project files document the activities undertaken with respect

to specific individual beneficiaries, property owners, and/or properties. These include, but are not limited to:

- Any bids or contracts and all related procurement information;
- Procurement policies and procedures;
- Characteristics and location of the beneficiaries;
- Compliance with special program requirements (e.g., income verification records);
- Budget and expenditure information (including draw requests); and
- Status of the project.

17.12.5 REPORTING

DED and its Subrecipients and Successful Applicants are required to maintain records related to monitoring visits and standard reporting, including QPRs; in addition to conducting monitoring and compliance activities to ensure compliant use of CDBG-DR funds.

Chapter 16: Monitoring and Compliance Plan will be utilized to ensure State and Federal rules and regulations are being followed, to understand how to identify implementation issues and needs, to deliver technical assistance, to assist in quarterly reporting on CDBG-DR activities, and to evaluate Subrecipient and Successful Applicant financial management systems.

17.12.6 CLOSEOUT

To ensure DED retains a complete record of information related to the CDBG-DR Program, DED will orchestrate file transfers from the Subrecipient and Successful Applicant to DED. For further information regarding closeout activities see **Section 17.9.1: File Transfer at Contract Closeout**.

17.13 DATA PRIVACY AND SECURITY

DED, implementation partners, Subrecipients, and Successful Applicants shall take reasonable steps to ensure that all data collected through the CDBG-DR program is managed in compliance with the Privacy Act of 1974, as amended, and other federal privacy-related laws, guidance, and best practices.

DED will collect CDBG-DR data through its GMS, AmpliFund. The GMS is designed to provide government-level security of all data, including PII. The SRA and Funding Agreement details that Subrecipients and Successful Applicants are required to secure any PII they collect.

17.13.1 PERSONALLY IDENTIFIABLE INFORMATION

In the normal course of grant administration, DED and its Successful Applicants and Subrecipients may receive PII, which is information that can be used to distinguish or trace an individual's identity. Examples of PII include names, addresses, income verification documents, disability status, and employment status. This information can be linked or is linkable to a specific Applicant or beneficiary of CDBG-DR programs.

DED anticipates receiving PII information during the administration of housing recovery programs, such as:

- First and last names;
- Mailing or unusable addresses;
- Driver's license numbers or other identification numbers;
- Birth dates;
- Telephone numbers and email addresses;
- Financial and employment information; and
- Limited medical information (e.g., existence or type of disability).

Pursuant to the Privacy Act, DED, its Successful Applicants and Subrecipients, and its contractors take the following steps to protect PII:

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

DED's electronic files with PII are password protected; password access is limited to program staff only. AmpliFund users have unique login credentials; access for DED staff is restricted and maintained by agency-wide policies and procedures. DED releases records containing PII upon request, after verification by State auditor and other Federal or State agencies, for DOB analyses.

If records containing PII are subject to FOIA requests, such records shall only be released in accordance with State and Federal law. PII records will only be stored as long as is necessary.

17.13.2 PROTECTING PII

DED will avoid unsafe data management practices in order to mitigate potential breaches in data. Unsafe data management practices may include:

- Storing PII on unencrypted thumb drives or unsecured online applications (e.g., Google Sheets);

- Transmitting PII in unencrypted files using unencrypted email;
- Using a coworker's login and password;
- Leaving printouts containing PII in a conference room after a meeting;
- Failing to lock file cabinets or offices containing case files; or
- Discussing PII over the phone in a public place.

Paper copies and other physical media containing PII are also protected against unauthorized uses and disclosures. Anyone who records, uses, or processes PII on participants for a data system must secure the system with:

- Username and password protocols that meet industry standards for user authentication;
- Commercially available virus protection software that automatically scans and updates;
- Firewalls between the data system and other systems or networks outside the organization;
- Secure connections from approved computers and systems;
- Access controls for data systems and paper records in public areas;
- Back-up storage practices for disaster protection and recovery;
- Reformatting practices to delete data on data storage media; and
- Regular, systematic monitoring of data security practices and user access logs.

Additional data security practices can be put in place but only if they provide greater protections for all data in electronic and paper formats. Data systems must have documented procedures for responding to and reporting security breaches. Federal, State, or local laws may be relevant to the reporting of and response to any security breach.

17.13.3 ACCESS TO RECORDS

Representatives of HUD, the Inspectors General, the Comptroller General of the United States, or any of their authorized representatives have the right of access to any documents, papers, or other records pertinent to a CDBG-DR award to complete audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to DED's personnel for interview and discussion related to such documents. DED also provides citizens access to records regarding the use of CDBG-DR funds on DED's CDBG-DR website. DED protects PII in the public access of CDBG-DR records. Successful Applicants and Subrecipients are also required to make information on programs funded by CDBG-DR easily available to citizens and by any public requests.

17.13.4 USES AND DISCLOSURES

Once collected, DED, Subrecipients, and Successful Applicants have obligations about how PII information may be used and disclosed.

- **Uses** are internal activities for which DED, Subrecipients, or Successful Applicants interact with participant PII.
- **Disclosures** of PII occur when DED, Subrecipients, and Successful Applicants share PII with an external entity.

HUD supports sharing participant information (i.e., disclosures) provided that the information is disclosed securely and only for appropriate purposes. Uses and disclosures may be required by HUD (e.g., participants' access to their own information) or permitted by HUD (e.g., to provide services). HUD requires two mandatory disclosures:

- Participants' access to their own information; and
- Disclosures for oversight of compliance with data privacy and security standards.

In order to maintain compliance with these requirements, DED will maintain a "need to know" data management process, whereby data requests will specifically include that data that is required or needed in the disclosure request. Certain uses and disclosures may be prohibited or otherwise restricted by other Federal, state, or local laws.

17.13.5 PRIVACY AND SECURITY GRIEVANCES

DED will establish procedures for accepting and considering questions or complaints about data privacy and security policies and practices.

TOOLKIT LIST

The following documents for **Chapter 17: Recordkeeping and Data Management** are available on the Toolkit section of DED's website:

- Sample Project Status Report (PSR) Template

CHAPTER 17 ADDENDUM: FEDERAL REGISTER REFERENCES

This appendix contains the context for quotes from the FR published on February 9, 2018 (83 FR 5844):⁷

- **Availability and accessibility of the Action Plan.** “During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee’s use of grant funds.” (83 FR 5844 at 5854).
- **Public Website.** “The grantee must maintain a public website that provides information accounting for how all grant funds are used and managed/administered, including links to all action plans, action plan amendments, CDBG–DR program policies and procedures, performance reports, citizen participation requirements, and activity/program information for activities described in its action plan, including details of all contracts and ongoing procurement policies.” (83 FR 5844 at 5854).
- **Recordkeeping.** “When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: the State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG–DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. All grantees must report FHEO data in the DRGR system at the activity level.” (83 FR 5844 at 5856).
- **DRGR system Quarterly Performance Report (QPR).** “Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee’s official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee’s first QPR is due after the first full calendar year quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and

⁷ 83 FR 5844.

all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG–DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report. Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non–CDBG–DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG–DR assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, grantees must select “Not Visible on PDF” to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled “Overall Progress Narrative” in the DRGR system.” (83 FR 5844 at 5853).

18 DUPLICATION OF BENEFITS

18.1 POLICY OVERVIEW

As the administrator for the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds for the State of Nebraska, the Department of Economic Development (DED) is responsible for preventing, detecting, reporting, and rectifying duplicative benefits identified under CDBG-DR programs.

The purpose of this chapter is to assist in determining the total amount of assistance to be provided to Subrecipients, Successful Applicants, and beneficiaries to determine whether any Duplication of Benefits (DOB) has occurred. A DOB occurs when:

- A Subrecipient, Successful Applicant, or beneficiary receives assistance from more than one source (e.g., insurance payments or assistance from Federal Emergency Management Agency (FEMA), State or local government, or non-profits) for a particular recovery purpose; and
- The total assistance amount from all sources exceeds the need for the particular recovery purpose.

DOB verification may be a complex compliance requirement, particularly for housing and infrastructure activities. Fundamentally, DED must prove that they have identified and accounted for any other funding a Subrecipient, Successful Applicant, or beneficiary has received for the same purpose as the CDBG-DR award, prior to the expenditure of CDBG-DR funds. The policies and procedures set forth in this chapter are administered under the supervision of DED. In all cases, all program participants must keep project records through closeout of the CDBG-DR grant plus three (3) years (see **Chapter 17: Recordkeeping and Data Management** for additional details). In the case of a secondary disaster that hits the same area after closeout, **Section 18.1.1: Multiple Disasters** will apply.

18.1.1 MULTIPLE DISASTERS

DED recognizes the possibility that future disasters may occur and impact Subrecipients, Successful Applicants, and beneficiaries who have not fully recovered from DR-4420. If a second disaster occurs in the same area as a previous disaster, the second disaster may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how Subrecipients, Successful Applicants, and beneficiaries expended assistance provided after the first disaster. If this situation arises, DED will comply with HUD's policy in the Federal Register Notice issued June 20, 2019 (see 84 FR 28836) for managing policy revisions as appropriate.

Successful Applicants, beneficiaries, and Subrecipients are not required to maintain documentation related to the use of Federal, State, and local assistance for DR-4420 beyond when a Subrecipient or DED closes out a project. Note that Subrecipients will sit on different sides

of this requirement based on the program; as described in Section 18.5: DOB Verification Procedures, in some cases (e.g., Housing Programs), the Subrecipient will conduct DOB checks on beneficiaries and will be subsequently responsible for maintaining records, where for others (e.g., Infrastructure Match Program), DED will maintain documentation related to the DOB check on Subrecipients.

All documentation should be reviewed and uploaded into DED's system of record and the Subrecipient's electronic records (see also Chapter 17: Recordkeeping and Data Management). If documentation cannot be provided, future DED programs may accept a self-certification regarding how the Subrecipient, beneficiary, or Successful Applicant used previous assistance. Beneficiaries, Subrecipients, and Successful Applicants will be advised of the criminal and civil penalties that apply in cases of false claims and fraud.

DED will determine that the Subrecipient, beneficiary, or Successful Applicant's total need is consistent with data available about the nature of damage caused by multiple disasters.

18.2 DUPLICATION OF BENEFITS POLICY

Many Federal and State agencies are involved in responding to major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The Stafford Act is designed, in part, to achieve greater coordination and responsiveness between Federal disaster preparedness and relief programs. Accordingly, the Stafford Act includes a provision addressing DOB that applies to all Federal agencies administering financial assistance for emergency response and long-term recovery. CDBG-DR awards are subject to these requirements.

Eligible Subrecipients, Successful Applicants, and beneficiaries may have previously received assistance from other sources. Under the requirements of Section 312 of the Stafford Act (42 USC § 5155), Grantees (i.e., DED) determining the amount of assistance that can be granted must consider aid previously received by entities receiving funds through the CDBG-DR program, including Subrecipients, beneficiaries, or Successful Applicants. The Federal Register Notice from June 20, 2019 (see 84 FR 28836) further provides that CDBG-DR funding may only be supplied to the extent that it does not duplicate funding provided to a Subrecipient, Successful Applicant, or beneficiary for the same purpose.

Section 312(a) requires the Federal government to assure that no person receiving Federal financial assistance receives funds for any part of a loss already paid by insurance or any other source. Section 312(c) makes any person receiving duplicative assistance liable to the Federal government for the duplicative amount and states that "the agency which provided the duplicative assistance shall collect [it] from the Recipient [i.e., Grantee] when the head of such agency considers it to be in the best interest of the Federal government".¹ Additionally, Section 312(b) of the Stafford Act permits the payment of assistance to someone who is or may be entitled to future

¹ 42 USC § 5155(c).

payments from insurance or another source “if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.”²

The Stafford Act requirements are reinforced by other requirements on the use of CDBG-DR funds. Public Laws governing each of the allocations require the HUD Secretary to certify in advance of making grant awards that the Grantee (DED) has established adequate procedures to prevent any DOB. To support the Secretary’s certification, the Grantee (DED) must certify that they have “established adequate procedures to prevent any DOB as defined by Section 312 of the Stafford Act.”³

Additionally, the Appropriations Act, regulations, and cost principles within the uniform administrative requirements (2 CFR Part 200) are applicable to all CDBG-DR Grantees and Subrecipients. These require that costs are necessary and reasonable: “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”⁴

18.2.1 EXAMPLE OF DOB CALCULATION (HOUSING)

The following are sources of funding assistance provided for structural housing damage and loss that may be considered a DOB:

- Federal Emergency Management Agency (FEMA) IA;
- National Flood Insurance Program (NFIP);
- Private insurance;
- Small Business Administration (SBA); and
- Any other funding source available to the homeowner for the same purpose as a CDBG-DR award that may duplicate assistance (i.e., charities or non-profits).

Funds received from any source, including FEMA, flood insurance, and hazard insurance, that were used to cover repair to the homeowner’s home will reduce the amount of disaster assistance if the evidence of expenditures at least equals the amount of assistance provided from the source(s). Documentation must be provided demonstrating the cost and type of repair conducted. An example of a DOB calculation is provided below in **Table 1**.

² 42 USC § 5155(b).

³ 83 FR 5844 at 5847.

⁴ 2 CFR § 200.404.

Table 1: Example Award Calculation

DOB Steps	Dollar Amount
1) Eligible Repair Costs	\$95,000
2) FEMA Assistance for Structural Repairs	\$20,000
3) Private Insurance for Structural Repairs	\$35,000
4) Total Duplication of Benefits (sum of 2 and 3)	\$55,000
5) Maximum Eligible Award (1 less 4)	\$40,000

18.2.2 FEMA AND USACE FUNDS

The statutory order of assistance for CDBG-DR appropriations provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or United States Army Corps of Engineers (USACE). DED will verify whether FEMA or USACE funds are available for program activities before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or USACE funds are available, the Subrecipient, Successful Applicant, or beneficiary must seek assistance from those sources before receiving CDBG-DR assistance. If FEMA or USACE can reimburse the Subrecipient, Successful Applicant, or beneficiary’s costs for the activity, they cannot receive CDBG-DR assistance for those costs as it would be a DOB.

18.3 SUBSIDIZED LOANS AND EXCEPTIONS

Subsidized loans (including forgivable loans) are loans other than private loans in the context of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836). Both the SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other government sources. DED does not anticipate program participants to have open subsidized loans for the projects that CDBG-DR funds will be used for, but any subsidized loans must be declared in the DOB review process.

In certain situations, homeowners and businesses may receive CDBG-DR assistance after declining SBA loan(s) assistance. DED and/or Subrecipients (see **Section 18.4: Roles and Responsibilities** for clarification of when this applies to DED or Subrecipients) must demonstrate why providing CDBG-DR funds to Successful Applicants or beneficiaries is necessary and reasonable and analyze the circumstances under which the SBA assistance was declined.

Beneficiaries and Successful Applicants do not need to apply for SBA assistance before applying for and receiving CDBG-DR assistance, but HUD encourages them to. Accepting SBA assistance that was already offered is also not required for CDBG-DR funding. At a minimum, DED and/or Subrecipients (see **Section 18.4: Roles and Responsibilities** for clarification of when this applies to DED or Subrecipients) must collect the following:

- Identify the circumstances under which the beneficiary or Successful Applicant declined SBA assistance;
- Establish why CDBG-DR assistance is appropriate for the beneficiary or Successful Applicant; and
- Determine, generally through underwriting, the amount of CDBG-DR assistance necessary and reasonable to assist the beneficiary or Successful Applicant in achieving recovery.

For loans received, the full amount of a subsidized loan available to the beneficiary or Successful Applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in Section V.B.2. of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836) applies. A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Exceptions include:

- Reimbursement of beneficiary or Successful Applicant expenses for eligible activities on or after the date of the disaster;
- Declined or canceled subsidized loans; and
- Subsidized loans that meet the statutory exception of DRRA amendments to the Stafford Act.

Program activities funded through allocations in response to DR-4420 are subject to the provisions of the DRRA amendments and may use exception iii of Section V.B.2 of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836). Pursuant to section 1210 of the DRRA, a loan made in response to damage arising from a major disaster declared between 2016 and 2021 is not a prohibited DOB provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. This means that any portion of an SBA loan that was drawn by a beneficiary or Successful Applicant can be eliminated as a DOB if the beneficiary or Successful Applicant can prove that the funds were applied to cover a loss suffered as a result of DR-4420. However, this exclusion must be applied before October 5, 2023.⁵

All Subrecipients conducting DOB checks must use and implement DED's procedures to document the use of SBA funds drawn for a disaster-related purpose. DED developed and implemented a procedure to document the same for directly administered activities.

⁵ See 84 FR 28836 at 28842. The 2019 DOB Notice supersedes the 2011 DOB Notice for any new activities submitted to HUD in an action plan or action plan amendment on or after June 25, 2019, and for existing activities, to the extent that DED amends its action plan to change its treatment of loans in accordance with the 2019 DOB Notice.

- **Declined loans are not considered DOB.** Declined loans should be determined from the SBA data feed and, in absence of this data, self-certification from the beneficiary or Successful Applicant;
- **Canceled loans that were accepted and never drawn are not considered DOB.** Canceled loans that were never drawn may be documented through the SBA data feed demonstrating the \$0 draw and the expiration of the loan term, written communication from the lender, or a legally binding agreement between DED and the Successful Applicant or the Subrecipient and the beneficiary; and
- **Accepted but undisbursed loan amounts (e.g., accepted but undisbursed SBA loan amounts) are not considered a DOB but are subject to further requirements.** Documentation required for proof of cancellation of loans may be either written communication from the lender or a legally binding agreement between DED and the Successful Applicant or the Subrecipient and the beneficiary.

For directly administered activities, DED develops a written agreement binding the Subrecipient or Successful Applicant to refrain from pursuing future draws against SBA loans. DED also develops and implements a procedure to notify the lender that (1) additional CDBG-DR assistance is being provided to the Subrecipient or Successful Applicant and (2) the Subrecipient or Successful Applicant has agreed not to take any action to reinstate the loan or payments.

18.4 ROLES AND RESPONSIBILITIES

DED and its Subrecipients will be the primary entities responsible for conducting DOB checks. Additionally, all individuals and entities applying to receive assistance through the CDBG-DR program (e.g., beneficiaries, Applicants, Successful Applicants) must provide the necessary information to support DOB checks.

Responsibility	For funds administered by Subrecipients	For funds administered directly by DED
DED	DED will review DOB checks conducted by Subrecipients and will conduct DOB checks of Subrecipients.	DED will be responsible for DOB verification processes (e.g., of Successful Applicants and Subrecipients). A reference to a DOB check of a Subrecipient or Successful Applicant is associated with DED as the entity responsible for verification.
Subrecipients	Subrecipients will be responsible for DOB checks of beneficiaries . A reference to a DOB check of a beneficiary is associated with a Subrecipient as the entity responsible for verification.	N/A

For clarification on procedures, including any program-specific requirements, see **Section 18.5: DOB Verification Procedures**.

18.4.1 DED RESPONSIBILITIES

DED maintains overall responsibility for ensuring that no duplicative benefits are provided through the CDBG-DR program and serves as the lead for coordinating with State and Federal partners to obtain the necessary data to support DOB checks. To this effect, DED will serve the following functions to support DOB checks:

- DED will lead and establish a process⁶ to coordinate information gathering from FEMA and SBA in order to determine if Subrecipients, Successful Applicants, and/or beneficiaries have applied for or received funding from these two agencies.
- DED will coordinate information sharing with Subrecipients to support DOB checks through information collected from State and Federal entities.

⁶ A best practice related to DOB analysis is for the Grantee to coordinate with FEMA and SBA via an MOU to establish a process to obtain data related to the assistance these agencies have provided, through DED who acts as a liaison to ensure all documentation is accurately received. However, if Federal agencies fail to provide or share necessary information and data for this purpose in a timely manner, DED will develop an alternative set of requirements for Subrecipients.

- **For funds administered by Subrecipients**, DED will review DOB checks conducted by Subrecipients to verify that there is no duplicative benefit.
- **For funds administered directly by the State to Subrecipients and Successful Applicants:**
 - DED will lead DOB checks and
 - DED will demonstrate why providing CDBG-DR funds is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.

18.4.2 SUBRECIPIENT RESPONSIBILITIES

For funds administered by Subrecipients, Subrecipients are responsible for conducting DOB checks for their beneficiaries. This includes the following:

- Lead DOB checks.
- Demonstrate why providing CDBG-DR funds to beneficiaries is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.
- Obtain documentation directly from beneficiaries to determine if they received insurance benefits or other resources and how those funds were used to ensure there are no DOB issues.
- Review data and information provided by DED (if applicable) to complete DOB checks (i.e., FEMA and SBA data).
- Report DOB checks to DED for review and rectify any errors identified by DED.

In accordance with the Stafford Act, all projects—both those DED administers directly and those the Subrecipient administers—must perform due diligence to identify potentially duplicative sources of funding, analyze whether the source is duplicative, and include duplicative sources in an assessment that is deducted from the project’s need-based award determination.

18.5 DOB VERIFICATION PROCEDURES

The DOB verification procedures differ based on the program type and the entity responsible for administering the program. The following sections identify the DOB verification procedures for the following programs:

- Affordable Housing Construction Program, including associated subprograms: CDBG-DR LIHTC Gap Financing, Small/Non-LIHTC Rental Production, and Homeownership Production;
- Infrastructure Match Program; and

- Housing Resiliency Planning Program.

In order to maintain accurate assessments of applicants' unmet needs, DED will require that Subrecipients review recovery needs according to the structure of the associated program, as described in the sections below.

Generally, DOB review is carried out at the time of application for funding, tracked during implementation, and reconciled prior to closeout.

STEP 1: DED and Subrecipients complete DOB verification (see below) to validate the total funds received by Subrecipients, Successful Applicants, and beneficiaries.

For all programs administered directly by DED, all approved Subrecipients and Successful Applicants receive the DOB letter from DED. For all programs administered by Subrecipients, the Subrecipient will ensure beneficiaries receive and understand DOB requirements (see **DOB Letter**). This requirement on the part of Subrecipients will be set forth in the Subrecipient Agreement (SRA).

Subrecipients, Successful Applicants, and beneficiaries requesting CDBG-DR funds for disaster recovery assistance must submit the following forms (as applicable by program) for all proposed activities prior to approval as a part of DOB verification:

- Subrogation Agreement (see **CDBG-DR DOB Subrogation Agreement**);
- DOB Certification/Affidavit (Infrastructure) (see **CDBG-DR Duplication of Benefits Certification/Affidavit (Infrastructure)**);
- DOB Certification/Affidavit for Successful Applicants acting as developers in all Housing Programs (Housing) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Developer (Housing)**);
- DOB Certification/Affidavit for Homebuyers in Homeownership Production Program (HPP) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Individual Homebuyer (Housing - HPP)**); and
- DOB Certification/Affidavit for Successful Applicants implementing the Housing Resiliency Planning Program (HRPP) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Housing Resiliency Planning Program (Planning - HRPP)**).

The abovementioned DOB Certification/Affidavit forms include two levels of attestation. Signatures *certifying* the Applicant-provided information as accurate are required at the time of application for CDBG-DR funding, or as otherwise requested by DED. Notarization is optional at the time of application. Once notarized, the certification of information within the form functionally

converts the DOB Certification to a DOB *Affidavit*.⁷ Under all programs, a completed DOB Affidavit is required prior to program launch.

DED will publish these DOB forms at: <https://opportunity.nebraska.gov/cdbg-dr/>.

- **For programs administered by Subrecipients**, the Subrecipient is responsible for the dissemination and collection of the forms from beneficiaries. The Subrecipient submits an electronic copy of the completed forms to DED. If required documents are not submitted or are incomplete, a request to proceed with the activity cannot be processed until the required documentation is received and approved. The Subrecipient is responsible for determining if the beneficiary received any financial assistance from the beneficiary's insurance company or from any other source and include documentation in the beneficiary's file.
- **For programs administered directly by DED**, DED is responsible for dissemination and collection of the forms.

STEP 2: DED staff use the submitted information from Step 1 to review FEMA and SBA databases or use FOIA to determine if the Subrecipient, Successful Applicant, or beneficiary has received any financial assistance from either of these two agencies. DED staff certify the review results to the 1) Subrecipient for the beneficiary or 2) Subrecipient or Successful Applicant's file for directly administered programs. To contact FEMA concerning FOIA requests, call 202-646-3323 or contact the agency electronically at fema-foia@dhs.gov. To contact SBA concerning FOIA requests, call 202-401-8203 or contact the agency by email at foia@sba.gov.

If potential DOB is identified, DED will conduct a full review of assistance dollar amounts received, the purpose of the assistance (e.g., repairs, personal property, rent, etc.), and how dollar amounts were used, as part of the underwriting process.

18.5.1 AFFORDABLE HOUSING CONSTRUCTION PROGRAM

The Affordable Housing Construction Program (AHCP) and associated subprograms (see *AHCP Program Guide* for additional details) are required to verify DOB for all payments to increase affordable housing supply in flood-impacted areas. DED does not expect any DOB for projects under the AHCP program. However, DED is required to conduct DOB checks for all subprograms to verify that Successful Applicants and, as applicable, beneficiaries have not received a duplicative benefit.⁸ DED shall conduct the following steps during the program application process to review potential developers:

⁷ An affidavit is a written declaration under oath ([Neb. Rev. Stat. §25-1241](#)).

⁸ In the event DED awards AHCP assistance to a Subrecipient, DOB policies apply. Local governments applying for HPP would be subject to DOB requirements if awarded CDBG-DR funding.

1. Determine Affordable Housing Construction Program activity eligibility.
2. Review DOB Certification/Affidavit for sources of assistance for the same purpose as the Affordable Housing Construction Program. DED does not expect any DOB to be found.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, memorandum of understanding (MOU), or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.
5. The maximum award for the Affordable Housing Construction Program is \$2,000,000 and is not to exceed \$150,000 per housing unit constructed. The \$150,000 per unit cap includes all hard and soft construction costs.

The DOB evaluation is a formally distinct review driven by CDBG-DR specific requirements. However, in all cases DED will complete underwriting reviews of all development projects and require buyer specific underwriting reviews when providing direct assistance under the HPP. The broader underwriting approach is similar to a DOB review. It ensures that the CDBG-DR assistance provided is no more than necessary after taking into account all available sources of financing or funding, whether or not those are sources that would be specifically included in a DOB review.

DED will lead these checks for Subrecipients and Successful Applicants. Subrecipients will lead these checks for individual beneficiaries, which DED will then verify.

The DOB Affidavit for the Housing Programs must be submitted by the Subrecipient or Successful Applicant to DED prior to construction beginning on the project.

Under the Affordable Housing Construction Program subprogram, Homeownership Production Program (HPP), homeowner beneficiaries will require a HPP Homebuyer Agreement, or other such instrument used under the Program. The homebuyer must also submit the DOB Affidavit to the Subrecipient or Successful Applicant for submission to DED. If the Affidavit has not been submitted within 90 days of the execution of the HPP Homebuyer Agreement, the homeowner's application may move into an inactive status.

In addition to the DOB check conducted at the beginning of the program, assistance for the Housing Programs will be reassessed when the project is completed to verify that the beneficiary or Successful Applicant has not received a duplicative benefit for the same project during the course of the project. Further details regarding reassessment are provided below under **Section 18.6: Reassessment of DOB**.

18.5.1.1 Homeownership Production Program, Beneficiary Verification

In the case of HPP,⁹ the Successful Applicant shall conduct the following steps during the application process for potential homeowners who will, as part of their purchase, be provided with direct homebuyer assistance (e.g., down payment and closing cost assistance):

1. Calculate the beneficiary's total need for direct buyer assistance.
2. Review DOB Certification/Affidavit signed by the beneficiary for sources of assistance for the same purpose as HPP's included buyer assistance. DED does not expect any DOB to be found.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, memorandum of understanding (MOU), or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

18.5.2 INFRASTRUCTURE MATCH PROGRAM

DED must verify DOB for all Infrastructure Match Program projects that eligible Subrecipients submit during the detailed eligibility review described in the **Infrastructure Match Program Guide**. Eligible Subrecipients or Applicants may have previously received assistance from other sources. Under the requirements of Section 312 of the Stafford Act (42 USC 5155), DED must consider certain aid received by Subrecipients or Applicants in determining the amount of assistance that can be granted. The Federal Register Notice dated June 20, 2019 (see 84 FR 28836) further provides that CDBG-DR funding may only be supplied to the extent that it does not duplicate funding provided to a beneficiary for the same purpose.

To determine the DOB of a project, DED will take the following steps:

1. Review eligible projects submitted by the Applicants to confirm the local match for FEMA PA or HMGP projects.
2. Determine the local match share of the FEMA PA or HMGP project.

⁹ Due to program design, DOB will not occur for end beneficiaries of the other AHCP programs (LIHTC Gap Financing Program and Small/Non-LIHTC Rental Production Program), so they do not need to go through the DOB verification process.

3. Review DOB Certification/Affidavit form to determine if the eligible Subrecipient or beneficiary received funds for the same purpose as FEMA PA and HMGP match.
4. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement or memorandum of understanding, or a DED alternative as described under Section 18.4.1: DED Responsibilities, if necessary.
5. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

For the Infrastructure Match Program, DED will review applications submitted by eligible Subrecipients to determine project eligibility and need. DED will review the Project Worksheet at the end of the project to verify the total amount of FEMA funds received by the PA and HMGP Applicant.

The maximum award for the Infrastructure Match Program is \$10,000,000. As described above, DED will reassess total needs at the end of the project to verify that there is no duplicative benefit associated with CDBG-DR funds. Further details regarding reassessment are provided below under **Section 18.6: Reassessment of DOB**.

18.5.3 HOUSING RESILIENCY PLANNING PROGRAM

DED must verify DOB for all Applicants to the Housing Resiliency Planning Program. The Certification/Affidavit described below, plus any other documentation that refers to other funding sources, will be collected during the application process, as described in the **Housing Resiliency Planning Program Guide**. To determine the DOB of a project, DED takes the following steps:

1. Review submitted applications to determine the Housing Resiliency Planning Program activity eligibility and need.
2. Review DOB Certification/Affidavit form to determine if the eligible Subrecipient received funds for the same purpose as the Housing Resiliency Planning Program.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, MOU, or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

While the DOB check for the Housing Resiliency Planning Program is required pursuant to the federal statutes described in **Section 18.2: Duplication of Benefits Policy**, DED generally expects that there will not be any DOB under the Housing Resiliency Planning Program.

18.6 REASSESSMENT OF DOB

As described above, DED and its Subrecipients may need to reassess DOB at certain stages of project implementation. During the reassessment process, Subrecipients and DED must collect all necessary documents needed to complete an updated DOB calculation to update the program's assessment of the Subrecipient, Successful Applicant, or beneficiary's DOB (see ***Updated Duplication of Benefits Calculation Form***).

Any change in the total unmet need should be reflected in the award from the program. These files are reviewed by DED during monitoring visits using the applicable Monitoring Checklist to ensure DOB compliance.

18.7 SUBRECIPIENT REQUIREMENTS

As described under **Section 18.5: DOB Verification Procedures**, the DED DOB review process includes a series of forms to assist Subrecipients and program staff in determining the amount of financial assistance that may be available to eligible disaster recovery beneficiaries and to ensure beneficiaries do not receive duplicative benefits.

Subrecipients are required to maintain original completed forms and support documentation in contract or beneficiary files. An electronic copy of completed forms and support documentation is submitted to the DED Program Manager assigned to the SRA. **Subrecipients are required to follow DED's procedures for DOB and complete associated forms.** A Subrecipient may elect to develop their own policies and procedures to manage DOB; however, these must be approved by DED prior to program launch.

If a DOB is discovered after the award is provided, based upon reported insurance benefits or other reported funding sources—and unless exempted in writing by DED—the Subrecipient must recapture the monetary amount of duplicative benefits provided and return the duplicative amount to DED (see **Section 18.8: Recapture**).¹⁰ Subrecipients are required to maintain all corresponding financial transactions related to the refund(s) in the contract or beneficiary files and submit an electronic copy of the completed documents and supporting documentation to the DED Program Manager assigned to the SRA.

DED shall withhold payment on any project or suspend activities if a duplicative benefit issue is not resolved to DED's satisfaction. DED shall not complete the SRA closeout processing until all identified DOB issues are resolved.

¹⁰ In limited circumstances, DED reserves the right to coordinate directly with the Subrecipient to identify an alternative approach to collect duplicative funds.

18.8 Award Reconciliation

Generally, financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds is considered DOB. To prevent the payment of DOB to Subrecipients, Successful Applicants, and beneficiaries, program controls include, but are not limited to:

- Certification that Subrecipients, Successful Applicants, and beneficiaries have notified the State of all potential DOB;
- Verification of specific DOB through various available sources; and
- Enforcement of certification to the fullest extent of the law.

Prior to award closeout, DED and its Subrecipients shall complete an award reconciliation, which includes a final verification of all benefits received by the Subrecipient, Successful Applicant, and/or beneficiary. Note that Subrecipients will conduct the reconciliation for beneficiaries for whom they're administering funds, and DED will verify reconciliation. As part of the process, DED and its Subrecipients confirm all factors comprising the award calculation:

$$\text{Total Project Cost} - \text{DOB} = \text{Award}$$

For example, for a project through the Affordable Housing Construction Program, total project costs constitute:

$$\begin{aligned} & \text{Allowable Activities (work already completed)} \\ & + \text{Estimated Cost of Construction (construction still needed)} \\ & + \text{Estimate Cost of Elevation for Homes in a flood zone} \\ & = \text{Total Project Costs.} \end{aligned}$$

The initial award is based on the information set forth in the scope of work (SOW) and DOBs that were available at that time. As additional information becomes available about these factors, the award can change. If the SOW has changed or other factors resulted in DOB throughout the duration of the project, it may affect the amount of the award. If the Subrecipient, Successful Applicant, or beneficiary has received award payments that exceed this final award calculation, they may be required to return funds.

18.9 RECAPTURE

18.9.1 IDENTIFICATION OF POTENTIAL DOB

When potential DOB is identified, DED shall coordinate with the Subrecipient (if applicable) to perform the following steps:

1. Re-evaluate need and document remaining DOB.

2. Check the documentation in the file (re-evaluation of need, ensure all agreements in place, etc.).
3. Send a Repayment Letter (further described below) to the beneficiary, Subrecipient, or Successful Applicant requesting reimbursement.
4. Conduct debt collection procedures.
5. Track and return all funds recovered as a result of this policy to the State's CDBG-DR account or US Treasury in the event that the State's CDBG-DR Grant has been closed out.

If a duplication is discovered after DED or a Subrecipient has provided assistance, the duplicative funds shall be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose. Subrecipients are responsible for the recapture of funds when a DOB occurs in a program they directly administer, which must be conducted in compliance with this chapter.

18.9.2 METHOD OF RECAPTURING FUNDS

As described in **Section 18.5: DOB Verification Procedures**, and **Section 18.7: Subrecipient Requirements**, funds may be recaptured if a duplicative benefit is identified during the assessment and reassessment processes.

The recapture method and timeframe must be consistent with the requirements established by 2 CFR Part 200 or other applicable cost principles, any relevant guidance or handbook issued by HUD, and the Stafford Act, which requires that duplicative assistance be collected in accordance with 31 USC Chapter 37, relating to claims for debt collection. DED may withhold payment on any project or suspend activities if a DOB issue is not resolved in a timely manner. DED does not complete the SRA or contract closeout process until all identified DOB issues are resolved.

Funds canceled and recaptured from CDBG-DR Subrecipients, Successful Applicants, or beneficiaries shall be redistributed by returning funds to DED for use in other CDBG-DR program activities. In advance of the recapture process, DED and the Subrecipient perform a complete reconciliation of the files for the amount that the Subrecipient, Successful Applicant, or beneficiary has identified as having been overpaid. This will include:

1. Documenting the amount and basis for the repayment in a written letter to the Subrecipient, beneficiary, or Successful Applicant, as well as procedures for repaying the funds (the "Repayment Letter").
2. Assigning the Subrecipient, beneficiary, or Successful Applicant a DED representative to provide guidance and assistance throughout the repayment process.
3. Affording the Subrecipient, beneficiary, or Successful Applicant the opportunity to submit a written appeal of the repayment determination if they disagree with the amount owed or the basis for repayment.

The Subrecipient is responsible for supporting these steps for the programs they administer.

18.9.3 APPEALS

If a Subrecipient, beneficiary, or Successful Applicant does not agree with the amount owed or the basis for repayment, they must submit a written appeal within 20 calendar days from the date of the Repayment Letter to the Subrecipient and DED via email or in writing. If the letter is provided to the Subrecipient, the Subrecipient is responsible for providing the letter to DED to make a determination.

DED reviews the written appeal and issues a final written determination of its decision. Appeals may be denied or granted in whole or in part. Nothing in the appeal determination shall obviate the Subrecipient, beneficiary, or Successful Applicant from complying with all applicable program requirements. For instance, if the Subrecipient, beneficiary, or Successful Applicant successfully appeals a DOB amount, they are still fully obligated to complete their project.

DED only reviews facts and information already included in a Subrecipient, beneficiary, or Successful Applicant's file. If a Subrecipient, beneficiary, or Successful Applicant wants to submit more information, they must include it in a written appeal. Recapture appeals shall only be reheard after the initial hearing if new material information is received by DED or a new CDBG-DR program policy is enacted that impacts the Subrecipient, beneficiary, or Successful Applicant's appeal status.

If a Subrecipient, beneficiary, or Successful Applicant fails to file an appeal to DED within the time allotted, the inaction shall be deemed an acceptance of the determination; there will be no further right to contest or appeal the amount to be repaid.

If a Subrecipient's, beneficiary's, or Successful Applicant's appeal is denied or there is a failure on their part to appeal within the allotted timeframe, the Subrecipient, beneficiary, or Successful Applicant shall be moved to the repayment phase (see **Section 18.9.4: Repayment Phase**) to begin repayment.

Once a Subrecipient, beneficiary, or Successful Applicant has received their Repayment Letter and the appeal period has passed, their file shall be moved to the Repayment Phase (see **Section 18.9.4: Repayment Phase**).

For additional information regarding the appeals procedures, see the CDBG-DR webpage: <https://opportunity.nebraska.gov/cdbq-dr/>.

18.9.4 REPAYMENT PHASE

Once the repayment is determined, the DED Program Manager or a representative from the Subrecipient shall assist the Subrecipient, beneficiary, or Successful Applicant with the steps necessary to repay their funds in a timely manner. All repayments shall be repaid in full as one lump sum amount or broken down into a payment plan agreed upon by DED and the Subrecipient (if applicable). DED and the Subrecipient (if applicable) analyzes any Subrecipient, beneficiary,

or Successful Applicant claims of financial hardship and may make accommodations to facilitate repayment. Final determinations regarding such accommodations will be provided by DED.

DED and its Subrecipients shall monitor repayments to ensure Subrecipients, beneficiaries, and Successful Applicants are performing in accordance with the terms of repayment, and DED may take additional, cost-reasonable measures as necessary to collect the repayment amount, including instituting a collection proceeding. DED, in its sole discretion, shall institute measures necessary to effectuate repayment from individual program beneficiaries to the extent that amounts are collectible.

TOOLKIT LIST

The following documents for **Chapter 18: Duplication of Benefits** are available on the Toolkit section of DED's website:

- CDBG-DR Duplication of Benefits Certification/Affidavit (Infrastructure)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Individual Homebuyer (Housing - HPP)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Developer (Housing)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Housing Resiliency Planning Program (Planning - HRPP)
- CDBG-DR Subrogation Agreement
- DOB Letter
- Updated Duplication of Benefits Calculation Form

CHAPTER 18 ADDENDUM: DATA COORDINATION

18A.1 STANDARD OPERATING PROCEDURE (SOP) OVERVIEW

As the administrator for the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds for the State of Nebraska, the Department of Economic Development (DED) is responsible for preventing, detecting, reporting, and rectifying duplicative benefits identified under CDBG-DR programs.

This ***Duplication of Benefits Data Coordination SOP*** outlines a general process for DED to identify individuals whose duplication of benefits (DOB) needs to be verified by reaching out to federal agencies (i.e., FEMA, SBA, insurance), collecting data, and reporting back to the Subrecipient. It is written to support the overarching ***Chapter 18: Duplication of Benefits***, which articulates the full DOB policy and procedures in place to assist DED and its Subrecipients in determining the total amount of assistance to be provided to Subrecipients, Successful Applicants, and beneficiaries to determine whether any DOB has occurred.

18A.2 DUPLICATION OF BENEFITS VERIFICATION AND DATA COORDINATION PROCEDURE

The DOB verification procedures differ based on the program type and the entity responsible for administering the program. DED will coordinate data collection from federal agencies to verify the DOB reported by Subrecipients, Successful Applicants, and beneficiaries. A title search will also be done on privately owned land associated with any project. Specific agencies with which DED will coordinate information collection are indicated below in ***Table 1***.

Table 1: Duplication of Benefits Verification and Data Coordination Policy

CDBG-DR Program		DOB Verification Required	Data Coordination Partners
Infrastructure Match Program		DOB verification required for the Infrastructure Match Program includes a review of projects submitted, local match share, DOB Affidavit form, verification of potential duplicative assistance, calculation of the total assistance determined to be duplicative, and review of project worksheet.	DED will coordinate with NEMA to verify data through EMMIE and related reporting systems.
Affordable Housing Construction Program	CDBG-DR LIHTC Gap Financing	DOB verification required for the Affordable Housing Construction Program includes a review of activity eligibility and need, calculation of total need for assistance, review of DOB Affidavit form, verifying potentially duplicative assistance, calculation of the total assistance determined to be duplicative, and reviewing maximum award cap.	DED will coordinate with FEMA, SBA, and NIFA to verify data for housing-related DOB.
	Small/Non-LIHTC Rental Production		
	Homeownership Production		
Housing Resiliency Planning Program		DOB verification required for the Housing Resiliency Planning Program includes a review of submitted applications to determine activity eligibility and need, review of DOB Affidavit form, verification of potentially duplicative assistance, and calculation of total assistance determined to be duplicative.	N/A

18A.3 DATA COORDINATION PARTNERS

18A.3.1 FEMA

The Federal Emergency Management Agency (FEMA) provides disaster assistance based on damage estimates and recovery unmet needs. DED coordinates with FEMA through NEMA. DED will work with NEMA to collect data on Applicants, Successful Applicants, and Subrecipients through FEMA’s Emergency Management Mission Integrated Environment (EMMIE) system and related systems or through a FOIA request.

18A.3.2 SBA

The U.S. Small Business Administration (SBA) provides low-interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters. SBA disaster loans can be used to repair or replace real estate, personal property, machinery and equipment, and inventory and business assets damaged or destroyed in a declared disaster. In some cases, SBA can refinance all or part of a previous mortgage when the applicant does not have credit available elsewhere, has suffered substantial disaster damage not covered by insurance, and intends to repair the damage. HUD encourages but does not require CDBG-DR applicants to apply for SBA assistance as a prerequisite to receiving CDBG-DR assistance.

DED will determine if the Subrecipient, Successful Applicant, or beneficiary has received financial assistance from SBA by searching the [SBA database](#) or through a FOIA request. DED will provide written notification to lenders when it is confirmed that a full loan amount will not be needed.

18A.4 INSURANCE

Disaster assistance may come in the form of insurance proceeds. The Stafford Act prohibits any person, business, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source.

18A.4.1 NFIP

The National Flood Insurance Program (NFIP) provides insurance to help reduce the socio-economic impact of floods. NFIP is managed by the FEMA and is delivered to the public by a network of more than 50 insurance companies and the NFIP Direct.

DED will determine if the Subrecipient, Successful Applicant, or beneficiary has received financial assistance from the NFIP by searching the [NFIP database](#) or through a FOIA request

18A.4.2 PRIVATE INSURANCE

Private insurance is a financial mechanism meant to help disaster victims. All private insurance settlement amounts for loss to structures are considered in the award calculation. Private insurance payments for contents or other expenses are not considered.

18A.5 VERIFICATION AND DATA COORDINATION PROCEDURES

18A.5.1 DED ADMINISTERED PROGRAMS

For funds administered directly by the State to Subrecipients and Successful Applicants, DED will lead DOB checks for any programs with the potential to create DOB scenarios. DED will demonstrate why providing CDBG-DR funds is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.

To conduct the DOB review process, DED will use the best, most recent available data from FEMA, SBA, insurers, and any other sources of local, state, and federal funding to prevent DOB. DED will complete the following steps:

1. DED identifies an Applicant that needs to undergo DOB data verification.
2. DED will identify the Applicant's total need.
3. DED will identify the total assistance available to the Applicant identified on submitted DOB forms.
4. DED will exclude any amounts that are not duplicative with CDBG-DR funding from the DOB analysis.
5. DED will use the submitted information to review the following (as applicable to the program):
 - a. FEMA databases:
 - i. DED will submit a data request to NEMA to retrieve FEMA data.
 - ii. DED will search the FEMA database or use FOIA to determine if the Applicant has received any financial assistance from FEMA.
 1. To contact FEMA concerning FOIA requests, call 202-646-3323 or contact the agency electronically at fema-foia@dhs.gov.
 - b. SBA:
 - i. DED will search the SBA database or use FOIA to determine if the Applicant has received any financial assistance from SBA.
 1. To contact SBA concerning FOIA requests, call 202-401-8203 or contact the agency by email at foia@sba.gov.
 - c. National Flood Insurance Program:

- i. DED will review [NFIP external datasets](#) to determine if any additional funding has been received by the Applicant.
6. DED verifies the amount of assistance received from the above sources and the purpose of the assistance (repairs, personal property, rent, etc.), and gathers the required documentation.
7. DED staff certify the review results to the 1) Subrecipient for the beneficiary or 2) Subrecipient or Successful Applicant's file for directly administered programs. If potential DOB is identified, DED will conduct a full review of assistance dollar amounts received, the purpose of the assistance (repairs, personal property, rent, etc.), and how dollar amounts were used, as part of the underwriting process.

18A.6 SUBRECIPIENT ADMINISTERED PROGRAMS

For all programs administered by Subrecipients, the Subrecipient will ensure beneficiaries receive and understand DOB requirements. DED will review DOB checks conducted by Subrecipients and will conduct DOB checks of Subrecipients to verify that there is no duplicative benefit. Subrecipients will be responsible for DOB checks of **beneficiaries**.

For funds administered by Subrecipients, Subrecipients are responsible for gathering DOB documentation from beneficiaries, conducting DOB checks, and sharing findings with DED. DED is responsible for reviewing and coordinating data collection from the agencies listed above and sharing their results with the Subrecipient. Subrecipients should take the following steps to verify DOB:

1. Demonstrate why providing CDBG-DR funds to beneficiaries is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.
2. Obtain documentation directly from beneficiaries to determine if they received insurance benefits or other resources and how those funds were used to ensure there are no DOB issues.
3. Review data and information provided by DED (if applicable) to complete DOB checks (i.e., FEMA and SBA data).
4. Report DOB checks to DED for review.
5. Rectify any errors identified by DED.

18A.7 LENDER NOTIFICATION PROCEDURES

In the unlikely event that a beneficiary has an open subsidized loan for the same purposes as CDBG-DR grant funds, a letter must be provided to the lender stating that further funds will not be drawn. For all programs administered by Subrecipients, once a Subrecipient verifies an award and it is determined that a full loan amount will not be needed, DED will take the following steps:

1. DED will review verification from the Subrecipient demonstrating that the full loan amount will not be needed.
2. DED will provide a formal letter to the lender notifying the lender that the full loan amount is no longer needed and its use constitutes a DOB.
3. DED will provide a letter to the Subrecipient informing the Subrecipient that the lender has been notified that the full loan amount is no longer needed and the award amount is being reduced.

18A.8 REPORTING

Note that DED will track the above communications and associated documentation in DED's system of record, AmpliFund, as per **Chapter 17: Recordkeeping and Data Management**.

19 ANTI-FRAUD, WASTE, AND ABUSE POLICY

19.1 PURPOSE

DED, as Grantee of the CDBG-DR funds, is responsible for preventing, detecting, reporting and rectifying incidents of fraud, waste, and abuse (FWA) among other irregularities related to the program. DED has zero tolerance for the commission and/or concealment of acts of FWA. The purpose of this chapter is to encourage any individual to raise any concern, known or suspected, of acts of FWA by anyone involved with the CDBG-DR Program.

As described in this chapter, DED will leverage existing investigative resources and corrective actions available to the State of Nebraska to meet HUD requirements. If FWA are identified, DED shall pursue investigation, including taking legal action where warranted. Reported cases under review shall be considered potential FWA until claims are substantiated.

DED encourages any individual who is aware of or suspects any conduct or activity that may be considered an act of FWA of the CDBG-DR Program to report such acts to DED's Internal Auditor, the Nebraska Auditor of Public Accounts (APA), directly to the Office of Inspector General (OIG) at HUD, or any local or federal law enforcement agency. As applicable to Certified Administrators for projects, and at the discretion of DED, engaging in FWA, whether or not such activity is a crime, may result in the implementation of the de-certification process without an initial or additional probationary status. Generally, de-certification occurs where an individual fails to properly administer CDBG-DR projects.

19.2 FEDERAL AND STATE REGULATIONS

The following federal and state rules and regulations are in place to prevent, detect, report, and rectify FWA. These rules and regulations exist to encourage any individual to raise any concern, known or suspected, of acts of FWA by anyone involved with the CDBG-DR Program:

19.2.1 FEDERAL

- 2 CFR § 200.303 requires that non-Federal entities must “establish and maintain effective internal control over the Federal award” and further requires that such entities “take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.”¹

¹ 2 CFR § 200.303.

- Related to the allocation for Winter Storm Ulmer (DR-4420), the Federal Register Notice from February 9, 2018² outlines adequate procedures to detect and prevent fraud, waste, and abuse, including the Grantee (i.e., DED) verifying “the accuracy of information provided by applicants”, providing “a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored”,³ and demonstrating “it has an internal auditor that provides both programmatic and financial oversight of Grantee activities; and includes a document⁴ signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.”⁵

19.2.2 STATE

- The State Government Effectiveness Act (the Act),⁶ sometimes referred to as the Whistleblower Act, prohibits agencies of State government from retaliating against State employees who report wrongdoing in State government to proper authorities and provides certain protections for employees who are “whistleblowers” covered by the Act.

19.3 ROLES AND RESPONSIBILITIES

DED and its Subrecipients and Successful Applicants have a shared responsibility to prevent and detect FWA. Subrecipients and Successful Applicants are responsible for the day-to-day monitoring of project activities and ethical management practices to ensure there is no FWA within the program, and to report FWA if it is identified. DED staff are responsible for the overall detection and prevention of FWA, including regular monitoring to maintain accountability of Subrecipients and Successful Applicants, as well as coordinating investigations if any FWA is reported and/or to determine if CDBG-DR funds are being spent within the confines and parameters of relevant HUD and other Federal requirements. For further details regarding monitoring of Subrecipients and Successful Applicants, see **Chapter 16: Monitoring and Compliance Plan**.

19.4 PREVENTION

The structure of CDBG-DR makes the program vulnerable to fraud as CDBG-DR funds may flow through numerous entities before being spent on eligible activities or reaching their intended beneficiaries. To proactively address potential cases of FWA, DED will maintain monitoring processes (see **Chapter 16: Monitoring and Compliance Plan**) to track Subrecipients and Successful Applicants throughout program implementation.

² 83 FR 5844 at 5848.

³ See **Chapter 16: Monitoring and Compliance Plan**.

⁴ An earlier version of this document was submitted to HUD as a part of the CDBG-DR Financial Management and Grant Compliance Certification process prior to the State receiving CDBG-DR funds.

⁵ 83 FR 5844 at 5848.

⁶ Neb. Rev. Stat. §§ 81-2701–81-2711.

To prevent FWA, DED staff will:

- Develop a Code of Conduct Subrecipients and Successful Applicants adopt and use as a framework for ethical decision making within an organization. The Code of Conduct shall include a written collection of the rules, principles, values, and employee expectations to be reviewed at least annually;
- Ensure ongoing compliance with Federal, State, and local requirements through analysis of policies and procedures, evaluation of Subrecipient and Successful Applicant eligibility and award determinations, and review of program activity files;
- Identify and assist with investigations of potential fraud as described herein; referring cases to DED's Internal Auditor and Nebraska's APA, as appropriate;
- Oversee and coordinate all reporting for DED's CDBG-DR funds, including Federal reporting requirements and data analysis, and provide data dashboards for agency leadership and the public; and
- Provide technical assistance to partners, Subrecipients, and Successful Applicants across the CDBG-DR Program regarding compliance issues and questions, as well as assisting in resolution of monitoring concerns and findings.
- DED reserves the right to create additional tools and checklists in connection with this chapter for review of FWA.

If any case of potential fraud is identified among Subrecipients and Successful Applicants, DED's Internal Auditor shall follow their existing, applicable process to investigate allegations. When appropriate, cases are referred to the Nebraska APA, State Attorney General's Office, or the Office of the United States Attorney for Nebraska.

19.5 REPORT AND INVESTIGATION

Any allegations of FWA related to CDBG-DR funds or resources must be reported to DED's Internal Auditor, the Nebraska APA, directly to the OIG at HUD, or any local or Federal law enforcement agency. When appropriate, the DED Internal Auditor will also report the allegation to the Nebraska APA, State Attorney General's Office, or the Office of the United States Attorney for Nebraska.

19.5.1 HOW TO REPORT FRAUD, WASTE OR ABUSE

Any person, including any state employee, who suspects, witnesses, or discovers any FWA related to the CDBG-DR Program should report it immediately by any of the means listed below. It is possible that a citizen may disclose acts of FWA of CDBG-DR funds to any CDBG-DR program staff (e.g., at Field/Regional offices, events, etc.). Therefore, any information received must be treated with extreme confidentiality and shared with the DED Internal Auditor or the Nebraska APA by following established procedures.

To the Nebraska Department of Economic Development Internal Auditor	
Online or Anonymous Email	Fill out the Contact Form, available here: https://opportunity.nebraska.gov/cdbg-dr-afwa-form/ .
Phone	800-426-6505
Postal Mail	Nebraska Department of Economic Development PO Box 94666 245 Fallbrook Blvd, Suite 002 Lincoln, NE 68521
In Person	Nebraska Department of Economic Development 245 Fallbrook Blvd, Suite 002 Lincoln, NE 68521

To the Nebraska APA	
Online or Anonymous Email	Fill out the FWA Submission Form, available at the Nebraska APA's website https://auditors.nebraska.gov/About_Us/SAE_E-Mail.html .
Phone	Nebraska APA Confidential Hotline at 1-800-842-8348.
Postal Mail	Nebraska Auditor of Public Accounts State Capitol, Suite 2303 P.O. Box 98917 Lincoln, NE 68509-8917
In Person	Nebraska Auditor of Public Accounts State Capitol, Suite 2303 Lincoln, NE 68508

Contact HUD's OIG Fraud Hotline via phone 1-800-347-3735 or via email at hotline@hudoig.gov.

19.5.2 INVESTIGATION

Upon receiving allegations by any of the reporting means stated previously with regards to anyone involved with the CDBG-DR Program, including Subrecipients and Successful Applicants, DED's Internal Auditor has the primary duty of analyzing the complaint. DED's Internal Auditor reports to the Deputy Director of Operations/Chief Legal Counsel and notifies those supervisors of any active investigations. If the allegations have no grounds or are not supported by any documentation, the file must be closed. Such determination must be made in writing and included in the file, with the consent of the Nebraska APA.

If warranted, DED's Internal Auditor shall conduct an investigation into the allegations and may seek advice from Human Resources or the Legal Division, if necessary. To the extent that any substantiated actions violate Federal, State, or local laws, Nebraska officials shall evaluate pursuing appropriate criminal or civil penalties. The DED Internal Auditor should communicate any inquiries received to DED's Deputy Director of Operations/Chief Legal Counsel. The issue should be investigated immediately to avoid further damage. Nebraska's APA has the authority to investigate any complaints or suspicions of fraud directly if that office determines such an investigation to be necessary.

All substantiated cases of FWA of government funds shall be forwarded to the HUD OIG Fraud Hotline via phone 1-800-347-3735 or email hotline@hudoig.gov and DED's HUD Community Planning and Development (CPD) Representative.

19.6 CONFIDENTIALITY

All allegations or complaints received by DED's Internal Auditor, the Nebraska APA, State Attorney General's Office, and the Office of the United States Attorney for Nebraska shall be treated with absolute confidentiality. The complainant may choose to remain anonymous and therefore does not have to provide their contact information (i.e., name, address, telephone, or email) to report the alleged or suspected act of FWA. The complainant's contact information must be kept confidential unless the complainant authorizes in writing otherwise.

19.7 TRAINING

Related to the allocation for Winter Storm Ulmer (DR-4420), the Federal Register Notice from February 9, 2018 imposes a training requirement on Grantees (i.e., DED) "to attend and require Subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG-DR grant funds."⁷ DED will alert CDBG-DR Program's staff, partners, and Subrecipients and Successful Applicants of fraud related training offered by the OIG at HUD.

In addition to HUD OIG trainings, DED will conduct an annual training on FWA with internal CDBG-DR program staff, Subrecipients and Successful Applicants. The training will cover how to manage and disclose any allegation of known or suspected acts of FWA using CDBG-DR funds. Training on FWA, what to look for, and how to report it also serves as a tool for Subrecipients and Successful Applicants to speak up when they see wrongdoing. Training is updated based on emerging types of FWA to improve monitoring and compliance among Subrecipients and Successful Applicants. To supplement training, DED will provide Subrecipients with informational materials, including, but not limited to brochures; flyers; posters; or electronic content to help identify fraudulent activities and explain how to report them.

19.8 COMMON TYPES OF FRAUD

⁷ 83 FR 5844 at 5856.

Potential fraud types that can be found across all CDBG-DR Programs include:

- Embezzlement and theft;
- Contracting and procurement frauds;
- Bribery;
- Kickbacks;
- Bid rigging;
- Conflicts of interest; and
- Identity theft.

Table 1 is a non-exhaustive list of fraud types that may occur across all programs and in general program management. CDBG-DR falls under HUD programs below, as listed. As described in **Section 19.3: Roles and Responsibilities**, DED and its Subrecipients and Successful Applicants have a shared responsibility to prevent and detect FWA.

Table 1: Potential CDBG-DR Program Fraud Types

Name	Description	Red Flags
Embezzlement and Theft	In several HUD programs, administrators and participants may be entrusted with cash or assets and take them for their personal use. There are many ways they may embezzle, from simple to more elaborate methods to conceal the theft.	<ul style="list-style-type: none"> Participants taking money from the cash drawer or writing checks to cash. Participants falsifying invoices. Participants misusing credit cards of the HUD-funded organization. Participants stealing rental or laundry receipts. Participants falsifying deposits, checks, or other accounts. Participants hiring “ghost” employees and converting the payroll checks for their own use. Participants writing bonuses to themselves. Participants using staff, materials, or equipment for personal use.

Name	Description	Red Flags
<p>Contracting and Procurement Frauds</p>	<p>There are many variations of embezzlement and theft, contracting and procurement, bribery, kickbacks, bid ridding, conflicts of interest, and identity theft which can involve procurement officials and bidders working alone or in collusion to commit fraud.</p>	<p>A false certification of regulatory and statutory compliance or qualifications necessary to obtain a contract.</p> <p>Colluding with others to win a contract using bid rigging, phantom or altered bids, or split bids.</p> <p>Falsifying information on contract proposals.</p> <p>Using Federal funds to purchase items that are not for government use.</p> <p>Billing more than one (1) contract for the same work.</p> <p>Billing for expenses not incurred as part of the contract.</p> <p>Billing for work that was never performed.</p> <p>Falsifying data such as employee credentials, experience, and rates; bonds; and test or inspection results.</p> <p>Abusing change orders.</p> <p>Underbidding to win a contract and colluding with the procurement officer to make up profits through unnecessary change orders.</p> <p>Substituting approved materials with unauthorized products.</p> <p>Misrepresenting a project's status to continue receiving government funds.</p> <p>Charging higher rates than those stated or negotiated for in the bid or contract.</p>
<p>Bribery</p>	<p>Bribery is the offering, giving, receiving, or soliciting of anything of value to influence an official act. Bribery is an unethical business transaction where one (1)</p>	<p>Most bribery schemes begin with gifts and favors. Be cautious of free entertainment, vacations, travel, conference perks, sports events, parties, home or business repairs, and use of resort facilities.</p> <p>Companies submit bids with identical individual line items or lump sums.</p>

Name	Description	Red Flags
	<p>person, usually the person benefiting from the transaction, is paying for the influence of another.</p>	<p>Bids greatly exceed the agency's estimate of contract value or exceed comparable bids by the same companies in other areas similar in demographics.</p> <p>Winning bidder awards subcontracts to one or more of the losing bidders.</p> <p>Last minute alteration of bids after submission.</p>
<p>Kickbacks</p>	<p>A kickback is a type of bribe. A kickback is a collusive agreement where a "cut" of the profit is given to the bribe taker for services rendered. Kickbacks can be in the form of money, credits, gifts, gratuity, services, or anything of value.</p>	<p>Paying a kickback is a two-sided financial transaction. The vendor making the illicit payment must divert funds to pay for the bribe.</p> <p>Payments coded as "fees" for consulting or other services should be scrutinized.</p>
<p>Bid Rigging</p>	<p>Bid rigging is a fraud that involves impeding competitive bidding. Generally, bid rigging involves an agreement to limit competition. These schemes usually occur in the pre-solicitation, solicitation, or evaluation phase of the bidding process.</p>	<p>Pre-Solicitation Red Flags include the following:</p> <ul style="list-style-type: none"> • Specifications and statement of work are tailored to a specific product or vendor. • Prequalification procedures restrict competition. • Unnecessary sole source or non-competitive justifications. • New vendors added to the qualified list without justification. • Projects split into smaller awards to avoid review. • Costs of materials are out of line. • Established bidding policies and procedures are not being followed. • Materials not being ordered at optimal reorder point. <p>Solicitation Phase Red Flags include the following:</p>

Name	Description	Red Flags
		<ul style="list-style-type: none"> • Improper communications between purchasers and contractors at trade or professional meetings.
		<ul style="list-style-type: none"> • Improper social contacts between purchasing agents and contractors.
		<ul style="list-style-type: none"> • Purchasing officials with business or financial interest in the contractor.
		<ul style="list-style-type: none"> • Falsification of documents or receipts so that late bids are accepted.
		<ul style="list-style-type: none"> • Indications of collusion between bidders.
		<ul style="list-style-type: none"> • Falsification of contractor qualifications, work history, or personnel.
		<ul style="list-style-type: none"> • An indication of last-minute alteration of bids.
		<ul style="list-style-type: none"> • A large gap between the winner's proposed pricing and losing bidders' pricing.
		<p>Bid Submission or Contract Acceptance Red Flags include the following:</p>
		<ul style="list-style-type: none"> • Winning bidder awards subcontracts to one or more of the losing bidders.
		<ul style="list-style-type: none"> • Procurement that has been restricted to exclude or hamper any qualified contractor.
		<ul style="list-style-type: none"> • Improperly accepting late bids.
		<ul style="list-style-type: none"> • A bidder who always bids last on contracts and consistently wins.
		<ul style="list-style-type: none"> • Falsification of contractor information, like financial capability, personnel qualifications, and previous performance.
		<ul style="list-style-type: none"> • Bids tend to be awarded in a geographic pattern or in a noticeable rotation, such as a

Name	Description	Red Flags
		particular type of work always being awarded to a particular company.
Conflicts of Interest	A conflict of interest occurs when an employee, manager, or executive has an undisclosed economic or personal interest in a transaction that adversely affects that person's employer. A criminal conflict occurs when an employee participates substantially in a particular matter where they have a financial interest, if the particular matter will have a direct and predictable effect on that interest.	<p>Overly friendly relationship between government employees and contractors such as frequent socialization outside of the work environment.</p> <p>Unexplained increases of business with one (1) contractor or subcontractor.</p> <p>Change orders with a high percentage of original costs.</p> <p>Defining statements of work and specifications to fit the products or capabilities of a single contractor.</p> <p>Government personnel or their families acquiring stock or a financial interest in a contractor or subcontractor.</p> <p>Government personnel discussing possible employment with a contractor or subcontractor for themselves or a family member.</p> <p>Employment of family members by a contractor.</p>
Identity Theft	Program administrators and others who steal identities or create false identities to apply for and illegally receive various HUD funded benefits such as rental assistance, mortgages, or block grant program funds.	<p>Contractors certified as small or disability-, minority-, woman-, or service-disabled veteran-owned businesses are often given preferential treatment related to contract awards. For this reason, some contractors have been inclined to falsely certify themselves, or obtain legitimate certifications, through invalid means.</p> <p>Programs have seen various scams in which websites and other social media sites are used to induce the public to send money in order to receive various HUD benefits, grants, or contracts. They sometimes falsely advertise as being government representatives or agents of HUD to promote their scheme further.</p>

Name	Description	Red Flags
Whistleblower Protection	Protects Federal employees and Applicants for employment who lawfully disclose information they reasonably believe evidence violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health evidences.	If an employee is discharged, demoted, or otherwise retaliated against for making a protected whistleblower disclosure.

TOOLKIT LIST

The following documents for **Chapter 19: Anti-Fraud, Waste and Abuse** are available on the [Toolkit section of DED's website](#):

- Code of Conduct

20 INFRASTRUCTURE MATCH PROGRAM

20.1 PURPOSE

The CDBG-DR Infrastructure Match Program (Match Program) is designed to provide funding to supplement the non-Federal cost share of Federal Emergency Management Agency (FEMA) Public Assistance (PA) and Hazard Mitigation Grant Program (HMGP) in the aftermath of the 2019 disasters (DR-4420). The Match Program focuses on developing and implementing projects that will strengthen and build resilient communities driven by the needs, opportunities, and strategies to mitigate future impacts throughout the State. CDBG-DR funds can be awarded to reimburse up to the full amount of the local match amount for eligible projects.

20.2 ELIGIBLE ENTITIES

Applicants eligible to receive Match Program funding include:

- Local governments;
- State agencies, departments, and authorities, including housing agencies;
- Tribal Territory governments;
- Public schools (K-12);
- Universities;
- Critical infrastructure facilities as defined by FEMA (e.g., wastewater and potable water facilities);
- Natural Resource Districts (NRDs); and
- Other local program Applicants eligible to receive Federal recovery funds, including but not limited to eligible private and public non-profit organizations.

20.3 FEMA PUBLIC ASSISTANCE MATCH

The Public Assistance (PA) Match Program provides funding to repair or rebuild infrastructure with FEMA funding 90% of the project cost and local jurisdictions responsible for the remaining 10% for projects under DR-4420.¹

For a full overview of the program and its associated policies and procedures, see the [Infrastructure Match Program Guide](#).

20.4 FEMA HAZARD MITIGATION GRANT PROGRAM MATCH

The Hazard Mitigation Grant Program (HMGP) provides funding for projects that mitigate risks from future disasters with FEMA funding 75% of project cost and local jurisdictions responsible for the remaining 25% for projects under DR-4420.

For a full overview of the program and its associated policies and procedures, see the [Infrastructure Match Program Guide](#).

¹ President Biden made additional disaster assistance available to the State of Nebraska by authorizing an increase in the level of federal funding for public assistance projects as a result of Winter Storm Ulmer (DR-4420).

21 AFFORDABLE HOUSING CONSTRUCTION PROGRAM

21.1 PURPOSE

The Affordable Housing Construction Program (AHCP) focuses on providing support related to affordable housing recovery and housing resilience, including the construction of affordable housing that reduces flood vulnerabilities in areas the United States (US) Department of Housing and Urban Development (HUD) defined as Most Impacted and Distressed (MID) by the severe winter weather events of 2019 (Sarpy, Dodge, and Douglas counties). This program prioritizes the Low- to Moderate-Income (LMI) households that lost their homes during the storm and those indirectly impacted by the loss of affordable housing stock following the storm.

Under the AHCP, there are three (3) sub-programs.

- Homeownership Production Program
- Small Non-LIHTC Rental Production Program
- LIHTC Gap Financing Program

21.2 ELIGIBLE ENTITIES

- Developers of affordable rental housing including both for-profit and nonprofit entities;
- Units of local government (e.g., counties, cities, or villages); and
- Public Housing Authorities (PHAs).

21.3 HOMEOWNERSHIP PRODUCTION

The Homeownership Production Program (HPP) provides development financing to support the production of affordable for-sale housing targeted to Low- to Moderate-Income (LMI) buyers by covering:

- **Appraisal gaps:** The difference between the total development cost and market value, sometimes referred to as "development subsidy."
- **Affordability gaps:** The difference between an eligible buyer's purchasing power and the market value of the house.
- **Financing gaps:** The difference between the total development financing needed and the Applicant's ability to obtain third-party construction financing and/or provide its own working capital.

The Community Development Block Grant Disaster Recovery (CDBG-DR) funds are used initially to reimburse development costs ranging from acquisition to hard construction to soft costs. Homes are then sold to income-eligible buyers. At the end of the project, total sources and uses are reconciled and program funding is allocated as a development subsidy (i.e., addressing the “appraisal gap” between total costs and appraised value), for direct buyer assistance (i.e., the “affordability gap” between a buyer’s purchasing power and total cost of their acquisition at market value) with any remaining CDBG-DR funds returned to the Department of Economic Development (DED) as program income which is reinvested in additional CDBG-DR activities.

The included buyer assistance is secured in the form of a second mortgage that is forgivable over a five (5) year affordability period provided the purchaser continues to occupy the home.

For a full overview of the program and its associated policies and procedure, see the [Homeownership Production Program Guide](#) .

21.4 SMALL NON-LIHTC RENTAL PRODUCTION PROGRAM

The Small/Non-LIHTC Rental Production Program provides gap financing (i.e., loans) for the production of small affordable multi-family rental housing for projects not otherwise seeking Low-Income Housing Tax Credits (LIHTC) awards from the Nebraska Investment Finance Authority (NIFA).

For a full overview of the program and its associated policies and procedure, see the [Small Rental Production \(non-LIHTC\) Program Guide](#).

21.5 LIHTC GAP FINANCING PROGRAM

The purpose of the Community Development Block Grant Disaster Recovery (CDBG-DR) Low Income Housing Tax Credit (LIHTC) Gap Financing Program is to provide gap financing to affordable multi-family housing production projects seeking LIHTC awards from the Nebraska Investment Finance Authority (NIFA). The CDBG-DR Program will accept applications for both the 4% and 9% tax credit opportunities available through NIFA.

For a full overview of the program and its associated policies and procedure, see the [LIHTC Joint Application Program Guide](#).

22 PLANNING PROGRAMS

22.1 PURPOSE

The State of Nebraska Department of Economic Development (DED) recognizes the importance of strong planning efforts to achieve an equitable and effective recovery. DED will administer two planning programs with CDBG-DR funding that will address flood hazard vulnerabilities that led to flood damage due to the storm and to support an effective and resilient recovery from the disaster. These efforts will specifically focus on addressing risk exposure from private levees and helping communities improve the resilience of their housing stock.

- Housing Resiliency Planning Program (HRPP)
- Risk Awareness Planning Program

22.2 HOUSING RESILIENCY PLANNING PROGRAM (HRPP)

The Housing Resiliency Planning Program utilizes CDBG-DR funding to support local jurisdictions and economic development districts in developing plans for housing recovery, resilience, and affordability. The plans will support communities in identifying and leveraging both CDBG-DR and other resources and strategies for housing recovery, resilience, and affordability. The overarching goal of this Program is to promote comprehensive community resilience. This Program is intended to address flood vulnerabilities in HUD-identified MID counties that were declared under DR-4420, i.e., Dodge, Douglas, and Sarpy.

For a full overview of the program and its associated policies and procedures, see the [Housing Resiliency Planning Program Guide](#).

22.3 RISK AWARENESS PLANNING PROGRAM

The Risk Awareness Planning Program targets areas with risk exposure from private levees. This Program targets counties that received a disaster declaration under DR-4420 and focuses on flood hazard vulnerabilities that led to flood damage under DR-4420. This Program will educate individuals on the risk associated with private levees as water control infrastructure and provide alternative flood mitigation options to promote resilience. DED, in partnership with the Nebraska Department of Natural Resources (NeDNR), will allocate CDBG-DR funds to support developing an outreach plan for risk communication and consultation on alternative mitigation activities.

This Program is a single grant that DED will administer in its entirety, in collaboration with the NeDNR and the Nebraska Emergency Management Agency (NEMA). No subgrants will be awarded.

For a full overview of the program and its associated policies and procedures, see the [Risk Awareness Planning Program Guide](#).

APPENDIX A - ACRONYMS

Acronym	Meaning
AB#	Address Book Number
ACH	Automated Clearing House
ADA	Americans with Disabilities Act
ADC	Activity Delivery Costs
AFFH	Affirmatively Furthering Fair Housing
AFN	Access and Functional Needs
AFWA	Anti-Fraud, Waste, or Abuse
AHCP	Affordable Housing Construction Program
AICPA	American Institute of Certified Public Accountants
AMI	Area Median Income
APA	Auditor of Public Accounts
ARPA	American Rescue Plan Act
ASL	American Sign Language
AUGF	Authorization for Use of Grant Funds
CAFR	Comprehensive Annual Financial Report
CDBG	Community Development Block Grant
CDBG-DR	Community Development Block Grant – Disaster Recovery
CE	Categorically Excluded
CEQ	Council on Environmental Quality
CFDA	Catalog of Federal Domestic Assistance
CFO	Chief Financial Officer
CFR	Code of Federal Regulation
CO	Certifying Officer
CPA	Certified Public Accountant
CPD	HUD Office of Community Planning and Development
CPR	Certified Payroll Report
CWHSSA	Contract Work Hours and Safety Standards Act

DBRA	Davis-Bacon and Related Acts
DED	Nebraska Department of Economic Development
DOB	Duplication of Benefits
DOL	US Department of Labor
DRGR	Disaster Recovery Grant Reporting System
DRRA	Disaster Recovery Reform Act
E1	EnterpriseOne
F&A	Facilities and Administrative Costs
FAC	Federal Audit Clearinghouse
FEMA	Federal Emergency Management Agency
FFATA	Federal Funding Accountability and Transparency Act
FLSA	Fair Labor Standards Act
FMR	Fair Market Rent
FMV	Fair Market Value
FOIA	Freedom of Information Act
FR	Federal Register
FSRS	Federal Subaward Reporting System
FWA	Fraud, Waste, and Abuse
GAAP	Generally Accepted Accounting Principles
GAGAS	Generally Accepted Government Auditing Standards
GEF	Governor's Emergency Fund
HCDA	Housing and Community Development Act of 1974
HMGP	Hazard Mitigation Grant Program
HPP	Homeownership Production Program
HUB	Historically Underutilized Business
HUD	United States Department of Housing and Urban Development
IA	Individual Assistance (FEMA)
IFB	Invitation for Bids
IPA	Independent Public Assistance
ION	Initiation of Negotiations

IRS	Internal Revenue Service
LEP	Limited English Proficiency
LIHTC	Low-Income Housing Tax Credit
LMI	Low- to Moderate-Income
LSCO	Labor Standards Compliance Officer
LSO	Labor Standards Officer
MID	Most Impacted and Distressed
MNL	Monitoring Notification Letter
MOU	Memorandum of Understanding
MR	Monitoring Report
NAA	Notification of Annual Audit
NAHTF	Nebraska Affordable Housing Trust Fund
NEMA	Nebraska Emergency Management Agency
NFIP	National Flood Insurance Program
NIFA	Nebraska Investment Finance Authority
NOFO	Notice of Funding Opportunity
OIG	Office of the Inspector General
OMB	US Office of Management and Budget
P&P	Policies and Procedures
PA	Public Assistance (FEMA)
PAC	Program Administrative Costs
PCAOB	Public Company Accounting Oversight Board
PHA	Public Housing Agency
PII	Personally Identifiable Information
PO	Purchase Order
PSR	Project Status Report
PW	Project Worksheet
QPR	Quarterly Performance Report
R&D	Research and Development
RAPP	Risk Awareness Planning Program

RE	Responsible Entity
RFP	Request for Proposal
RROF	Request for Release of Funds
SBA	Small Business Administration
SFHA	Special Flood Hazard Area
SOW	Scope of Work
SRA	Subrecipient Agreement
UGLG	Unit of General Local Government
URA	Uniform Relocation Assistance
US	United States

APPENDIX B - CDBG-DR PROGRAM DEFINITIONS

PURPOSE

This document is intended to provide a list of definitions for terms used throughout the State of Nebraska Department of Economic Development's (DED) Community Development Block Grant – Disaster Recovery (CDBG-DR) Manual.

This document is intended to assist all DED employees and external providers, vendors, contractors, consultants, Subrecipients, Successful Applicants, partners, citizens, external departments, and agencies doing business with DED, as well as beneficiaries and others associated with, working for, accessing, or attempting to access benefits under the CDBG-DR Programs.

1 A

Abatement: Any measure or set of measures designed to permanently eliminate lead-based paint hazards.¹

Abuse: Excessive or improper use of a thing, or to use something in a manner contrary to the natural or legal rules for its use. Abuse can occur in financial or non-financial settings.

Access and Functional Needs (AFN): Persons who may have additional needs before, during and after an incident in functional areas, including but not limited to: maintaining independence, communication, transportation, supervision, and medical care. Individuals in need of additional response assistance may include those who have disabilities; live in institutionalized settings; are seniors; are children; are from diverse cultures; have limited English proficiency or are non-English speaking; or are transportation disadvantaged.

Action Plan: For each disaster allocation, the relevant Action Plan describes the State of Nebraska's unmet needs, the programs that will address those unmet needs, the method of distribution across those programs, and how those programs and activities will meet the requirements of HUD.

Activity Delivery Costs (ADC): Costs of carrying out a specific CDBG-DR program and providing a program benefit.

¹ See 40 CFR § 745.223 for full EPA definition.

Address Book Number (AB#): Banking information for a Subrecipient or Successful Applicant of CDBG-DR funds in the EnterpriseOne system.

Affirmatively Furthering Fair Housing (AFFH): The AFFH obligation requires a Grantee and associated Subrecipients and Successful Applicants to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them.²

Aggregation: For purposes of environmental reviews, the activities should be aggregated (grouped) to consider the combined environmental effect of the project. Activities that are related either geographically, functionally, or as logical parts of a composite contemplated action can be aggregated. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street paving, and construction of a water line, would be aggregated together under one (1) project. Aggregation will reduce the number of Environmental Review Records (ERRs) that the Responsible Entity will have to complete. Activities where project aggregation would occur include:

1. Activities are in a concentrated area;
2. Activities are within unspecified sites;
3. Multi-year activities; and
4. Special HUD initiatives.

Allowable Cost: Costs that are in line with 2 CFR Part 200.

Ambulatory Difficulty: Having serious difficulty walking or climbing stairs.

American Sign Language (ASL): A visual language based on hand shape, position, and movement; facial expression; and palm orientation in relation to each other and the body.

Americans with Disabilities Act (ADA): Prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards.³

AmpliFund: DED's grant management system utilized to track and manage all spending for the CDBG-DR Program. AmpliFund holds all project documents, budgets, and expenditure information. AmpliFund is the primary method for communicating the status of the payment request.

² 86 FR 30779 at 30781.

³ The Americans with Disabilities Act (42 USC 12101).

Anti-Fraud, Waste, or Abuse (AFWA) Submission Form: An electronic document that may be used for the purpose of reporting allegations of fraud, waste, or abuse related to CDBG-DR funds. This form can be submitted online, by electronic or postal mail, or in person. The complainant may choose to remain anonymous or specify that their contact information stay confidential. The form can be found here: [CDBG-DR Anti-Fraud, Waste, or Abuse Submission Form – Nebraska Department of Economic Development](#).

Applicant: Applicant means a State, metropolitan city, urban county, governmental entity, tribe, developer, or nonprofit organization that submits a written expression of interest in a CDBG-DR program. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers.⁴ Eligible Applicants under each CDBG-DR program are further specified in the respective Program Guide.

Appraisal:⁵ A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Apprentice: A person employed and individually registered in a bona fide apprenticeship program, including Step-Up apprenticeship programs designed for Davis-Bacon construction work.⁶

Area Median Income (AMI): The median family income for the metropolitan statistical area (MSA), if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.⁷

Auditor of Public Accounts (APA): An executive position in the Nebraska State government that aims to provide independent, accurate, and timely audits, reviews, or investigations of the financial operations of Nebraska State and local governments.

2 B

Best efforts: In reference to Section 3, DED uses the HUD terminology “best efforts” and “to the greatest extent feasible” to qualify expectations for Section 3 activities. These statutory terms⁸ provide flexibility for Grantees, Subrecipients, and Successful Applicants of HUD funding. DED will evaluate Subrecipient and Successful Applicant performance based on the standard set forth

⁴ 24 CFR § 291.405.

⁵ 49 CFR § 24.2(a)(3).

⁶ “Davis-Bacon Compliance Principles and Reporting Requirements,” Handbook 1344.1 Rev 2 (c).

⁷ 12 CFR § 228.12.

⁸ 12 USC 1701u(b)-(d).

by HUD,⁹ based on “the level of effort expended by those recipients that fail to meet the benchmark safe harbor... [to] ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at 24 CFR §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).”

Beneficiaries: The individuals and/or developers who directly benefit from a Nebraska CDBG-DR project.

Business:¹⁰ Any lawful activity, except a farm operation, that is conducted:

- 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;
- Primarily for the sale of services to the public;
- Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Business Unit: Unique identifying number for program or project within EnterpriseOne.

3 C

Categorically Excluded (CE): A categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see 24 CFR § 58.2(a)(3)) in which a normally excluded activity may have a significant impact.

Certified Administrator: Persons with extensive knowledge and experience with cross-cutting Federal requirements and CDBG regulations and who participate in training and pass a written exam administered by DED.

Certifying Officer (CO):¹¹ CO is the “Responsible Federal Official”¹² for the Responsible Entity. Generally, the CO is the Unit of General Local Government (UGLG)’s, State’s, or Tribe’s highest-

⁹ See <https://www.hudexchange.info/section-3/faqs/>.

¹⁰ 49 CFR § 24.2(a)(4).

¹¹ 24 CFR § 58.2(a)(2).

¹² “Responsible Federal Official” is the term used in section 102 of NEPA.

ranking elected official (or designee). Written delegation is necessary if the role is delegated below Governor, Mayor, Village Board Chair, City Manager, or County Judge, and can generally be delegated to the person who signs grant agreements. The CO has the authority to enter binding commitments in response to court judgements and responds to the jurisdiction of the federal courts. Per 24 CFR § 58.2(a)(2), the CO is the official who has the authority to assume legal responsibility for certifying that all environmental requirements have been followed.

Code of Federal Regulations (CFR): The codification of the general and permanent rules published in the Federal Register (FR) by the executive departments and agencies of the Federal government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and issued on a quarterly basis.

Cognitive Difficulty: Because of a physical, mental, or emotional problem, having difficulty remembering, concentrating, or making decisions.

Community Development Block Grant – Disaster Recovery (CDBG-DR) Program: CDBG-DR grants fund rebuilding in affected disaster areas and provide crucial seed money to start the recovery process. These flexible grants help cities, counties, and states recover from presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. CDBG-DR funding is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Public Laws are the appropriation acts that provide funding for each disaster. In addition to any requirements cited in the appropriation acts, the CDBG regulations in 24 CFR Part 570 apply to CDBG-DR funds. However, CDBG-DR appropriations generally grant HUD broad authority to issue waivers and alternative requirements, which are identified in a Federal Register Notice issued by HUD shortly following the announcement of allocations. HUD also provides guidance on the CDBG-DR program through CPD Notices.

Community Development Block Grant (CDBG) Program: Created under the Housing and Community Development Act of 1974, this program provides grant funds to local and State governments to develop viable urban communities by providing decent housing with a suitable living environment and expanding economic opportunities to assist LMI residents. CDBG replaced several categorical grant programs, such as the Model Cities program, the Urban Renewal program, and the Housing Rehabilitation Loan and Grant program.

CDBG funds include funds received in the form of grants under subpart D, F, or § 570.405 of 24 CFR Part 570, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of 24 CFR Part 570, urban renewal surplus grant funds, and program income as defined in 24 CFR § 570.500(a).

Complainant: Any citizen, previous, current, or potential Applicant, beneficiary, consultant, contractor, employee, partner, provider, Subrecipient, Successful Applicant, supplier, or vendor filing a complaint under the CDBG-DR Program.

Concern: An issue that is not an instance of statutory or regulatory noncompliance but may result in noncompliance if not addressed.

Condemnation: The legal process of acquiring private property for public use or purpose through the government's power of eminent domain.

Construction, Prosecution, Completion, or Repair: All types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.¹³

Contract Work Hours and Safety Standards Act (CWHSSA): Establishes a single threshold excluding single contracts of \$100,000 or less from CWHSSA overtime and health and safety provisions. Prohibits contractors or subcontractor employing laborers or mechanics from requiring or permitting them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.¹⁴

Copeland Anti-Kickback Act: Makes it unlawful to induce by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever any person employed in the construction, prosecution, completion, or repair of any public building, public work, or work financed in whole or in part by loans or grants from the US, to give up any part of the compensation to which he is entitled under his contract of employment.¹⁵

Council on Environmental Quality (CEQ): Advises the President of the United States and develops policies on climate change, environmental justice, Federal sustainability, public lands, oceans, and wildlife conservation, among other areas. As the agency responsible for implementing NEPA, CEQ also works to ensure that environmental reviews for infrastructure projects and Federal actions are thorough, efficient, and reflect the input of the public and local communities.

4 D

Davis-Bacon and Related Acts (DBRA): Applies 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. DBRA contractors and subcontractors must pay their laborers and mechanics employed under the contract no less

¹³ 29 CFR § 3.2(b).

¹⁴ 52 CFR § 52.222-4.

¹⁵ Copeland Anti-Kickback Act of 1934. 18 USC § 874.

than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

Debarment: A debarment sanction means that an individual, organization and its affiliates are excluded from conducting business with any Federal agency government wide. Depending upon the outcome of an investigation or legal proceeding, a suspension may lead to debarment. Debarment is the most serious compliance sanction and is generally imposed for a three-year period. However, debarment can be imposed for a longer period of time, if the debarring official determines this action is necessary to protect the public interest. If a suspension precedes a debarment, then the suspension period is considered in determining the total length of time that debarment is imposed.

Decertification: This occurs when a Certified Administrator fails to properly administer CDBG projects.

Deduction: For purposes of DBRA, an employer may make payroll deductions as permitted by DOL in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.¹⁶

Designee: A person designated or selected to carry out a duty.

Developer: Pursuant to HUD's 2019 [CDBG-DR Policy Guide](#), the 2 CFR Part 200 regulations are silent on the term developer. The Neighborhood Stabilization Program (NSP) and CDBG programs consider a developer a beneficiary, much as an eligible household. The term is used frequently in the rehabilitation and new construction industries. Therefore, the term and its definition are borrowed from NSP. Therefore, a Developer is a for-profit or private nonprofit individual or entity that the grantee provides NSP (read also: CDBG-DR) assistance to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2) constructing new housing in connection with the redevelopment of demolished or vacant properties. Developers are program beneficiaries and thus distinct from Subrecipients, grantee employees, and contractors. For the purposes of this CDBG-DR manual, Developers fall under the broader category of program Applicants during the application period and Successful Applicants if in receipt of a funding award. Developers may receive NSP (read also: CDBG-DR) funds from either the grantee or a Subrecipient. It should be noted that Public Housing Authorities are public agencies and therefore are unable to be a developer.

Direct Cost: Any project cost or 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

¹⁶ "Davis-Bacon Compliance Principles and Reporting Requirements," Handbook 1344.1 Rev 2 (c).

as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

Disability: A physical or mental impairment that substantially limits one (1) or more of the major life activities for an individual.

Disaster Recovery Grant Reporting System (DRGR): HUD’s accounting system for CDBG-DR grants, which is primarily used by Grantees to access grant funds and report performance accomplishments for grant-funded activities. DED, as Grantee, requests drawdowns in DRGR of funds to pay invoices against its CDBG-DR grant.

Displaced Person:¹⁷ Except as provided in “Person Not Displaced” definition, any person who moves from the real property or moves his or her personal property from the real property. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at 49 CFR § 24.401(a) and 49 CFR § 24.402(a):

- As a direct result of a written notice of intent to acquire (see 49 CFR § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;
- As a direct result of rehabilitation or demolition for a project; or
- As 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. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under 49 CFR § 24.205(c), and moving expenses under 49 CFR § 24.301, 49 CFR § 24.302 or 49 CFR § 24.303.

Duplication of Benefits (DOB): Occurs when a Subrecipient, Successful Applicant, or beneficiary receives assistance from multiple sources and the assistance exceeds the need for a particular recovery purpose.

5 E

Easement: An interest in real property that conveys use, but not ownership, of a portion of an owner’s property. An Easement can be permanent or temporary for a period of months or years. A Public Utility Easement (PUE) allows a public agency to construct, improve, maintain, repair, and replace roadways, sidewalks, landscaping, and utilities. It also allows private utility companies

¹⁷ 49 CFR § 24.2(a)(4).

to install and maintain their facilities if an agreement to undertake such work exists between the public agency and utility company. Once granted, a PUE precludes the owner of the underlying land from constructing any physical improvements other than approved landscaping in areas specifically designated for such use.

Elderly Person Household: A household composed of one (1) or more persons at least one (1) of whom is 62 years of age or more at the time of initial occupancy.

Eminent Domain: An exercise of the power of government or quasi-government agencies (such as airport authorities, highway commissions, community development agencies, and utility companies) to take private property for public use.

Employee: For purposes of Davis Bacon and labor standards requirements, every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.¹⁸

EnterpriseOne (E1): The State of Nebraska’s accounting system.

Employed: For purposes of Davis Bacon and labor standards requirements, every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.¹⁹

Environmental Officer: The person responsible for conducting the review and facilitating responses to comments and findings as appointed by the CO. This person may also be called the “preparer.”

6 F

Fair Housing Act: A 1968 Act (amended in 1974 and 1988) that provides the HUD Secretary with fair housing enforcement and investigation responsibilities and prohibits discrimination in all facets of the homebuying process on the basis of race, color, national origin, religion, sex, familial status, or disability.

¹⁸ “Davis-Bacon Compliance Principles and Reporting Requirements,” Handbook 1344.1 Rev 2 (c).

¹⁹ 29 CFR § 5.2(O).

Fair Market Value (FMV): The amount of money that would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy.

Fair Market Rent (FMR): The rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This FMR includes utilities (except telephone). Separate FMRs are established by HUD for dwelling units of varying sizes (number of bedrooms).²⁰

Federal Emergency Management Agency (FEMA): An agency of the US Department of Homeland Security that supports citizens and emergency personnel to build, sustain, and improve the nation's capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

Federal Funding Accountability and Transparency Act (FFATA): This Act requires recipients to report Subrecipient and Successful Applicant information to the FFATA Subaward Reporting System (FSRS).

Federal Register (FR): Published by the National Archives and Records Administration (NARA), the FR is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

Federal Subaward Reporting System (FSRS): The reporting tool Federal prime awardees (i.e., prime contractors and prime grant recipients) use to capture and report subaward and executive compensation data regarding their first tier subawards to meet the Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

Final Order of Condemnation: The instrument that, when recorded, transfers title to public ownership.

Finding: A finding is reported when there is evidence that a statute, regulation, or requirement has been violated. If compliance is not possible, monetary or administrative sanctions may be imposed upon the Program Implementation Contractor, Subrecipient, Successful Applicant, or a combination thereof.

Force Account Labor: Labor employed directly by the Grantee or Subrecipient on either a permanent or temporary basis. The workforce can be external (employees hired in the private market) or internal (currently employed maintenance or other staff). In essence, the hiring entity obtains the materials and equipment needed and directly employs workers to undertake the improvement acting as its own general contractor.

²⁰ 24 CFR Part 5.

Fraud: The wrongful or criminal deception intended to result in financial or personal gain. Fraud includes false representation of fact, making false statements, or concealment of information.

Fringe Benefit: Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave, and some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State, or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

Funding Agreement: Funding agreements govern the funding and activities of Successful Applicants.

7 G

General Marketing and Outreach: Marketing and outreach activities conducted across the affected areas regardless of level of impact or prevalence of certain demographics that provide indication of vulnerable, hard-to-reach populations. Examples include television, radio, and newspaper announcements, application in-take sessions, and direct mailings.

Grantee: The State of Nebraska Department of Economic Development is the "Grantee" for purposes of the CDBG-DR Program.

Green Building Standards: All rehabilitation that meets the definition of substantial improvement, reconstruction, or new construction must meet an industry-recognized standard that has achieved certification under at least one (1) of the following programs: (1) ENERGY STAR (Certified Homes or Multifamily High-Rise); (2) Enterprise Green Communities; (3) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); or (4) ICC-700 National Green Building Standard.

8 H

Hearing Difficulty: A person with hearing difficulty is deaf or has serious difficulty hearing.

Homeless: An individual who lacks a fixed, regular, and adequate nighttime residence; as well as an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations, an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Housing Activities: Housing activities may include single family home repair, reconstruction, new construction, demolition, acquisition, and code enforcement or rental activities.

9 I

Independent Living Difficulty: Because of a physical, mental, or emotional problem, having difficulty doing errands alone such as visiting a doctor’s office or shopping.

Independent Public Accountant (IPA): Any certified public accountant or firm of certified public accountants appointed and paid by the State who, or each of whom, (i) is independent and not under the domination of the State; (ii) does not have any substantial interest, direct or indirect to the State; and (iii) is not connected with the State as an officer or employee of the State but who may be regularly retained to make annual or other audits of the books of, or reports to, the State.

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.

Individual Assistance (IA): FEMA provides IA to eligible individuals and households who have sustained losses as a direct result of a disaster that receives a Federal disaster declaration. Homeowners and renters in officially designated counties who sustained damage to their homes, vehicles, personal property, businesses, or inventory may apply for disaster assistance. Assistance can include grants to help pay for temporary housing; emergency home repairs; uninsured and underinsured personal property losses; and medical, dental, and funeral expenses caused by the disaster, together with other serious disaster-related expenses.

Initiation of Negotiations (ION): If a tenant is displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition, ION occurs upon the execution of the loan or grant agreement between DED and the Subrecipient or Successful Applicant controlling the real property.²¹ In the absence of a loan or grant agreement between DED and the Subrecipient or Successful Applicant, see the definition of ION in the government-wide regulations at 49 CFR § 24.2(a)(15)(iv) or 49 CFR § 24.101(b)(1)-(5).

Interagency Agreement (IA): A binding agreement entered into by two State agencies.

Invoice Package: A template that Subrecipients and Successful Applicants complete when submitting invoices.

10 J

Just Compensation: Just compensation is the fair market value of the property being acquired by the government. The HUD definition of fair market value is “The amount of money that would

²¹ See <https://www.hud.gov/sites/documents/1378EXHIBITACPDH.PDF>.

probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy.”

11 L

Labor Standards Compliance Officer (LSCO): The LSCO is a DED managed position that is responsible for tracking records and monitoring compliance of Subrecipients and Successful Applicants with the requirements described in **Chapter 14: Davis-Bacon**.

Labor Standards Officer (LSO): The LSO is a Subrecipient or Successful Applicant managed position that is responsible for the regulatory administration and enforcement of the Federal labor standards provisions on all SRAs and funding agreements covered by DBRA requirements.

Labor hours: For purposes of Section 3, 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.²²

Laborer or Mechanic: Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.²³

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 by weight.

Leverage: The term “leverage” is not defined in the specific context of CDBG-DR. However, HUD has published a definition related to its Continuum of Care (CoC) Program. Per this definition, for Nebraska’s CDBG-DR program, Leverage is the non-match cash or non-match in-kind resources committed to making a project fully operational. Leverage funds may be used for any program related costs, even if the costs are not budgeted or not eligible in the Program. Leverage may be used to support any activity within the project provided by the recipient or Subrecipient.

Limited English Proficiency (LEP): A person with a limited ability to read, write, speak, or understand English.

²² 24 CFR § 75.5.

²³ 29 CFR § 5.2(m).

Low-Income Housing Tax Credit (LIHTC): A tax incentive intended to increase the availability of low-income housing. The LIHTC program provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects.

Low-Income Person: An individual or family whose income does not exceed 80% of the median family income for the area, as determined by the HUD Secretary with adjustments for smaller and larger families, except that the HUD Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the HUD Secretary's findings that such variations are necessary because of prevailing construction costs or unusually high or low family incomes.²⁴

Low- to Moderate-Income (LMI): Households whose total annual gross income does not exceed 80% of AMI, adjusted for family size.

- **Extremely Low Income:** Very low-income families whose incomes do not exceed the higher of 1) the poverty guidelines updated periodically by the Department of Health and Human Services or 2) 30% of the median family income for the area, as determined by HUD, adjusted for family size.
- **Very Low:** Low-income families whose incomes do not exceed 50% of the median family income for the area, as determined by HUD, adjusted for family size.
- **Low:** Low-income families whose incomes do not exceed 80% of the median family income for the area, as determined by HUD, adjusted for family size.²⁵

Lower Income Dwelling Unit: A dwelling unit with a market rent (including utility costs) that does not exceed the applicable fair market value (FMR) for existing housing established under 24 CFR Part 888.²⁶ However, the term does not include any unit that is owned and occupied by the same person before and after the assisted rehabilitation.

Lower-income Person:²⁷ As appropriate, a "low and moderate income person" as that term is defined in 24 CFR 42 § 570.3, or a "low-income family" as that term is defined in 24 CFR 42 § 92.2.

²⁴ 42 USC § 1437a(2)(b)(2)(A).

²⁵ 42 USC § 1437a(b).

²⁶ 24 CFR § 42.305.

²⁷ 24 CFR Part 42.

12 M

Market Value: The most probable price that a property should bring in a competitive and open market, provided that all conditions requisite to a fair sale are present, the buyer and seller are knowledgeable and acting prudently, and the price is not affected by any undue stimulus.

Material 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.²⁸

Most Impacted and Distressed (MID) Areas: Areas of most impact as determined by HUD or the State using the best available data sources to calculate the amount of disaster damage. The HUD MID-designated areas for Winter Storm Ulmer (DR-4420) are Dodge County, Douglas County, and Sarpy County.

Monitoring Report (MR): Summary of monitoring review, this report is issued by DED to the Subrecipient or Successful Applicant; this report includes identification of any components the Subrecipient or Successful Applicant is doing well, areas for improvement, and any corrective action items, as needed. If multiple reports are issued, MRs may include a sequential number or other identifier.

13 N

National Flood Insurance Program (NFIP): Managed by FEMA, NFIP provides flood insurance to property owners, renters, and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP works with communities required to adopt and enforce floodplain management regulations that help mitigate flooding effects.

Nebraska Affordable Housing Trust Fund (NAHTF): A resource to help increase the supply and improve the quality of affordable housing in Nebraska. The NAHTF provides matching funds for Federal resources and aims to serve the lowest income individuals for the longest period of time.

Nebraska Department of Economic Development (DED): Referred to as the “Grantee.”

NEPA:²⁹ The National Environmental Policy Act of 1969 (NEPA) as implemented by CEQ via regulations at 40 CFR Parts 1500 to 1508.

Notice of Funding Opportunity (NOFO): A notice published each year on Grants.gov for HUD’s Discretionary Funding Programs. This notice describes the type of funding available on a

²⁸ 24 CFR § 75.5.

²⁹ 40 CFR Parts 1500 to 1508.

competitive basis and provides a contact where an application may be submitted, typically up to 60 to 90 days from the date of NOFO publication. Selection will then be made based upon specific factors and criteria identified within the NOFO.

14 O

Office of Inspector General (OIG): Conducts audits, evaluations, investigations, and other reviews of the programs and operations of HUD.

Office of Management and Budget (OMB): Part of the Executive Office of the President, OMB oversees the preparation of the Federal budget and overarching management and financial guidance to Executive Branch agencies.

Overtime: All hours worked in excess of 40 hours in any workweek. Where governed by Federal labor standards, overtime hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

Owner: Any private person or entity, including a cooperative, an agency of the Federal government, or a public housing agency, having the legal right to lease or sublease dwelling units.

Owner-occupied: means that the residence is occupied by:

- The legal owner;
- A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or
- A person who has lifetime occupancy rights with formal title vested in another.³⁰

15 P

Parcel: For purposes of the *Chapter 12: One-for-One Replacement Housing Relocation and Real Property Acquisition Requirements*, the property that is being acquired or otherwise impacted such that relocation assistance is necessary.

Participants: Any individual or entity that is engaged in the processes for CDBG-DR funds.

Performance Report: See Quarterly Performance Report in section Q.

³⁰ 44 CFR Part 206.111.

Person Not Displaced:³¹ The following is a nonexclusive listing of persons who do not qualify as displaced persons under 49 CFR Part 24:

- A person who moves before the initiation of negotiations (see 49 CFR § 24.403(d)), unless DED 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 Uniform Act;
- A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by DED in accordance with any guidelines established by HUD (in this case, the Federal Agency responsible for oversight to the program);
- An owner-occupant who moves as a result of an acquisition of real property as described in 49 CFR § 24.101(a)(2) or 49 CFR § 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally-assisted project is subject to 49 CFR Part 24);
- A person whom DED determines is not displaced as a direct result of a partial acquisition;
- A person who, after receiving a notice of relocation eligibility (described at 49 CFR § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and DED agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
- An owner-occupant who conveys his or her property, as described in 49 CFR § 24.101(a)(2) or 49 CFR § 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, DED will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in 49 CFR Part 24;
- A person who retains the right of use and occupancy of the real property for life following its acquisition by DED;
- An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93-477, Appropriations

³¹ 49 CFR § 24.2(a)(9)(ii).

for National Park System, or Pub. L. 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of 49 CFR § 24.301;

- 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, as provided for in 49 CFR § 24.206. However, advisory assistance may be provided to unlawful occupants at the option of DED in order to facilitate the project;
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 49 CFR § 24.208; or
- Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Down payment Initiative (ADDI) authorized by section 102 of the American Dream Down payment Act ([Pub. L. 108-186](#); codified at 42 USC 12821).

Personally Identifiable Information (PII): Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.³²

Policies and Procedures (P&P): A set of rules and methods designed and communicated to structure certain processes within an organization. This term embraces the set of instructions given to employees from general guidelines to specific steps applicable to job positions.

Possession: Legal control; to have the right to use.

Prevailing Wages: The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.³³

Primary Home: The beneficiary's principal residence, not a secondary or vacation home.

³² 2 CFR § 200.1.

³³The Davis-Bacon Act, as Amended (April 2009). PL 107-217-Section 3142(b).

Prime Contractor: The principal contractor responsible for the completion of a project under contract with the owner of the job.

Procurement: The buying, purchasing, renting, leasing, or otherwise acquiring goods or services. The term also includes all functions that pertain to obtaining goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration in accordance with Nebraska statutes, rules, and regulations.

Professional Services: For purposes of Section 3, 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.³⁴

Program Administrative Cost (PAC): Costs incurred for the general management, oversight, and coordination of the CDBG-DR grant, and are generally incurred only by the Grantee. Subrecipients receiving CDBG-DR funds should not incur PACs because costs associated with activity delivery are considered Activity Delivery Costs (ADCs). Successful Applicants are ineligible to receive both PAC and ADC reimbursements on top of their project budgets and must factor their administrative costs into their application budgets.

Program Implementation Contractor: An entity competitively selected to provide clearly-specified goods or services. The contract price is established through the procurement process. CDBG-DR funds are paid to the contractor as compensation for the satisfactory provision of the goods and services as specified in the contract.

Program Income: Gross income received by a Subrecipient, a Successful Applicant, or the Grantee directly generated from the use of CDBG-DR funds or matching contributions.

Program Manager: Oversees and coordinates monitoring and compliance for Subrecipients and Successful Applicants for their respective programs (e.g., Housing Program Manager, Infrastructure Program Manager).

Project Cost: Total of CDBG-DR funds, local or other matching funds, and total business investment in the project.

Project Status Report (PSR): A document or report that communicates the current state of a Subrecipient's or Successful Applicant's project to DED.

³⁴ 24 CFR § 75.5.

Public Building or Public Work: Building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.³⁵

Public Housing: Housing assisted under the provisions of the Housing Act of 1937 or under a State or local program having the same general purposes as the Federal program. Distinguished from privately financed housing, regardless of whether Federal subsidies or mortgage insurance are features of such housing development.

Public Housing Financial Assistance: For purposes of Section 3, public housing financial assistance means:

- Development assistance provided pursuant to Section 5 of the Housing Act of 1937;
- Operations and management assistance provided pursuant to Section 9(e) of the 1937 Act;
- Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and
- The entirety of a mixed-finance development project as described in 24 CFR § 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.³⁶

Public Housing Agency (PHA): Any State, county, municipality, other governmental entity, public body, agency, or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the Housing Act of 1937.

Public Housing Project: The term “public housing” means low-income housing and all necessary appurtenances thereto, assisted under the Housing Act of 1937, other than assistance under 42 USC 1437f of the 1937 Act (Section 8). The term “public housing” includes dwelling units in a mixed-finance project that are assisted by a public housing agency with public housing capital assistance or Operating Fund assistance. When used in reference to public housing, the term “project” means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing.³⁷

Public Use: A use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water pipelines or storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection.

³⁵ 29 CFR § 3.2(c).

³⁶ 24 CFR § 75.3(a)(1).

³⁷ 24 CFR § 905.108.

Some public uses are for private entities, such as universities, hospitals, and public utilities, which serve the public.

Public Use Areas: Interior or exterior rooms or spaces of a building that are made available to the public. Public use may be provided at a building that is privately or publicly owned.

16 Q

Quarterly Performance Report (QPR): The QPR enables Grantees to create and submit financial and performance data related to each grant in the DRGR system along with progress narratives. HUD users review QPRs to check on Grantee progress and review activities for compliance. Although Grantees can submit information on the overall progress for a grant, much of the data is at the activity level.

17 R

Recipient Grant Manager: Subrecipient's or Successful Applicant's primary contact established in AmpliFund.

Responsible Entity (RE): REs assume HUD's NEPA responsibilities. Only States, UGLGs, or Tribes that do not distribute HUD assistance to a UGLG and exercise land-use responsibility where the project is located can serve as a RE.³⁸

Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act): The Stafford Act constitutes the statutory authority for FEMA's disaster response activities and FEMA's administration of individual and public assistance programs.

18 S

Section 3: Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

³⁸ Other recipients of HUD assistance who cannot act as a RE include: Tribal Housing Authorities, Public Housing Authorities, Councils of Government, Planning Agencies, other quasi-governmental organizations, non-profit organizations, or for-profit entities.

Section 3 Business Concern: A business concern meeting at least one (1) of the following criteria, documented within the last six-month period:

- It 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 prior three-month period are performed by Section 3 workers; or
- It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 Project:³⁹ Means housing rehabilitation, housing construction, and other public construction projects⁴⁰ 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.

Section 3 Business Registry: A listing of firms that have self-certified that they meet one (1) of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts. The database can also be used by Section 3 workers to identify businesses that may have HUD-funded employment opportunities.

Section 3 Final Rule: The Final Rule, published on September 29, 2020, updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3.⁴¹

Section 3 Worker: Any worker who currently fits or when hired within the past five (5) years fit at least one (1) 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;⁴²

³⁹ 24 CFR § 75.3.

⁴⁰Public construction may include infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

⁴¹ 85 FR 189.61524 at 61524.

⁴² Median income data is available at: https://www.huduser.gov/portal/datasets/il.html#2021_query.

- The worker is employed by a Section 3 business concern; or
- The worker is a YouthBuild participant.

Section 8 Existing Rental Assistance: Provides rental assistance to low-income families who are unable to afford market rents. Assistance may be in the form of vouchers or certificates.

Self-Care Difficulty: Having difficulty bathing or dressing.

Service Area or the Neighborhood of the Project:⁴³ For purposes of Section 3, an area within one (1) mile of the Section 3 project or, if fewer than 5,000 people live within one (1) mile of a Section 3 project, 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 US Census.

Site of Work: The physical place or places where the construction called for in the contract will remain when work on it has been completed, including other adjacent or nearby property used by the contractor or subcontractor in the construction of the project (e.g., fabrication sites), provided they are dedicated exclusively or nearly so to the performance of the contract or project and are so located in proximity to the actual construction location that it would be reasonable to include them.

Small Business Administration (SBA): Created in 1953, SBA is a Federal agency that promotes, finances, and provides counseling, capital, and contracting expertise for small businesses. SBA also provides disaster recovery loan assistance to businesses and homeowners.

Small Business: For purposes of the URA, a small business is a business having not more than 500 employees working at the site being acquired or displaced by a program or project whose site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business.⁴⁴

Small Public Housing Agency (PHA): For purposes of Section 3, a PHA that manages or operates fewer than 250 public housing units.⁴⁵

Special Flood Hazard Area (SFHA): The area that would be inundated by the flood event having a 1% chance of being equaled or exceeded in any given year. The 1% annual chance flood is also referred to as the base flood or 100-year flood.

State Auditor: See definition for Auditor of Public Accounts.

⁴³ 24 CFR § 75.5.

⁴⁴ 49 CFR § 24.2.

⁴⁵ 24 CFR § 75.5.

Statement of Compliance: A short form WH-348.⁴⁶

Sub-Applicant: Any individual person who applies for assistance to a Subrecipient or Successful Applicant of the Nebraska CBDG-DR Programs.

Subrecipient: A public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR § 570.201(o), receiving CDBG funds from the Grantee or another Subrecipient to undertake activities eligible for such assistance under subpart C of 24 CFR Part 570. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of 24 CFR Part 570, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 2 CFR Part 200, Subpart D.⁴⁷

Subrecipient Agreement (SRA): Pursuant to 24 CFR § 570.503, SRAs govern the funding and activities of Subrecipients.⁴⁸

Successful Applicant: Successful Applicants include any eligible entity that is selected to enter into a funding agreement (e.g. funding agreements govern the funding and activities for Successful Applicants) with DED to implement CDBG-DR program activities (e.g., for-profit developers).

19 T

Targeted Marketing: Activities aimed at groups least likely to apply for housing without targeted outreach (because of language barriers, insufficient information about the property, etc.).

Targeted Section 3 worker:⁴⁹ A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

- A worker employed by a Section 3 business concern; or
- A worker who currently fits or when hired fit at least one (1) of the following categories, as documented within the past five (5) years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or

⁴⁶ HUD Davis-Bacon and Labor Standards On the Mark #10.

⁴⁷ 24 CFR § 570.500(c).

⁴⁸ 24 CFR § 570.503.

⁴⁹ 24 CFR § 75.21.

- A YouthBuild participant.⁵⁰

Temporarily Displaced Person: A person who is not required to relocate permanently as a direct result of a project.⁵¹

Tiering: For purposes of NEPA and environmental reviews, tiering refers to the coverage of general matters in broader EISs with subsequent narrower statements or EAs incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.⁵²

Trainee: A person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the DOL, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administrator.⁵³

20 U

UGLG: Unit of General Local Government. Per section 5302(a) of the Housing and Community Development Act of 1974, UGLGs are defined as 1) a county, parish, city town, township, village, or other general purpose political subdivision of a State that 2) have power to levy taxes and expend Federal, State, and local funds and exercise governmental powers.

Unmet Needs: Unmet needs are needs that are not covered by other sources and can be covered by CDBG-DR funds.

Uniform Relocation Assistance (URA) Program or Project: For purposes of the URA, the phrase “program or project” means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.⁵⁴

Urgent Need National Objective: An urgent need that exists because existing conditions pose serious and immediate threat to the health or welfare of the community, the existing conditions are recent or recently became urgent (typically within 18 months), and the Subrecipient or Successful Applicant cannot finance the activities on its own because other funding sources are not available.

⁵⁰ 24 CFR § 75.21(a).

⁵¹ 49 CFR § 24.

⁵² 40 CFR § 1508.28.

⁵³ 29 CFR § 5.2(n).

⁵⁴ 49 CFR § 24.2(a)(22).

21 V

Vendor/Contractor: A Vendor/Contractor refers to an entity that is providing the service. No Subrecipient Agreement is issued to a Vendor/Contractor but may be related to a CDBG-DR program.

Veteran: A person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

Vision Difficulty: A person with a vision difficulty is blind or has serious difficulty seeing, even when wearing glasses.

22 W

Waste: The thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment (or potential detriment) of the US government. Waste also includes incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls.

23 Y

YouthBuild:⁵⁵ A community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school. YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality.

⁵⁵ Additional information regarding Youthbuild is available at <https://www.dol.gov/agencies/eta/youth/youthbuild>.