

Chapter 23.B

Infrastructure In Support of Housing



STATE OF MISSOURI CDBG-DR POLICY
STATEMENT

IN EFFECT FOR GRANT(S):
DR-4317: B-18-DP-29-0001
DR-4451: B-19-DF-29-0001

ACTION	VERSION #	CHANGE #	PAGE #	SUMMARY OF ACTION	APPROVAL DATE
Approval	1	0	Entire document	Creation and approval of IPDR	3/07/2023

POLICY CHANGES OR UPDATES TABLE

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23B.1 Introduction

This Chapter details the use of Community Development Block Grant-Disaster Recovery (CDBG-DR) funds for the development of infrastructure projects in support of affordable housing. In response to damages caused by natural disasters that impacted the State of Missouri in 2017 and 2019, the Department of Housing and Urban Development (HUD) allocated DR-4317 funding and DR-4451 funding for the purpose of infrastructure development under DED's CDBG-DR Program (83 FR 5844 and 85 FR 4681).

This Chapter serves as a resource for all entities, such as local governments and/or non-profit organizations, looking to receive funding to develop and execute infrastructure in support of housing-related activities. Please refer to Chapter 23, General Infrastructure, for guidance regarding infrastructure activities that are not associated with a corresponding housing development.

This Chapter is organized into three broad categories: Introduction and Category Compliance, Infrastructure in Support of Affordable Housing, and Program Closeout. The Infrastructure in Support of Affordable Housing Program Design section is specifically for infrastructure activities that support housing recovery. Both DR-4317 and DR-4451 authorize infrastructure activities in support of housing. All the requirements that apply to this program are detailed in Section 23B.7. The final sections of this Chapter, Recapture of Funds, Confidentiality, and Appeals (to mention a few), apply to all activities under Infrastructure, just as the first sections of this chapter.

23B.2 Program Overview

This Chapter lays out the policies required by DED's CDBG-DR Program for infrastructure in support of housing related activities. After a disaster event, the scope of infrastructure activities typically includes the rehabilitation, replacement, and/or relocation of damaged public facilities whereby improvements can include, but are not limited to, work on bridges, water treatment facilities, roads, sewer lines, water lines, and storm water management systems. Subrecipients should describe how preparedness and mitigation measures will be integrated into rebuilding activities and how the Subrecipient will promote community-level and/or regional (e.g. multiple local jurisdictions) post-disaster recovery and mitigation planning.

Subrecipients must also describe how they will address the construction or rehabilitation of storm water management systems in their projects to minimize flood risk to flood impacted areas. State grantees must work with local governments in the most impacted and distressed areas to identify the unmet needs and associated costs of needed storm water infrastructure improvements.

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23B.2.1 Applicable Disasters: DR-4317 and DR-4451

The DR-4317 event is comprised of severe storms, tornadoes, straight-line winds, and flooding during the period of April 28th to May 11th, 2017, as identified in the June 2nd, 2017, Presidential disaster declaration. Between April 29th and April 30th, a strong storm system brought multiple rounds of thunderstorms and heavy rain to the southern two-thirds of Missouri. Rainfall totals surpassed nine inches in some areas, resulting in cataclysmic flash flooding along some of the tributaries of the Missouri and Mississippi Rivers. A few thunderstorms also became severe during the afternoon of April 29th, with two documented tornadoes. April 2017, became the second wettest April on record in Missouri over the past 123 years as a result of the DR-4317 event.

In addition to DR-4317, between April to July of 2019, the State of Missouri was hit with heavy rains, straight-line winds, flooding, and tornadoes that resulted in an additional federally declared disaster—DR-4451. Tragedy struck on the night of May 22, 2019, as an EF-3 tornado touched down and stayed on the ground for more than 32 miles, destroying numerous homes, businesses, and infrastructure at across the disaster zone and particularly in Cole, Holt, and St. Charles Counties. On June 1, the Mississippi River crested at the second highest stage on record (30.15 feet) it reached the third-highest stage (27.11 feet), with several counties topping the historical flood stages observed in 1993, 2011, and 2015. By June 3, at least 28 levees had breached across the state, more than 380 roads were closed in 56 counties due to significant, damaging floods, and more than 600 homes had been affected by severe storms. More than 1,400 households requested and received assistance in disaster recovery.

HUD has designated funding through Public Law (P.L.) 115-56 and 115-123, for the CDBG-DR program to repair and/or replace infrastructure damaged by the disaster events that occurred between April 28th, to May 11th, 2017. Both FRNs for DR-4317 and DR-4451 require that the State primarily consider and address its unmet housing recovery needs as this funding was made available with the goal of supporting new housing development as part of previously unaddressed unmet housing needs. After the State demonstrates through a needs assessment (outlined in the applicable Action Plans) that there is no remaining unmet housing need or that the remaining unmet housing need will be addressed by other sources of funds, the remainder of the allocation may address unmet economic revitalization and infrastructure needs that are unrelated to unmet housing needs. A grantee may allocate funds to address unmet infrastructure needs, but in doing so, must address how infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

Program activities under DR-4451 pertain to infrastructure in support of housing only.

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To target the funds, HUD has identified the most impacted and distressed (MID) areas based on the best available data for all eligible affected areas. The State has implemented a recovery strategy that provides funding directly to Units of General Local Government (UGLG) in MID counties so that they may individually shape the recovery of their citizens who are most in need of recovery assistance. At least 80 percent of all allocations provided in the referenced notices must address unmet disaster needs within the HUD-identified most impacted and distressed area, which are defined as areas in zip codes 63935 (Doniphan), 63965 (Van Buren), 64850 (Neosho), 65616 (Branson), and 65775 (West Plains).

HUD's Federal Register Notices 83 FR 5844 (Prior Notice), 83 FR 40314 (published in 2018), and 85 FR 4681, describe the allocations; applicable waivers; alternative requirements; relevant statutory requirements; relevant regulatory requirements; the grant award process; the criteria for action plan approval; and eligible disaster recovery activities.

23B.3 CDBG-DR Waivers from 83 FR 5844 and 85 FR 4681

The Secretary of HUD has the authority to waive, or specify alternative requirements for, any provision of statute or regulation in connection to the CDBG funds that HUD administers. This section details the waivers from [85 FR 4681](#) and [83 FR 5844](#) which apply to all infrastructure program Subrecipients. DED has not requested any additional waivers.

According to 83 FR 5844, the following provisions and requirements are waived:

Requirements for CDBG action plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), and 24 CFR 91.320, are waived for these disaster recovery grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe disaster recovery programs that conform to applicable requirements as specified in this notice. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all the required elements identified in this notice.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the Quarterly Performance Report (QPR) and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements

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can be found on the HUD exchange at: <https://www.hudexchange.info/programs/drgr/>."

Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings but do require the grantee to provide a reasonable opportunity (at least 14 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant under this notice can be found in 83 FR 5844.

Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this notice, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly.

HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived.

The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.483(d), are waived for the grants under this notice and replaced with the following alternative requirement. In the context of disaster recovery, the standard urgent need certification requirements may impede recovery. Since the Department only provides CDBG-DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a presidential disaster declaration as identified in Table 1 of this notice, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster.

42 U.S.C. 5302(a)(7) (definition of "non-entitlement area") and provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit a State to distribute CDBG-DR funds to units of local government and Indian tribes.

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

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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.

One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 are waived in connection with funds allocated under this notice 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. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements.

The relocation assistance requirements at section 104(d)(2)(A) of the HCD Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not.

The requirements of sections 204 and 205 of the URA, and [49 CFR 24.2\(a\)\(6\)\(vii\)](#), [24.2\(a\)\(6\)\(ix\)](#), and [24.402\(b\)](#) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with [49 CFR 24.204\(a\)](#) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited, and such payments are required by the URA to be based on a 42-month term.

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

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who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

The regulation at [24 CFR 570.606\(d\)](#) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but [24 CFR 570.606\(d\)](#) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-DR funds under this notice may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

Per 85 FR 4681, IV.A. Incorporation of Waivers and Alternative Requirements for Local Governments states:

The Secretary amends the following sections of the February 9, 2018 notice to expand waivers to include waivers of the regulations that apply to local government grantees: In Section VI.A.2., Action Plan for Disaster Recovery waiver and alternative requirement, the Secretary waives [24 CFR 91.220](#); in section VI.A.4., Citizen participation waiver and alternative requirement, the Secretary waives [24 CFR 91.105\(b\)](#) and [\(c\)](#); and in section VI.A.12, Use of the urgent need national objective, the Secretary waives [24 CFR 570.208\(c\)](#). Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). This waiver does not affect the statutory and regulatory obligations of CDBG-DR grantees to affirmatively further fair housing. As part of the CDBG-DR action plan, all grantees must certify that they will affirmatively further fair housing. For CDBG-DR grantees, this means conducting an Analysis of Impediments to Fair Housing Choice (AI), taking appropriate actions to overcome the effects of any impediments identified through that analysis, and keeping records of these actions.

The preceding paragraph waives specific provisions of the program requirement to have a consolidated Citizen Participation Plan and further waives provisions regarding activities designed to meet urgent community development needs. However, grantees are still responsible for providing equal access to information and fair housing.

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IV.B. Grant Administration states:

IV.B.7. The waiver and alternative requirement in section VI.A.6. of the February 9, 2018 notice is replaced with the following language to include 2018 and 2019 disaster grantees: "HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at [42 U.S.C. 12706](#), [24 CFR 91.325\(a\)\(5\)](#) and [91.225\(a\)\(5\)](#)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, [42 U.S.C. 5304\(e\)](#), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. Grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, but any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update no later than its Fiscal Year 2020 update for 2017 disasters and Fiscal Year 2022 for 2018 and 2019 disasters."

The preceding paragraph waives specific provisions regarding exceptions on the maximum amount of assistance and the requirement for a grantee to adopt policies and procedures outlining those exceptions. Through the implementation of this waiver, HUD is providing flexibility and allowing changes to the consolidated plan to meet program-specific housing, employment, and infrastructure needs.

IV.C. Clarifications and Amendments for Grants Under Public Law 115-56, 115-123, 115-254, and 116-20 states:

IV.C.2. Clarification and Amendment on Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#) et seq.). The Federal Register notice published on February 19, 2019 ([84 FR 4842](#)) provided a waiver and alternative requirement of Section 414 for all grantees receiving a grant for a major disaster occurring in 2015, 2016, and 2017. This waiver and alternative requirements allowed grantees that received a grant(s) under Public Laws 114-113, 114-223, 114-254, and 115-31 to carry out its programs under the same Section 414 requirements as its grant(s) under Public Laws 115-56 or 115-123. To clarify this provision and extend the Section 414 waiver and alternative requirement to include grantees under those older Public Laws that are now receiving a grant under the 2018 and 2019 Appropriations Acts for a major disaster in 2018 or 2019, HUD is amending paragraph IV.2 of the February 19, 2019, notice by replacing it in its entirety with the following:

"2. Waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#) et seq.). Section 414 of the Stafford

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Act ([42 U.S.C. 5181](#)) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [[42 U.S.C. 4601](#) et seq.] [“URA”] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].” Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced, as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project, may become eligible for a replacement housing payment, notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Grantees that received a CDBG-DR grant for a major disaster in 2015, 2016, or 2017 under Public Laws 114-113, 114-223, 114-254, or 115-31, and a CDBG-DR grant for a 2017, 2018, or 2019 major disaster under Public Laws 115-56, 115-123, 115-254, or 116-20 are subject to different alternative requirements with respect to protections afforded to tenants and homeowners under Section 414 of the Stafford Act.

To avoid the administrative burden of implementing two different URA alternative requirements, HUD is authorizing grantees under Public Laws 114-113, 114-223, 114-254, and 115-31 that also received a CDBG-DR grant under [Public Law 115-56](#), 115-123, 115-254, or 116-20 to either: (a) Continue to follow Section 414 of the Stafford Act (or any grantee-specific alternative requirement previously authorized by HUD) for its Public Laws 114-113, 114-223, 114-254, and 115-31 CDBG-DR grants; or (b) follow the waiver and alternative requirement described in the following paragraph for its Public Laws 114-113, 114-223, 114-254, and 115-31 CDBG-DR grants. The grantee's programs under the most recent Public Laws ([Pub. L. 115-56](#), 115-123, 115-254, or 116-20) are already required to follow the waiver and alternative requirement defined below. If a grantee chooses to follow option (b) above then it must identify this approach in its policies and procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

The waiver and alternative requirement is as follows: Section 414 of the Stafford Act (including its implementing regulation at [49 CFR 24.403\(d\)\(1\)](#)), is waived to the extent that it would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG-DR funded project, undertaken by the grantee or Subrecipient, commencing more than one (1) year after the Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-DR funded project shall be determined to have

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commenced on the earliest of: (1) The date of an approved Release for Request of Funds (RROF) and certification, or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the approving official when a project converts to exempt under [24 CFR 58.34\(a\)\(12\)](#). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG-DR funds covered under this waiver and alternative requirement, or the grantees' use of these funds.

The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one (1) year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver."

The aforementioned waiver regarding Section 414 of the Robert T Stafford Disaster Relief and Emergency Assistance Act summarizes past and current public laws and appropriations. Eligible individuals shall not be denied assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. These individuals may be eligible for relief in the form of payments. To avoid administrative burden, depending on relevant public law, grantees may choose to follow the requirements of their choice whether it be the previous version of Section 414 or the current version of Section 414 (see direct references above).

23B.4 Definitions

Definitions outlined in this section are intended to provide more clarity on the terminology used throughout this Policy document. Adequate knowledge of these definitions will provide the reader with sufficient information to maintain program compliance.

Acquisition - The utilization of CDBG-DR Disaster funds to acquire real property. Acquisition alone is not considered a complete activity in the Program and must be combined with another eligible use (i.e. relocation assistance). The purchase price must be consistent with applicable uniform cost principles (i.e. appraised value;

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local methods used for determining property value).

Affirmatively Furthering Fair Housing (AFFH) - A legal requirement that federal agencies and federal grantees further the purposes of the Fair Housing Act. HUD's AFFH rule provides an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The HUD AFFH assessment tool and final rule can be found here: https://www.huduser.gov/portal/affht_pt.html.

Affordable Housing - Housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities. Please note that some jurisdictions may define affordable housing based on other, locally determined criteria, and that this definition is intended solely as an approximate guideline or general rule of thumb.

Affordable Rents - Affordable and mixed income developments will offer no less than fifty-one percent (51%) of units to households with an Adjusted Gross Income (AGI) of eighty percent (80%) of the Area Median Income (AMI) or less, and these units will be defined as Low-Income Units. Affordable rents will be consistent to the HUD rent limits established for the area. Rents will be restricted on Low-Income Units so that the gross rent to be charged for a Low-Income Unit will not exceed thirty percent (30%) of the household's adjusted gross income applicable to such unit, adjusted for unit size.

Broadband Infrastructure – Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 USC 1302). Broadband is required if new construction/substantial rehabilitation.

Builder/ General Contractor - (Used interchangeably) A person who contracts to construct or repair houses or buildings and/or supervises construction operations.

Confidentiality – Subrecipients of CDBG funds for multifamily housing and infrastructure must ensure the confidentiality of personally identifiable information (PII) obtained for the purposes of eligibility for inclusion in a multifamily development project.

Critical Action - An activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage

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to property. Examples include: hospitals, nursing homes, police stations, fire stations and principal utility lines.

Davis-Bacon Act of 1931 (40 USC Part 3141 et seq.) and Related Acts - All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. Davis-Bacon applies to the rehabilitation and reconstruction of residential property only if such property contains 8 or more units.

Developer/Development Team – A person, partnership, or corporation, including non-profit Community Housing Development Organization (CHDO) or Community-Based Development Organization (CBDO), and for-profit organization, who buy and develop houses, buildings, and/or land. Use and relevance of a Developer is only applicable to housing developments supported by infrastructure activities. This Chapter 23B is specifically regarding infrastructure activities supporting housing developments and therefore the use of the term Developer shall be limited.

Displaced Persons – any person (family, individual, business, non-profit organization, or farm) that moves from the real property or moves his or her personal property from the real property permanently, as a direct result of the acquisition, rehabilitation, or demolition of such real property, in whole or in part, as the result of a rental rehabilitation project.

Duplication of Benefits - The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern, or other entity from receiving financial assistance from CDBG-DR funding with respect to any part of a loss resulting from a major disaster as to which he/she has already received financial assistance under any other program or from insurance or any other source. Further defined in Chapter 10 of these policies.

Elevation Standards - Standards that apply to new construction or reconstruction of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in [44 CFR 59.1](#).

Eligible Costs – The costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance.

Environmental Review – All qualified projects must undergo an environmental review process. This process ensures that the activities comply with National Environmental

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Policy Act (NEPA) and other applicable state and federal laws. This requirement is made for all multifamily properties regardless of the number of units. Note that some lenders may require both a Phase I and Phase II Environmental Site Assessment.

Family – Family means all persons living in the same household who are related by birth, marriage or adoption as further defined under 24 CFR 570.3.

Federal Register (FR) – A daily publication of the US federal government which issues proposed and final administrative regulations of federal agencies.

Flood Disaster Protection Act of 1973 and Sec. 582(a) of the National Flood Insurance Reform Act of 1994 – Compliance with the legal requirements of Section 582(a) mandates that HUD flood disaster assistance that is made available in Special Flood Hazard Areas (SFHAs) may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if: (1) the person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and (2) that person failed to obtain and maintain flood insurance as required under applicable federal law on such property.

Flood Insurance – The Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) requires that projects receiving federal assistance and located in an area identified by FEMA as being within a Special Flood Hazard Areas (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). In order to be able to purchase flood insurance, the community must participate in the NFIP. If the community is not participating in the NFIP, federal assistance cannot be used in those areas.

Floodplain – FEMA designates floodplains as geographic zones subject to varying levels of flood risk. Each zone reflects the severity or type of potential flooding in the area:

- 100-year floodplain — the geographical area defined by FEMA as having a one percent chance of being inundated by a flooding event in any given year. No new construction will occur in the “100-year floodplain”
- 500-year floodplain — the geographical area defined by FEMA as having a 0.2 percent chance of being inundated by a flooding event in any given year.

Grantee - The legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. For the purposes of this Chapter, “Grantee” refers to the “State of Missouri’s Department of Economic Development (DED)” and both terms are used interchangeably. Grantee requirements apply to Subrecipients of CDBG funds.

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Green Building Standards – All rehabilitation (meets the definition of substantial improvement), reconstruction, or new construction must meet an industry-recognized standard that has achieved certification under at least one of the following programs:

- ENERGY STAR (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); or,
- ICC– 700 National Green Building Standard.

Household – All persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements. For housing activities, the test of meeting the LMI National Objective is based on the LMI of the household.

Housing and Urban Development Act of 1968, Section 3 – Requires program administrators to ensure that training, employment, and other economic opportunities generated by HUD financial assistance shall be directed to the greatest extent feasible and consistent with existing federal, state, and local laws and regulations, to low- and very low-income persons. Recipients of Section 3-covered funding ensure compliance and the compliance of their contractors/subcontractors with the Section 3 requirements, as outlined in [24 CFR 135.32](#). Projects awarded after December 1, 2020, must follow the regulations at [24 CFR 75](#).

Housing Quality Standards (HQS) – Establish certain minimum standards for buildings constructed under HUD housing programs. This includes new single-family homes and multifamily housing as outlined in [24 CFR 982.401](#).

Housing Unit – A house, apartment, group of rooms, or single room occupied or intended for occupancy as separate living quarters.

Ineligible Costs - The costs that are not permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance.

Low to Moderate Housing (LMH) National Objective – Any activity that involves the buyout, acquisition, or rehabilitation of property to provide housing or improve permanent residential structures will upon completion benefit and must be occupied by low- and moderate-income households (42 U.S.C. 5305(c)(3)). Income eligibility will be determined using Area Median Income (AMI). The most current income limits, published annually by HUD, shall be used by the Subrecipient or the

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state to verify the income eligibility of each household applying for assistance at the time assistance is provided.

Low to Moderate Income National Objective – Activities which benefit persons of income that does not exceed 80 percent of the area median income:

- Very low: Household's annual income is up to 30 percent of the area median family income, as determined by HUD, adjusted for family size;
- Low: Household's annual income is between 31 percent and 50 percent of the area median family income, as determined by HUD, adjusted for family size; and
- Moderate: Household's annual income is between 51 percent and 80 percent of the area median family income, as determined by HUD, adjusted for family size.

Within the low to moderate income national objective, the following acronyms and definitions are also applicable:

- Low to moderate area benefit (LMA) – Describes activities where the area served includes 51% or more low to moderate income households.
- Low to moderate income household (LMH) – A household with an income of less than 80% of the local area median income.
- Low to moderate safe housing incentive (LMHI) – Describes activities that demonstrate housing incentives that benefit LMI households.

Most Impacted and Distressed (MID) - HUD has been directed to use the disaster appropriations in the "most impacted and distressed areas". HUD evaluates the level and type of FEMA assistance, the level of concentrated damage, and the level of unmet need and defines these areas as a means to direct recovery funding.

Minimum Property Standards – The Minimum Property Standards (MPS) establish certain minimum standards for buildings constructed under HUD housing programs. This includes new single-family homes, multi-family housing, and health care type facilities as outlined in [HUD's 1994 Edition Handbook \(4910.1\)](#).

Mitigation – Improvements made to reduce the possibility of property damage, personal and commercial hardship, as well as long lasting monetary burdens. For example, creating a flood mitigation program such as an acquisition of at-risk flood-prone property/housing, and elevation of housing in high-risk floodplains are two visible and effective mitigation projects that can be taken to make residents and communities safer in the face of natural disasters.

Mitigation Activity - As defined by HUD in the CDBG-MIT Federal Register Notice (84 FR 45838, 8/30/19) mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship by lessening the impact of future disasters.

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Multifamily Rental (considered “commercial”)– Five (5) or more rental units in the project. Units may be in the same building or scattered sites. HUD defines single family as one (1) to four (4) units (considered residential).

Needs Assessment – Determines the type of housing and infrastructure programs that will be offered equitably and based upon an objective assessment of unmet needs in the affected community’s population. The State of Missouri’s Needs Assessment may be found in the DR-4317 and DR-4451 Action Plans.

NSPIRE – National Standards for Physical Inspection of Real Estate, an updated set of standards, which will replace HQS, that have been tentatively proposed in the Federal Register and slated to be published sometime in 2023.

Not Suitable for Rehabilitation – Units for which the cost of rehabilitation, including clear consideration for resolving issues affecting health and safety, exceeds the cap allowed for the project type.

Owner-occupied – The residence is occupied by:

1. The legal owner;
2. 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
3. A person who has lifetime occupancy rights with formal title vested in another.

Preliminary Engineering Report - The information submitted to determine the technical, economic and environmental adequacy of the proposed Project.

Program Design – The selection and development of programs and activities based on a needs assessment. The Program Design must include the type of housing activities that will be offered by the Subrecipient or the state; how the program will be marketed; how Fair Housing Objectives will be achieved, and how funding will be prioritized as determined through a needs assessment.

Program Income – Net income derived from the sale of program assets that exceeds \$35,000 in the aggregate, in a single fiscal year, received by the Subrecipient and directly generated from the use of housing CDBG-DR funds.

Reasonable Accommodation - Under the Fair Housing Act, a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service.

Reasonable Modification - Under the Fair Housing Act, reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

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Reconstruction – According to HUD policy, reconstruction refers to the rebuilding of a structure on the same site in substantially the same manner. Reconstruction is a form of rehabilitation.

Rehabilitation - The labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs. The term includes where the use of a building is changed to an emergency shelter from prior use, and the cost of this change and any rehabilitation costs does not exceed 75 percent of the value of the building before the change in use.

Single Family Home – A single-unit family residence detached or attached to other housing structures.

Stand-Alone Project – Non-match, stand-alone projects are those eligible infrastructure projects critical to address identified unmet disaster recovery needs and increase the resilience of cities and counties and are not funded by other federal recovery programs.

Subrecipient – A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. Cities, counties, Indian tribes, local governmental agencies (including COGs), private non-profits (including faith-based organizations), or a for-profit entity authorized under [24 CFR 570.201\(o\)](#). The definition of Subrecipient does not include procured vendors, private grant administrators, or contractors providing supplies, equipment, construction, or services and may be further restricted by Program rules or other guidance including applications. See vendor definition for further clarification.

Substantial Rehabilitation – HUD considers substantial rehabilitation of HUD-assisted multifamily rental housing to occur under one of the following circumstances: 1) when the required repairs, replacements, and improvements involve the replacement of two or more major building components, or (2) the costs of the rehabilitation exceeds the greater of 15% (exclusive of soft costs) of the property's replacement cost (FMV) after completion of all required repairs, replacements, and improvements; or \$6,500 per dwelling unit (adjusted by HUD's authorized high cot percentages); or, 20% of the mortgage proceeds applied to rehabilitation expenses.

Supportive Housing – A model that combines low-barrier affordable housing, health care, and supportive services to help individuals and families (particularly those that are homeless) lead more stable lives and live as independently as possible.

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Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (Title 49 CFR Part 24) (42 U.S.C. 4601 et seq.) (URA) – Applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted program or projects. URA's objective is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects. For the purposes of these guidelines, URA mostly applies to residential displacements in involuntary acquisition or multifamily damaged/occupied activities that require the relocation of the tenants. A displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months, as waived by the FR. Further guidance on these requirements is provided in CDBG-DR Administrative Document, Chapter 5: [Uniform Relocation Act Relocation Assistance Policy \(URA\)](#).

Vendor - a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program.

23B.5 Cross-Cutting Federal Regulations and CDBG-DR Applicability

There are many requirements outlined in federal, state, and local statutes, regulations, notices, and handbooks, which apply to the use of CDBG-DR funding. These requirements surround topics of financial management, environmental review, labor standards, acquisition, relocation, fair housing, and more. These requirements are considered “cross-cutting”, given that they are applicable to—and have actions tied to—several activities within each project. The Missouri State CDBG Program utilizes HUD Handbook 1344.1 to measure the applicability of federal statutory provisions to the State CDBG Program, please see the MO DED CDBG Administrative Manual for more information. Subrecipients of the CDBG-DR program are subject to these “cross-cutting” requirements.

There is a “cross-cutting” toolkit provided by HUD that can be accessed at: <https://www.hudexchange.info/resource/34/cdbg-crosscutting-issues-toolkit-contents/>.

Per [83 FR 40314](#), which details specific infrastructure requirements, HUD requires the grantee to address long-term recovery and hazard mitigation planning in the action plan or substantial amendment, whichever is applicable. The grantee must include a description of how the grantee plans to:

- Promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account future possible

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- extreme weather events and other natural hazards and long-term risks;
- Adhere to the elevation requirements established in paragraph B.32.e of section VI of the Prior Federal Register Notice;
- Coordinate with local and regional planning efforts to ensure consistency, including how the grantee will promote community-level and/or regional (e.g., multiple local jurisdictions) post-disaster recovery and mitigation planning;
- How mitigation measures will be integrated into rebuilding activities and the extent to which infrastructure activities funded through this grant will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;
- How infrastructure activities will be informed by a consideration of the costs and benefits of the project;
- How the grantee will seek to ensure that infrastructure activities will avoid disproportionate impact on vulnerable populations create opportunities to address economic inequities facing local communities;
- How the grantee will align investments with other planned state or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including existing state and local capital improvement projects in planning, and the potential for private investment; and
- The extent to which the grantee will employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure.

Additional guidance on predevelopment principles is described in the Federal Resource Guide for Infrastructure Planning and Design at <http://portal.hud.gov/hudportal/documents/huddoc?id=BAInfraResGuideMay2015.pdf>

23B.5.1 Environmental Review

All CDBG-DR Subrecipients must complete an environmental and historic preservation compliance review before committing funds or beginning program activities. Generally, CDBG-DR appropriations acts prohibit HUD from waiving these requirements. HUD regulations at 24 CFR 58 allow the assumption of authority to perform the environmental reviews by responsible entities, which are units of general local government (UGLGs), such as a town, city, county, tribe, or state. Usually, the state will assume HUD's role as the responsible entity for its subrecipients.

Each project will conduct an environmental review and shall document compliance with 24 CFR 58, the National Environmental Policy Act (NEPA), and all related state/local/federal laws, authorities, and executive orders. The program will not proceed with the construction or rehabilitation of infrastructure that has been determined to have a Finding of Significant Impact (FOSI). No work may start on a

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proposed project, or proposed site acquisition, until the environment review process is complete and the Authority to Use Grant Funds (AUGF) has been issued by DED. All awards are contingent on a successful environmental review.

All applicable Environmental Review Requirements must be met prior to the allocation or disbursement of funds to a project activity. These requirements include local, State, and federal environmental requirements whereby the most stringent environmental rules apply (whether it be local, state, or federal).

The responsible entity manages the scope and content of the environmental review. Generally, the following steps are necessary to complete a review:

- Develop a detailed project description
- Determine the appropriate level of review
- Complete the environmental analysis, including compliance with the related federal laws and authorities
- Obtain the necessary signatures
- Publish or post a Notice of Intent to Request a Release of Funds (NOI-RROF)
- Publish or post a Finding of No Significant Impact (FONSI), if necessary
- Wait for the applicable comment period to elapse
- Submit the Request Release of Funds and Certification (RROF/C) (HUD form 7015.15) to HUD
- HUD will approve the release of funds with an Authority to Use Grant Funds after the HUD 15-day objection period if no valid objections are received
- Revisit the review to address mitigation measures, reevaluate the project, or add another funding source, if applicable

The following categories are the different levels of Environmental Review:

- CEST: Categorically Excluded, Subject To §58.5 (also subject to §58.6)
 - Includes Continuum of Care Program leasing, sponsor-based and project-based rental assistance, minor rehabilitation
- EA: Environmental Assessment
 - Includes new construction, demolition, and major rehabilitation
- EIS: Environmental Impact Statement
 - Typically, an EA is completed first resulting in a Finding of Significant Impact, warranting an EIS
 - However, if significant impacts are anticipated or known early in the planning process, an EIS can be prepared without first completing an EA

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The table below shows the Level of Review and Length of Comment Period that is required for each type of Notice:

Type of Notice	Level of Review	Length of Comment Period
Notice of Intent to Request Release of Funds (NOI-RROF)	CEST, EA, and EIS	7 days when published or 10 days when only mailing and posting
Notice of FONSI	EA only	15 days when published or 18 days when mailing and posting
Concurrent or combined notices	EA only	15 days when published or 18 days when mailing and posting

Following the Determination of Level of Review, the responsible entity will submit all applicable findings and forms to DED for the agency's review. When applicable, the certifying officer of the responsible entity (the chief elected official) signs the RROF/C and takes legal responsibility for the review. DED must review and approve the responsible entity's RROF/C before it is submitted to HUD. HUD responsibilities under Part 58 are very limited. HUD will receive the RROF/C from the responsible entity, accept public comments during the HUD objection period, and approve the use of HUD assistance through the Authority to Use Grant Funds (HUD form 7015.16). HUD will also periodically conduct in-depth monitoring of responsible entities' environmental review records.

Per DR-4317's Action Plan, CDBG-DR Subrecipients are permitted to charge to grants the pre-award and pre-application costs of homeowners, businesses, and other qualifying entities for eligible costs these applicants have incurred, but this is contingent on meeting the environmental requirements at 24 CFR part 58 and not committing environmental harm. For more information on the environmental review process, please refer to Chapter 8 – Environmental Review of the CDBG-DR Policy Manual.

23B.5.2 Uniform Relocation Assistance and Section 104(d)

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) establishes minimum Federal requirements for the acquisition of real property and the displacement of persons from their homes, businesses, or farmhouses as a direct result of acquisition, rehabilitation, or demolition for Federally-assisted programs and projects. The Act applies to the following types of project acquisitions:

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- Permanent easements and temporary easements necessary for the project
- Parcel of land
- Long-term leases of 50-years or more
- Rights-of-way

The key objective of the URA is to establish fair and equitable treatment of people whose property is acquired or who must move for a Federally funded project. The URA regulations at [49 CFR 24](#), in part, establish minimum requirements for:

- Real property acquisition, including but not limited to, valuation, negotiations, and the payment of just compensation.
- Residential and nonresidential relocation.
- Temporary relocation.

As it relates to the relocation and displacement of businesses, per 49 CFR 24, the following should be noted:

- During the early stages of development, a planning relocation survey or study should include an estimate of the number, type, and size of the businesses to be displaced, the approximate number of employees that may be affected, and an estimate of the availability of replacement business sites.
 - When an adequate supply of replacement business sizes is not expected to be available, the impact of displacing the businesses should be considered and addressed.
- If applicable, a relocation assistance advisory program shall determine the relocation needs and preferences for each business to be displaced and explain the relocation payments and other assistance for which the business may be eligible.
- A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with [paragraph \(e\)](#) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:
 - The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;
 - The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

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- The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.
- The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;
- The business is not operated at the displacement site solely for the purpose of renting the site to others; and
- The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement.

For additional information regarding the displacement of businesses, please see 49 CFR 24.

The CDBG-DR Consolidated Notice modifies the following URA regulatory requirements by providing waivers and alternative requirements:

1. URA Voluntary Acquisition – Homebuyer Primary Residence Purchase: The requirement at 49 CFR 24.101 (b) (2) is waived in connection with a homebuyer’s voluntary purchase of their primary residence. This waiver reduces the burdensome administrative requirements for homeowners following a disaster. This waiver has no effect on a displaced tenant's eligibility for URA relocation assistance as a result of the Federally-assisted acquisition.
2. URA Replacement Housing Payments for Tenants: The URA replacement housing payments requirements are waived only to the extent necessary to allow the grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a rental housing program subsidy (e.g. housing choice voucher), if certain conditions are met.

Section 104(d) refers to a section of a federal law called the “Housing and Community Development Act of 1974,” as amended. Section 104(d) applies to the demolition or conversion of lower-income dwelling units in connection with a CDBG- or HOME-assisted activity. Section 104(d) regulations are found at [24 CFR 42](#).

Additional objectives of Section 104(d) include:

- Minimize displacement by requiring grantees / Subrecipients to create and follow a Residential Anti-displacement and Relocation Assistance Plan (RARAP) which includes but is not limited to, steps taken to minimize displacement of persons from their homes and neighborhoods.
- Provide relocation assistance for displaced lower-income persons as an alternative to URA-based payments.

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- Replace lower-income dwellings demolished or converted to a use other than lower-income housing in connection with a CDBG-assisted activity.

The CDBG-DR Consolidated Notice modifies section 104(d) requirements by providing the following waivers and alternative requirements:

1. Section 104 (d) one-for one replacement of lower-income dwelling units: One-for-one replacement requirements are waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. This waiver does not apply to tenant-occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG-DR assisted activity, which are generally subject to one-for-one replacement requirements.
2. Section 104(d) relocation assistance: Section 104(d) eligible displaced persons may choose either section 104(d) relocation assistance or URA relocation assistance. This waiver eliminates the persons' choice and limits the available relocation assistance to the amounts and types of assistance for displaced persons under the URA, as may be modified by the waivers and alternative requirements in the CDBG-DR Consolidated Notice.
3. RARAP Section 104(d): Section 104(d) RARAP requirements are modified to add certain descriptions and steps that grantees / Subrecipients must add to their RARAP for CDBG-DR activities. In addition, CDBG-DR grantees / Subrecipients must either amend their existing RARAP or create a new RARAP for CDBG-DR purposes. See below for additional guidance.

23B.5.3 Program Income

Program income is defined as gross income generated (in excess of \$35,000 per year) received by a Subrecipient of the State and unit of local government from the use of CDBG funds. Examples of program income include:

- Proceeds from the disposition (by sale or long-term lease) of the real property purchased or improved with CDBG funds
- Proceeds from the disposition of equipment purchased with CDBG funds
- Gross income from the use or rental of real or personal property acquired with CDBG funds
- Net income from the use or rental of real property owned by the Subrecipient or UGLG that was constructed or improved with CDBG funds
- Interest earned on program income
- Gross income paid from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG assistance.

The CDBG Administrative Manual provides the steps that Subrecipients and UGLG's

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must take when program income is earned on any project or grant:

1. Identify those activities that are likely to produce a program income
2. Review DED procedures regarding the use of program income
3. Upon receipt of program income, record in the Subrecipient's ledger indicating a source, date, and amount received
4. Obtain DED approval for applying program income to any new or existing community development activity
5. For program income derived from a revolving loan fund, DED determination as to the disposition of program income at grant closeout.
6. After obtaining approval concerning allocation of program income to a DED-DR eligible activity, make the appropriate journal entry to your accounting records.

States must track program income in the DRGR system, including creating program income accounts for funds that are allowed to be kept and re-used at the local government level. For this purpose, UGLG's and Subrecipients will be asked to track and report program income quarterly.

Both DR-4451 and DR-4317 allow the State to maintain a percentage of the program income to add to their administrative funds (up to 5% of program income). UGLG's and Subrecipients must receive pre-approval from DED if any program income funds are to be used for administrative purposes.

For disaster recovery projects funded under DR-4317 HUD is waiving program income rules and requirements at 42 USC 5304(j) and 24 CFR 570.489(e), 570.500, and 570.504 only to the extent necessary to provide additional flexibility to the State. When CDBG is only a part of the funding of the activity that generated the program income, the program income shall be pro-rated to reflect the CDBG percentage of participation. If the State allows the local government or Subrecipient to retain the program income it is to be used to continue disaster recovery activities only and must be used prior to the use of any other CDBG funds. The State may transfer remaining program income funds to its regular program at close-out, however the regular CDBG program rules will apply to the funds.

23B.5.4 Davis Bacon and Related Acts (DBRA)

The CDBG-DR program requires all subrecipients, contractors, and subcontractors to comply with federal labor provisions, including Davis-Bacon and Related Acts (DBRA), if projects are funded in whole or in part with CDBG-DR funding assistance. Activities that are subject to DBRA include the construction, alteration, or repair of public buildings or public works valued at more than \$2,000, except residential properties with less than 8 units. Under Section 110(a) of the Housing and Community Development Act of 1974 (HCDA), laborers and mechanics employed by contractors and subcontractors on construction work "financed in whole or in part" with CDBG assistance must be paid not less than wages determined to be prevailing

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on similar construction work in the locality by the Secretary of Labor in accordance with the Davis Bacon Act (40 U.S.C. 3141 et seq.). The guidance in this section will assist Subrecipients to understand the federal labor standards requirements under DBRA. Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wages and overtime pay requirements under State and local laws. Overtime work pay requirements under the Contract Work Hours and Safety Standards Act (CWHSSA), and the Fair Labor Standards Act (FLSA) may apply.

In the following cases, Davis-Bacon prevailing wage requirements do not apply to:

- construction work prime contracts of \$2,000 or less,
- bona fide volunteers where procedures and requirements of 24 CFR § 70 are met,
- force account work by employees of the Subrecipient,
- architectural and engineering (A/E) fees,
- other services (such as legal, accounting, construction management),
- non-construction activities like storm debris removal,
- demolition that is not followed by construction,
- clearance activities that are not related to construction,
- equipment installation costs so long as they do not exceed 13% of the total equipment cost,
- real property acquisition,
- other non-construction items (such as furniture, business licenses, real estate taxes),
- the rehabilitation, reconstruction, and demolition of residential property containing fewer than eight units.

When CDBG-DR assistance is provided to a project, but not utilized in construction costs, Davis-Bacon prevailing wages are not applicable. An example would be projects where CDBG-DR assistance is only utilized for land acquisition, soft costs, professional fees, and anything non-construction related. If construction work is ongoing when an application for reimbursement or financing of construction costs is submitted, then Davis-Bacon prevailing wage rates are applicable.

Grants for disaster relief under FEMA's principal relief authority, the Robert T. Stafford Disaster Relief Act, are not subject to the DBA prevailing wage requirements. FEMA provides grants for disaster assistance including low-interest loans to repair or replace personal property, business disaster loans to fund repair or replacement of real estate, and assistance to state or local governments to pay costs of rebuilding a community's damaged infrastructure.

Please refer to CDBG-DR Administrative Manual Chapter 11 – Labor Standards – for labor standards guidance. For additional guidance and resources, please see the following:

- <https://www.fema.gov/news-release/2019/03/27/what-fema-public-assistance>

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- <https://www.dol.gov/agencies/whd/field-operations-handbook>
- https://www.fema.gov/sites/default/files/2020-07/fema_procurement_contract-provisions-template.pdf

Please refer to CDBG-DR Administrative Manual Chapter 11 – Labor Standards for labor standards guidance.

23B.5.4.1 Wage Classifications

Each labor classification (laborers and mechanics) has a wage determination list that contains a basic hourly wage rate and fringe benefit rates that have been determined to be prevailing for the same type of construction activities within the county covered by said wage determination. The classification is determined based on the type of work being performed by the laborer during the pay period.

If the work being performed by the laborer is not included in the classifications listed in the wage determination, an SF-1444 form will need to be completed and submitted to DED along with any accompanying required documentation. DED will forward the form to the U.S. Department of Labor for concurrence with the requested wage rate. This process can take four to six weeks for approval, so it is recommended that requests for new classifications be made as early as possible.

23B.5.5 Fair Labor Standards Act (FLSA)

The FLSA governs such matters as Federal minimum wage rates and overtime. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one half times the regular rate of pay. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) Federal standards such as the DBRA prevailing wage requirements and CWHSSA overtime provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

23B.5.6 Missouri Prevailing Wage Law

In addition to the Davis-Bacon and Related Act (DBRA), prevailing wage laws may be applicable as well as overtime pay requirements under State and local laws.

The Missouri Prevailing Wage Law is comparable to the Federal law in requiring payment of prevailing wages, as determined each year by the Missouri Division of Labor Standards, to all laborers and mechanics on public works construction projects for both straight time and overtime as defined by the authorizing State statute. As determined in the Missouri House Bill 1729; public works projects valued \$75,000 and under are not subject to the Prevailing Wage Law and projects valued at \$10,000 and below are not subject to a competitive bidding process. No project

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may be split up into smaller projects valued at less than \$75,000 for the purpose of evading the requirement to pay a prevailing wage or public works contracting minimum wage.

Additionally, when the project is advertised for bid, a "Prevailing Wage Project Notification Contractor Information Notification" (PW-2) must be filed with the Missouri Division of Labor Standards. Subrecipients are encouraged to review other related documents such as the Prevailing Wage Law Check-Off list, and the Affidavit of Compliance with the Prevailing Wage Law, which contractors must submit to the Missouri Department of Labor prior to requesting final payment of public funds. These forms are provided electronically in conjunction with the Annual Wage Order through the Missouri Division of Labor Standards website at <http://www.labor.mo.gov/DLS/PrevailingWage/>.

In addition, between Missouri's prevailing wage law and the federal wage law, the stricter/higher of the two requirements must be followed. Further requirements may include the completion of form WH-347, provided by the Department of Labor (DOL) or a similar format with all the required information as shown in WH-347. This weekly payroll form is required to be filled out by contractors and subcontractors for their federal or federally aided construction contracts and subcontracts. If completed properly, the WH-347 form will satisfy the requirements of Regulations, Parts 3 and 5 of 29 CFR, Subtitle A (payrolls submitted in connection with contracts), subject to the DBRA.

Regarding signatures on the applicable and relevant payrolls forms, the DOL and HUD permit the use of electronic submittals and electronic signatures for the contractor's weekly payroll and the "Statement of Compliance" submittals. However, there are stipulations on what counts as an electronic signature.

If not submitting payrolls through an accepted electronic payroll system, the Subrecipient will need originally signed "statement of compliance" for payrolls in their files.

The Department of Labor allows the filing of certified payrolls via electronic payroll systems that meet certain requirements.

1. The main requirement is that the contractor submitting the payroll uses an official digital signature, typically a unique PIN number and password that verifies the identity of the contractor.
2. Certified electronic payroll systems allow for electronic submissions of both payroll documents and certification statements.
3. A digital signature is only available through an electronic payroll system.
 - a. If they complete the WH-347 online, it must be printed out and hand

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signed. Once the WH-347 is in paper form, it remains in paper form, and the original paper certified payroll must be sent to the Subrecipient.

For additional details on prevailing wage, please see Chapter 11 - Labor Standards, of the DED CDBG Administrative Manual.

23B.5.7 Section 3

The Section 3 of the Housing and Urban Development Act of 1968 requires recipients of HUD funding to direct employment, training, and contracting opportunities to low-income individuals and the businesses that employ these persons within their community. Section 3 is a provision of the HUD Act of 1968 and is found at 12 U.S.C. 1701u; the regulations are found at [24 CFR 75](#).

A Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

- An LMI worker that fell below HUD income limits for the previous or annualized calendar year.
- Employed by a Section 3 business concern.
- A YouthBuild participant.

A Targeted Section 3 worker is a worker who meets the definition of a Section 3 worker, plus one of the following:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits or when hired was living within the service area, neighborhood of the project, or is a YouthBuild participant. The Subrecipient should document that the worker meets this definition within the past five years.

A Section 3 Business Concern creates a contracting priority for businesses that provide economic opportunities to LMI workers. This is accomplished by prioritizing Section 3 business concerns in the awarding of contracts. A business concern can be any type of business such as a sole proprietorship, partnership or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration. Subrecipients must certify that they are making efforts to prioritize contracting with Section 3 business concerns and are responsible for verifying that businesses meet the definition.

A Section 3 Business Concern is defined as a business that meets at least one of the following (documented within the last 6-month period):

1. At least 51 percent owned or controlled by low-or very low-income persons;
2. More than 75 percent of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers; or

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3. At least 51 percent owned and controlled by current residents of public housing or residents who currently live in Section 8 assisted housing.

Section 3 requirements apply when Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the \$200,000 project threshold. For example, Section 3 applies to training or employment arising in connection with HUD-funded housing rehabilitation, housing construction, or other public construction projects, and related contracting opportunities if the amount of HUD funding exceeds the \$200,000 project threshold.

To meet the requirements, Subrecipients must include Section 3 language in any agreements or contracts for qualifying projects. However, contractors and subcontractors must meet the regulation's requirements, regardless of whether their agreements or contracts include Section 3 language. CDBG-DR Subrecipients are encouraged to offer training to any contractors or subcontractors who may be new to Section 3 requirements.

Subrecipients should also be regularly monitoring for:

- Contractor compliance;
- Assisting contractors to obtain compliance;
- Penalizing non-compliance;
- Providing incentives for good performance

In addition, Grantees and Subrecipients should refrain from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

DED monitors Section 3 goals weekly, as each contractor that is subject to Section 3 must report on their compliance when submitting weekly payroll and costs. To review a sample Section 3 plan provided by HUD, please see the following link: https://files.hudexchange.info/resources/documents/Section3_SamplePlanTemplate.pdf

Section 3 requirements do not apply to projects that do not include housing rehabilitation, housing construction or other public construction. For example, if CDBG-DR funds are used for direct homebuyer assistance or tenant-based rental assistance, the Section 3 requirements do not apply. Section 3 requirements also do not apply to "materials-only" contracts or contracts that do not require any labor. An example of a materials-only contract is a contract for office or janitorial supplies only.

Subrecipients must track and report labor hours for three categories of workers on

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Section 3 projects: all workers, Section 3 workers, and Targeted Section 3 workers. “Labor hours” means 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.

Grantee will report Section 3 data at the activity level data in DRGR. In instances where there are multiple funding sources, grantees must collect and report the same data across programs for consistency.

For purposes of reporting the labor hours for Section 3 workers, an employer may choose whether to define the workers as Section 3 workers for a five-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 worker definition. The five-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 workers hired prior to November 30, 2020 may be certified for a five-year period beginning November 30, 2020.

Section 3 Benchmarks are as follows:

- Benchmark 1: Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers (Section 3 Labor Hours/Total Labor Hours = 25%), and
- Benchmark 2: Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers (Targeted Section 3 Labor Hours/Total Labor Hours = 5%).

In the event that Section 3 benchmarks have not been met, Subrecipients or contractors provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities. Please refer to Chapter 12 Section 4.7.6 of the CDBG Administrative Manual for examples of qualitative efforts that will provide compliance with Section 3.

HUD will consider grantees to have complied with Section 3 benchmarks, in the absence of evidence to the contrary if they certify to the prioritization of effort in 24 CFR 75.19 and meet or exceed the applicable Section 3 benchmarks.

HUD will monitor CDBG-DR grantees for compliance with Section 3 using exhibits in the CPD Monitoring Handbook. To prepare for potential monitoring, grantees must establish and maintain documentation that:

1. Demonstrates the workers meet the definition of a Section 3 worker or Targeted Section 3 worker,
2. Reports total labor hours worked, and
3. Certifies the employee met the requirements to receive the Section 3 worker status.

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Subrecipients should retain documentation either at the time the employee is hired or the first reporting period. Subrecipients are reminded that recordkeeping and record retention requirements continue to apply.

23B.5.8 Section 504

Activities that receive CDBG-DR funding are subject to Section 504 of the Rehabilitation Act of 1973, a federal law that prohibits discrimination on the basis of disability in federally-assisted programs or activities.

Section 504 states: “No otherwise qualified individual with a disability in the United States, shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

Section 504 also requires any federally funded new construction of non-housing facilities be designed and constructed to be readily accessible and usable by individuals with handicaps. Any federally funded alterations to existing non-housing facilities must be designed and constructed with the same accessibility goals, to the maximum extent feasible.

23B.5.9 Equal Employment Opportunities

In addition to Fair Housing and Section 3, all facets of every CDBG-DR funded activity are subject to Equal Employment Opportunity (EEO) laws. Equal Opportunity is a protection measure supported by several laws including:

- Section 109 of Title 1 of the Housing and Community Development Act of 1974 which provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
- Section 504 of the Rehabilitation Act of 1973 which makes it unlawful to discriminate based upon disability in Federally assisted programs.
- The Americans with Disabilities Act of 1990 which modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against a qualified individual with a disability.
- The Equal Employment Opportunity Act which empowers the Equal Employment Opportunity Commission to bring civil action in Federal court against private sector employers who have been investigated by the EEOC and found probable cause of discrimination and have failed to obtain a conciliation agreement acceptable to the EEOC.
- The Immigration Reform and Control Act of 1986 which provides employers

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may only hire persons legally allowed to work and requires verification of the same.

- The Uniform Guidelines on Employee Selection Procedures, which applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral.
- Section 3 and the provision of opportunities for employment and training for low- and moderate-income residents of the project area.
- The Jobs for Veterans Act of 2002 which ensures equal opportunity for qualified disabled veterans and veterans of the Vietnam War.
- Executive Order 11246 which applies to all contracts and provides that no person shall be discriminated against on the basis of race.
- 24 CFR 85 which provides that Subrecipients shall take affirmative steps to encourage contracting with small minority and female owned businesses.

23B.5.10 Minority and Woman-owned Business Outreach

Section 281 of the National Affordable Housing Act requires each participating jurisdiction to prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program. In the state of Missouri, a business must meet the following requirements to become a certified Minority/Women Owned Business Enterprise (M/WBE):

- At least 51 percent of the business must be owned by a minority and/or a woman;
- The minority and/or woman owner must be a U.S. citizen or lawfully admitted permanent resident of the U.S.;
- The minority and/or woman owner must hold the highest position in the company and be capable of exercising direct control over the daily, as well as long-term decisions regarding the management, policies and operations of the firm; and
- The business must be organized as a for-profit business.

The minority outreach program shall include minority and woman-owned businesses in all contracting activities entered into by the participating jurisdiction to facilitate the provision of affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction. Therefore, minimum HUD standards require that each participating jurisdiction's outreach effort to minority and women-owned businesses be:

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

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local resources.

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

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

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

For more information, please see Chapter 9, Procurement, of the CDBG-DR Administrative Manual.

23B.5.11 Technical Assistance

The applicant/recipient must provide technical assistance to groups representative of LMI persons that request such assistance in developing proposals at the level of expertise available at governing offices. All application materials and instructions shall be provided at no cost to any such group requesting them.

23B.5.12 Citizen Participation Plan

Local government recipients of CDBG funds must comply with the State Citizen Participation Plan requirements as found in 24 CFR 570. All applicants and recipients of grant/loan funds shall be required to conduct all aspects of the program in an open manner with access to records on the proposed and actual use of funds for all

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interested persons.

All records of applications and grants must be kept at the Subrecipient's offices and be available during normal business hours. Any activity of the Subrecipient regarding the CDBG project, with the exception of confidential matters relating to housing and economic development programs, shall be open to examination by all citizens.

The applicant/ Subrecipient must provide technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals at the level of expertise available at governing offices. All application materials and instructions shall be provided at no cost to any such group requesting them.

Residents shall be provided adequate and timely information to enable them to be meaningfully involved in important decisions at the various stages of the program, including at least:

1. The determination of needs.
2. The review of the proposed activities.
3. The review of past program performance, in the following manner:
 - a. At least two public hearings shall be scheduled at times and locations felt to be most likely to make it possible for the majority of impacted persons to attend without undue inconvenience, addressing the three items above.
 - i. At least one hearing must be held to address items (1) and (2) above prior to the submission of the application for housing and/or non-housing needs.
 - ii. Item 3 must be addressed in a public hearing to review performance of the recipient in a previous program and must occur prior to closeout of any loan or grant for which performance evaluation has not occurred in a previous hearing.
 - b. Notification of any and all hearings shall be given a minimum of five full days in advance to allow citizens the opportunity to schedule their attendance. Notification shall be in the form of display advertisements in the local newspaper with the greatest distribution. Additional advertisement may be conducted by posting letters, flyers and any other forms, which seem practical; however, publication is required.
 - c. All hearings must be accessible to persons with disabilities. Provisions for interpretation shall be made at all public hearings for LEP residents if such residents are expected to be in attendance.

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The full DED Citizen Participation Plan created for Disaster Recovery may be found at: <https://ded2.mo.gov/media/pdf/2017-and-2019-disaster-citizen-participation-plan-and-language-access-plan>

23B.5.12.1 Notices and Hearings

Citizens shall be provided with adequate and timely information to enable them to be meaningfully involved in important decisions at the various stages of the program, including at least the determination of needs, the review of proposed activities, and the review of past program performance, in the following manner:

1. At least one public hearing shall be held prior to the submission of an application for housing and/or non-housing needs being submitted to the State for funding through the CDBG-MIT Program. Hearings shall be scheduled at a time and location felt to be most likely for the majority of interested citizens to attend without undue inconvenience. The development of needs and a review of the proposed activities and their possible environmental impact must be addressed at this hearing as reflected by the minutes of the hearing. The hearing cannot be more than 6 months prior to application submission. The second required hearing is held to address the performance on the funded grant at a minimum of 80% completion. The review of the performance (during the grant) must be addressed in a public hearing prior to grant closeout. Proof of said hearing will be part of the closeout documentation.
2. Notification of all hearings shall be given a minimum of 5 full days (actually 7 days, as the day of the notice and the day of the hearing cannot be counted as one of the 5 full days) in advance to allow citizens the opportunity to schedule their attendance. Notification shall be in the form of display advertisements in the local newspaper with the greatest distribution, and/or by posting letters, flyers, and any other forms that are clearly documented with wide circulation. All hearings must be accessible to handicapped persons. Provisions for interpretation shall be made at all public hearings for limited English proficiency residents, if such residents are expected to be in attendance.

23B.5.12.2 Complaints

To comply with the requirements regarding complaints, the State has designated an appropriate and practicable procedure to handle complaints from citizens related to the CDBG-DR Action Plan and Program, CDBG-MIT Action Plan and Program, consolidated plan, amendments, and performance reports. Upon receiving a complaint, the State will provide a timely, substantive written response to written citizen complains within a 15-working day period.

23B.5.13 Applicable CDBG-DR Laws and Regulations

DED will ensure compliance with the following federal cross-cutting requirements.

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These requirements may be relevant to all programs and activities under this chapter. For complete details of requirements and regulations that may be relevant, please see all previous chapters of the CDBG-DR Administrative Manual at <https://ded2.mo.gov/programs/cdbg/disaster-recovery>.

- Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing)
- Title VI of the Civil Rights Act of 1964, as amended in 1988 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."
- Affirmative Marketing Owner must create and comply with the Affirmative Fair Housing marketing plan
- Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part §570.602),
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794)
- CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development."
- Title II of the Americans with Disabilities Act of 1990
- Housing for Older Persons Act of 1995 (HOPA)
- National Environmental Policy Act (NEPA) and Related Laws 24 CFR Part 58.6, including ongoing requirements related to any required mitigation for the project resulting from the NEPA review and clearance, and flood insurance as required by the National Flood Insurance Reform Act of 1994, if applicable.
- Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint
- Hazard Reduction Act of 1992 24 CFR part 35, subparts A, B, J, K, and R.
- Davis-Bacon Prevailing Wages 24 CFR Section 570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7))
- Contract Work Hours and Safety Standards Act 40 U.S.C. 3141 et seq.
 - Mechanics and Labors are paid wages of not less than one and one-half times their basic wage rates for all hours in excess of forty in a work week
- "Anti-Lobbying" Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 "New Restrictions on Lobbying".)
- 2 CFR Part 2424 "Non-procurement Debarment and Suspension" subpart C of 2 CFR Part 180, as required by 2 CFR Part 2424
- Copeland "Anti-Kickback" Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.
- Minority and Women-Owned Business Enterprises 24 CFR Part 85.36(e) requires Owner to take all necessary affirmative steps to assure that minority firms,

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women's business enterprises, and labor surplus area firms are used when possible

- Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) as amended, and implementing regulations at 24 CFR part 75.
 - Section 3 requirements apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property
- Displacement, Relocation, Acquisition and Replacement of Housing Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24)
- Section 104(d) of the Housing and Community Project Act of 1974, as amended
- Recordkeeping requirements 24 C.F.R. 570.490 Project Activity Records, including supporting documentation such as Housing and Beneficiary Records and Labor Standards records (Section 3, CWHSSA, and Davis Bacon), shall be retained for at least five years from closeout of the grant to the state.

23B.6 CDBG-DR Program Category Compliance: Infrastructure Development

These requirements are like the "cross cutting" compliance requirements that are applicable to all infrastructure in support of housing activities that are funded via CDBG-DR funds.

All CDBG-DR funded activities in the infrastructure program must:

1. Be a CDBG-eligible activity, or be eligible under a waiver or alternative requirement in this notice;
2. Meet a national objective; and
3. Address a direct or indirect impact from the major disaster in a Presidentially-declared County.

Eligible activities and national objectives will be discussed in more detail later in this chapter.

23B.6.1 Project Planning

Per the 2017 FRN for DR-4317, 83 FR 5844, all Infrastructure program activities that include the rehabilitation, reconstruction, and new construction should be designed to incorporate the principles of sustainability, including water and energy efficiency, resilience, and mitigation of future disaster impacts. Furthermore, HUD encourages Subrecipients to implement green infrastructure policies to the greatest extent feasible.

23B.6.1.1 Eligible and Ineligible Activities

All activities and uses authorized under Title I of the Housing and Community

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Development Act (HDCA) of 1974 allowed by waiver, or as published in [83 FR 5844](#), are eligible.

The infrastructure program primarily uses, but is not limited to, the following HUD eligible activities:

1. The acquisition of real property, public facilities and improvements, clearance, construction, and rehabilitation of buildings.
2. Disposition of real property, including costs associated with maintenance and transfer of acquired properties.
3. Infrastructure projects, including, but not limited to, the payment of the non-Federal share of other Federal matching grant programs.
4. Relocation associated with projects that utilize one or more of the other eligible activities listed here.

For more information about HUD-eligible infrastructure activities, please see Section 105(a) of the HCDA.

DR-4317 (after Amendment 5 is approved by HUD) and DR-4451 program activities will be used to fund infrastructure projects that support recovery and rehabilitation of housing impacted by the disaster, address identified unmet disaster recovery needs, and increase the resilience of cities and counties that are not funded by other federal recovery programs. Projects under this program may include, but not limited to: water/sewer/stormwater systems, roads and bridges, drainage systems, and facilities.

For a detailed overview of the eligible activity requirements for CDBG, please see 24 CFR 570.200 at <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570/subpart-C/section-570.200>.

Additional eligible activity requirements for CDBG-DR may be found in Section 105(a) of the Housing and Community Development Act of 1974: <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-State-National-Objectives-Eligible-Activities-Appendix-A.pdf>.

The following activities are ineligible for the use of CDBG-DR funds in the Infrastructure in Support of Housing Program:

- Activities that do not address an identified disaster-related impact.
- Preparedness activities and measures that are not connected to any recovery, rebuilding, and/or disaster
 - Such activities may be eligible for CDBG-MIT funds instead
- Activities that are ineligible per 24 CFR 570.207 or the CDBG-DR regulations and a waiver has not been granted.

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- Activities that fail to meet a National Objective.
- Activities that do not support an affordable housing development

In addition, ineligible activities are further identified in 83 FR 5844. These ineligible activities include, but not limited to:

- The use of CDBG-DR for forced mortgage payoff
- The construction of a dam/levee beyond its original footprint
- Incentive payments to households that move to disaster-impacted floodplains
- Assistance to privately owned utilities
- Assistance for second homes and activities identified in 24 CFR 570.207.

23B.6.1.2 Eligible and Ineligible Project Costs

Any project costs incurred, whether charged on a direct or an indirect basis, must be in conformance with [2 CFR 200, subpart E](#). The following activities are considered Eligible costs:

- Costs associated with the acquisition of any real property for the purposes of implementing an infrastructure project;
- Capital costs including, but not limited to, materials and labor of construction;
- Soft costs including but not limited to professional services required in the implementation of the project, insurance, fees and other pre- and post-construction expenses.

In general, any cost that is not specifically authorized under the CDBG regulations and statute is ineligible. In addition, the regulations stipulate that the following activities may not be assisted with CDBG funds:

- Buildings for the general conduct of government (e.g., city hall);
- General government expenses; and
- Political activities.

The following activities may not be assisted with CDBG funds unless authorized as a special economic development activity:

- Purchase of construction equipment or furnishings and personal property;
- The cost-plus-a-percentage-of-cost (CPPC) and percentage of construction cost methods of contracting;
- Operating and maintenance expenses (of public facilities, improvements, and services), except for operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG Program; and Income payments.

23B.6.1.3 Disaster Tieback

All activities funded with CDBG-DR funds must demonstrate how they meet unmet needs and respond to direct and/or indirect impacts of the federally declared

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disaster event (DR-4317 or DR-4451). The Missouri CDBG-DR program requires Applicants to distinguish the relationship between the disaster and the need for the proposed project. This relationship, also referred to as the “tieback”, is demonstrated by the Applicant identifying the impacts of the disaster event and how the proposed project aligns with the National Objectives and Eligible Activities identified in this policy manual. Applicants detailing FEMA damage assessments, physical losses, rebuilding estimates, and or images, are often the most effective tools for demonstrating connection to the disaster and should be included in their applications.

23B.6.1.4 National Objectives

All CDBG-DR funded Infrastructure activities as well as the housing supported by the infrastructure, must meet at least one of the three national objectives required of the CDBG-DR program:

1. Benefit LMI persons;
2. Aid in the prevention or elimination of slums or blight (Slum and Blight); and/or;
3. Meet a need having a particular urgency (Urgent Need).

All activities funded through the Infrastructure Program, unless the requirement is waived by HUD, are required to meet at least one of the national objectives to receive program funding. In the instance that a national objective is not met, program funds will be recaptured.

The LMI national objective is often referred to as the “primary” national objective because of an additional requirement that requires grantees to expend 70 percent of their CDBG-DR funds to benefit LMI persons. Due to this requirement, if grantees are utilizing multiple national objectives, they must limit expenditures under the slum/blight and urgent need national objectives in order to meet the LMI expenditure requirement. For specific calculations, please see the following National Objectives chapter from HUD:

<https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-3-Nat-Obj.pdf>

There are four tests used to determine whether a project primarily benefits LMI persons and fulfills the LMI national objective: the area benefit test, the housing benefit test, the jobs test, and the limited clientele test. The two most common categories are area benefit (LMA) and limited clientele (LMC).

- The Area Benefit (LMA) category is most common used for activities that benefit a residential neighborhood. An area benefit activity benefits all residents in a particular area, where at least 51 percent of the residents are

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LMI persons. Subrecipients are responsible for determining the service area of an activity.

- The Limited Clientele (LMC) category is another common way to qualify activities under the LMI national objective. Under this category, 51 percent of the beneficiaries of an activity must be LMI persons. In contrast to the area benefit category, it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity. Again, in contrast with the area benefit qualifications, activities in this category provide benefits to a specific group of persons rather than everyone in an area.
- The housing benefit test (LMH) confirms that CDBG-DR assisted housing is occupied by LMI households. The housing can be either owner-occupied or renter occupied. Single family units must be occupied by LMI households. Two-unit structures must have at least one unit occupied by LMI households, and in multi-unit structures, 51% of the units must be occupied by LMI households.
- The jobs test confirms that at least 51% of the jobs created or retained using CDBG-DR assistance are being held by or created for LMI persons. Projects that do not meet the LMI national objective must meet the requirements of the Urgent Need or Slum/Blight national objectives.

The National Objective is only met when the appropriate percentage of persons are occupying the housing. It is not enough to state that a project “intends” to meet the National Objective. It must be shown to meet the National Objective. For example, in the case of the construction of single-family homes for sale to homeowners, the project cannot close until the required number of homes are sold to and occupied by low- and moderate-income persons.

In addition to meeting a national objective, activities must also meet at least one CDBG-DR program eligible activity and demonstrate a connection to the DR-4451 and/or DR-4317 disaster events. Infrastructure must be publicly owned (typically by the community applying for the grant). For more information regarding criteria for National Objectives, please refer to [24 CFR 570.483](#)

23B.6.1.5 Duplication of Benefits

In accordance with the Stafford Act requirements, all activities funded by the CDBG-DR program must undergo a Duplication of Benefits (DOB) review prior to an award of funds and again at project close out. DOB occurs when a program beneficiary or a Subrecipient receives assistance from multiple sources for a

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cumulative amount that exceeds the total need for a particular recovery purpose. It is the Subrecipient's responsibility to ensure that the program provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been awarded from another source. Both the application and project proposal submitted by the Subrecipient must document all funds obtained from any source from the date of the disaster until the date of the application. These funds include, but are not limited to, FEMA payments, the Small Business Administration (SBA), private insurance payments, grants, and/or any other source of funds dedicated to the infrastructure project.

DED will review and verify the DOB information provided by the Subrecipient with partner agency databases prior to issuing an award, during the project lifecycle phase and as a part of Project closeout to ensure that duplicative assistance is not provided for infrastructure. When monitoring for DOB, DED will complete a spot check to ensure that calculations were completed correctly using risk assessment procedures, and if DED finds it necessary, will complete a comprehensive monitoring. DED will sign the DOB workbook after calculations have been completed.

To address any potential duplication, the agreement will include provisions requiring repayment of any assistance later received for the same purpose as the CDBG-DR funds. This agreement must also include the following language:

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

For more information on DOB and related processes, please refer to Chapter 7 - Duplication of Benefits, of the CDBG-DR Administrative Manual.

23B.6.1.6 Order of Assistance (OOA)

Under [44 CFR 206.191](#), FEMA provides the following policy and procedural guidance to ensure uniformity in preventing DOB and make clear the order of assistance (OOA):

- I. Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance.
- II. When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional

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disaster assistance programs are available.

The delivery sequence is, in order of delivery:

1. Voluntary agencies emergency assistance, as applicable
2. Insurance, including flood insurance
3. FEMA Public Assistance
4. Economic Development Administration (EDA)
5. Other state funds
6. Missouri CDBG Program

As per 44 CFR 206.191 and FEMA, two significant points about the delivery sequence are that:

- I. Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence; and
- II. The sequence itself determines what types of assistance can duplicate other assistance (i.e., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency. There also may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A reopens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either:

- I. Assist Agency B in preventing the duplication of benefits, or
- II. In the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

23B.6.1.7 Geographic Eligibility and Project Location

In further accordance with CDBG-DR funding requirements, projects must be located within a county designated by the relevant Presidential disaster declaration as a recipient of CDBG-DR funds. The impacted counties for each disaster event can be found listed in the relevant Action Plans.

DED will prioritize projects located within the MID areas and those which qualify as LMI as the highest priority. LMI projects that are not located in MID areas will be given second priority. Projects located in MID areas that do not serve LMI areas will be given third priority. Non-LMI and non-MID projects will be given fourth priority. For

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more information on impacted counties, please refer to the relevant Action Plan.

Additional location considerations require that a project shall not be located in an environmentally sensitive area without meeting all requirements implemented by the Federal Register, including but not limited to, elevation standards, floodplain guidance, and the completion of a successful Environmental Review Record.

23B.6.1.8 Expenditure of Funds

All infrastructure projects must be evaluated to determine if they can be completed and have all of their CDBG-DR funds fully expended within the expenditure period for the awarded funds. According to 85 FR 4681 and the Disaster Relief Appropriations Act, 100 percent of CDBG-DR funds must be expended within 6 years of signed agreement between HUD and the grantee.

23B.6.1.9 Maximum Amount of Assistance

The maximum amount to be awarded per project is identified in the relevant DR Action Plan (the State of Missouri CDBG may approve a waiver to exceed on a case-by-case basis).

CDBG-DR funds are awarded in the form of a grant and as previously mentioned, are considered gap financing to be utilized when no other funding sources are available for a particular scope of work. Documentation sufficient to support an amendment must be provided and identified costs must be necessary for the project to be compliant with project requirements and cannot result in a deviation from the approved scope of work. All costs must be reasonable, allowable, and allocable to the project. DED may request a certification from the Applicant that project costs cannot be reduced and there are no other available sources of funding for the project.

Subrecipients receiving CDBG-DR funds are required to assess the cost-effectiveness of construction projects relative to other alternatives by deploying a cost reasonableness test prior to the award being made and when processing change orders. Subrecipients must require construction contractors to implement cost control measures and/or verify that reimbursable costs are correctly controlled during the project. Standard Agreements with jurisdictions will include subrogation clauses in case of the event of non-compliance with the applicable requirements and regulations.

All CDBG-DR expenditures remain subject to cost principles in 2 CFR 200, subpart E – Cost Principles, including the requirement that costs be necessary and reasonable for the performance of the Subrecipient's CDBG-DR grant. For more information on Cost Reasonableness, see Chapter 5 – Cost Reasonableness of the CDBG-DR Administrative Manual.

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For more information, please see Chapter 4, Financial Management and Reporting, of the CDBG-DR Administrative Manual.

23B.6.1.10 Procurement

General requirements for procurement can be found in the CDBG Administrative Manual, Chapter 9, Procurement.

Additionally, subrecipients must comply with procurement policies and procedures based on full and open competition consistent with the requirements of 24 CFR 570.489(g) and shall require an evaluation of the cost or price of the product or service.

Infrastructure projects require the services of engineers, contractors and inspectors and may also include other specialists depending upon the project. Section 9.2 of the CDBG Administrative Manual provides a detailed description of each of the procurement methods. Section 9.3 provides a step-by-step description of the procurement procedures.

Section 9.4 provides information on the relevant conflict of interest policy and procedures including definitions of relevant conflicts.

HUD may request periodic updates from any grantee / Subrecipient that uses contractors. A contractor is a third-party organization from which the grantee / Subrecipient acquires goods or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD is establishing an additional alternative requirement for all contracts with contractors used to provide discrete services or deliverables only, as follows:

- a. The subrecipient (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;
- b. The subrecipient (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement;
- c. The subrecipient (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to decision-making and management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

All services and activities paid for with CDBG funds require the execution of a formal contract. All contracts at minimum must detail: scope of work, total cost, duration of

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the contract, compliance requirements, and reporting responsibilities. To view a sample contract and a complete list of contract language requirements, please see Chapter 10 - Contract Management of the CDBG-DR Administrative Manual, Chapter 10's accompanying CDBG Contract Management Forms and Templates, and Chapter 12 - Civil Rights.

All construction contract fees shall be based on a lump sum or unit price and all professional service contracts shall be based on lump sum. Cost plus percentage and percentage of construct cost methods are prohibited.

23B.6.1.11 Affirmative Marketing

As part of the evaluation of developers interested in accessing CDBG funds to support the costs of infrastructure that serve housing development, there should be evidence of a plan by the developer to market to the low- and moderate-income home buyer. The Affirmative Fair Housing Marketing Plan is a marketing strategy designed to attract renters of all majority and minority groups, regardless of sex, disability, and/or familial status, to assisted rental units (and sales of dwellings) that are being marketed. DED is dedicated to affirmatively furthering fair housing practices in all CDBG programs. This includes:

- Promoting fair housing choice for all persons;
- Providing opportunities for inclusive patterns of housing occupancy regardless of
- race, color, religion, sex, familial status, disability and national origin;
- Promoting housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities and;
- Fostering compliance with the nondiscrimination provisions of the Fair Housing Act.

A plan for affirmative fair housing marketing by a developer must be evaluated by the subrecipient prior to signing a Developer's Agreement.

23B.6.1.12 Cost Verification

To ensure that cost controls are implemented that accomplish construction costs consistent with market conditions at the time and place of construction, each local government Subrecipient must require construction contractors implement cost control measures or verify that reimbursable costs are correctly controlled during the project. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description must address controls. HUD may issue guidance to subrecipients and may require a subrecipient to verify cost reasonableness from an independent and qualified third-party architect, civil engineer, or Project Manager.

Examples of cost control measures include the following:

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- The development of thorough, detailed costs estimates
- Limiting change orders and requiring cost verification and justification for change orders
- On-site inspection and reports
- Third party evaluation of costs
- Use of construction management software
- Use of familiar, quality subcontractors
- Efficient communication practices including daily reports and updates
- Strong solicitation and procurement of competitive bids
- Pre-determination of industry standards with the development of a cost control plan that is designed to avoid cost overruns by providing guidelines for estimates and forecasts of labor, material, and overhead costs.
 - The purpose of the plan is to make sure the project is delivered on time, within budget and accomplishing the defined scope of work.

Cost Verification Process:

A cost verification, or cost analysis, is the review and evaluation of any separate cost elements of a proposal, as needed to determine a fair and reasonable price. Some cost analysis techniques may include, but are not limited to, the following:

- Verification of the necessity for, and reasonableness, of proposed cost
- Projections of cost trends on the basis of current or historical data
- Comparison of proposed costs from other proposals for the same or similar terms

Cost verification is always required when noncompetitive proposals are used and necessary when price competition is lacking. For additional details, please see 48 CFR 15.404-1 (c)(1).

According to 2 CFR 200 – Reasonable Costs – procurements related to CDBG-DR projects must undergo cost analysis procedures prior to award of contract. The following is an outline of cost analysis methods used for professional service contracts, construction contracts, and contract modifications:

- Professional Service (A/E and Consulting) Contracts: Cost analysis methods for A/E contracts include but are not limited to:
 - a. Comparing proposed contracts to industry averages using RS Means as a benchmark for A/E contracts
 - b. Comparing proposed contracts to prior contracts with similar scopes of work
 - c. Comparison of prices through market research for similar or same projects or items
- Construction Contracts: Cost analysis methods for construction contracts include but are not limited to:
 - a. Comparing bids to industry averages using RS Means as a benchmark

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- b. Comparing bids to contracts to prior contracts with similar scopes of work
- c. Comparing bids to the engineer's estimated cost
- d. Comparison of prices through market research for similar or same projects or items using bid tabs
- Contract Modifications: Cost analysis methods for contract modifications include but are not limited to:
 - a. Comparing specific scope of work to industry averages using RS Means as a benchmark
 - b. Comparing specific scope of work to prior contracts with similar scope
 - c. Comparing specific scope of work to the engineer's estimated cost for a similar scope
 - d. Comparison of prices through market research for similar or same projects or line items

23B.6.1.13 Acquisition, Relocation, and Site Control

In the event of new construction or the acquisition of property, the Uniform Relocation and Real Property Acquisition Policies Act (URA) is applicable. Properties that are to be purchased for the purpose of this program must gain title using the notification and fair market value evaluation processes established in the URA. Applicants may submit their applications under the Infrastructure program demonstrating proof of site control, however, if awarded funds, no activities may occur until an Environmental Review is completed and the acquisition of the property is finalized. Acquisition is considered a "choice-limiting" activity, regardless of the source of funds and if performed in the wrong order, may cause a loss of CDBG funding.

If the property is already owned and rehabilitation is to be pursued, the property must be assessed for occupancy. Every attempt shall be made to minimize the displacement of individuals and families from their home and/or neighborhood. If displacement is necessary (permanent or temporary), the URA outlines the process for providing tenant rental assistance and moving costs. The aforementioned process needs to be documented as applicable to the project.

Per [24 CFR 42.350](#), a displaced person may choose to receive any of the following assistance (but not limited to): advisory services, moving expenses, security deposits and credit checks, interim living costs, and/or replacement housing assistance.

Please refer to Chapter 14 - Acquisition and Relocation, of the CDBG-DR Administrative Manual for more information on the URA requirements.

23B.6.1.14 Conflicts of Interest and Identity of Interest

In order to comply with CDBG-DR requirements and to maintain integrity in the program, conflicts of interest (both real and perceived) must be avoided.

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The CDBG regulations at 24 CFR 570.611 cite that no person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient or subrecipient that are receiving CDBG Funds and (1) who exercises or has exercised any functions or responsibilities with respect to activities assisted with CDBG funds; or (2) who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest from a CDBG-assisted activity, or have any interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Identity of interest means any relationship (generally based on family ties or financial interests) between (a) the seller and purchaser (prospective owner), (b) the owner and/or general contractor and the subcontractor, material supplier or equipment lessor, or (c) the owner and the lender, which could reasonably create or allow for the assumption or idea that the parties to the transaction may collude to establish the acquisition price of the property, the cost of the rehabilitation, or the terms of the financing. All entities must operate at arms-length.

23B.6.2 Design

The following design requirements are applicable to all infrastructure activities. In regard to any associated housing developments, it is recommended that housing developments follow Section 23B.6.2.2 on energy efficiency and green building standards.

23B.6.2.1 Resiliency

All reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters.

23B.6.2.2 Energy Efficiency and Green Building Standards

All rehabilitation and new construction projects should be designed to incorporate principles of sustainability such as water and energy efficiency, resilience, and mitigation measures.

According to [83 FR 5861](#), contractors are required to use Green Building Standards on all construction projects to meet an industry recognized standard that has achieved certification under at least one of the following programs:

- ENERGY STAR;
- Enterprise Green Communities;
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- ICC-700 National Green Building Standard;

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- EPA Indoor AirPlus (ENERGY STAR a prerequisite); or,
- Any other equivalent comprehensive green building program acceptable to HUD.

Applicants must identify in their application which Green Building Standard will be used, along with a checklist provided by the relevant program/agency. Other documentation demonstrating the elements of the chosen standard that will be followed is allowable, if reviewed and approved by DED. The Contractor and/or the Architect will provide documentation that certifies plans are consistent with the Green Building Standard requirements.

23B.6.2.3 Elevation of Nonresidential Structures

Nonresidential structures must be elevated to the standards described in this paragraph, or flood-proofed, in accordance with FEMA flood-proofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard up to at least two feet above the 100-year (or 1 percent annual chance) floodplain.

All Critical Actions, as defined by 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or flood-proofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or flood-proofed at least three feet above the 100-year floodplain elevation. Applicable state and local codes and standards for floodplain management that exceed these requirements, including elevation setbacks, and cumulative substantial damage requirements will be followed.

Per 24 CFR 55.2(b)(3), Critical Actions are, "activities for which even a slight chance of flooding would be too great, because flooding might result in loss of life, injury to persons or damage to property". For example, hospitals, nursing homes, police stations, fire stations, and principal utility lines. All applicable State, local, and tribal codes and standards for floodplain management that exceed and are stricter than these requirements (including elevation, setbacks, and cumulative substantial damage requirements), will be followed.

23B.6.3 Construction

Per the 2017 FRN for DR-4317, 83 FR 5844, all Infrastructure program activities that include the rehabilitation, reconstruction, and new construction should be designed to incorporate the principles of sustainability, including water and energy efficiency, resilience, and mitigation of future disaster impacts. Furthermore, HUD encourages grantees to implement green infrastructure policies to the greatest extent feasible.

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In accordance with these goals, all parties must use their respective experience and expertise to ensure projects are completed in a timely, efficient, and compliant manner. When the CDBG-DR funds are used for Infrastructure in Support of Housing, both the construction of the infrastructure and the construction of the housing it supports must be compliant. The following subsections will describe the infrastructure requirements that Subrecipients must comply with during the project implementation and construction period.

The construction of infrastructure and housing requires a series of contracts and agreements, all of which must incorporate the following: a clear scope of work, responsibilities of parties, termination clauses, insurance and bonding requirements, timelines, deadlines, and best practices in contract language.

All contracts and agreements must contain language regarding cross-cutting issues which include the following, but are not limited to: equal opportunity, civil rights, fair housing, disability rights, Section 3, wage requirements, and general conditions. In addition, contracts should include a certificate of owner's attorney, required levels of insurance, architects/engineers' authority, period of service, scope of service, and completion time.

Please refer to Section 10.6 in Chapter 10, Contract Management, and Chapter 12, Civil Rights, for a complete list of contract language requirements.

23B.6.7.1 Grantee Responsibilities

Grantees must describe how they will address the construction or rehabilitation of storm water management systems in flood impacted areas. State grantees must work with local governments in the most impacted and distressed areas to identify the unmet needs and associated costs of needed storm water infrastructure improvements.

A grantee may designate a private non-profit, a public non-profit (such as a housing or redevelopment authority), and a public entity (such as a state or local government agency) as a subrecipient.

Additional grantee responsibilities include:

1. To ensure that the project meets the CDBG national objective and eligible use of funds.
2. To communicate rules and regulations to the subrecipient and provide resources to maintain compliance.

23B.6.7.2 Subrecipient Responsibilities

Subrecipients are required to follow CDBG procurement (see 24 CFR 570.611 (b)). A procurement process must be followed when subrecipients select their contractors

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or services. The following information will need to be reported by Subrecipients for inclusion on the State's website:

- Quarterly progress reports (QPR)
- Public bidding opportunities via <https://missouribuys.mo.gov/>
- Summary of all procured contracts for Grantee and Subrecipient, including information regarding, but not limited to, the phase of procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract. This information is to be submitted to Missouri DED via the appropriate compliance specialist on a monthly basis.

Additional **subrecipient** responsibilities include:

1. To assemble a qualified, experienced team of professionals with the capacity and the capability to complete the development.
2. To implement financial management and control systems.
3. To communicate rules and regulations to the contractor(s) and/or vendor(s) and provide resources to maintain compliance.
4. To ensure quality construction and cost reasonableness.
5. To oversee and manage long-term project sustainability and affordability.
6. Contract directly with the contractor, incorporating all applicable local, DED, and Federal requirements.
7. Ensure that the contractor enters into written agreements with each subcontractor who does work for the project. These subcontracts must incorporate all Contractor requirements, and shall be subject to review, upon request, by DED.
8. Actively manage the construction process including scheduled inspections, approval of draws, approval of change orders prior to execution, and close out. This can be done by an in-house or procured Architect/Engineer and/or Construction Manager.
9. Ensure cost verification is conducted. Cost verification is required and shall include profit, overhead, and general conditions. Change orders must also be accompanied by cost verification. Cost verifications are typically provided by 3rd party architects or cost estimators.
10. Ensure that, prior to executing contracts, no project contractors or subcontractors are debarred federally on SAM.gov or by the State Office of Administration. Screenshots with a date verification will need to be included in the project file or can be included as part of a signed contract.
11. Issue the formal Notice to Proceed to the Contractor at the appropriate time.
12. Provide a projection of expenditures and milestones to DED. DED compliance specialists will compare expenditures and milestones against the Request For Funds (RFF) and will request updates if any differences arise.

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13. Schedule all inspections, including interim and post-construction inspections, and invite DED to attend.

23B.6.7.3 Contractor Responsibilities:

The Subrecipient shall contract directly with its Contractor, incorporating all applicable local, DED, and Federal requirements. The Subrecipient shall also ensure that the contractor enters into written agreements with each subcontractor who does work for the project. These subcontracts must incorporate all Contractor requirements, and shall be subject to review, upon request, by DED.

Additional Contractor responsibilities include:

1. The Contractor selected for the project will obtain all local and state permits in order to execute the project.
2. The Contractor will ensure that all construction complies with local building and occupancy codes as applicable, the provisions of this Chapter, and any other appropriate federal, state, or local code requirements.
3. The Contractor shall ensure compliance with all state and federal Labor Standards, prevailing wage laws, and assure that all employees and "self-employed" (1099 workers) are paid prevailing wages.
4. The Contractor will post all notices in a public area. Public notices include Notice of Commencement, Notice of Public Work, Notice of Prevailing Wages, Notice of Completion, Preliminary Notices, Notice of Intent to Lien, Fund-Trapping Notices, Notice to Proceed, Request for Information Notice, Change Order Notice, Claim Notices, Stop Work Notice, Notice of Termination, and Retention Notice.
5. The Contractor will purchase and maintain appropriate insurance policies and present bid, performance, and payment bonds as prescribed.
6. Each individual contract will specify a construction schedule with progress inspections included. The contractor will notify the Subrecipient and/or Construction Manager when they have reached the scheduled milestones.
7. Subrecipients must ensure that Contractors meet all Section 3 requirements applicable to the project. It is strongly recommended that the Contractor complete and submit a comprehensive Section 3 Plan to the Section 3 Administrator and Compliance Specialist for review and approval. The Section 3 Plan will include the Section 3 goals of DED and the Contractor.

23B.6.7.4 Change Orders

After construction begins, circumstances may require a change in scope, timeline, or cost from the original contract. Change orders will be managed at the Subrecipient level and reviewed by DED. However, too many change orders may trigger monitoring of the Subrecipient by DED. If the Contractor discovers or determines that a Change Order may be necessary, the following process shall be followed:

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1. The Contractor will submit the change order to the Construction Manager for approval
2. The Construction Manager will approve it in writing and submit it to the Subrecipient for review and approval, in compliance with DED procurement policies outlined in Chapter 10 – Contract Management of the CDBG-DR Administrative Manual.
3. If the Subrecipient approves the change order, the Construction Manager will provide the Contractor with written approval to proceed.
4. The Construction Manager will be responsible for any increase in cost based on any change order required due to errors and/or omissions.
5. All change orders must be submitted to DED as they occur.

23B.6.7.5 Emergency Change Orders

The Contractor and Construction Manager shall each have the authority to issue Emergency Change Orders without the prior written approval of the Subrecipient. The Contractor and Construction Manager shall:

Notify the Subrecipient that an Emergency Change Order has been issued within twenty-four (24) hours after issuance.

Each Emergency Change Order shall be accompanied with the reason for its need and issuance.

Provide the Subrecipient copies of the Emergency Change Order.

Valid Emergency Change Orders shall be approved by the Subrecipient and submitted to DED. As with regular Change Orders, the Construction Manager will be responsible for any increase in cost based on any errors and/or omissions.

23B.6.7.6 Requirements of Flood Control Structures

Grantees that use CDBG-DR funds to assist flood control structures (i.e. dams and levees), are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG-DR funds for levees and dams are required to:

1. Register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams;
 - a. To add a dam to the NID, the UGLG or state must contact and coordinate with their appropriate state dam safety office. A list of state contacts is available from the Association of State Dam Safety Officials web site at <https://damsafety.org/states>.
 - b. To add a levee to NLD, the UGLG or state must send data to the NLD Support Team at nld@usace.army.mil and the Support team will coordinate inputting the information into the database.
2. Ensure that the structure is admitted in the USACE PL 84-99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects);

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3. Ensure the structure is accredited under the FEMA NFIP;
4. Provide the State with the exact location of the structure and the area served and protected by the structure, for the DRGR system;
5. Maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.

In addition, the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) requires that projects receiving federal assistance that are located in an area identified by FEMA as being within a Special Flood Hazard Areas (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). The community must be participating in the NFIP to be able to purchase flood insurance, if they are not, federal assistance cannot be used in those areas.

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website. HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable.

With respect to flood insurance, a HUD-assisted homeowner of a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 ([42 U.S.C. 4012a](#)) mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. HUD strongly recommends the purchase of flood insurance outside of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

23B.6.7.7 Exception

The State of Missouri will make exceptions to the maximum award amounts based on its Exception Policy. Each request for an exception to the maximum award amount or other program policies will be reviewed on a case-by-case basis by MO DED. Requests must be submitted in writing and include a justification for exceeding the maximum award amount or other policy requirements. The policy exception is not to be implemented until MO DED authorizes the exception in writing. Requests

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will be review by MO DED and a response will be provided in writing within 5 business days. All exceptions must still meet HUD's requirements for necessary and reasonable.

23B.6.7.8 Leverage

UGLGs may propose to leverage CDBG-DR funds for the construction of publicly-owned infrastructure in conjunction with other financial sources, including private investment, for all necessary work to support development of affordable housing. This is done by application to CDBG demonstrating project readiness through an executed Developer's Agreement with Developers and Development Teams, which may include for-profit and/or non-profit developers.

23B.7 Infrastructure in Support of Affordable Housing

This program, as authorized by both DR-4317 and DR-4451, provides funding for construction of publicly-owned infrastructure in support of the development of affordable housing. These infrastructure activities may include, but not limited to:

- Sidewalks
- Roads
- Water, sewer, and storm water systems
- Site-clearance and demolition
- Engineering and design of infrastructure

23B.7.1 Applicable Disasters

Both DR-4317 and DR-4451 authorize infrastructure activities in support of all types of housing development. The primary focus should be on the type of housing that the needs assessment for that area has indicated would be best able to assist the recovery.

23B.7.2 Program Criteria

23B.7.2.1 Program Goals

The program goal is to provide infrastructure activities which support and increase the availability of affordable housing within eligible communities. All infrastructure activities under this program, infrastructure in support of housing, must be linked to housing recovery.

Regarding DR-4451's funding for infrastructure, all funds must be directed at infrastructure in support of housing, whereas DR-4317 has other types of infrastructure programs (explained and outlined in Chapter 23, General Infrastructure, and the CDBG-MIT Infrastructure Addendum.

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23B.7.2.2 Housing Development and Affordability

Infrastructure in Support of Housing uses CDBG funding for public infrastructure only. In this category, no CDBG funds are used for housing costs. For example, since the service taps (service lines that connect the home to the public infrastructure) are considered a housing expense in the CDBG program, that activity is not one used in the Infrastructure in Support of Housing category.

As no CDBG dollars will be used for housing activities, the housing development is **not** subject to the same cross cutting requirements as the infrastructure project with the exceptions of the following:

- The housing development must meet the national objective
- The housing development is recommended to meet green building standards

As previously mentioned, the infrastructure project cannot be closed out until its associated housing development has met the national objective.

Local governments must enter into development agreements with developers and development teams (non-profit and for-profit) who need infrastructure to support the affordable housing development.

An affordable home is one which is accessible to the LMI homebuyer. The LMI household should not pay more than 30% of their income towards their housing costs. Housing costs include:

- Sum of principal and interest on the mortgage loan
- Home price:
 - Cost of land
 - Size of home
 - Type of home
- Mortgage insurance
- Utility costs
- Property taxes
- Hazard insurance (as applicable)
- Any common charges – maintenance.

23B.7.2.4 Program Structure

Per **DR-4317's** Action Plan, 80% of the funds allocated under DR-4317 must serve unmet needs in housing prioritized in five zip codes

- 63935 – Doniphan
- 63965 – Van Buren
- 64850 – Neosho
- 65616 – Branson

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- 65775 – West Plains

The remaining 20% of the allocation may be spent in eligible counties included in the presidential declaration (see DR-4317 Action Plan).

Per **DR-4451's** Action Plan, 100% of the funds allocated under DR-4451 must be directed towards the three designed MID communities.

23B.7.2.5 Eligible Applicants

Under **DR-4317**, the eligible applicants are UGLGs, cities and counties within the 55 eligible counties.

Under **DR-4451**, proposals may be submitted by the MID defined UGLGs. As applicable, a lead applicant from each of the three MID counties will apply on behalf of the entire MID county. The lead applicant must be a UGLG and is chosen through a collaborative effort undertaken by the impacted jurisdictions within the MID county.

Applications must be submitted alongside an executed Developer's Agreement. Developers/development teams should be selected based on an evaluation of their ability to successfully implement the project. Those developers and development teams may be for-profit or non-profit intending to construct affordable housing. The developers and development teams may leverage their private investment and other funds with CDBG-DR that will fund all or a portion of the costs of infrastructure that support the affordable housing development.

23B.7.2.6 Project Budget and CDBG Limitations

Under **DR-4317**, CDBG funds for public infrastructure are limited to the lesser of 20% of total project costs or \$200,000 per project. No CDBG funds are proposed for any housing costs, including those costs of the service taps to hook the houses to the new public infrastructure. Service taps are not public infrastructure, and they remain the responsibility of the developer.

Under **DR-4451**, DED has allocated funds directly to each MID county. For the category of Infrastructure in Support of Housing activities, DED has established a \$1,000,000 maximum for each MID county.

23B.7.2.7 Project Selection Process

An applicant must submit a proposal which meets or exceeds the below listed criteria and demonstrates the applicant's ability to complete the activity within the prescribed timeframe. At the request of the lead applicant, DED will provide technical assistance for proposal development.

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Guidelines and requirements that must be addressed for each proposed activity:

Requirement Description	Max Points Attainable
Baseline Compliance & Communication Requirements	
Describe how all proposed activities will comply with all federal and state environmental laws, specifically those applicable to CDBG-DR grant funding. <ul style="list-style-type: none"> Specifically address how necessary Environmental Review(s) will be conducted. Describe all actions taken thus far to address the Environmental Review process. 	5
Explain how funding the activity will prioritize and address LMI households and vulnerable populations: <ul style="list-style-type: none"> Provide sufficient data to prove that 70% or more of the funding will benefit LMI households. 	10
Demonstrate in the proposal, the actions and process used to determine eligible beneficiaries. The eligibility determination process is outlined in DED CDBG-DR Policy and Procedures.	5
Address how Duplication of Benefits (DOB) will be prevented and layout how DOB checks and screening will be performed.	5
Explain public outreach plan/strategy.	5
Include a Language Accessibility Plan to demonstrate how the applicant will reduce language barriers that preclude meaningful access by Limited English proficiency (LEP) person, including: <ul style="list-style-type: none"> How accommodation will be made for citizens with limited English proficiency. Making all documentation available to the public in the appropriate language of the individual accessing it and ensuring the applicant's website is Section 508 compliant. 	5
Show how the activity includes resiliency measures to preclude the spending of federal money on the same area over again.	5
Baseline Required Content for Implementation	
Explain the implementation strategy, including Feasibility and Acceptability for delivery in areas of: <ul style="list-style-type: none"> Show how the proposed activity addresses the substantiated unmet need directly connected to the DR-4451 disaster. Explain how the activity meets a HUD National Objective. Show how compliance will be met in accordance with the Green Building Standards for housing construction projects. Identify parties that will implement the activity. Describe what the activity produces for the community, i.e. <ul style="list-style-type: none"> The number of households that will be serviced. 	20

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<ul style="list-style-type: none"> ○ The general location of households being served. ● Provide a timeline of activities for assurance that activities will end in the allotted amount of time. <ul style="list-style-type: none"> ○ Projected activity start date. ○ Projected activity end date. 	
<p>HUD has expressed a particular focus on addressing how housing activities will meet the special needs of persons who require supportive housing (e.g., elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e).</p> <ul style="list-style-type: none"> ● Describe any findings from the needs assessment, specific to the project area, that indicate the loss of supportive housing units. ● Describe how this proposed project will address those needs. And, if this specific project does not directly address the needs, describe other specific activities undertaken by the Applicant, or partner agency, that will address those needs. ● Describe, and seek to resolve if applicable, any loss of private market units receiving project-based assistance, or with tenants that participate in the Section 8 Housing Choice Voucher Program, or the loss of any other housing units otherwise assisted under a HUD program. ● Describe, and seek to resolve if applicable, unmet needs for supportive housing for otherwise vulnerable populations, such as housing for the elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents. 	10
<p>HUD has expressed a particular focus on addressing how homelessness will be prevented as a result of the disaster.</p> <ul style="list-style-type: none"> ● Describe any findings from the needs assessment, specific to the project area, that indicate the risk of increased homelessness as a result of the disaster. ● Describe how this proposed project will address those needs. And, if this specific project does not directly address the needs, describe other specific activities undertaken by the Applicant, or partner agency, that will address those needs. ● Describe, and seek to resolve, if applicable, any unmet needs for transitional housing, permanent supportive housing, and permanent housing needs for individuals and families that are homeless and at-risk of homelessness. ● Eligible Planning activities may include any unmet needs in the reconstruction, rehabilitation, or replacement of shelters for homeless or vulnerable populations. 	10

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Explain the timeline and milestones for successfully accomplishing the activity, with sufficient detail to show how the MID will complete the activities prior to June 30, 2024.	10
Explain the proposed budget for the activities included and if the costs are reasonable.	10

23B.7 Monitoring and Closeout

23B.7.1 DED Monitoring and Compliance

DED shall retain the responsibility of monitoring Subrecipients for compliance with DOB; Acquisition; Financial Management; Civil Rights; Citizen Participation; Environmental clearances; Procurement; Contract Management; Labor Standards; compliance with Davis Bacon labor laws; Section 3; Section 504, Financial Risk Assessment; accordance with National Objectives; and recertification, disbursements, and closeout.

The level of monitoring that DED implements upon a Subrecipient's activity will be based on the scope of the project activity and the project's risk assessment.

A risk assessment needs to be completed at the beginning of award to determine the level of monitoring will be required. This is based on their previous experiences and evaluated against the following questions:

- Whether the entity being monitored has done projects before?
- Were they successful?
- Do they have the proper level of staffing for the magnitude of the project?
- Have they implemented a new accounting system?
- Have they had turnover of key positions?

The risk assessment also includes a review of the financials and a single audit (if applicable). Monitoring tasks include review of expenditures, check-in phone and video calls, and periodic site visits. A monitoring check list should be completed at each contact to document the monitoring process that has been conducted. The completed monitoring checklists done by DED must be scanned and filed in the project file in the monitoring folder, so they are available for review.

23B.7.2 Subrecipient Monitoring and Compliance

Monitoring requirements may vary depending on individual Subrecipient agreements and scope of work, however at minimum, Subrecipients are responsible for:

- Complying with the terms and conditions of the grant agreement with DED, specifically anti-fraud and abuse;

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- Following procurement processes in accordance with 2 CFR 200, State procurement policy, and/or local standards if higher;
- Monitoring any contracted entities for federal compliance standards;
- Monitoring construction contractors for equal opportunity, federal, and state labor standards and Section 3 requirements;
- Performing sufficient financial controls to ensure grant costs are eligible, reasonable, and allocable,
- Documenting national objective compliance for all activities, and;
- Conducting the degree of monitoring normally executed by DED for any of their own subrecipients.

Please refer to Chapter 6 Monitoring Plan; Chapter 6.b Risk Assessment Plan and Policy; Chapter 6.c Risk Assessment Plan and Policy 4451 for additional guidance.

23B.8.3 Reporting Requirements

In compliance with HUD regulations 83 FR 5844 and 84 FR 45838, DED expects all subrecipients to meet the following reporting requirements:

1. The Subrecipient must report all awarded contracts to DED monthly, to be added to the Contract Reporting Template on DED's website.
2. The Subrecipient must be current with their Quarterly Performance Reporting to DED. DED will assemble the reports and then send it to HUD.
3. The Subrecipients' activities must be completed in accordance with the project completion dates.

23B.8.4 Closeout

The project closeout process begins when Subrecipients are set to receive their final assistance payment and are approaching the end of their project. DED shall retain the final construction CDBG-DR payment (RFF) until all reporting requirements are met. In general, a project is ready for closeout when the following conditions are met:

- All eligible activities were completed and met a national objective;
- All grant funds were expended in full, or all remaining funds are planned to be returned to DED;
- All reporting requirements were completed and submitted;
- Any special conditions of the grant were met and;
- All audit and monitoring issues affecting the grant were resolved.

Projects shall be officially closed out by DED when the subrecipient has met all requirements and DED approves all documentation pertaining to the National Objective.

DED's closeout of the subaward shall take place pursuant to 2 CFR 200.344 and 24

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CFR 570.502(a)(8). For more information, please see Chapter 13 - Closeout of the CDBG-DR Administrative Manual.

23B.8.4 Subrogation Clauses

Standard agreements with jurisdictions will include subrogation clauses in case of the event of noncompliance with the applicable requirements and regulations. A Subrecipient may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance or cost-effectiveness criteria; the State CDBG-MIT program will describe the process that UGLGs will use to make such exceptions in its policies and procedures. All CDBG-MIT expenditures remain subject to the cost principles in 2 CFR Part 200, Subpart E – Cost Principles, including the requirement that the costs be necessary and reasonable for the performance of the Subrecipient's CDBG-MIT grant.

23B.9 Use of CDBG-DR as Match

As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the FEMA or USACE. By law (codified in the HCD Act as a note to 105(a)), the amount of CDBG-DR funds that may be contributed to a USACE project is \$250,000 or less. Note that the Appropriations Act prohibits the use of CDBG-DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

23B.9.1 Determining the Non-Federal Share Amount

The non-federal share match is the portion of the project funding that is not covered by the federal government. FEMA administers its grants according to Federal cost sharing requirements as outlined in Title 2 of the Code of Federal Regulations, Sections 200.29, 200.306, and 200.434 and consistent with Title 44 of the CFR, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and the National Flood Insurance Act, as amended. In general, FEMA funds may be used to pay up to 75% of eligible activity costs. The non-federal share for FEMA Public Assistance (PA) Match and Hazard Mitigation Grant Program (HMGP) Match project totals 25% of the overall project cost. In Missouri, the state divides the 25% local share between the state government (10%) and the local government (15%). HUD allows Grantees / Subrecipients to use CDBG-DR funds to address the non-federal cost share but requires that the funded project meet at least one additional HUD eligible activity and a National Objective.

Infrastructure repair is an eligible activity according to 42 USC 5305(a)(2), which authorizes the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction,

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or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.

23B.9.2 FEMA Public Assistance Match

The FEMA PA program is designed to provide assistance to the impacted jurisdictions for emergency work (under Stafford Act Sections 403 and 407) and permanent work (Stafford Act Sections 406 and 428) on infrastructure and community facilities. Emergency work takes place immediately after an event and permanent work restores or rebuilds a damaged asset or facility. FEMA PA projects fall under the following categories:

- Emergency Protective Work
 - Category A – Debris Removal
 - Category B – Emergency Protective Measures
- Permanent Work
 - Category C – Roads and Bridges
 - Category D – Water Control Facilities
 - Category E – Public Buildings and Equipment
 - Category F – Public Utilities
 - Category G – Parks, Recreational, and Other Facilities

FEMA PA projects eligible for PA Match funding under the General Infrastructure Program and Infrastructure in Support of Housing Program fall under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018 and 85 FR 4681 published January 27, 2020. CDBG-DR funds may fund required FEMA PA local non-federal share (match) funding for approved projects under the following FEMA PA permanent work categories:

- Category C (Road and bridges);
- Category D (Water control facilities);
- Category E (Public buildings and equipment);
- Category F (Public utilities); and
- Category G (Parks, recreational, and other facilities).

All projects must meet a National Objective as detailed in Section 23B.6.1.4

Ineligible FEMA PA Match costs include required FEMA PA Match funding for approved projects under Categories A (Debris Removal) and Category B (Emergency Protective Measures). Any increase in scope or modification of a FEMA PA project is also ineligible for funding.

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23B.9.3 FEMA Hazard Mitigation Grant Program Funds

Eligible FEMA HMGP costs are those activities eligible under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018 and 85 FR 4681 published January 27, 2020. As such, CDBG-DR funds may fund required FEMA HMGP local non-federal share (match) for approved projects that meet the CDBG-DR requirements, including a tie-back to the DR-4317 and DR-4451 disaster events. All projects must meet a National Objective as detailed in Section 23B.6.1.4. To be eligible for FEMA HMGP Match, the project must also be a project obligated by FEMA, and the project and service location must be in an area impacted by DR-4317 or DR-4451.

FEMA HMGP projects that are not related to infrastructure and/or without a tie-back to DR-4317 or DR-4451 are ineligible for funding. FEMA HMGP costs covered by another funding source and are a Duplication of Benefits are ineligible for funding.

23B.9.4 Stand-Alone Infrastructure

The eligibility of Stand-Alone Infrastructure Projects requires that the projects are non-match, stand-alone infrastructure projects that have a tie-back to the DR-4317 or DR-4451 disaster events and address identified unmet disaster recovery needs. Further, Stand-Alone Infrastructure Projects must be those activities eligible under Title I of the Housing and Community Development Act of 1974 or those activities specified by waiver in 83 FR 5844 published February 9, 2018 and 85 FR 4681 published January 27, 2020. All projects must meet a National Objective as detailed in Section 23B.6.1.4.

Non-match, stand-alone projects not related to infrastructure, increased code compliance, or DR-4317 or DR-4451 disaster events are ineligible for funding. Further, any costs for non-match, stand-alone projects that are funded by another source are ineligible for funding.

23B.10 Recapture of Funds

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

- A Subrecipient does not comply with the terms of their SRA;
- A Subrecipient withdraws from the program prior to completion of the project and/or fails to meet a national objective;
- A Subrecipient and/or Contractor is found to have used program funds for an ineligible activity or cost;
- A Contractor does not report the receipt of additional insurance, SBA, FEMA, non-profit assistance, and/or any other Duplication of Benefits received after award; and/or,

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- Funds remain after the project is completed, or the expenditure deadline has passed.

The method of recapturing funds and the timeframe for doing so are determined on an individual project basis. However, the recapture method and timeframe will be consistent with 2 CFR 200 or other applicable cost principles.

23B.11 Recordkeeping

The purpose of this section is to ensure necessary records and documents are adequately protected and maintained and to ensure records that are no longer needed or of no value are discarded at the appropriate time. All applicant and program data will be retained for at least 5 years as required by the contract and regulations. Document retention, which includes scanning and uploading to the systems and the filing of Program documentation, are to provide both a physical and an electronic record of activities so that documentation is accessible for audit purposes.

Documentation standards allow for Program activities to be traced so that any possible audit issues are resolved. To protect all personal information, data security measures will be in place, such as hardware and software data security protocols and physical security for hard copy files. Documentation shall include, at minimum, all applicable materials as listed in the CDBG-DR Monitoring Checklist.

All files and records must be kept at the subrecipient's business offices and must be available to the public during regular business hours, except confidential files relating to housing and/or economic development. Subrecipients are required to control grant funds and establish adequate safeguards to protect the records that document CDBG transactions.

The records retention requirement applies to "source documentation", which refers to any writing that activates a flow of funds. Source documentation comprises of purchase orders, invoices, contracts, checks, budget transfer memoranda, and other transaction documentation. It also includes writings verifying compliance with nonfinancial aspects of program administration (i.e. inspection reports that confirm the fulfillment of applicable regulations).

For more information, please see Chapter 1, Introduction & Administration, of the CDBG Administrative Manual.

23B.11.1 Subrecipient Responsibilities

Subrecipients participating in the Infrastructure program must retain all records related to the projects and expenditure of funds for at least 5 years as required by the contract and regulations.

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23B.11.2 Confidentiality

All documentation which includes Personally Identifiable Information (PII) shall be maintained in accordance with the DED PII Policy detailed below.

The protection of PII data applies to all CDBG grantees, Subrecipients and contracted agents. Requirements of PII protection must be adhered to and as such are set forth in:

- Grant agreements
- Subrecipient contracts and agreements

All entities participating with CDBG shall indicate their recognition, acceptance and concurrence with this policy by executing it and providing the executed copy to the CDBG Program. The existence of a signed copy for all entities will be a monitoring function and non-compliance may cause penalties for future grant awards.

Retention and protection of PII data is the same as all CDBG grant data and shall be held for at least 5 years following the closing of the grant. Destruction of PII data shall follow shredding protocols and other destruction of records prescribed by the State Archives.

Databases or data sets that include PII may be breached inadvertently or through wrongful intrusion. Upon becoming aware of a data breach, the CDBG Program will notify the DED legal team and implement a notification of all affected individuals whose PII data may have been compromised. The notice will be accompanied by a description of action being taken to reconcile any damage as a result of the data breach. Notices will be provided as expeditiously as possible.

23B.12 Appeals

DED is required to have a systematic appeal process so that Applicants have recourse when they feel DED has made an adverse determination of eligibility or benefits. DED has adopted an appeal process that will apply for all recipients and will not be applied in a manner that discriminates against any Applicants based on race, color, national origin, religion, sex, sexual orientation, age, familial status, or disability. If, at any time, an Applicant requires reasonable accommodation to the established appeals process, DED staff will follow reasonable accommodation protocol.

The appeals procedure will be a formal process and may include but not be limited to informal hearings, third-party review, and director approval. The Applicant must

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appeal any issues regarding their award within 45 days of the date on the face of the determination letter.

- a) Upon Receipt of the appeal, DED will log the appeal and date of receipt.
- b) Within 15 business-days of receiving the appeal, DED will provide the Applicant confirmation that the appeal was received. DED will then review for completeness and accuracy
- c) DED will log the appeal and assign it to a designated staff member (must not be the staff that made the Award decision)
- d) The program staff will contact the Applicant to give the Applicant the opportunity to provide evidence, information, or additional documentation necessary to determine an outcome
- e) DED will make a determination that the application was properly processed or will note any changes or corrections from DED to the file within 10 days of receipt
- f) The Applicant will be sent a letter from DED with the appeal determination within 45 days of initial receipt of the appeal request.

The entire Appeals process shall be completed within a 45-day period from receipt of initial appeal. Documentation for each appeal must be maintained. Each file will include the following:

- Contact information for the Applicant;
- Initial appeal;
- Address and DED assigned project number (if applicable);
- Any communications to and from appellant;
- Results of the investigation, together with any notes, letters, or other investigative documentation;
- The date the appeal was closed; and
- Any other action taken.