CDBG-DR COMPLIANCE MANUAL

8/24/2015

City of Joplin

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Chapter 1 – Introduction

1.1 Purpose

This Manual is provided to assist the City of Joplin and Subrecipients in implementing disaster recovery grants which are provided by the Department of Housing and Urban Developments Community Development Block Grant Disaster Recovery program (CDBG-DR). It provides guidance regarding the general requirements included in all Cooperative Endeavor Agreements (CEAs) that apply to the City which is classified as a Unit of Local Government (ULG). It is the responsibility of each grantee to verify that all provisions of this manual, federal rules and regulations, and grant award are complied with. Grantees must also carry out proper and efficient grant administrative practices. The City of Joplin falls under HUD Region VII, located in Kansas City. The regional contact office information is as follows:

400 State Ave.
Room 200
Kansas City, KS 66101-2406
Phone (913) 551-5462

1.2 Tornado Overview

On May 22, 2011 the city of Joplin, Missouri was impacted by an EF-5 Tornado. At the tornado's peak, up to a mile wide, the tornado had winds in excess of 200 miles per hour destroying everything in its 13 mile long path. Approximately 4,000 homes were destroyed and 3,500 homes were damaged causing 9,200 people to be displaced. The U.S. Department of Housing and Urban Development (HUD) provided support to the City of Joplin through the Community Development Block Grant Disaster Recovery program.

On April 16, 2012 the City of Joplin, Missouri was awarded what became Round 1 of Community Development Block Grant Disaster Recovery (CDBG-DR) funds through the Department of Housing and Urban Development. This funding was announced in **Federal Register** Volume 77, Number 73 on Monday, April 16, 2012. This award was for just over $45 million, see Appendix 1-1.

The impact and effect of the May 2011 Tornado had been so grave that another round, known as Round 2, of disaster funding was announced in **Federal Register** Volume 78, Number 103 on Wednesday, May 29, 2013 (Appendix 1-2), with the statutory requirements being found at Federal Register Volume 78, Number 43 published Tuesday, March 5, 2013, (Appendix 1-3).

1.3 Applicable Regulations

"Supplemental Appropriations Acts" are used to authorize CDBG-DR funding. Requirements specific to a Presidentially declared disaster are typically included in the appropriation law adopted to cover a specific disaster. These requirements may modify, or authorize HUD's Secretary to modify, various statutes and regulations that could impede the prompt implementation of disaster relief and associated

community development programs. Notice of any waivers and alternative requirements are subsequently published in a Federal Register notice.

The entity that has responsibility for designing and administering the Grant Programs depends on the nature of the disaster. In recent catastrophic disasters, (i.e. Hurricane Katrina) the Congress left the design and implementation of the disaster relief programs to the affected states and ULG's. HUD maintained a pivotal role - working with the states ensuring the designs of the action plans/amendments were acceptable; granting waivers of existing statutory requirements and associated implementation regulations; defining alternate requirements when necessary; and, monitoring implementation activities. At the same time, states/ULG's submit needs assessments and submit action plans and amendments covering their programs to implement as part of their disaster recovery effort. Action plans and amendments are submitted to HUD for approval. This shows that proposed actions are within the guidelines of existing statutes, particularly in meeting the spirit of the statute. The action plans define the scope and allocate the funds appropriated to the programs described. After approval by HUD, the ULG implement their program(s) or delegate the responsibility to grantees and their Subrecipients. The delegation of responsibility Cooperative Endeavor Agreements (CEAs) or conditions of grant awards associated with the program. Individual projects are implemented through an application process and associated grant award. This award will define the activities to be undertaken and establish a budget for the project. It also contains requirements that the grantee must comply with. Each grantee must become familiar with the terms of the CEA, grant awards, and associated statutory and regulatory waivers.

Chapter 2 – Administration

2.1 Overview of the Grants Process

To begin expending CDBG-DR funds, there are several expedited steps that must occur. The grantee must adopt a citizen participation plan for disaster recovery to inform the Action Plan. The grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment. The grantee responds to public comment and submits its Action Plan to HUD. The Action Plan includes SF424 and certifications. HUD reviews the plan and if approved (generally less than 45 days) then HUD will send a cover letter with grant conditions and signed grant agreement to the grantee. The grantee is responsible for signing and returning the fully executed grant agreement. The grantee is responsible for posting the final HUD accepted Action Plan on its official website. HUD establishes the grantee's line of credit (LOC). If the grantee does not already have access to the Disaster Recovery Grant Reporting (DRGR) system they must request access. The grantee must enter the activities from its published Action Plan into DRGR and submit to HUD. Funds can only be drawn from the LOC for activities that are established in the DRGR system. This process is explained further in section 2.7.

2.2 General

The City and HUD have a written agreement documented by the grant agreement and the following illustrates some of the responsibilities undertaken under this agreement.

A Grantee is Responsible for:			
1.	Day-to-day program management;	6.	Record keeping;
2.	Subrecipient/ULG monitoring;	a.	Document day-to-day management;
3.	Contractor management;	b.	Retain five years after overall grantee HUD close-out;
4.	Beneficiary data;	7.	Privacy; and,
5.	Grantee's internal audit function;	8.	Freedom of Information Act (FOIA) Requests

HUD Provides the Following General Guidance for Program Administration			
1.	Put all procedures in writing. Follow them or document why they aren't followed.	4.	Build compliance into day-to-day management. Project completion can be undone by noncompliance.
2.	Build performance targets into contracts. Hone the scopes of work.	5.	Sign off on the work.
3.	Make the files tell the story.	6.	Catch problems early and take action.
		7.	Communicate.

2.3 Meeting a National Objective

Before any activity can be funded utilizing CDBG-DR funds, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act (HCDA), as amended. Additionally, all projects funded under CDBG-DR must address at least one of the following three national objectives of the CDBG-DR Program:

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

The Low and Moderate Income (LMI) objective is frequently referred to as the "Primary" National Objective. This stems from the requirements of the Housing and Community Development Act, which requires that recipients use 70 percent of CDBG-DR funds for developing viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' 42 U.S.C. 5301(c).

In **Federal Register** /Vol. 77, No. 73 /Monday, April 16, 2012 /Notices it was recognized that for Disaster Recovery (CDBG-DR), a 70 percent LMI target could be difficult to reach, and perhaps even impossible, for many communities affected by the 2011 disasters. As a result, the 70 percent requirement was waived. In order to provide grantees with greater flexibility to carry out recovery activities, a 50 percent target was implemented for the benefit low- and moderate-income persons. The remaining 50 percent of funds can be used to assist activities under the urgent need (UN) or prevention or elimination of slums or blight national objectives.

Applicants must validate that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons. A determination of the eligibility of an activity is made as a part of the Project Application review process. However, under the CDBG-DR regulations, a project is not considered as meeting a national objective until it is complete. Grantees must be aware of the national objective category and document compliance throughout the life of the project or program.

2.3.1 Meeting a National Objective Documentation

National Objective	Required Documentation
Low/Mod Area	1. Boundaries of service area
	2. Census data including total persons and percentage low/mod
	3. Evidence area is primarily residential
	4. Survey documentation (if applicable)
Low/Mod Limited Clientele	Documentation that the beneficiaries are low/mod or presumed to be low/mod (by category)
Low/Mod Job Creation and Retention	1. Number of jobs created or retained
	2. Type and title of jobs created or retained
	3. Income of persons benefiting from the jobs created or retained
Slum and Blight	1. Area designation (e.g., boundaries, evidence area meets State slum/blight requirements)
	2. Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)
	If applicable, evidence that the property meets spot designation requirements (e.g., inspections)
Urgent Need	1. Documentation of urgency of need and timing
	2. Certification that other financing resources were unavailable and CDBG-DR had to be used

2.4 Duplication of Benefits

The Robert T. Stafford Act (Stafford Act) - 42 U.S.C. 4144, the Code of Federal Regulations Title 44, Emergency Management and Assistance (44 CFR), and HUD's clarification for duplication of benefits under the Stafford Act for CDBG-DR provide authority and general guidelines for a grantee (i.e., the City of Joplin) or subgrantee (i.e., a J-HAP Applicant) regarding duplication of benefits.

Under the Stafford Act:

(a) General prohibition - The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules -

(1) Limitation - This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) Procedures - The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) Effect of partial benefits - Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) Recovery of duplicative benefits - A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose.

(d) Assistance not income - Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

The City of Joplin's Programs and the 44 CFR have key requirements for verifying there is no duplication of benefits. See Appendix 2-4 for the City of Joplin's Duplication of Benefits Policy. This entails obtaining various documents from Applicants and reconciling that documentation for potential duplication of benefits. This includes reviewing actual and anticipated insurance and other proceeds.

All Persons applying (both Applicants and Co-Applicants) for CDBG-DR funding through the City of Joplin's programs are required to disclose all sources of financial or housing assistance received (local, state, federal, and private sources) as a result of damage (i.e. structural damage, any related down payment assistance, and any related housing construction, repair or rehabilitation, or emergency assistance) caused by the May 2011 Tornado. The program office is required to verify applicable amounts received by Applicants/Co-Applicants.

2.5 Complaints

Resolving local complaints is the grantee's responsibility. Grantees are required by federal regulations to establish a procedure for handling complaints that deal with local program administration, management, or operational procedures. The City Office of Planning and Community Development is responsible for monitoring to verify that a procedure for handling local complaints is in place and is used when necessary. The grantee may provide HUD contact information to complainants as needed.

For complaints regarding civil rights violations in grant programs, they should contact the Department of HUD, Office of Fair Housing and Equal Opportunity (FHEO) (1-800-669-9777).

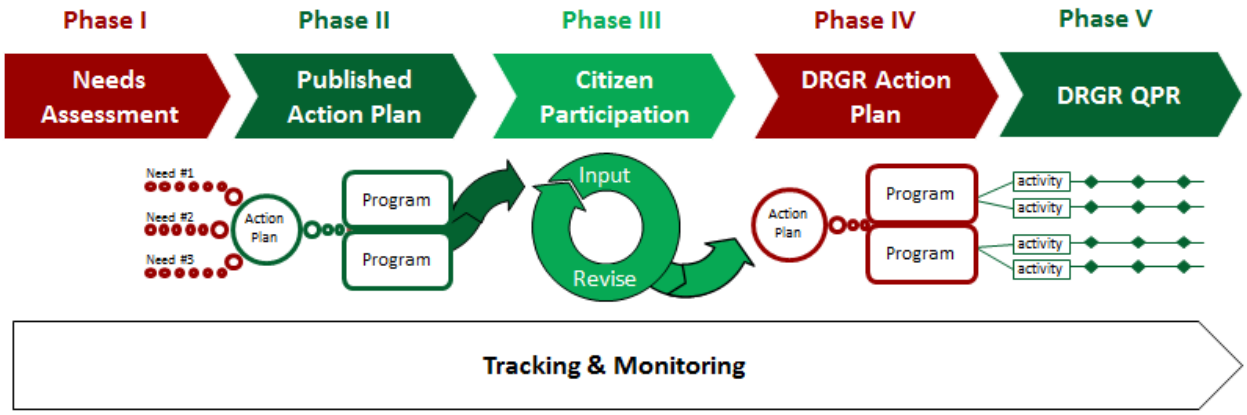
Complaints about fraud, waste, and abuse related to grant programs that represent criminal wrongdoing or HUD standards of ethics and conduct may be submitted to the Office of Inspector General (1-800-347-3735).

Section 3 of the HUD Act of 1968 provides that complaints are required to be filed at the appropriate HUD FHEO Regional Office in which the violation occurred. This action should take place within 180 days from the date of the action or omission upon which the complaint is based.

2.6 Action Plan Procedures

As part of the CDBG-DR programs, grantees must notify stakeholders about the plan to develop the community and what activities they intend to fund. These documents are called Action Plans and Amendments. The procedures to implement action plans can be lengthy due to the level of effort required to gather stakeholder input and approval. It is appropriate for the City to prepare action plan amendments which is explained in section 2.4 Action Plan Amendments.

The visual below portrays a simplified lifecycle for action plans however in practice the process has some flexibility to conform to the City's ever changing community conditions:



2.6.1 Needs Assessment

A needs assessment should be a preliminary step to assess the needs of the community and to set initial priority for the use of funds. The basic types of needs are:

- Housing needs which evaluates the needs for interim and permanent, owner and rental, single family and multifamily, affordable and market rate, including public and HUD-assisted housing and housing for homeless;
- Infrastructure needs which evaluate the needs for restoration of roads, bridges or other public structures; and
- Economic needs which evaluate estimated job losses or revenue loss.

The City should evaluate the needs then consider other alternative assistance sources available for affected communities and individuals. The City should identify the purpose of funds including identifying & documenting the needs, allocating the CDBG-DR funds and illustrating the connection between recovery needs and allocation of funds.

2.6.1.1 Joplin Citizens Advisory Recovery Team (CART)

The Joplin CART was established to provide a voice of the community impacted by the disaster. This coalition of community leaders serves to provide recommendations of needs within the community impacted. This team recommends the master plan and provides input into the needs assessment which is provided to the City officials. More information on the CART and its role in the Joplin disaster recovery efforts can be found on http://joplinareacart.com/.

2.6.2 Published Action Plan

An Action Plan may include a list of specific programs and organizations funded. In other cases, they detail a proposed method of distribution based on an analysis of community needs. The method of distribution may identify areas eligible for funding and the types of activities which will be considered. Action Plans and Amendments for grants must first be published to the community and then the published versions must also be approved by HUD.

The City will review the needs assessment results and then identify programs that City intends to use the CDBG-DR funds for. This preliminary action plan will provide the programs that the City is proposing to implement. This preliminary Action Plan is intended to set broad objectives that the community can agree upon. Over time, the community will provide feedback on the specifics which can be included through an Action Plan Amendment which is detailed in section 2.4 Action Plan Amendments. The general requirements for the plan are:

- Must be CDBG-DR eligible
- Meet a national objective
- Address a direct or indirect impact from the disaster in a presidentially-declared county identified in the notice
- Must demonstrate how each activity and program is tied to disaster in both the Action Plan and individual activity files

Before any activity can be funded utilizing CDBG-DR funds, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act (HCDA), as amended. Additionally, all projects funded under CDBG-DR must address at least one of the following three national objectives of the CDBG-DR Program, which is further elaborated in section 2.4:

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

2.6.3 Citizen Participation

To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, **Federal Register** /Vol. 77, No. 73 /Monday, April 16, 2012 /Notices - provides that the provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), 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 at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under the Notice are:

> **A.** Before the grantee adopts the Action Plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency. Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction.

Subsequent to publication of the Action Plan, the grantee must provide a reasonable time frame and for receiving comments on the plan or substantial amendment. In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the allocation or re-allocation of more than $1 million; or the addition or deletion of an activity.

B. The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. However, every amendment to the Action Plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's Web site. The Department will acknowledge receipt of the notification of non-substantial amendments via email within 5 business days.

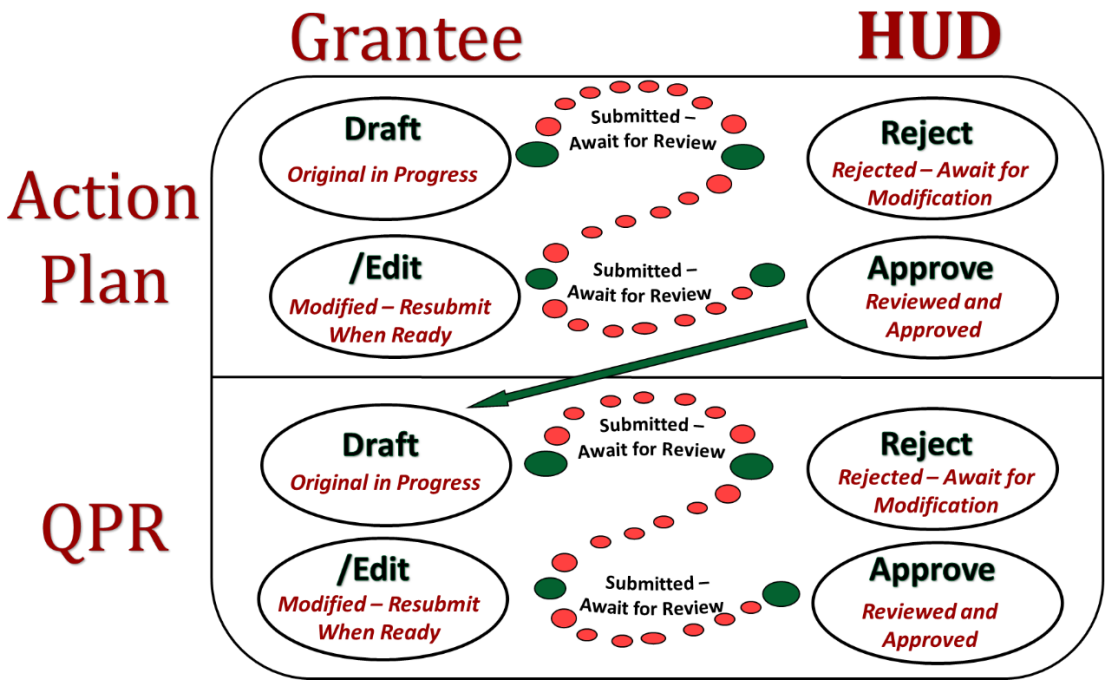
C. The grantee must consider all comments, received orally or in writing, on the Action Plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the Action Plan or substantial amendment.

D. The grantee must make the Action Plan, any substantial amendments, and all performance reports available to the public on its Web site and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds.

E. The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable."

2.6.4 DRGR Action Plan

After the community has approved the Action Plan, the Action Plan will be submitted to HUD which must have all comments addressed received through public comment period. HUD will review that the Action Plan is CDBG-DR compliant and has been vetted by the community. An Action Plan approval may follow a process shown in the visual below:



The DRGR system serves as HUD's primary grant reporting system for tracking the CDBG-DR spending. When grantees enter information into DRGR for published Action Plans and Amendments, they are listed as part of only one DRGR Action Plan for each grant. The DRGR Action Plan must be submitted for review and approval by HUD staff before the grant will be unblocked to permit draws and quarterly reporting. In some cases, grantees will not fully budget the activities in DRGR when the first DRGR Action Plan is submitted. When changes are made, grantees can continue to process draws before the DRGR Action Plan is re-approved by HUD. However, changes in the Action Plan must be approved by HUD before each quarterly report can be submitted.

2.6.5 DRGR Quarterly Performance Reporting

The Quarterly Performance Report (QPR) enables grantee users to create and submit financial and performance data related to the each grant in the DRGR system along with progress narratives. HUD users review QPRs to check on grantee progress and review activities for compliance. Although grantees can submit information on the overall progress for a grant, much of the data is at the activity level.

Data from the QPR comes from a variety of sources. These include:

DRGR Module	Requested Data
Action Plan	Project Number and Title
	Activity Number and Title
	Activity Budget
	Activity Description and Location
	Activity Type and National Objective
	Performance goals
Drawdown	Grant Fund obligations.
	Grant Fund and Program Income (PI) draws completed
QPR	Activity Beneficiaries Assisted
	Performance Accomplishments
	Expenditures

Action Plan changes should be submitted in advance of QPR due dates to allow for HUD review of Action Plan changes. If Action Plans are in approved status, the grantee may continue to add and submit QPRs for approval regardless of the status of prior QPRs. However, HUD staff must approve QPRs in order since the data is cumulative based on prior QPRs. Action Plans cannot be edited when there are one or more QPRs in submitted status.

2.6.6 Partial Action Plan

For the City's Round II funding, see **Federal Register** / Vol. 78, No. 103 / Wednesday, May 29, 2013 / Notices, there is a two year time constraint, from date of obligation, which must be taken into consideration. For this reason, the City may submit a partial Action Plan. The partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award, subject to the limitations that HUD may not obligate Appropriations Act funds after September 30, 2017 and the last date that grantees may submit an amendment is June 1, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

2.6.7 Action Plan Amendments

Even after all funds have been programmed or budgeted in a grantee's Action Plan at the necessary level of detail, the grantee may continue to subsequently amend its plan as needed. As needs often change throughout the long-term recovery process, grantees may find it necessary to amend its Action Plan to update its needs assessment, modify activities, create new ones, or to re-program funds. **Federal Register** /Vol. 77, No. 73 /Monday, April 16, 2012 /Notices, refers to Action Plan amendments, stating that:

"Each amendment should constitute the entirety of the Action Plan, as amended. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan should be able to be accessed and viewed as a single document at any given point in time, rather than the public having to view and cross reference changes among multiple amendments."

2.7 Reporting

Grantees are responsible for fully documenting compliance with applicable program and statutory requirements as well as associated regulations for the CDBG-DR program. This can be accomplished through careful attention in maintaining adequate records (see Section 4 – Records Management) and submitting required reports. Grantees are required to submit reports on a quarterly basis using HUD's DRGR system.

The type of information that may be required within these reports includes, but is not limited to:

Reporting			
1.	Persons Benefitting	**6.**	Non-business Organizations Benefitting
a.	Jobs created (LMLI/Non-LMI)	**7.**	Public Facilities
b.	Homes rehabilitated (LMI/Non-LMI)	**8.**	Buildings (non-residential)
c.	LMI Special Assessments Paid	**9.**	Parcels Acquired Voluntarily
d.	Elderly/Handicapped	**10.**	Linear Feet of Public Improvement
e.	Race	**11.**	Parcels Acquired by Condemnation - Linear Miles of Public Improvement
f.	Ethnicity	**12.**	Permanent Jobs Created
2.	Houses holds Benefitting	**13.**	Cable Feet of Public Utility
3.	Housing Units	**14.**	Cases Opened
4.	Businesses	**15.**	Cases Closed
5.	Properties		

2.8 Management of Subrecipients

The CDBG-DR Grantee Administrative Manual is written primarily to assist grantees with the implementation of disaster recovery grants. While the details provided may also assist sub-recipients, it's important to note that if grantees make use of subrecipients to carry out activities with CDBG-DR funds, it is necessary that proper management of these subrecipients be executed. Subrecipient management should be conducted according to HUD's *Managing CDBG: A Guidebook for Grantees on*

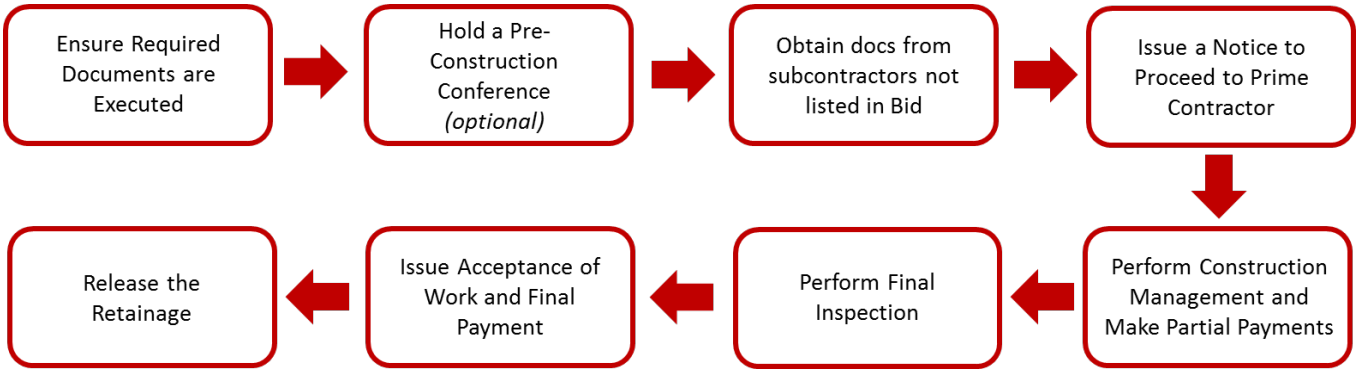
Subrecipient Oversight and *Playing by the Rules: A Handbook for CDBG Subrecipients on Administrative Systems*. Each of these publications can be accessed by the following link:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/library/subrecipient.

2.9 Additional Construction Contract Administration Requirements

By nature, construction projects are more complex and as a result, grantees are required to take additional steps for these projects and their associated contracts. These steps are designed not only to validate compliance with required laws, rules, and regulations but also the quality of work and.

The diagram below provides an overview of the additional steps required for construction contracts.



2.9.1 Execute Required Documents

After the contract has been awarded, the contract documents and applicable bonding and insurance requirements must be completed and executed. Contract documents include:

1. All the items contained in the bid package
2. The executed contract
3. Bid proposal
4. Contractor certifications
5. Bonding and Insurance forms
6. Verification of the status of surety or insurance companies must be carried out by the grantee, and the date and method of verification must be clearly documented in the grantee's files.
7. The Missouri Insurance Commissioner's Office must be contacted to determine whether or not the agent selling the bond is currently licensed to do business in Missouri.

The contract file and associated compliance files should be reviewed to make sure documentation is complete. The following is a list of construction contract file requirements:

1. Preliminary design and cost estimates;
2. Final design documents and cost estimates;
3. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
4. Bid documents;
5. Documentation of submittal to and approval of plans and specifications by the cognizant state/federal agency having jurisdiction over the project;
6. Certification of Compliance with Architectural Barriers Act, if applicable;
7. Proof of publication/copy of advertisement for bids;
8. Minutes of public bid opening;
9. Tabulation of bids;
10. Recommendation for award;
11. Notice of contract award;
12. Executed contract document;
13. Certification of insurance/bonding; and
14. Notice to Proceed.

2.9.2 Pre-Construction Conference

Immediately upon execution of the contract, a pre-construction conference or other means of notification should be held. This is to inform the prime contractor(s) of his/her responsibilities. Others who must be aware of these responsibilities are the foreman or construction superintendent, the person who will be preparing payrolls, and all subcontractors identified in the bid.

These responsibilities include:

1. Labor standards (see Section 7 - Labor Regulations).
2. Other State and local provisions.
3. Technical job requirements.
4. Equal opportunity (see Section 8 - Civil Rights).
5. Any equal opportunity deficiencies should be corrected at this time. This could include items such as Section 3 of the HUD Act of 1968 compliance plans, certificates of compliance, etc. that have not been submitted by prime contractors and subcontractors.
6. Contractor and subcontractor responsibilities regarding equal opportunity can be explained using the list of commonly asked equal opportunity questions as a guide.
7. The requirements for the equal opportunity monitoring during site visits should be explained.

2.9.3 Subcontractor Documentation

Any subcontractors **not** identified in the bid should provide the data necessary to verify eligibility, sign required certifications, prepare a written plan to validate compliance with Section 3 of the HUD Act of

1968, etc. All of these contractor/subcontractor responsibilities should be complete prior to start of construction.

2.9.4 Notice to Proceed

Once the contract has been executed and after notification of the contractor(s) and subcontractor(s) responsibilities, a Notice to Proceed should be issued to each prime contractor. This notice should include the construction start date and the scheduled completion date.

2.9.5 Monitoring Contractor Progress and Making Progress Payments

The purpose of monitoring contractor progress is to monitor construction contracts and to insure compliance with technical specifications and state and federal requirements, maintain adequate cost and budget controls, and process necessary contract changes in order to bring the contract to completion.

2.9.5.1 Cost Breakdown

Upon receiving the Notice to Proceed, the contractor is required to submit a cost breakdown showing the amount assigned to each portion of the work.

1. This breakdown is not required when per unit prices form the basis of payment under the contract.
2. This breakdown must be reviewed by the grantee and the grantee's architect/engineer and used as the basis for requests for payment.
3. The breakdown should be submitted within 5-10 days of receipt of the Notice to Proceed.

2.9.5.2 Monitoring and Construction Management

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

The grantee is also responsible for construction management, including inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications and quantity and quality control. Subtasks that are a part of construction management include:

1. **General Supervision** – This requires monitoring construction to alert the grantee of the need for adjustments in design as dictated by actual field conditions and the need for contract amendments. All contract amendments affecting alignment and detail or dimensions shown on drawings must include revised drawings.
2. **Quality Control** – This requires performance of quality tests as necessary to verify conformance with technical specifications concerning minimum quality requirements.
3. **Quantity Control** – This requires verification of in-place quantities and other records reflecting an as-built facility.
4. **Certification of Pay Estimates** – This requires inspection reports and copies of field measurement notes. The test results used to verify contractor's periodic pay estimates for partial payments should be attached to and filed with the periodic estimate for partial payment.

5. **General** - construction management often involves other responsibilities. These may include, but are not limited to: providing horizontal and vertical control in the form of benchmarks and baselines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.
6. Construction Management may be done by the architect/engineer, and, if so, should be included in the scope of services of the professional services contract.

2.9.5.3 Partial Payments

Upon receipt of requests for partial payment and necessary documentation, the grantee must check equal opportunity and labor standards compliance files to validate that all payrolls have been received and checked, any restitution paid, employee interviews have been conducted, and all discrepancies corrected.

2.9.5.4 Change Orders

In accordance with the Public Bid Law, all change orders must be in writing. All change orders must be evaluated to determine if the change order will cause any of the following circumstances prior to execution:

1. The project eligibility;
2. The scope of the project is outside of the approved project application; or,
3. The project's environmental clearance.

The following steps must be taken for all change orders:

1. Change orders must be prepared and recommended by the architect/engineer.
2. The costs of all change orders must be assessed for "cost reasonableness."
3. Each change order must be accompanied by a supporting statement which describes why the proposed change is deemed necessary.
4. The fully executed change order must contain the signatures of the architect/engineer, contractor, and grantee.
5. A copy of the fully executed change order must be maintained within the project file.

2.10 Inspecting and Accepting the Work and Making Final Payment

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

2.10.1 Inspecting and Accepting the Work

When construction work has been completed, the following steps must be taken:

1. The contractor must certify completion of work to the grantee and submit a final request for payment.
2. The grantee must then arrange for a final inspection.

3. The grantee or the grantee's architect/engineer should attend the final inspection and prepare a written report of the inspection prior to the grantee's issuance of a final certificate of payment.
4. If the project involved the construction of a building, the Office of the State Fire Marshal, Code Enforcement, and Building Safety must issue a Certification of Occupancy.

Before making final payment (less retainage), the grantee must validate that:

1. All weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved;
2. All discrepancies identified via on-site interviews must have been resolved;
3. All other required equal opportunity and labor standards provisions must have been satisfied;
4. All contract submissions must have been received;
5. All claims and disputes involving the contractor must have been resolved, and all files must be complete;
6. As-built information has been provided to the engineer; and,
7. A Final Wage Compliance Report is drafted and placed in the Labor Standards Compliance file.

2.10.2 Final Payment

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

2.10.3 Retainage

After 45 days from the filing of the acceptance and upon submission of a clear lien certificate by the contractor, the grantee may release the retainage to the contractor. If any claims or liens remain after the 45 day lien period, the grantee must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with state law.

In accordance with Missouri State law (RSMo §436.300), the grantee may withhold a maximum of 10 % retainage on construction contracts

2.12 Green Building Standards

2.12.1 Introduction

Construction Projects that are implemented utilizing funding from The City of Joplin's Round II Funding announced at, **Federal Register** / Vol. 78, No. 103 / Wednesday, May 29, 2013 / Notices, are required to follow the statutory guidance found at **Federal Register** /Vol. 78, No. 43 /Tuesday, March 5, 2013 /Notices. These regulations require projects to meet specific guidelines related to Green Building, depending on the type of project.

The projects described below are required to meet the "Green Building Standard."

i. All new construction of residential buildings; and,

ii. All replacement of substantially-damaged residential buildings.

The "Green Building Standard" is described in more detail in *Section 11.2 Requirements of the Green Building Standard*. Replacement of residential buildings may include reconstruction (i.e., substantially demolishing and re-building a housing unit on the same lot in the same manner). It may also include changes to structural elements such as flooring, columns or load bearing interior or exterior walls. For projects other than those described above, such as rehabilitation of non-substantially-damaged residential buildings, Grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the Community Planning and Development (CPD) Disaster Recovery website located at: http://portal.hud.gov/hudportal/documents/huddoc?id=drsi_retrofit.xls.

2.12.2 Requirements of the Green Building Standard

Meeting the Green Building Standard requires the Grantee to ensure all new construction of residential buildings and all replacement of substantially-damaged residential buildings, meets an industry recognized standard that has achieved certification under at least one of the following programs:

i. ENERGY STAR (Certified Homes or Multifamily High Rise);
ii. Enterprise Green Communities;
iii. LEED (NC, Homes, Midrise, Existing Buildings O&M, or Neighborhood Development);
iv. ICC–700 National Green Building Standard;
v. EPA Indoor AirPlus (ENERGY STAR a prerequisite); or,
vi. Any other equivalent comprehensive green building program, including regional programs.

2.12.3 Standards for Rehabilitation of Non-substantially-damaged Residential Buildings

For rehabilitation projects, Grantees must apply the guidelines outlined in the HUD CPD Green Building Retrofit Checklist (Appendix 2-1) (http://portal.hud.gov/hudportal/documents/huddoc?id=drsi_retrofit.xls), to the extent applicable, on the rehabilitation work undertaken. Examples include the following:

- The use of mold resistant products when replacing surfaces such as drywall.
- When older or obsolete products are replaced as part of the rehabilitation work, use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.
    - If the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products
    - WaterSense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced.
- Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).
    - PCA – Identifies repairs necessary in the first year following restructuring and the repairs and replacements during the next 20 years; it only offers "traditional" and "green"

components that meet local building code; it estimates costs using both "traditional" and "green" principles; and it provides comments on the benefits (financial and otherwise) of the green alternative.

- GPNA – A tool developed by HUD to be utilized by public housing agencies in conducting a comprehensive assessment of the physical condition of their housing stock, as well as, all sites and other facilities. Additionally, agencies are required to conduct energy audits of all developments and incorporate the results into the GPNA.

2.12.4 Exceptions

There are circumstances under which a Grantee is not required to meet the specifications described in the previous sections. They include, but are not limited to, the following:

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

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

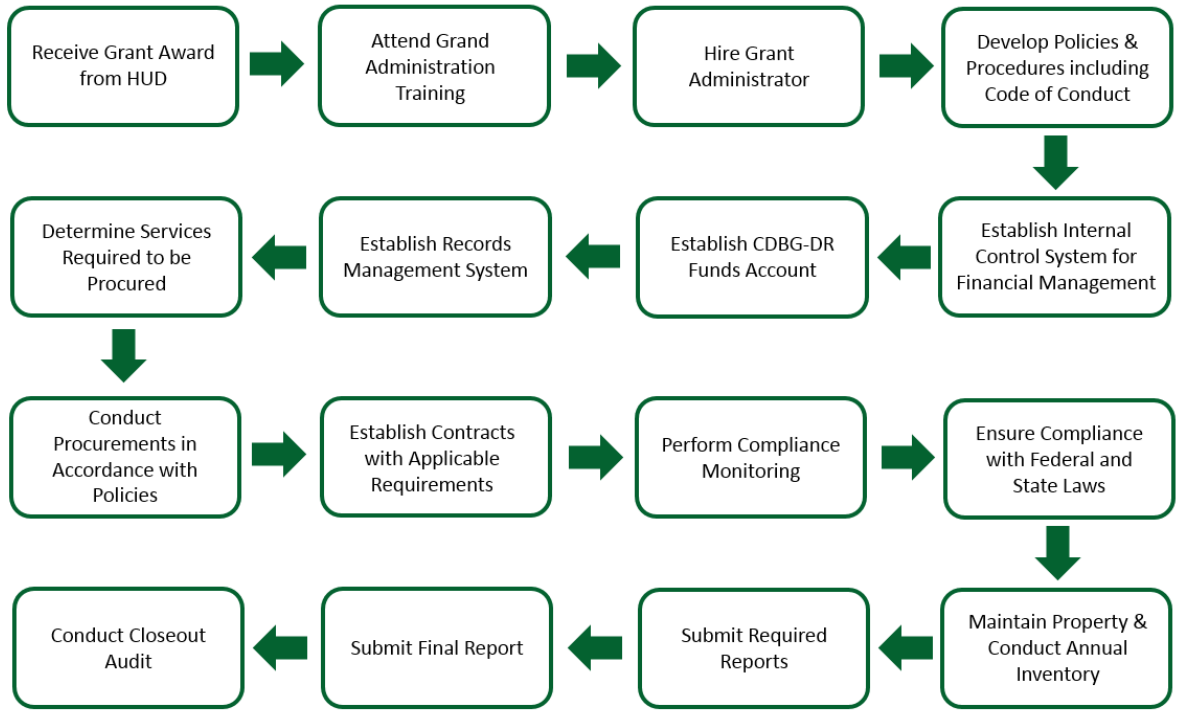
Chapter 3 – Grant Implementation Checklist

3.1 Introduction

To provide overall guidance, for implementing approved CDBG-DR activities, the following pages detail a general yet comprehensive Grant Implementation Checklist. The checklist is general in nature, which means that not all items may be applicable. This will depend on the type of grant awarded. In addition to this checklist, some chapters of the manual include specific checklists for grantee use. This checklist should be used to validate appropriate actions have been taken at various stages of the implementation process. This checklist has been prepared to include references to the corresponding sections of the Administrative Manual for guidance on completing the action.

3.2 Grant Implementation Process Flow

Presented below is a high-level process flow which depicts an overview of the grant implementation process. Appendix 3-1 provides a checklist, while not exhaustive, it provides the outline of the detailed implementation steps.



Chapter 4 – Records Management

4.1 Introduction

The grantee should establish and maintain records over the use of CDBG-DR funds as such to facilitate review or audit from HUD, the Inspector General, the General Accounting Officer, the City of Joplin, the State of Missouri or other oversight entities as appropriate.

4.2 Applicable Regulations

It is the grantee's responsibility to remain compliant with applicable local, state, and federal regulations. The grantee should periodically review regulator guidance for new requirements. Pursuant to grant requirements the grantee should comply with regulations listed but not limited to:

Regulation	Description
2 CFR Part 200 Subpart E (Formerly Circular A-87 "Cost Principles")	This circular establishes principles and standards for determining allowable costs under federal grants.
2 CFR Part 200 Subpart F (Formerly Circular A-133 "Audits of Institutions of States, Local Governments and Nonprofit Institutions")	This circular provides guidance to be followed regarding audits including the type and level of audit required, reporting and audit review/resolution.
24 CFR Part 570 "Community Development Block Grant Program"	This regulation provides CDBG-DR specific requirements for administrative and delivery for the use of grant funds.
Article I §2.2 of the City of Joplin Municipal Code "Record of destroyed records"	This regulation details the city policy on records management
Article XV of the City of Joplin Municipal Code "Transfer of record/property and use of equipment/supplies"	This regulation details records and property management

4.3 Grantee Responsibilities

The grantee will identify or create documentation and controls to exhibit stewardship responsibilities over the use CDBG-DR funds to meet national HUD objectives. Stewardship responsibilities include providing documentation for the description of an activity, the location of use, the amount of funding budgeted, obligated and expended for the activity, and the provision of eligibility (§570.506).

Grantee documentation must be retained for a period of three years from closeout of the grant agreement (§570.490-d). At which point grant documentation is no longer required. The grantee will sufficiently destroy old records and the office of the city clerk shall maintain a permanent record (Article I §2.2).

4.3.1 Sub Recipient Responsibilities

The grantee will provide oversight for sub recipients of grant funding and provide guidance for their compliance with applicable regulations. At minimum, the grantee should establish a written agreement with the sub recipient to specify the particular records that the sub recipient must maintain and the particular reports that should be provided to the grantee to assist with recordkeeping requirements (§570.503). The sub recipient should retain records of grant activity the sub recipient performs, compliant with sub section 4.5 Personally Identifiable Information (PII), but it is the responsibility of the grantee that the sub recipient complies with recordkeeping regulations. The grantee can delegate record retention to a third party however the grantee is still responsible for maintaining compliance with regulatory requirements.

4.4 Access to Records

The grantee's records should be maintained in a centralized location in an orderly manner. Records should be organized in a format that allows for examination, review or audit by an oversight entity. Sensitive information, noted within 4.5 Personally Identifiable Information (PII), should follow guidance stated there within.

4.4.1 HUD

The Housing and Urban Development Department (HUD) is the grantor of the funds and must maintain oversight of grantee spending. As such, HUD may require regular reporting, perform site inspections or audits on specific activities, programs or on the grantee. At the request of HUD, the grantee should be able to provide sufficient, appropriate and relevant documentation for any activities provided using the CDBG-DR grant funds.

4.4.2 Other Government Oversight Entities

The grantee is subject to various oversight entities as a result of use of the HUD CDBG-DR grant funds. The grantee should be able to provide documentation to these entities as requested. Such entities may be, but not limited to, OIG, GAO, auditors, state officers, local officers, or external auditors.

4.4.3 General Public

In accordance with the freedom of information act (FOIA) and CFR 570.508 *Public Access to Program Records*, the grantee should provide citizens with reasonable access to records regarding the historic use of CDBG-DR funds. The grantee should establish procedures to maintain the privacy of individual's information and obligations of confidentiality as provided in 4.5 Personally Identifiable Information (PII).

4.5 Personally Identifiable Information (PII)

The CDBG-DR projects and programs of the grantee may be require the handling of Personally Identifiable Information (PII) as defined as information which can be used to distinguish or trace an individual's identity or when combined with other personal or identifying information linkable to a specific individual. PII is often associated with social security numbers, driver licenses, biometric

records, bank account numbers or credit card details but can be considered other information such as, but not limited to, home address, birth dates, or place of birth.

The grantee should implement procedures to limit PII for use to only a need to know basis and when PII information is no longer needed, the grantee should destroy or redact the PII. Effective PII handling procedures should be established on a case by case basis but first should start with identification of the need to handle PII. Instances where PII is not needed, the grantee should take steps to deny accepting PII and destroy or redact information deemed to be PII. The grantee should provide PII and information security education to employees and contractors that have or may have access to PII.

Physical controls over hardcopy (physical) PII should be to contain information in a locked cabinet of which only those individuals which need the information may access. Hardcopy PII should not be left unattended, in an unlocked location or in sight of individuals outside of those that need to view the information. A record should be kept of individuals who have key access and management should periodically review handling procedures of staff.

System controls over softcopy (electronic) PII should include proper access controls (i.e. user ids/password), restricting access to individuals with a valid need to know and electronic audit trails. Electronic transmission (i.e. email) of PII information should be sent using an encryption method that is password protected.

4.6 Project Files to Maintain

Documentation required for each specific grantee project may vary based on the specific local, state and federal regulations. Documentation should adhere to the guidance provided there within section 4.5 Personally Identifiable Information (PII) for each of the projects. See Appendix 4-1 for a list of documentation produced for each of the grantee projects.

Chapter 5 – Financial Management

5.1 Introduction

Financial management refers to the efficient and effective management of money (funds) in such a manner as to accomplish the objectives of the organization. In regards to the CDBG-DR program the basis for Financial Management is to verify the appropriate, effective and timely use of funds while minimizing the risk of fraud, waste, and abuse.

In order to meet these goals, it is the grantees responsibility to validate that:

1. Internal controls are in place and adequate;
2. Source documents are available to support accounting transactions;
3. Financial reporting and financial statements are current, complete, and reviewed periodically;
4. Audits are conducted timely in accordance with applicable standards.

5.2 Applicable Regulations

It is the grantee's responsibility to remain compliant with applicable local, state, and federal regulations. The grantee should periodically review regulatory guidance for new requirements. In accordance with grant requirements the grantee should comply with regulations listed but not limited to:

Regulation	Description
2 CFR Part 200 Subpart E (Formerly Circular A-87 "Cost Principles")	This circular establishes principles and standards for determining allowable costs under federal grants.
2 CFR Part 200 Subpart F (Formerly) Circular A-133 "Audits of Institutions of States, Local Governments and Nonprofit Institutions"	This circular provides guidance to be followed regarding audits including the type and level of audit required, reporting and audit review/resolution.
2 CFR Part 200 (Formerly 24 CFR Part 84 "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments")	This regulation provides requirements for financial management, reporting, accounting controls, cash management and procurement/contracting. This section is referred as the "Common Rule."
24 CFR Part 570 "Community Development Block Grant Program"	This regulation provides CDBG-DR specific requirements for administrative and delivery for the use of grant funds.

The “Administrative Requirements”, sometimes referred to as the Common Rule, requires that the grantee’s financial management system provide:

1. Accurate, current, and complete disclosure of financial activity;
2. Records that identify the source and use of grant funds;
3. Comparison of budget verse actual grant spending;
4. Procedures to minimize the amount of time elapsed between the transfer of funds from the US Treasury and the disbursements by the grantee;
5. Procedures for determining reasonableness and allowable costs;
6. Accounting records that are supported by appropriate source documentation; and,
7. A systematic method for timely and appropriate resolution of audit findings and recommendations.

The Common Rule and the guidance found at 2 CFR Part 200 §76.302 govern CDBG-DR grantee financial management systems. In addition, the use and accounting for CDBG-DR funds are governed by:

1. The city of Joplin, Mo, local ordinance part II – Code of Ordinances,
2. 2 CFR Part 200 Subpart E, and
3. Treasury Circular 1075.

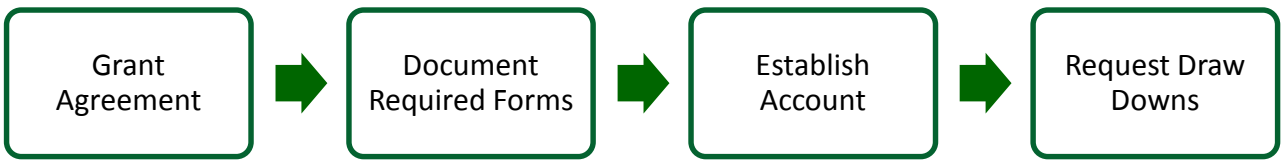
Failure to account for and manage CDBG-DR funds accordingly may result in sanctions imposed by city of Joplin, Mo, local ordinance part II – Code of Ordinances and/or HUD.

Regulations dictate that the financial management system used for administration of the grant funds should:

1. Have an identified procedure for recording all financial transactions;
2. Have all expenditures related to allowable activities in the Grant Agreement approved by the City of Joplin City/Planning Department; and,
3. Have all expenditures of CDBG-DR funds in compliance with applicable laws, rules, and regulations.

5.3 Establish the CDBG-Disaster Recovery Account

The process for establishing a CDBG-DR Funds Account is illustrated in the diagram below:



5.3.1 Grant Agreement

The purpose of this agreement is to set forth the terms and conditions under which HUD will provide federal financial assistance to the City of Joplin to carry out Community Development Block Grant – Disaster Recovery activities. The agreement will set the intent of the federal funds and provide a threshold of dollars available to be spent for eligible activities. Multiple grant agreements may be issued for an intended purpose however the City must segregate grant spending by grant agreement.

The City should read the agreement carefully before signing it. The agreement is fully executed only after all City/Planning Department signatures have been obtained.

5.3.2 Document Required Forms

The City/Planning Department must fill out, authorize and document required forms prior to establishing the grantee CDBG-DR account in the City/Planning Department accounting system or HUD CPD grant system. No funds may be drawn down until this account is established. The required forms are the:

1. IRS Form W-9 (if applicable) (Appendix 5-1)
2. City/Planning Department Authorized Signature Form (Appendix 5-2)
3. Statement of Assurances (Appendix 5-3)
4. Financial Management Questionnaire (HUD Form 2880) (Appendix 5-4)

5.3.3 Establish Account

5.3.3.1 Account Controls

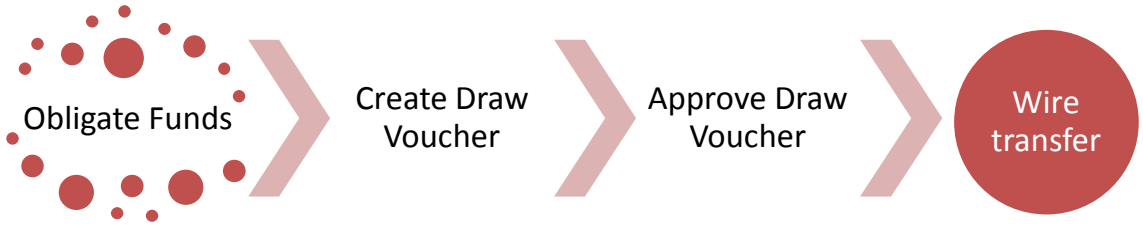
All CDBG-DR funds should have controls in place such as monthly reconciliations of activity, segregation of duties, and use of pre-printed, pre-numbered checks or similar controls for computer generated checks.

5.3.3.2 Insured Account

The CDBG-DR funds must be held in an FDIC insured account or the bank must provide collateral to secure those funds that are in excess of the FDIC insurance limit of $250,000.

5.3.4 Request Drawn Down

To request a payment the City/Planning Department should establish an account in the HUD CPD system and then follow a series of steps portrayed in the graphic below. Funds can be requested (drawn down) once the grant agreement is executed by the city, all required forms are submitted and an account is set up.



5.3.4.1 Obligate Funds

As part of the CDBG-DR program grantees must notify the public about what activities they intend to fund. These documents are called Action Plans and Amendments. They may include a list of specific programs, projects or organizations funded. Action Plans and Amendments for grants in DRGR must first be published and the published versions must also be approved by HUD. For a complete instruction manual on how to use the Disaster Recovery Grant Reporting System (DRGR) to submit Action plans, the Action Plan Module User Guide can be found in Appendix 5-5. Action Plan and Amendments are discussed in greater detail in Chapter 2 – Administration.

Once an Action Plan is approved by the community and HUD, the City will be provided a letter of credit by HUD provide approval for the use of the funds and obligating funds for the specific purposed contained within the Action Plan.

5.3.4.2 Create Draw Voucher

A drawdown—also called a voucher—is a request for payment against the City's line of credit for costs incurred in support of one or more activities. The City creates a voucher in DRGR to drawdown funds for one or more activities, specifying how much in grant funds is being disbursed for each activity. Before the City can drawdown funds from a grant:

- The activity must have had grant funds committed (obligated) from one or more funding sources.
- The City must have DRGR users authorized to both create and approve drawdowns

For a complete instruction manual on how to use the Disaster Recovery Grant Reporting System (DRGR) to create draw vouchers, the Draw Down Module User Guide can be found in Appendix 5-6.

5.3.4.3 Approve Draw Voucher

An authorized person from the City approves each voucher line item (or the entire voucher). If a voucher line item exceeds a drawdown threshold, it is forwarded to HUD for approval before being submitted to

Line of Credit Control System (LOCCS). If approved by LOCCS, LOCCS sends the line items to the U.S. Treasury for payment. Once received by Treasury, if Treasury accepts, electronic payment is made to the recipient. If rejected by Treasury, Treasury sends DRGR the rejection status and the grantee will have to create a new voucher for the rejected line items.

For a complete instruction manual on how to use the Disaster Recovery Grant Reporting System (DRGR) to create draw vouchers, the Draw Down Module User Guide can be found in appendix 5-6.

5.3.4.4 Wire Transfer Appendix

Once the approval of the draw voucher is completed, a wire transfer will be processed by U.S. Treasury to deposit grant funds into the specified account for the City. The account is specified in the submission of the Electronic Payment Request Form.

5.4 Procedures for Financial Administration

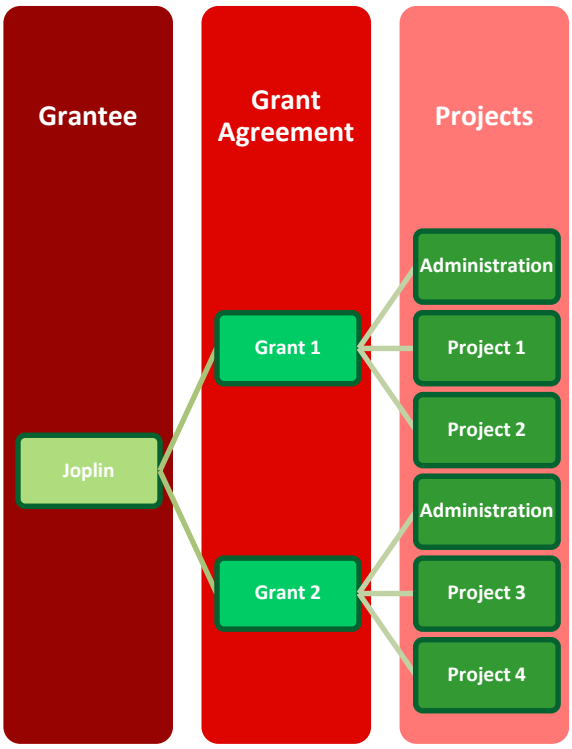
This section presents an overview of the accounting procedures that must be followed in order to comply with federal, state and local requirements under the CDBG-DR Program.

5.4.1 Documenting Uses and Sources of Funds

All accounting activity associated with the grant agreements must be documented in a manner that can justify that funds have been used in accordance with the grant agreement and applicable federal, state and local regulations. For each draw voucher/request for payment/draw down the City of Joplin should verify that funds have been documented in accordance with applicable regulations.

The City must track and report each project's activity separately. The financial systems of the City should be able to track this information, however, if they are unable to then the City must establish procedures to capture activity data by project. The projects that the City plans to implement should be segregated by each grant agreement.

In the diagram provided, the grantee has four projects and two administration cost pools that should have sources and uses of funds tracked separately.



2 CFR Part 200 Subpart F requires, for the single audit, the identification of CDBG-DR funds received and expended. Additionally a schedule of expenditures of Federal awards shall be prepared for the period covered by the City's financial statements.

5.4.2 Financial Management System Adequacy

The accounting system must provide the functionality to track receipts and expenditures and generate financial statements on an as requested basis. The City will require financial information for the Quarterly Performance Reports to be submitted in the HUD DRGR system. If the City's accounting system is unable to meet the requirements of the DRGR reporting then the City must implement alternative procedures to meet the requirements.

The state CDBG-DR standards recommend that the recipient's accounting system must:

1. Provide accurate, current, and complete disclosure of the financial status of the CDBG-DR project by eligible program activity
2. Compile and justify data required in reports submitted
3. Have records that identify adequately the source and disposition of funds for project activities (Recipients must be able to trace every CDBG-DR dollar received and prove where it went and for what it was used - an audit trail must be established.)
4. Provide effective control over and accountability for CDBG-DR funds, property and other assets, including proper segregation of duties
5. Compare actual expenditures with budgeted amounts by program activities
6. Provide adequate procedures for minimizing the time elapsing between the deposit of funds in the CDBG-DR bank account and their disbursement
7. Have accounting records that are supported by source documentation
8. Document sources of funding other than CDBG-DR project funds

The grantee will receive a Financial Management Questionnaire, which must be completed and returned to HUD. This document will be reviewed along with other information to determine the adequacy of the grantee's financial management system prior to the award of the grant (24 CFR 85.20)). A copy of the grantee's bonding certificate or fidelity policy, and proof of payment or renewal will be required. This should accompany the grantee's audit.

5.4.3 Support Documents

Accounting records must be supported by documentation such as paid bills, invoices, purchase vouchers, payrolls, deposit slips, time and attendance records, grant agreements and sub-grant award documents, etc. (24 CFR 85.20 (b)(6)). The CDBG-DR grant is a reimbursement grant, and requests for drawdowns should not be made until invoices have been paid and with sufficient detail to support the draw down request. All vouchers/invoices should be on vendors' letterhead. Source documentation should explain the basis of the costs incurred and the actual dates of the expenditure.

5.4.4 Record Keeping

Financial records are to be retained for a period of three years after final close-out, with access guaranteed to State officials, their representatives, or HUD representatives. Section 4 - Records Management provides additional record keeping requirements and a comprehensive list of all financial documents required to be maintained.

5.5 System of Internal Controls

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

Specifically, internal controls refer to:

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

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

5.5.1 Basic Elements

Internal control defined by The Committee of Sponsoring Organizations (COSO) "Internal control is a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance." The city should implement internal control procedures and records management in order to provide reasonable assurance that transactions are authorized, activity is permitted under laws and regulations, and transactions are recorded accurately and physical assets are accounted for.

The Committee of Sponsoring Organizations (COSO) provides a framework that the city may use as a model including five components of internal control:

- Control Environment – is the organization culture including standards of conduct and tone at the top regarding the importance of controls and ethical values.
- Risk Assessment – is an iterative process for identifying and assessing risk that may arise over time.
- Control Activities – are established through policies and procedures to mitigate risk such as authorizations, verifications, reconciliations, segregation of duties and performance reviews.
- Information and Communication – is a continual iteration of obtaining information and the dissemination of that information throughout the organization to responsible parties.
- Monitoring Activities - are ongoing evaluations to review the components of internal control to make sure they are present and functioning as intended.

5.5.2 Independence

The grantee should implement controls for segregation of duties so that individuals that disburse funds are not the same as individuals that approve the disbursement. In addition the grantee should maintain compliance with city of Joplin Municipal Code Sec. 2-107. - Financial interest disclosure that "All elected and appointed officials as well as employees of the City of Joplin shall comply with Missouri Reserved Statues § 105.454 on conflicts of interest."

5.5.3 Physical Properties

The grantee should comply with eligibility requirements set forth in Chapter 11 Property Management however when physical property or assets are purchased in compliance regulations the grantee should maintain records of property. A physical asset inventory should be established including the purchase price, appropriate authorization, location of asset, use of asset and the responsible party. This physical asset inventory should be updated periodically.

5.6 Rules of Expenditure (Other Program-Related Expenditures)

5.6.1 Office Equipment

The grantee's policy for capital expenditures will determine whether the purchase of office equipment is considered a capital expenditure or an expense. When purchasing or leasing equipment, grantees must take care to act in compliance with 24 CFR 85.36. See Chapter 6 - Procurement Methods and Contractual Requirements of this Manual for guidelines for meeting procurement requirements.

Any CDBG-DR funds expended to lease or purchase equipment will result in disallowed costs unless the grantee can establish - and has fully documented in the project files - that the expenditure(s) was reasonable, necessary, and allowable for the grant, and was not a general expense required to carry out the overall responsibilities of local government as required by 2 CFR Part 200 Subpart E. Prior to the lease or purchase of any equipment with CDBG-DR funds, grantees should carry out an analysis of lease versus purchase alternatives and any other appropriate analysis to determine which approach would be the most economical. This analysis must be fully documented in the project files.

5.6.2 Employees Paid From CDBG-DR Funds

All employees paid in whole or in part from CDBG-DR funds Disaster Recovery should prepare timesheets indicating the hours worked corresponding to specific activities for CDBG-DR projects. The city should account for the total of the employees' activities in accordance with A-87. See Section 7 - Labor Regulations for additional payroll requirements.

5.6.3 Real Property vs. Rent

Real property should not be purchased with CDBG-DR funds to accommodate administrative staff. Office space may be leased or rented if necessary but the rent paid shall not exceed average office rental costs in the community. See Section 11 - Property Management for guidelines on managing property purchased with CDBG-DR funds.

5.6.4 Allowable Costs

Cost incurred must be in line with 24 CFR Part 85 and 2 CFR Part 200 Subpart E. It is the City's responsibility that CDBG-DR funds are spent on reasonable and necessary costs associated with project activities. To support this requirement it is necessary to establish policies and procedures for determining cost reasonableness, allowability, and allocability of costs.

5.6.5 Indirect Costs

In order for indirect costs to be charged to the grant, the Indirect Cost Plan or a Negotiated Indirect Cost Rate Agreement (NICRA) must be approved by the Cognizant Agency. Grantees should review 24 CFR Part 85 and 2 CFR Part 200 Subpart E for additional guidelines regarding indirect costs.

5.6.6 Direct Costs

Direct costs are those that can be directly associated with a project, project activity, or specific authorized grant. Examples of direct costs include program staff salaries, space occupied by direct staff, supplies used by direct staff, or communications used by direct staff.

5.6.7 Activity Delivery & Program Administration Costs

Those costs directly linked to a project can fall into two categories: A Program Administration Costs (PAC) and Activity Delivery Costs (ADC). These activities will need to be properly categorized when draw vouchers are created for the CDBG-DR Program. Note that there is no requirement to designate a specific budget for project delivery; however, project delivery will be monitored for reasonableness.

Program administration costs (PACs). The statutory provision regarding the eligible use of CDBG-DR funds to pay PACs is section 105(a)(13) of the Housing and Community Development of 1974, (HCDA) as amended. The general program administration regulations are codified at 24 CFR 570.205 and 570.206. Costs attributable to program administration are limited such that not more than 20 percent of the annual grant can be obligated by entitlement grantees. The 20 percent limitation is not contained in the HCDA, but has been included in annual appropriations acts for the CDBG-DR program since 1978. The limitation on program administration costs is codified at 24 CFR 570.200(g). Examples of program administration costs allocable to the CDBG-DR program include the following:

1. Salaries of executive officers and staff with general program oversight responsibilities;
2. Leased office space for staff employed in carrying out the CDBG-DR program;
3. Staff time spent for the development of general CDBG-DR program policies and procedures, such as the monitoring of overall program performance;
4. Staff time spent for the development of the Consolidated Plan/Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER); and
5. Administrative services performed under third-party contracts, such as legal, accounting, and auditing services or development of the Consolidated Plan.

As noted above, under the authority of 24 CFR 570.206, CDBG-DR funds may be used to pay staff costs for persons responsible for general CDBG-DR program administration as a whole. These general PACs cover such positions as a community development director, urban planner generalists, and general administrative and clerical staff. In addition, staff costs associated with compliance oversight and monitoring of a grantee's subrecipients would generally fall under the program administration cost category as well unless such costs may be allocated to a final cost objective.

Activity delivery costs (ADCs). ADCs are those allowable costs incurred for implementing and carrying out eligible CDBG-DR activities. All ADCs are allocable to a CDBG-DR activity, including direct and indirect costs integral to the delivery of the final CDBG-DR-assisted activity. CDBG-DR expenditures for activity delivery costs are not governed by 24 CFR 570.205 and 570.206.

To recognize the difference between ADCs and PACs, 24 CFR 570.206 notes that "staff and overhead costs directly related to carrying out activities are eligible under 570.201 through 570.204, since those costs are eligible as part of such activities." In addition, 24 CFR 570.205(a)(4)(iii) and (iv) state that "…engineering and design costs related to a specific activity… are eligible as part of the cost of such activity. Examples of ADCs allocable to CDBG-DR activities include the following:

1. Compensation of employees for the time devoted to the performance of implementing and carrying out a specific eligible CDBG-DR activity;
2. Cost of materials acquired, consumed, or expended by staff in carrying out a specific eligible CDBG-DR activity; and
3. Travel costs incurred specifically for carrying out eligible activities, such as visits made to the job site of a housing rehabilitation activity to validate legitimate progress payments.

5.6.8 Local Government Costs

The city may be reimbursed with grant funds to cover general expenses such as attendance to project-related workshops, travel, staff time, legal fees, advertising fees, audit fees, and costs associated with Section 504 compliance. The City may not use grant funds for the cost of normal operations.

5.6.9 Administrative Costs

Cost activities that are required to meet federal regulations include things like grants management, monitoring, financials, reporting, etc. General rule of thumb is that if it crosses multiple projects, it is probably an administrative cost. The table below provides guidance and specific examples of activities

and under which categories by program area these activities should be budgeted and/or invoiced. Contact the City/Planning Department for additional clarification.

Program Type	Administrative Cost Examples
General	Cost activities that are required to meet federal regulations such as monitoring, financial reporting, etc.
Homeowner rehab, rental rehab, homeownership financing, homeowner compensation, housing relocation, homeless prevention, neighborhood redevelopment, infrastructure, economic development, community resiliency, public services program	Management, financial reporting, compliance and monitoring that spans multiple projects.

5.6.10 Program Income

Program income is gross income received by the City that is generated from the use of CDBG-DR funds.

Examples of Program Income include:

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

Program income does NOT include any income received in a single program year by the recipient and all its subrecipients if the total amount does not exceed $25,000; and amounts generated by activities that are financed by a loan guaranteed under section 108 of the Act and meet one or more of the public benefit criteria specified at 24 CFR 570.209(b)(2)(v) or are carried out in conjunction with a grant under section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Additionally, program income does NOT include any funds generated from activities carried out by 105(a)(15) Non Profit entities.

Treatment of program income depends on the nature of the program and other factors specified by HUD.

5.7 Changes in the Grant

The City's grant application was approved by HUD under the CDBG-DR program requirements. Deviations from the agreement will require written approval from HUD; failure to receive that approval may result in disallowed costs. See Section 2 –Administration for specific guidance on requesting amendments or changes to the grant.

5.7.1 Left-over Money

If all of activities within the approved action plans have been completed and there are funds remaining due to cost under-runs, the use of those funds may be de-obligated and then re-obligated to another

action plan, partial action plan, program or activity subject to prior approval of documented procedures are described in Section 2 – Administration.

5.8 Audit Process

Receipt and spending of federal funds is subject to financial management requirements including that the funds are subject to audit. Audits serve as specific purpose within a financial management system and are required by law. Audits serve as an independent check that funds are expended by programs for their intended purpose that they comply with regulations and to provide improvements to management operations.

An audit is a series of selective tests that give the auditor a basis for judging whether financial records can be relied upon. Audits are an important part of effective financial systems, as they produce useful financial reports and verify the reliance of those reports. There are both federal and state requirements for audits. 2 CFR Part 200 Subpart F (formerly OMB Circular A-133) provides federal requirements for audits of governmental entities and nonprofit organizations. Failure to comply with the audit requirements can jeopardize the grantee's ability to draw grant funds and to receive future grants.

5.8.1 State Requirements

These accounting records, or a copy of these records, should be kept at City Hall or the County Office. The following information should be generated in an accounting system utilized for CDBG-DR:

1. Transaction date, description, source document reference and amounts
2. Summary of receipts (e.g., CDBG-DR funds or program income)
3. Summary of disbursements by program activity (eligible program activities are documented in the grant contract)
4. Summary of cash transactions
5. All source documents should be maintained for future review

5.8.2 Federal Requirements

Under 2 CFR Part 200 Subpart E §74.425 a reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by the requirements of this part are allowable. Audits must be completed within nine months of the end of the fiscal year. Auditees must submit to the Federal Audit Clearinghouse (FAC) the data collection form and reporting package upon completion of the annual audit in accordance with 2 CFR Part 200 Subpart F. Grantees have no later than 30 days after receipt of the auditor's report to submit the final copies to the FAC.

5.8.2.1 Single Audit

Under the provisions of the Single Audit Act Amendments of 1996, an audit under 2 CFR Part 200 Subpart F is required whenever the amount of federal expenditures (CDBG-DR program funds plus all other federal expenditures) in a year exceeds $750,000. This type of audit, which includes a full set of financial statements and other detailed information, is often referred to as a "single audit." The single

audit will meet federal accountability requirements and will also be sufficient to meet state accountability requirements.

5.8.2.2 Other Types of Financial Reports

When a grantee engages an independent CPA to prepare an audit or compilation, a copy of the written engagement agreement must be furnished to the City management for approval of the engagement terms and conditions. The City management will forward to the independent CPA a copy of the approved engagement agreement.

5.8.3 Audit Costs

The only costs allowable under the CDBG-DR Program for financial report preparation are single audit costs. If single audit costs are to be charged to the CDBG-DR program, the grantee must follow the "Procurement" guidelines established under the Common Rule. A written procurement policy must be prepared and adopted by the governing body. Such policy should clearly prohibit elected officials, staff, or their agents from obtaining any benefit from procurement contracts. Specific guidance is presented in Section 6 - Procurement Methods and Contractual Requirements. However, due to the importance of the audit process, grantees are reminded that not all CPAs are qualified to perform audits of governmental entities and in particular, under the Single Audit Act. Care should be exercised to select an experienced, qualified firm, rather than simply selecting the firm offering to perform the audit at the lowest price.

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

Under the latest revisions to 2 CFR Part 200 Subpart E, if appropriate documentation of the single audit costs provides a higher amount than the formula, the higher single audit costs may be charged to the program. Supporting documentation should be available for review by CDBG-DR staff.

Chapter 6 – Procurement Methods and Contractual Requirements

6.1 Introduction

This chapter establishes standards and guidelines for the procuring of supplies, equipment, construction, engineering, architectural, consulting, and other professional services for CDBG-DR programs. The purpose of establishing standards is to verify that the materials and services procured are obtained efficiently, and economically and in compliance with the provisions of applicable Federal and State laws and executive orders.

The standards presented do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with sound business judgment and administrative practices, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

6.2 Procurement Policy

A procurement policy must be written and adopted prior to securing contract services. If a procurement policy is already in place, the grantee must determine whether it includes all federal requirements contained in 24 CFR 85.36. If the policy does not contain all federal requirements (and the grantee intends to use CDBG-DR funds to pay for such services), the policy must be amended accordingly. A sample procurement policy is included as (Appendix 6-1) Joplin Procurement Procedures).

The grantee's procurement policy must address the following:

1. A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from CDBG-DR procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by grantee officials, staff or agents, or by contractors or their agents must be identified [24 CFR 85.36 (b) (3)].
2. Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to validate costs are "reasonable" CFR 85.36 (b) (4)].
3. Affirmative efforts must be undertaken to hire women's business enterprises, minority firms and labor surplus firms, both by the grantee and the project's prime contractor [24 CFR 85.36 (e)].
4. The method of contracting outlined in the policy should be acceptable (fixed price, cost reimbursement, purchase orders, etc.). Cost plus a percentage of cost contracting must be specifically prohibited if CDBG-DR funds are involved [24 CFR 85.36 (f) (4)] and percentage construction cost.

5. Procedures to handle and resolve disputes relating to procurement actions of the grantee must be included [24 CFR 85.36 (b) (12)].
6. All procurement transactions, regardless of dollar amount, must be conducted so as to provide "maximum open and free competition" [24 CFR 85.36 (c)]. Some of the situations considered to be restrictive of competition include, but are not limited to:

    a. Placing unreasonable requirements on firms in order for them to qualify to do business; requiring unnecessary experience and excessive bonding;
    b. Noncompetitive pricing practices between firms or between affiliated companies;
    c. Noncompetitive awards to consultants that are on retainer contracts;
    d. Organizational conflicts of interest;
    e. Specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
    f. Any arbitrary action in the procurement process.

7. Methods of procurement to be followed must be included (Subsections 7.0 through 11.0 below and 24 CFR 85.36 (d)).

6.3 Procurement Procedures

6.3.1 Selection Procedures

In accordance with 24 CFR 85.36 (c) (3), selection procedures for procurement transactions are required to be written prior to securing contract services. These procedures must provide that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
2. All requirements which the offerors must fulfill; and
3. All other factors used in evaluating bids or proposals.

6.3.2 Preparing Contracting Procedures to Meet Equal Opportunity Requirements

Language supporting equal opportunity must be included in the bid specifications and contract documents, contractor eligibility must be verified, required documentation must be secured, and compliance must be monitored. See Appendix 6-2 for sample bid documents and construction contract provisions.

Affirmative efforts to use minority and women owned firms must be made by CDBG-DR recipients when possible:

1. Place qualified firms on solicitation lists.
2. Divide total requirements into smaller tasks.
3. Establish delivery schedules that encourage participation.
4. Use SBA and Minority Business Development Agency services.
5. Require prime contractors to take same affirmative steps.
6. A description of the equal opportunity provisions and their applicability are found in Section 8 - Civil Rights.

6.4 Conflict of Interest

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided.

"No employee … of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when…the employee, any member of his (her) immediate family, his or her partner…has a financial or other interest in the firm selected for award" (24 CFR 85.36(b) (3)).

Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611 which are included as Appendix 6-3. Conflicts of interest may be governed also by state law (Appendix 6-3b Missouri Ethics Commission Conflict of Interest).

6.5 Contract Administration and Records

In accordance with the requirements of 24 CFR 85.36 (b)(9) grantees and subgrantees are required to maintain records in sufficient to detail to relate the significant history of a procurement. These records shall include, but are not limited to, the following:

1. Rationale for the method of procurement;
2. Selection of contract type;
3. Contractor selection or rejection; and,
4. The basis for the contract price.

It is the Grantees responsibility to also maintain a contract administration system to monitor contractor's performance against the terms, conditions, and specifications of their contracts or purchase orders.

A complete listing of required procurement and contract documentation that must be maintained is included in Section 4 – Records Management. The procurement records should:

1. Support an auditor or other interested party to track the nature of the goods or services bought with public funds;
2. Track the entire process used to purchase those goods and services; and,
3. Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

6.5.1 Contract Management

It is the responsibility of the grantee to manage the contracts executed with CDBG-DR funds. It takes substantial time and commitment by designated staff with a good understanding of the project.

Contract management is a large part of any project's success. It is important that all parties in a contract are held to the roles and responsibilities for which they are receiving payment. Project delays or problems are often the result of misunderstandings, assumptions of the responsibilities of different parties in a contract, or of parties not performing their work to a standard. To correct these problems, the grantee must make contract language clear and concise.

Before entering into a contract it is important to validate that the contracts are written so that they are based on a lump sum or unit price. Use care to address any hidden or unexpected costs or additional fees that may have been added to the contract. Such fees may include per hour additional fees for surveying, obtaining easements, etc. Often grantees may think these costs are part of the base contract and have not allowed for the additional cost in their budget.

The engineering firm or the administrative firm most often prepares professional service contracts and construction contracts. It is the responsibility of the grantee to read and understand the contract documents. The contract documents should be reviewed to verify that the expected scope of work and the agreed cost is included.

6.5.1.1 Contract Content

The CDBG-DR Program does have both contract documents and specific language, which is a standard part of every contract, executed involving CDBG-DR dollars. Please note that while the content is required, the format is not. Many engineering firms and legal firms provide contract language in different formats. Use of these formats is certainly acceptable to CDBG-DR**.** The forms provided by CDBG-DR are samples only and are meant to be a guide. Any document that is signed by the grantee and has legal implications and consequences should be carefully reviewed (by an attorney is encouraged) with respect to its completion.

To determine which documents are required in which contracts, it is helpful to determine the type of work (professional services versus construction contractors) and the amount of the contract ($2,000, $10,000, $25,000, $100,000). Thinking in terms of the procurement procedure used to acquire the service will assist the grantee toward proper contract selection and execution

1. Professional services contracts shall include the following civil rights laws, regulations, and executive orders:

Civil Rights Laws
Title VI of the Civil Rights Act of 1964
Section 3 (applicable over $100,000)
Section 109, Housing and Community Development Act of 1974
Section 503 of the Rehabilitation Act of 1973
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Executive Order 11246 (over $10,000)
Affirmative Action Plan
Authorized Employees
Construction contracts shall include the following civil rights laws, regulations, and executive orders:

2. Construction contracts shall include the following civil rights laws, regulations, and executive orders:

Civil Rights in Construction Contracts
Contractor and subcontractor certifications on Section 3
Contractor and subcontractor certifications on Labor Standards and Prevailing Wage
Section 3 Tables A, B, C, and D
Section 3 Plan
Title VI of the Civil Rights Act of 1964
Title VIII of the Civil Rights Act of 1968
Section 3 language (applicable over $100,000)
Section 109, Housing and Community Development Act of 1974
Section 503 of the Rehabilitation Act of 1973
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Executive Order 11246 (over $10,000)
Executive Order 11063
Affirmative Action Goals
Information Regarding the Use of Minority and Women's Business Enterprises

3. Additional content, laws and regulations required for Construction Contracts:

Construction Contracts
Copeland Anti-Kickback Act
Anti-Lobbying (over $100,000)
Contract Work Hours and Safety Standards Act, if the contract exceeds $2,000
Davis Bacon Act, if the contract exceeds $2,000
Missouri Prevailing Wage Law
Architectural barriers
Clean Air and Water Acts, if the contract exceeds $100,000
Lead-Based Paint Poisoning Prevention Act
Bid Bonds (equal to 5% of bid)
Performance bonds (over $25,000, equal to 100% of contract price)
Payment bonds (over $25,000, equal to 100% of contract price)
Federal Labor Standards Provisions (HUD Form 4010)
CDBG-DR General Conditions (or equivalent)
HUD Supplemental Conditions
Certificate of Owner's Attorney

4. Contents of Bid Packet for Construction Contracts**:**

Bid Packet
Advertisement for Bids form
Information for Bidders
Bid Bond form
Unit Price Bids form
Bidder Qualification
Bidder EEO Certification
Certification of Bidder Regarding Section 3 and Segregated Facilities
Bidder Section 3 Plan Format - Affirmative Action Plan
Proposed Subcontracts Breakdown
Bidder Section 3 estimated new hires
Contractor Section 3 new hires report
Contractor Section 3 business utilization report
Subcontractor EEO Certification
Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities
Bonding and Insurance Requirements
Certification Regarding Government Wide Restriction on Lobbying

The executed Contract Agreement form (blank)
Certificate of Owners Attorney
General Conditions and Supplemental General Conditions
Wage Rate Decisions - Missouri and Federal
Specifications/Drawings/Maps/Site locations
Federal Labor Standards Provisions
Attachment to Federal Labor Standards Provisions
Affidavit Section 285.530, Revised Statues of Missouri

5. Additional forms, clauses and references in *any type of contract* should include, but is not limited to:

Form/Clause or Reference	Definition
Executed Contract Form:	The binding agreement with appropriate signatures of all parties attested and dated.
Certificate of Owner's Attorney:	A record of the local attorney review and acceptance of the terms of the contract.
Or Equal Clause:	Language that tells the bidder that any references to brand names are solely for explanation/clarification and that any and all equals are allowed.
Required Levels of Insurance:	Information for the bidder listing all necessary types and levels of insurance: worker's compensation, public liability and property damage, vehicle liability, special hazards, builder's risk, etc.
Subcontracting:	A statement of the terms under which any part of the contract may be subcontracted.
Architects/Engineers Authority:	Provides information to the contractor that the owner has given the decision-making authority, regarding specifications relative to the contract, to the engineer or architect.
Conflicting Conditions:	Provides rules for which condition applies when contract documents are found to have two statements in conflict.
Anti-Lobbying, Over $100,000:	The form preventing the contracted agent from using any of the CDBG-DR funds to lobby a member of Congress.
Specifications:	The exact detail of the work to be completed.
Period of Service:	The time for which the contract is valid and the date that the work is to be completed.
Scope of Services:	The detailed activities that the contracted agent is expected to perform for payment under the terms of the contract.
Address of The Work Sites:	The exact project site location(s).

Schedule of Payment:	The allowed drawdown of funds to be paid under the contract (often coincides with the milestones).
Applicable Retainage (Usually 10%):	The amount held by the community until the project is 100% complete, used as a control device.
Final Inspection:	The act of the responsible party(ies), usually the engineer, to inspect the work completed and recommend final payment.
Engineer/Consultant's Certification for Acceptance and Final Payment:	To be completed by the project engineer once final inspection of all work under the contract documents has been completed in accordance with the drawings and specification and is functioning properly. Recommendation for final payment.
Termination:	The circumstances under which designated parties may terminate the contract, usually described for cause or convenience.
Changes:	Describes the only process or circumstances where changes may be approved by owner and result in payment.
Extras:	Describes the only process or circumstances where owner can add extras to work and result in payment without invalidating contract.
Completion Time/Liquidated Damage:	Spells out completion date expectations for work and prescribes level of daily monetary penalty to contractor for days beyond prescribed date.
Correction of Work:	Provides information to contractor that outlines the correction process and expense if work is found by Engineer or Architect inspection to be deficient.
Personnel:	Requires professional service provider or contractor to employ adequate, qualified personnel, licensed to complete work under the terms of the contract.
Assignability:	Limits any party's ability to assign the contract to any other person or firm without the prior written consent of all parties to the contract.
Reports and Information:	Describes the necessary written reports expected to be furnished by the professional service provider or contractor to the community and the times that such reports are due.
Records and Audits:	Requires the maintenance of records (personnel, property, and financial) to verify proper accounting, and the conditions under which they are to be made available.
Findings Confidential:	Requires the permission of the community before any records or reports are provided to any persons not a party to the contract.
Copyright/Patent:	Limits copyright and patent activities by the professional service provider or contractor.

Weather Conditions:	Describes responsibility of the contractor for protection of work completed from weather damage and the financially responsible party if damage occurs.
Compliance with Local Laws:	Spells out to the professional service provider or contractor the necessary compliance with local, state, and Federal laws.
Interest of Parties:	Clause defines and prohibits conflicts of interest, financial gain by any party to contract.

6.5.1.2 Common Rules Regarding Contracting with CDBG-DR Funds

1. All services, professional, or construction, paid in whole or in part with CDBG-DR funds, require the execution of a formal contract.
2. The use of CDBG-DR funds, regardless of amount, for payment of any service under contract in a grant, initiates the contracting requirements described in this chapter. The total amount of the contract will often indicate the proper documentation to be included in the contract.
3. All contracts should contain a clear, concise, and detailed description of the:

    - Scope of work;
    - Total cost;
    - Duration or life of the contract;
    - Compliance requirements;
    - Reporting responsibilities; and,
    - Contract content paragraphs listed above

4. All contracts that are found to be incomplete at the time of monitoring may require a contract amendment to correct the deficiency.
5. All contracts requesting payment for activities not clearly defined in the scope of services may be denied CDBG-DR funding.
6. It is the responsibility of the City to manage all contracts executed for CDBG-DR funded projects.
7. All contracts using CDBG-DR funds for payment must pass a cost reasonableness test.

6.5.1.3 Acceptable Contract Cost Structures

All construction contract fees shall be based upon a fixed price which can be lump sum or unit price. All professional service contracts shall be based upon a lump sum or a cost-plus-fixed-fee. Cost plus a percentage of cost and percentage of construction cost methods are prohibited.

6.5.1.4 Alternative Deductibles/Alternate Add-Ons in Construction Bidding

In an effort to remain flexible in the bidding process for construction activities, the grantee may set in place alternative deductibles or alternate add-ons. These items must be clearly marked as such and, in the event of bids received over budget, may be “deducted” from the scope of the project, or in the event of bids received under budget, may be “added” to the scope of the project. All alternative deductibles/additions must be assigned a number in order of preference to be either eliminated or added. Any eliminations or additions of these items must follow that numerical guide (e.g., Item #2 may

not be deducted or added prior to Item #1). No items may be eliminated or added from a bid process if they were not initially indicated as an alternative deductible or alternate add-on. Alternate deductibles should include, but not be limited to, items the grantee may be able to complete on its own or items that would not have an adverse effect on the project if omitted.

6.5.1.5 Negotiation

Negotiation is not allowed. The grantee may not negotiate a lesser price with any bidder in order to match the funds budgeted. This includes negotiating change orders that would be initiated after a contract award.

6.5.1.6 Addendum Procedure

If the owner or engineer finds that changes or additions to the bid packet must be made prior to the bid deadline date, an addendum must be executed. The addendum must spell out the change or addition and must be distributed to all interested bidders. This action must not take place later than 72 hours prior to the bid submission deadline. If this time period is not possible, the addendum may be distributed and the deadline may be delayed exactly one week. All bidders obtaining bid documents must be made aware of all addenda in order not to provide an unfair advantage in the procurement procedures.

6.5.1.7 Amendment Procedure

If, during the life or duration of any formal contract, the parties agree to a change in the design, duration, cost, or any of the terms of the contract, a formal amendment may be executed. For this amendment to be valid and recognized by CDBG-DR, it must be in writing, signed, and attested by both parties and attached to all original contract documents. The grantee may require review by their attorney prior to implementing the process. Any changes or change orders that directly affect the use of CDBG-DR dollars, the scope of the project, or greatly changes the duration of the contract should be reviewed with a CDBG-DR Compliance Specialist prior to execution.

Reports should be prepared and submitted by each contractor whenever it is determined that any change in the design, cost, or duration of the project is necessary. Changes in the project which increase the cost of the activity by more than $10,000 or 10 percent of the approved CDBG-DR budget line amount, whichever is less, must first be approved by the City of Joplin, Planning, Development and Neighborhood Services Department.

6.5.1.8 Award of Contract

The City should award contracts relevant to CDBG-DR funded projects in the same manner as they would if using local funds. The required process for entering into contracts (which may be set by local ordinance or resolution) should be reviewed and used for CDBG-DR projects. If the city requires attorney review and board approval prior to signing any contract, then that method should be practiced with CDBG-DR projects as well.

6.5.1.9 Federally Debarred Contractors

The City should contact HUD prior to the award of any construction-related contract in order to clear the proposed contractor. Before the grantee can sign a contract with a proposed contractor, the grantee

must verify that the contractor is not on the federal listing of contractors unable to perform work under a federally sponsored project.

6.5.1.10 Contractors Licensed to Business in Missouri

All professional service contracts and construction contracts paid for with CDBG-DR funds must use firms/businesses that are licensed to operate in the State of Missouri. No grant funds will be released to pay businesses that do not hold this license.

6.5.1.11 Businesses in Good Standing with the Secretary of State

All licensed businesses must be in good standing with the Secretary of State's office if they are to be paid with CDBG-DR funds.

6.5.1.12 Department of Treasury's Listing of Approved Sureties

The bonding company used by the contractor to provide payment and bonds must be listed with the Department of the Treasury's Listing of Approved Sureties.

6.5.1.13 Internal Control

Proper internal control for each contractor may include a contract file that includes the following:

- A signed contract and amendments or change orders
- A schedule of payments supported by:
  - copies of time sheets or payroll records
  - copies of checks or transfer notifications
  - copies of invoices
- All project-related correspondence
- Property records (where appropriate)
- Any notice of cancellation, termination, or suspension of the contract
- All field inspection reports and employee interviews
- Other data as required by the recipient to properly administer the contract

6.5.1.14 Engineer/Consultant's Certificate of Completed Work

A copy of the Certificate for Acceptance, and Final Payment, signed by the project engineer/consultant, must be submitted to City of Joplin, Planning, Development and Neighborhood Services Department prior to project closeout. This certificate must cover all work included in the project (regardless of funding source), including grantee cash and in-kind. The certificate must state that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for Final Payment.

A complete listing of required procurement and contract documentation that must be maintained is included in Section 4 – Records Management. The procurement records should:

1. Support an auditor or other interested party to track the nature of the goods or services bought with public funds;
2. Track the entire process used to purchase those goods and services; and,

3. Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

6.6 Methods of Procurement Overview

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
Small Purchase See 6.7.0	> Price Analysis	> Purchase Order > Fixed Price	> Quotations > Submitted Bids	> Produced Items > Single Task Services > Supplies
Sealed Bid (formal advertising) see 6.8.0	> Price Analysis	> Fixed Price	> Submitted Bids	> Construction Items > Produced or Designed Items
Competitive Proposals - see 6.10.0	> Price Analysis > Cost Analysis	> Cost Reimbursement > Fixed Price > Time & Materials	> Submitted Proposals	> Professional Services > Multi Task Services > Designed Items
Non-competitive Proposals - see 6.11.0	> Cost Analysis	> Cost Reimbursement > Fixed Price > Time & Materials	> Submitted Proposals	> Produced Items > Single Task Services > Professional Services > Multi Task Services >Designed Items

The procurement process must be in accordance with the federal requirements of 24 CFR 85.36.

6.6.1 Cost Reasonableness

When determining the appropriate procurement method to use, the grantee must either use price competition or perform a cost analysis to determine reasonableness of costs.

6.6.1.1 Price Analysis

Price Analysis means that the grantee requests several bids, proposals, or quotes for the materials, supplies, or service being procured. The winning offeror is the firm that offers the most competitive price for the items being sourced.

6.6.1.2 Cost Analysis

A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

A cost analysis requires verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits. A cost analysis is always required when the noncompetitive proposals method is used. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established. Appendix 6-4 contains a sample form and instructions that can be used to perform the cost analysis, as well as additional HUD guidance.

6.6.2 Contract Type

6.6.2.1 Purchase Order

Supplies, single task services, and produced items procured through the small purchase method will require a purchase order.

6.6.2.2 Fixed Price

A fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. Firm-fixed-price contracts are suitable for acquiring commercial items (including construction) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.

6.6.2.3 Cost Reimbursement

A cost reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

6.6.2.4 Time and Materials

A time and materials contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. This contract type should be used only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

6.6.3 Solicitation Methods

6.6.3.1 Quotations

The grantee should obtain at least three quotations (“quotes”) from qualified sources to procure items, supplies, or a single task service using the small purchase method. The response of “not interested” does not qualify as a quote.

6.6.3.2 Submitted Bids

When using the procurement by sealed bids method, the grantee is required to provide a complete, adequate, and realistic specification or purchase description via publicly advertised invitation for bids. A submitted bid is a response to the grantee’s invitation for bids. See Subsection 6.9.0 Procurement by competitive proposals, below, for additional information regarding the bids package process.

6.6.3.3 Submitted Proposals

Submitted proposals are the responses to a grantee's Request for Proposal (RFP) or Request for Qualifications (RFQ). This type of solicitation method is used when the competitive proposal or noncompetitive proposal procurement method is used. See Subsections 6.9.1 Request for Proposal and 6.9.2 Qualification Statements, below, for additional information regarding the RFP and RFQ process.

6.7 Procurement by Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property (supplies costing less than $25,000 and services costing less than $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from at least three qualified sources. The grantee can request quotes from qualified sources via telephone, fax, email, mail, or any other reasonable method. The grantee should maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).

6.8 Procurement by Sealed Bids (formal advertising)

Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price- see below) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below, apply.

In order for sealed bidding to be feasible, the following conditions should be present:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively and for the business; and
3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

6.8.1 Creating, Advertising, and Opening Bids

6.8.1.1 Creating the Bid Package

1. Write the technical bid specifications:
    a. Usually written by the grantee's architect or engineer on the basis of prepared plans or working drawings.
    b. Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
    c. Must be sealed by an architect or engineer registered in Missouri.
    d. If the project falls under the jurisdiction of another State agency (e.g.
    e. Department of Health and Hospitals for sewer and water projects), the plans and specifications must be approved by the cognizant State agency prior to construction.
    f. For fire stations/garages and buildings that will be accessible to the public constructed, the architect or engineer must execute a certification that applicable standards of accessibility by the handicapped have been or will be satisfied or specify the basis for exemption. Such certification is to be co-signed by a City official, filed in the contract documents file, and a copy sent to the State.
    g. The base bid should include all components of the approved project. The base bid should not include any items which were not included in the approved application or which have not received subsequent approval from the HUD.

2. Obtain all lands, rights-of-way and easements necessary for carrying out the project.
3. If the grantee's construction project involves real property acquisition, the grantee should make sure the acquisition is undertaken according to the provisions of the Uniform Relocation Act (URA). See Section 10 - Acquisition and Relocation for additional acquisition and URA guidance.
4. Contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area.

5. When preparing the plans and specifications for the bid package, the following requirements pertaining to service connection line and hookup fees must be kept in mind:
    a. As stated in Section 24 CFR 570.202(b) (6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. It is eligible, however, as rehabilitation and will be considered as an integral part of the overall sewer or water project.
    b. Develop cost and pricing formats.
    c. Generally the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum.
    d. For fixed price contracts with unit cost pricing, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

6.8.1.2 Bid Process

The grantee must verify that the bid process is in compliance with the Missouri Code of State Regulations (CSR), Title 40: Purchasing and Materials Management. These statutes are continually being amended, revised, and superseded; therefore, it is the grantee's responsibility to assure compliance with the most recent and current regulations. The following steps must be taken prior to advertising for bids:

1. For Infrastructure projects, submit the final plans, specifications, and cost estimate to the HUD for review.
2. The grantee will be notified by HUD that they may advertise for bids.

6.8.1.3 Advertising for Bids

1. For projects that involve the development of plans and specifications, bids must be solicited by public advertising once approval to advertise is received from HUD.
2. The Public Bid Law requires that the advertisement for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality and the first advertisement shall appear at least 25 days before the opening of bids for construction projects.
3. For materials purchases, the Public Bid Law requires the advertisement to be published two times in a newspaper in the locality and the first advertisement shall appear at least 15 days before the opening of bids. The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.
4. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date.
5. The advertisement must call the bidders attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facility, Section 3 of the HUD Act of 1968, Section 109 and Equal Opportunity.
6. If the grantee and/or HUD amend the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.
7. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding

Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. A copy of each addendum shall be submitted to HUD at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.

8. All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.
9. A copy of the publicized bid advertisement, including the publication date, must be submitted to the HUD staff person who is assigned to the grant once all three advertisements have been published.

6.8.1.4 Public Bid Opening

The following provides general guidance:

1. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening
2. Bids must also be reviewed for both technical and legal responsiveness of bids.
3. The bidders must be evaluated as having the capacity to furnish products and/or services required.
4. Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file and sent to HUD.

After the bid opening, the grantee must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The grantee and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. A public entity may reject any and all bids for just cause. Also, a contract cannot be awarded with an incorrect federal wage decision. The grantee should verify the proper choice of the federal wage decision per the process described in Section 7 - Labor Regulations.

6.9 Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2. Proposals will be solicited from at least three qualified sources;

3. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
5. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. This qualifications-based approach to the competitive proposals method may ***not*** be used to purchase other than A/E services; and,
6. If only one bid or proposal is received, the Grantee must receive approval from HUD.

6.9.1 Request for Proposals (RFPs)

Request for Proposals (RFPs) are used to procure professional services except for A/E professional (design) services when the competitive negotiation method is used. Request for Qualifications are used to procure A/E professional services (See Subsection 6.9.2). RFPs for competitive acquisitions shall, at a minimum, describe the:

1. Grantee's requirement;
2. Anticipated terms and conditions that will apply to the contract:
    a. The solicitation may authorize offerors to propose alternative terms and conditions; and
    b. When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements)
3. Information required to be in the offeror's proposal; and,
4. Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.

A sample advertisement of a RFP for an administrative consultant is included as Appendix 6-5. Also included as Appendix 6-6 is a Sample Scope of Services for Housing Rehabilitation Program to assist in the development of housing specific scope of services RFP. A sample RFP for an administrative consultant is included as Appendix 6-7.

6.9.2 Qualification Statements - Architectural/ Engineering Services

Request for Qualifications (RFQs) are used to procure the professional (design) services of an engineering firm or architectural firm when using the competitive negotiation method. Qualification statements cannot be used to procure any other service.

A selection is made based on the competitors' qualifications, subject to negotiation of fair and reasonable compensation. The qualification statements must be evaluated by the selection criteria identified in the RFQ. The grantee should negotiate costs with the top ranked firm.

RFQs cannot be used to procure project management or construction management services.

These types of services must be procured using an RFP (See Subsection 6.9.1).

6.9.3 Review of Responses

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

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

6.10 Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. GRANTEES MUST OBTAIN PRIOR APPROVAL FROM HUD PRIOR TO USING THIS PROCUREMENT METHOD.

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
    a. The item is available only from a single source;
    b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    c. The awarding agency authorizes noncompetitive proposals; or
    d. After solicitation of a number of sources, competition is determined inadequate.
2. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required (See Subsection 7.1.2 above).

6.11 Developing Procedures for When Bids Exceed Cost Estimates.

There are instances when the lowest bid received will exceed the amount of funds allocated for the project. When this happens, HUD should be consulted to determine the best option to proceed.

Procedures should be developed to execute the following available options:

1. Reject all bids received
2. Rework the specifications within the bid package
3. Consult with HUD regarding any proposed changes to the plans and/or specifications
4. Once authorized by HUD, re-advertise the project
5. Make up the difference between the available funds and the amount of the lowest bid by reallocating funds
6. Make up the difference between the available funds and the amount of the lowest bid with other funding sources (i.e. local funds).

6.12 Verification of Contractor Eligibility

Grantees must verify that all contractors receiving CDBG-DR funds meet all eligibility requirements. The following steps should be taken to verify and document contractor eligibility for all services procured.

6.12.1 Prime Contractor Clearance

Prior to the award of a construction contract with a **prime** contractor, the grantee must obtain contractor clearance. To obtain clearance, the following steps should be taken:

1. The grantee should search the following web site: https://www.sam.gov/portal/public/SAM/.
2. The search of this web site only determines whether the contractor is debarred; other types of performance information are not gathered.
3. The grantee must complete the Verification of Contractor Eligibility Form (Appendix 6-8) and maintain in the project file.

6.12.2 Professional Consulting and Engineering Firms Clearance

Consulting and/or engineering firms who are either new to a CDBG-DR Program or have not performed services associated with a CDBG-DR Program within the previous five years must also be cleared. For clearance of professional firms, use Appendix 6-9.

6.12.3 Subcontractor Clearance

Grantees must make prime contractors aware that sub-contractor clearance is their responsibility, as such they must verify subcontractor eligibility based on factors such as past performance, a yellow page listing, and proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may use the SAM website referenced in section 6.12.1 Prime Contractor Clearance. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the Grantee should urge prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated and the matter reported to HUD.

6.13 Notice of Contract Award

Once a contractor has been selected using the appropriate solicitation method, the grantee must submit a completed Notice of Contract Award form to HUD for all prime contracts, along with a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

6.14 Preparation of a Contract

Depending on the type procurement used, the grantee should execute the required contract type. Any standard contract shall be modified to include CDBG-DR Program requirements. The program requirements are:

1. Construction contracts shall not contain any cost plus or incentive savings provisions. Therefore, the contract shall not make reference to compensation adjustments for cost plus or incentive savings provisions.
2. The method of contracting cannot be cost plus a percentage of cost or a percentage of construction cost. For example, a contractor cannot add a 15% “handling fee” to process an invoice for geotechnical services.
    a. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. Contracts with contractors are procured pursuant to 24 CFR Parts 8 and 85 as applicable or equivalent policies and procedures, but Grantee agreements with subrecipients are not subject to these procurement requirements.
    b. Grantees are required to verify that all contracts and agreements with subrecipients, recipients, and contractors clearly stipulate the period of performance or date of completion.

The requirements within a contract depend on the type of services provided. The following Subsections provide guidance on these specific requirements for consulting, appraisal, A/E, and construction services. Regardless of the services provided or templates used, all contracts must include all required CDBG-DR Compliance Provisions.

6.14.1 Consulting and Appraisal Contract Requirements

The grantee must execute its contracts according to the specific project requirements. The sample contracts included as Appendices must be modified to include the specific scope of services procured and required CDBG-DR Compliance Provisions for Professional Services Contracts (see Appendix 6-10). A sample contract for consulting services is included as Appendix 6-11. A contract for appraisal services Appendix 6-12 should be used when executing.

6.14.2 Architectural/Engineering Contract Requirements

The grantee may use the standard A/E contract templates (AIA or EICDS) when executing a contract for professional design services with architectural and engineering firms or other contract. The contract must include all required CDBG-DR Compliance Provisions for Professional Services Contracts.

Architectural/ Engineering fees, even those provided under either a fixed price contract or cost reimbursement contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by HUD is not adequate. The funds allowed will not exceed those identified in the applicable Application Package. If, after a project has been funded, the scope of the project changes significantly, the HUD will make a determination of any additional amount that will be allowed. Justification for additional services should be provided to HUD.

It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of CDBG-DR funds allowed by HUD. The firm will not be compensated from the applicable CDBG-DR Program if the project does not receive funding.

The final plans and specifications and cost estimate must be submitted to HUD for review prior to advertising for bids.

6.14.3 Construction Services Contract Requirements

The grantee can use a generic construction contract, but must include the CDBG-DR compliance provisions for construction contracts included in Appendix 6-2. A generic construction contract is also included as Appendix 6-2.

Firm-fixed-price contracts used to acquire construction may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis.

Lump-sum pricing shall be used in preference to unit pricing except when:

1. Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;
2. Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
3. Estimated quantities of work required may change significantly during construction; or
4. Offerors would have to expend unusual effort to develop adequate estimates.

6.14.3.1 Bonding

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee”' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all

the contractor's obligations under such contract. A sample performance bond is included as Appendix 6-2.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. A sample payment bond is included as Appendix 6-2.

The form attached as Appendix 6-13, can be used to verify the contractor’s bonding arrangement.

6.15 Section 3 of the HUD Act of 1968 Covered Contracts Requirements

Compliance requirements of Section 3 of the HUD Act of 1968 are triggered when a recipient receives in **excess** of $200,000. If Section 3 of the HUD Act of 1968 is triggered for the grantee, then contractors/subcontractors whose contracts **exceed** $100,000 must also comply. See Section 8: Civil Rights for additional information regarding Section 3 of the HUD Act of 1968.

Chapter 7 – Labor Regulations

7.1 Introduction

Grantees implementing projects involving construction contracts are required to comply with applicable labor related laws and regulations. The responsibilities, applicable statutes, and steps to verify compliance are included within this Section.

Each grantee is responsible for ensuring compliance with Labor Standards as detailed in this Section. The grantee's designated Labor Compliance Officer (LCO), often an administrative consultant, is normally delegated the tasks associated with compliance with labor standards; however, the grantee is ultimately responsible.

The grantee must establish and maintain adequate labor standards files as specified in Chapter 4 – Records Management. Grantees are encouraged to contact the HUD assigned to its program(s) or project(s) to discuss any questions regarding the applicability of labor standards, their interpretation, or the associated record keeping requirements.

7.2 Applicable Regulations

7.2.1 Federal Fair Labor Standards Act

The Fair Labor Standards Act (29 U.S.C. §201 et seq.) establishes standards for employment and employee pay by business organizations. The Fair Labor Standards Act (FLSA) has particular relevance to the construction industry.

A business in the construction industry must have two or more employees and have an annual gross sales volume of $500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states ("interstate commerce"). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

If an employer performs work on a federally financed project or a project in which the federal government has provided assistance in financing the project, a different and somewhat stricter set of labor standards applies. Typically this would require that employees performing on such contracts be paid a "prevailing wage rate".

7.2.2 Section 110 of the HCDA of 1974

Section 110 of the Housing and Community Development Act (HCDA) of 1974, as amended and as implemented in 24 CFR §570.603 extends coverage of Davis-Bacon and Related Acts to construction programs and projects financed by CDBG-DR funds, including new construction.

7.2.3 Davis-Bacon Act

Davis-Bacon Act (40 U.S.C. §3141, et seq., 276a to 276 a-7 as implemented in 29 CFR Part 5) provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title (in this case the CDBG-DR program) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

Construction contracts in excess of $2,000 awarded by recipients under the CDBG-DR program shall include a provision for compliance with Davis-Bacon and associated Department of Labor regulations. The principal requirements are:

1. The grantee must include a copy of the current prevailing wage rate decision in each Invitation for Bids (IFB), Request for Proposal (RFP) and Purchase Order (PO) when applicable.
2. The grantee may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis, and who will comply with other labor standards.
3. Contractors must pay laborers the wage rate determined by the Department of Labor (DOL) to be the prevailing rate in that labor market.
4. Contractors must submit weekly payrolls.
5. Grantees are required to report all suspected, reported or confirmed violations to HUD which may investigate these alleged violations.

Three special classes of employees may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon prevailing wages. These classes are:

1. Apprentices - provided they are individually registered in a bona fide apprenticeship program in which the contractor participates, and which is approved by the DOL. Apprentices must also satisfy other conditions as specified in the Labor Standards Contract Provisions.
2. Trainees - provided they are in a DOL-approved training program and they satisfy other conditions as specified in the Labor Standards Contract Provisions.
3. Volunteers - the use of Volunteers on a CDBG-DR project must meet the criteria found in 24 CFR Part 70. The grantee should contact HUD for further guidance if volunteers are going to be utilized.

When any of these employee classes appear on the Contractor's weekly payrolls, it is the Contractor's responsibility to provide the documentation necessary to permit the grantee to determine that there is compliance with the Davis-Bacon wage rate determination.

HUD has published a Contractor’s guide to prevailing wage requirements for federally-assisted construction projects. Grantees may use this “Making Davis-Bacon Work” guidebook to obtain a better understanding of Davis-Bacon laws and regulations and to determine how to comply with these laws and regulations. This guide is provided in Appendix 7-1 Making Davis-Bacon Work.

Terminology and Associated Davis-Bacon Requirements

1. **Prevailing Wages** - Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by the U.S. Department of Labor in a document called a wage decision. See Subsection 4.2 for a further discussion on wage decisions.
2. **Laborers and Mechanics** - Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that is not normally thought of as a recognized trade. On a wage decision a classification that is not "laborer" is automatically considered as a "mechanic" classification.
3. **Contractor's Guide to Davis-Bacon** - The HUD guide book, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not a required) publication which the grantee may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients as well as construction contractors and those who prepare contractor payrolls. It provides a brief explanation of issues associated with labor standards and Davis-Bacon in particular. The guide may be downloaded from HUD's website at www.hud.gov. Once at the HUD website, type in "Contractor's Guide to Davis-Bacon" in the search box. The search results should include the desired publication.
4. **Site of Work** - The site of work as related to Davis-Bacon is limited to the physical place or places where construction called for in the contract will remain when work has been completed and to adjacent or nearby property used by the contractor which can reasonably be included because of proximity.
5. **Cleaning** - Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.
6. **Demolition** - Demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages.
7. **Family Members (as it relates to contractor payrolls)** - There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.
8. **Supply and Installation** - The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. If a supply contract not otherwise covered requires the supplier to install the product, the installation portion of the contract is subject to prevailing wage requirements except when the installation involves only minor construction activity. For example, installation of window shades or draperies would not require Davis-Bacon wage rates; however, installation of an elevator or boiler would.

9. **Precutting and Prefabrication** - Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.
10. **Items to be posted at the Job Site** - The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as Appendix 7-2 Project Wage Rate Sheet.
11. **Debarment** - An Action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.''

Additionally, the grantee must see that the posters "Your Rights under the Fair Labor Standards Act," "Notice to All Employees," and "Equal Opportunity is the Law" are posted at the job site. Sample posters are available as Appendix 7-3 DOL Posters or may be downloaded from the internet at www.dol.gov/osbp/sbrefa/poster/main.htm.

7.2.4 Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors. All contracts for construction, reconstruction or repair (over $2,000) must include the following prohibition:

“No contractor or subcontractor shall induce, by any means, any person employed in such publicly-funded construction, reconstruction or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions.”

Recipients should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly certified payrolls documenting compliance.

7.2.5 Contract Work Hours and Safety Standards Act

Contract Work Hours and Safety Standards Act (40 U.S.C. §327 et seq.) and FLSA provide that no contract work, which may require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate pay for all hours worked in such workweek, whichever is greater. In the event of violations, the contractor or subcontract shall be liable to any affected employee for his unpaid wages as well as to the United States for liquidated damages.

All construction contracts in excess of $2,000 and other contracts in excess of $2,500 involving the employment of mechanics or laborers must comply with the following provisions of this law:

1. Contractors shall compute the wages of each laborer and mechanic on the basis of a standard workweek of 40 hours.
2. Work in excess of this standard is permitted, provided that compensation for the amount in excess of the standard is calculated at a rate not less than 1 ½ times the basic rate of pay.
3. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction safety or health standards promulgated by the Department of Labor.

7.2.6 Section 3 of the HUD Act of 1968 Compliance

Requirements of Section 3 of the HUD Act of 1968 are discussed in Section 8: Civil Rights. As part of those requirements, a construction contractor(s) must provide information on new employees and may optionally provide information on existing employees.

Appendix 7-4 has been included to use for the reporting of all new hires by the prime contractor and all subcontractors for verification of compliance with the requirements under Section 3 of the Housing and Urban Development Act of 1968. This form is required and must be submitted with the first payroll on which the new employee appears.

Appendix 7-5 has been included for the purpose of monitoring the existing workforce of the prime contractor and all subcontractors. This form is optional but if used must be submitted with the first payroll on which the employee appears.

Example: Joe Brown has been continuously working for XYZ, Inc., for 5 years on street projects all over southern Missouri. On the third week of a CDBG-DR project XYZ transfers Joe Brown to the CDBG-DR project. Joe will be considered an existing employee, and if the optional "existing employee information" form is used, it will be sent for review along with payroll number 3.

7.2.7 Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA requires payment of overtime compensation at a rate of 1½ times the basic hourly wage after working 40 hours in a work-week. The specific provisions of this Act only apply to all CDBG-funded construction contracts over $100,000; however, the overtime requirements in the Federal Fair Labor Standards Act are generally enforceable for all contracts and subcontracts (regardless of size) covered under Davis-Bacon provisions.

7.2.8 State Law and Local Law and Regulations

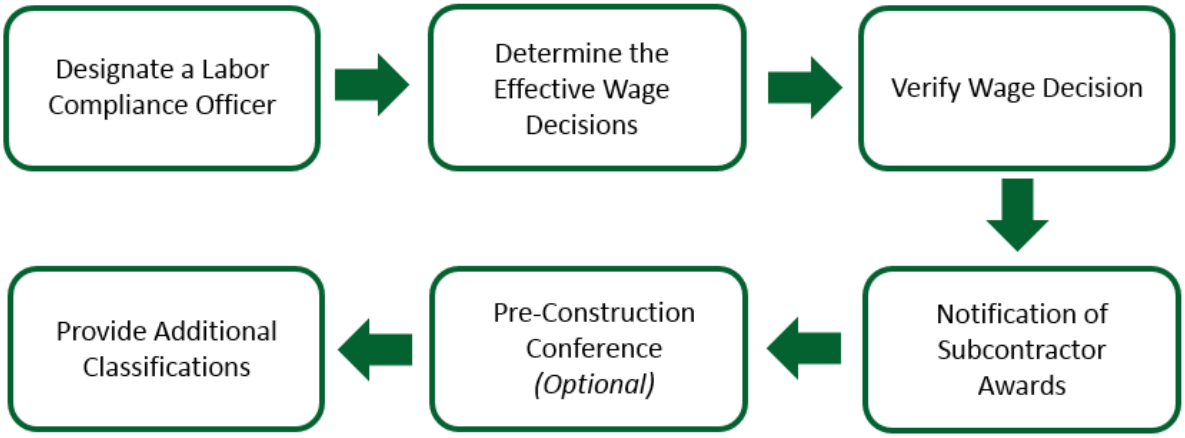
State requirements regarding use of apprentices and trainees, licensing, procurement requirements, and wage standards must be researched and complied with. Local code and regulations will also apply.

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 (RSMo Chapter 290). Obtain access to the State Annual Wage Order as supplied by the Missouri Division of Labor Standards through their Web site. In addition, 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. Grantees 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. The full law can be referenced in Appendix 7-6.

7.3 Grantee Administration of Labor Standards Requirements

The grantee should take the following steps to validate compliance with required labor standards:



7.3.1 Designate a Labor Compliance Officer

The grantee is to designate an appropriate staff person to act as labor officer to insure compliance with all requirements and to be the primary contact person for HUD. The form used to designate the grantee's Labor Compliance Officer is provided in Appendix 7-13, and is to be retained in the grantee's files.

7.3.2 Determine the Effective Wage Decisions

A wage decision is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction.

DOL does not wish for contract estimators to have to take into consideration the constantly changing rates when preparing bids. DOL allows the wage decision in effect ten days before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be "locked-in" and is also called the "effective" wage

decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the "effective" wage decision.

7.3.2.1 Construction Categories

Federal wage determinations are issued for four construction categories: Building, Residential, Heavy, and Highway, by location and include special characteristics. In determining which rate category to choose, it is important to understand the differences in order to avoid paying wages from the wrong category. It is possible that more than one wage determination may apply. Use of the wrong category may leave the grantee responsible for restitution and penalties. The construction categories are described in the following table.

Construction Category	Description
Building	Construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
Residential	Projects involving the construction, alteration or repair of single family houses or apartment buildings no more than four stories tall. (Remember the exemption for residential structures containing not less than eight units.)
Heavy Construction	All construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.
Highway	Projects for the construction, alteration, or repair of roads.

7.3.2.2 The Process of Updating Wage Decisions

DOL gathers information on a year-round basis regarding wage decisions and will often issue an update of a particular wage decision. An update of a wage decision is referred to as a "modification" or "mod." Less frequently DOL will issue an entire new series of wage decisions, called supersedes decisions, having a new wage decision number based on a new series year.

7.3.2.3 Ten Day Responsibility

It is the grantee's responsibility to verify that the wage decision(s) that is in effect ten days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on the updated wage decision(s).

The grantee may search the DOL website at www.dol.gov to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date.

If there has been an update, the grantee must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

If, after the bid opening, the award of the contract is delayed by more than ninety days, the grantee must determine if any wage decision updates have been made by searching the DOL website.

If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.

The Davis-Bacon requirement to "lock-in" a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.

7.3.2.4 Calling Requirement when using the Small Purchase Method

On rare occasions the prime contractor may be procured utilizing the "Small Purchase" method, provided the low bid is expected to be under $100,000 and the contract award is less than $100,000. See Chapter 6 - Procurement Methods and Contractual Requirements for additional information regarding the Small Purchase Method.

Note that the Small Purchase method does not have a bid opening date. Consequently, a special procedure to validate compliance with Davis-Bacon can be applied as follows:

Small Purchase method:

1. A bid tabulation date must be established in advance.
2. Bidders must be informed of the day on which bids will be tabulated and of the possibility of a wage decision update.
3. A ten day search must be made ten days before the bid tabulation date.
4. If there is a wage decision update, all bidders must be notified in a timely manner and documentation of notification must be maintained in project records.
5. Notification when the Small Purchase method is used may be done by addendum, telephone call, in person, e-mail, fax, or U.S. Mail.
6. The wage decision authorized at the ten day search will remain effective for the duration of the construction project provided that the contract is awarded within ninety days of the bid tabulation date.
7. The effective wage decision(s) must also become part of the construction contract when the Small Purchase method of procurement is used.

7.3.2.5 Document Wage Decision

Prior to the award of a construction contract to any prime contractor, the grantee must obtain verification of the wage decision choice. The fact that an inquiry was made at an earlier date is not sufficient as verification of the wage decision choice. The CDBG-DR program requires that the wage decision verification be obtained after the bid opening and before the award of the construction contract. The grantee remains responsible to verify the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

The grantee must verify that the wage decision in effect at the date of the contract award is made a part of the contract between the low-bidder and the grantee. The wage decision verification be documented using the Appendix 7-14. The Verification of Wage Decision Form, the Wage Decision, and evidence that the effective Wage Decision was utilized must be maintained within the project file.

7.3.2.6 Failure to Include or Use of Incorrect Wage Decision

Failure to include the effective wage decision in bid documents or contracts will not relieve grantees or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the grantee must either terminate and re-solicit the contract with the valid decision or validate that all parties sign a supplemental agreement to the contract which makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement:

1. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation—especially if the wage rate changes are minor.
2. The contractor will require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible CDBG-DR cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

7.3.3 Notification of Subcontractor Awards

The grantee's Labor Compliance Officer should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the grantee's Labor Compliance Officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

7.3.4 Hold Preconstruction Conference

It is recommended, however not required, that the grantee hold a preconstruction conference with the prime contractor and all available subcontractors prior to the start of construction, at which time they would be advised of their responsibilities and obligations concerning labor standards. If the grantee should opt to not have a preconstruction conference, then the grantee must utilize some method of its own choosing to advise contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the following paragraphs.

7.3.5 Provide Additional Classifications

A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the wage decision will be employed on the project, the contractor must request an additional classification.

The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or sub) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received.

Example: A prime contractor installing sewer lines may find that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator.

If the DOL response indicates a rejection of the request and specifies a higher rate, then the higher rate must be paid to all workers at the particular classification retroactive to the first day of work ("Restitution").

Restitution is to be paid at the contractor's expense. Grantees as well as contractors should be aware that the time that may elapse between the request and DOL's response may be approximately 60 days.

7.3.5.1 Additional Classifications Prior to Hiring or Mobilization

After a contract is awarded, a construction contractor will often know immediately whether additional classification(s) will be needed. In order to expedite the process, it is permissible for a contractor to request additional classifications before mobilization or hiring of workers.

7.3.6 Helpers, Apprentices and Trainees

7.3.6.1 Helpers

The use of helpers who use tools in assisting mechanics and who are paid below the minimum rates for mechanics is not proper, since an apprentice or trainee is the person who is to perform this type of work.

If a person listed as a helper on a payroll were to be found working with the tools of a trade, Davis-Bacon would require such a person to be classified as a mechanic and be paid the amount of a mechanic's wages for the associated classification listed on the wage decision retroactive to the first day of work. If a person listed as a helper on a payroll were to be found doing the work of a laborer, Davis-Bacon would require such a worker to be classified as a laborer and paid at least the minimum for the classification of "laborer."

7.3.6.2 Apprentices

Apprentices will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of his/her apprenticeship papers with the first payroll on which that worker appears.

Any worker listed on a payroll at an apprentice wage rate that is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

7.3.6.3 Trainees

Trainees will be permitted to work at less than the predetermined rate for their craft if they are employed and individually registered in a program that has received prior approval through formal certification by DOL. A copy of a trainee's papers must be submitted by the contractor with the first payroll on which the trainee appears.

Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress or a percentage of the associated mechanics rate as listed on the wage decision.

The contractor or subcontractor may be required to furnish written evidence of the certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program to USDOL, HUD, the City, and/or the grantee.

7.4 Payroll Requirements and Review Procedures

A sample Payroll Report and comments regarding payrolls are provided in Appendix 7-7 DOL Certified Payroll Form (WH-347: DBRA).

7.4.1 Responsibility of Prime Contractor Regarding Subcontractors

The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the grantee and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions. The Federal Labor Standard Provisions (HUD-4010) is provided as Appendix 7-8. If the required provisions are not included in a subcontract, the prime contractor remains responsible for underpayments and Liquidated Damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the grantee will require corrections via the prime contractor. It is the prime contractor's responsibility to validate corrective action by the applicable subcontractor.

7.4.2 Weekly Payroll Submission Requirements and Payroll Numbering

It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the grantee numbered weekly payrolls from the time work begins on the project until the work is completed. Contractors may use the payroll form, DOL publication WH-347, which is designated as Appendix 7-7. The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called and referred to as the Statement of Compliance, although the document is no longer officially designated with the title of “Statement of Compliance.” The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his

own payroll form or other computer-generated form if all required items of Appendix 7-7 are included, but the wording of the Statement of Compliance must be verbatim.

If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the grantee should be informed by phone or e-mail that no work was done. Once work resumes, use the next consecutive number. Example: Work was done during weeks 1, 2, 3, and 7—the payroll number for week number #7 would be Payroll #4.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the sub's payrolls and may require corrections. The prime forwards the sub's payroll(s) to the grantee. Payrolls may be collected by the project engineer for submission to the grantee; however, this does not relieve the prime contractor of responsibility for review of payrolls.

7.4.3 Addresses and Social Security Numbers

The first and last name of each worker and last four digits of each worker's social security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker's privacy, the address and full social security number is not a required element of payrolls. However, the office or place of record keeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information

7.4.4 Signature on the Statement of Compliance:

The Statement of Compliance, which is now the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.

7.4.5 Prompt Submission of Payrolls

The grantee should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor to the grantee within seven working days after the payroll ending date. Payrolls must be examined promptly by the grantee so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to verify that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the grantee may withhold contractor payment until acceptable payrolls are submitted.

7.4.6 Subcontractor Communication

The grantee's contractual relationship is between the grantee and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the grantee and subcontractor does not exist. Even though a direct contractual relationship does not exist, HUD recognizes the following conditions under which the grantee may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (a) the prime contractor agrees; (b) the subcontractor is cooperative; (c) the issues are not

complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.

7.4.7 Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on a CDBG-DR project. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

7.4.8 Wage Rates and Proper Classification

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

7.4.9 Employees Performing Work in More Than One Classification

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called "split" payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday. Example: Joe, a backhoe operator, gets off of his backhoe to try to find a buried water line. He uses a shovel most of the morning—which is the work of a laborer—and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line previously located. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.

7.4.10 Working Foreman Requirements

A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The "working foreman" if paid a flat salary with "salary" designated on the payroll, must be making prevailing wages for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet Davis-Bacon and Contract Work Hours and Safety Standards Act (CWHSSA) requirements.

7.4.11 Classifications

Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: "Operator" is a generic classification; however, "Backhoe" is on the wage decision and would be a proper classification.

7.4.12 Payroll Reporting Requirements

See Appendix 7-15, for a visual diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario. A Labor Standards Enforcement Report could be considered an interim report normally completed during a project whereas a Final Wage Compliance Report is completed at the conclusion of a project. Appendix 7-9 is required when restitution cumulatively reaches $1,000 or more for any contractor or subcontractor. Instructions for completing the form are included in Appendix 7-9. It is possible that one CDBG-DR project could trigger multiple Labor Standards Enforcement Reports.

The Labor Standards Enforcement Report is to be completed and sent to HUD when most or all of the corrective action has been completed. For instance, if a contractor made restitution and chose to pay Liquidated Damages, the grantee could wait until receipt of evidence of restitution, contractor's letter agreeing to pay Liquidated Damages, and payment of the Liquidated Damages prior to submitting the enforcement report. In such a case, the letter from the contractor agreeing to pay Liquidated Damages, evidence of the wire transfer, and the Labor Standards Enforcement Report would be sent together.

The Labor Standards Enforcement Report should be sent before close-out documents are submitted, especially if a waiver of payment of Liquidated Damages is requested, as HUD may take up to a month to respond.

Finally, under all three scenarios as the flow chart indicates, the last item regarding labor standards, the Final Wage Compliance Report listed in Appendix 7-10, must be submitted to HUD. The Final Wage Compliance Report will be sent to HUD together with other close-out documents.

7.4.12.1 Reporting Restitution under Davis-Bacon and Contract Work Hours and Safety Standards Act (CWHSSA)

In reporting restitution on the Labor Standards Enforcement Report or the Final Wage Compliance Report it is important to correctly classify restitution. The Davis-Bacon component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked.

Example: A laborer worked 48 hours in one work-week. He was paid $10.00 per hour for 48 hours. The wage decision calls for $11.00 per hour with no fringe benefits. Most payroll clerks would immediately know that $52.00 of restitution is due; however, some may not realize the proper classification of each of the components of restitution.

The proper classification would be $48.00 under Davis-Bacon and $4.00 under CWHSSA. Davis-Bacon CWHSSA Restitution 48 hours X $1.00 + 8 hours x $.50 = $52

7.4.13 Payroll Retention

Payroll records must be retained by the grantee for a period of five years from the date of the letter indicating "Final Close" of the CDBG-DR program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of the HUD, and DOL.

7.4.14 Three Scenarios of Payroll Review

Three scenarios regarding payroll review and corrective actions are identified in Appendix 7-15, Payroll Review Flowchart. The three scenarios are as follows:

- Scenario One: Error that involves restitution.
- Scenario Two: Error that does not involve restitution.
- Scenario Three: Error not detected.

Each scenario triggers a unique set of events. Review Appendix 7-15, Payroll Review Flowchart for an overview of the processes involved.

7.4.14.1 Notice to Contractor when Restitution is involved

Scenario One deals with payroll error that involves restitution due to underpayment of wages. Underpayment may result from Davis-Bacon violation(s), CWHSSA overtime violation(s), or both. The grantee must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll (as discussed below).

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor of two choices regarding Liquidated Damages—pay or request a waiver.

Certified Correction Payroll

Under Scenario One a payroll that reflects restitution paid under Davis-Bacon and/or CWHSSA is called a "Certified Correction Payroll." Such a payroll will always be prepared by the employer and the Statement of Compliance will be signed by the authorized signatory. The signature on the Statement of Compliance designates the payroll a "certified" correction payroll.

A Certified Correction Payroll will only list those workers to whom restitution is paid. A Certified Correction Payroll may cover multiple weeks and must specify the weeks covered. The monetary amounts listed, wages and deductions, reflect restitution amounts paid and should not indicate amounts paid and listed on past payrolls. Optionally, a Certified Correction Payroll may also cover one week at a time.

Payroll problems that require the employer to prepare a Certified Correction Payroll may include the following:

1. Wage rates on the payrolls do not meet Davis-Bacon requirements.
2. Wage rates on the payrolls do not meet CWHSSA requirements.
3. Worker classifications are wrong, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
4. Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate. Example: If a worker was paid $10.00 per hour and should have been paid $11.00 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be $1 x 100 = $100.

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks. Example: Weeks 2 through 8 and 11. In contrast, a Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek but must indicate the appropriate revision number. Example: “Payroll #2—Revision #1,” “Payroll 3, Revision 1,” and so forth.

In most cases the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by HUD or other reviewing agency.

The Use of Corrected Payrolls to Demonstrate Restitution

Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

1. A corrected payroll is always for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
2. A corrected payroll lists all workers who worked on a project during a weekly period whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
3. A corrected payroll lists the original disbursements and disbursements made for the payment of restitution whereas the Certified Correction Payroll will list only the disbursements made for the payment of restitution.

If a contractor wishes to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature and date must accompany the corrected payroll. The corrected payrolls should be numbered so as to be associated with the original payrolls, such as “Payroll 2, Revision 1.”

Calculation of Liquidated Damages

We continue with Scenario One assuming that there was restitution due that involved not only Davis-Bacon but also overtime violation(s) under CWHSSA. Overtime rates must be paid at 150% of the basic hourly rate. This is commonly referred to as "time and a half." Under CWHSSA, Liquidated Damages are computed at the rate of $10 per worker for each calendar day the worker was required or permitted to work in excess of forty (40) hours in a week without payment of overtime rates.

For instance, if workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The Liquidated Damages calculation would be $30 per worker. Liquidated Damages would be calculated in addition to the payment of wage restitution.

Steps in Calculation, Assessment, Payment or Appeal of Liquidated Damages

The grantee calculates restitution due and Liquidated Damages due and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or a corrected payroll with certification) and must agree to one of the following two choices regarding Liquidated Damages: pay or request a waiver. The contractor is to notify the grantee of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Such procedures involve filling out a special deposit-slip form, which is sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD and will, in fact, be sent a form that is equivalent to a deposit slip. The contractor will use a financial institution to conduct the wire transfer. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor's responsibility for payment of Liquidated Damages will have been met. The financial institution will charge the contractor a fee for making the wire transfer. The wire-transfer procedure is a very cumbersome process involving a multitude of steps before final resolution.

The other choice is to request a waiver. If requesting a waiver is the contractor's choice, the contractor is to send the grantee written communication explaining the reasons why a waiver is requested. HUD will grant a waiver for two reasons:

1. The error was unintentional although due care was exercised.
2. A mathematical mistake was made.

The grantee will forward the letter to the HUD in Missouri. Following HUD's response the grantee is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, then labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, the contractor will have 60 days to appeal the notice from HUD.

7.4.14.2 The Use of Corrected Payrolls Where Restitution Is Not Due

Under Scenario Two as shown in Appendix 7-15, restitution will not be due but some type of correction not involving restitution is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll. Example: "Payroll 4, Revision 1."

The contractor may line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature and date on a Statement of Compliance must be provided. One way to provide a new signature is by attaching a copy the original Statement of Compliance with a new signature and date above the original signature.

Optionally, the contractor may wish to prepare a new Statement of Compliance, signed and dated, for any week having a corrected payroll.

Supplementary Statements

A supplementary statement from the contractor may be obtained to clarify not only major issues involving restitution but also minor issues that do not involve restitution. Situations where a supplemental statement would be acceptable include: (a) the payroll on which an employee appears does not have the last four digits of the Social Security number and (b) an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and also identify the associated payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

7.4.14.3 No Error Detected

Scenario Three is identified as the scenario under which no error is detected.

7.5 Wage Decisions & Basic Hourly Rates

Total compensation (called prevailing wages as indicated on wage decision(s)) is required. There is some leeway given regarding the breakdown of total compensation between the two components of basic hourly rate and the hourly fringe benefit.

When calculating overtime pay where total compensation is adequate there is one notable restriction: if the basic hourly rate on the payroll is less than the basic hourly rate on the wage decision then the higher basic hourly rate on the wage decision must be used in the calculation of minimum overtime pay.

7.5.1 Fringe Benefits

If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the grantee.

Fringe benefits do not appear on the worker's checks but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee's gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting Davis-Bacon requirements if they are paid to the employee as cash on the payroll or into an approved fund, plan, or program on the employee's behalf.

When this section or the Statement of Compliance mentions the payment of fringes "in cash", actual payment in paper currency is not the meaning of the phrase but rather the compensation as dispersed on a payroll check is normally considered as payment "in cash."

If a wage decision contains fringe benefits for a classification used on the construction project, box 4a or 4b of the Payroll Form/Statement of Compliance (See Appendix 7-7) must be marked to indicate the method of fringe benefit payment (i.e. in cash or to an approved plan). If there were no classifications used on the project that required fringe benefits, the boxes should be left blank.

Box 4c is used to denote exceptions to box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash except one who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are calculated at a per-hour-worked rate and are not calculated at a "time and a half" rate. However, when fringes are paid in cash the payroll reviewer must be able to differentiate the basic hourly rate from the fringe benefit rate in order to calculate overtime properly. This total hourly compensation (basic hourly rate plus hourly fringe benefits) should be separated into the two components (a) in column 6 of the WH 347 Payroll form (b) in the "Comments" section on the Statement of Compliance or (c) by supplementary signed statement from the employer. If the separate components cannot be identified the entire monetary compensation per hour must be multiplied times 150% to calculate required overtime minimum rates. The payroll reviewer is not at liberty to guess or try to mathematically calculate the amount of the fringe component—the fringe component must be clearly stated by the contractor.

7.5.1.1 Fringe Benefit Verification

Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll:

1. When fringe benefits are paid in cash, box 4-b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll.
2. When fringe benefits are paid to an approved plan, box 4-a of the Statement of Compliance must be checked. The fact that box 4-a is marked on the Statement of Compliance is acceptable

to indicate that fringe benefits, equal to the amount stated on the wage decision, were paid. Most of the time additional verification will not be necessary.

3. If the basic hourly rate is less than required on the wage decision with the obvious claim that fringes are making up the balance due in order to meet the total Davis-Bacon requirements, verification of the payment of fringe benefits may be considered. In some cases, where problems are suspected, verification of the payment of fringe benefits may be necessary.

An approved plan will have an institution(s) that receives fringe payments on some type of regular basis. Fringe benefit payments into an approved plan may be on a weekly, monthly, or quarterly basis but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution's name(s), (b) phone number(s), (c) date(s) contacted, (e) results of the inquiry, (f) person(s) contacted at the institution, and (g) the name of the person who made verification for the grantee. Verification may be by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution. A computer printout from the contractor is also acceptable as supporting evidence of payment of fringe benefits.

7.5.2 Deductions

A deduction is an amount subtracted from a worker's gross wages. Deductions must be reviewed to determine if they are permissible. Permissible deductions by law include:

1. Court ordered deductions;
2. FICA; and
3. Federal or state income taxes.

Deductions not required by law, such as union dues, 401K deductions, loan payback amounts or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. Appendix 7-7 should be used.

7.5.3 Payroll Certification of the Self-Employed Contractor Who Works Alone

Example: A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a "working subcontractor," must be listed on the prime's (responsible employer's) payroll. For instance, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on a CDBG-DR project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

The minimum information needed on the responsible employer's payroll regarding the working subcontractor includes:

1. Name
2. Address
3. Classification(s)
4. Hours worked
5. Estimated hourly pay
6. Estimated gross pay

Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor, and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4-c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees.

The explanation for box 4c may read something like, "Working sub, Lump sum contract, Fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list on his payroll a working subcontractor in addition to his regular employees. In such case, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the WH 347 payroll form. (See Appendix 7-7).

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

7.5.3.1 Truck Owner-Operators Exception

Truck "owner-operators" must be reported on the prime's (responsible employer's) weekly payrolls but unlike other classifications, do not need to show the hours worked or rates—only the notation "owner-operator." The truck driver having an owner-operator exception is not to be confused with a truck driver working on-site for a prime contractor that does not fall under the exception.

7.5.4 Liquidated Damages

"Liquidated Damages" is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the CDBG-DR Program, will mean the penalty amount calculated for overtime violations under the CWHSSA. The pre-determined penalty is $10 per worker, per day for overtime violation(s).

Please note that penalty amounts paid for overtime violations to a specified government entity as Liquidated Damages are separate and distinct from wage restitution paid to workers. Liquidated

Damages are paid to a federal agency, namely HUD for CDBG-DR projects, in addition to any restitution paid to worker(s).

7.6 Force Account Labor

Force Account Labor refers to the use of laborers or mechanics who are employed by the grantee which serves as a contractor for the CDBG-DR construction project. In such cases, the grantee/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the CDBG-DR program.

7.6.1 Use of Force Account Labor

Appendix 7-11 Force Account Record Keeping explains required record keeping for force account work. If the grantee wishes to use force account, prior approval must be obtained from HUD. The following paragraphs briefly discuss Force Account Labor.

7.6.2 Prerequisites for the Use of Force Account Labor

In order to use force account labor, three criteria must be met:

1. There should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors;
2. The grantee must have the equipment, supervisory skills, a substantial portion of the required work force, and record keeping system; and
3. The legal counsel for the governing body must make a finding that the project is permissible in accordance with Missouri laws and does not constitute a major project nor include construction of a building.

7.6.3 Labor and Equipment Requirements for Force Account Labor

The grantee may hire some employees to work on the specific project to complement existing employees. The cost of equipment, including the cost of maintenance, operations, and minor field repairs is allowed.

Example: The cost to replace a radiator that was punctured accidentally would be an allowable CDBG-DR cost. However, the cost to replace the engine of a diesel bulldozer on a short term street project would not be an allowable CDBG-DR cost. Equipment may NOT be purchased with CDBG-DR funds.

The equipment cost to be allocated to the CDBG-DR project can be determined by use-allowance or depreciation value. Such allocations of cost must be approved by HUD. In rare instances, such as the breakdown of a primary piece of equipment during a street project, the cost of renting a replacement piece of equipment may be allowed with special written approval from HUD.

7.6.4 Material Cost for Force Account Labor Projects

The costs of materials, including transportation and storage, are eligible costs under the CDBG-DR program. When the cost exceeds $20,000, the purchase of materials must be by competitive bid (See Chapter 6 - Procurement Methods and Contractual Requirements).

7.7 Labor Standards Oversight & Corrective Actions

7.7.1 Field Inspections

The grantee should understand that the enforcement of labor standards is as important as other requirements of the contract specifications and that failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors. Failure to comply may result in the imposition of serious sanctions and penalties.

Periodic field inspections by the project administrator at the job site should be completed to establish compliance with labor requirements, identify violations and for the following purposes:

1. Insure that the wage decision is posted in a prominent place.
2. To insure that a poster is conspicuously displayed which informs employees of their rights.
3. To conduct employee interviews in order to determine that the wages they are receiving are the same as reported on the weekly payroll report.

7.7.2 Employee Interviews

During the course of construction, the grantee must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Interviews should be recorded on the Employee Interview form (Appendix 7-12).

7.7.2.1 Minimum Interview Requirements

Employees of the following contractors must be interviewed:

1. All prime contractors
2. Subcontractors whose contract award is $100,000 or more
3. Any subcontractor where there are a large number of payroll problems

One interview session will sometimes be sufficient to meet minimum interview requirements for the above listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above must be conducted if they are on the jobsite on the day of the trip.

It has been determined that interviews will be conducted so that a representative sample of laborers from each classification is presented. Additional interviews that exceed minimum requirements that the grantee deems necessary to validate compliance with Davis-Bacon are also required.

Example: A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than $100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than $100,000. Employees of all

three primes must be interviewed. Employees of the subcontractor whose contract is $100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required contractors must be interviewed.

If a subcontractor having a subcontract for less than $100,000 is not present on the day of an interview, that subcontractor will not have to be interviewed—unless there are payroll problems. If awarded a subcontract for less than $100,000, the future fence subcontractor will not be have to be interviewed—unless there are payroll problems.

7.7.2.2 Place of Interview

The following guidelines should be followed when deciding on the place to conduct the interview:

1. Care must be taken to arrange the session at a time convenient to the employer and employees.
2. Workers currently employed may be interviewed during working hours on the job provided that the interview can be properly and privately conducted on the premises.
3. Interviews may also be conducted at other public places.
4. Employees and former employees may also be interviewed by mail.
5. An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview.
6. The remaining items on the Record of Employee Interview form should be completed by the grantee with items 1 and 2 to be completed before initial mailing and items 13 through 17 completed after the employee returns the document by mail.
7. In off-site interviews or interviews by mail the amount of interviews required must be similar to the estimated amount that would have been obtained during an on-site session.

7.7.2.3 Initiating the Person to Person Interview

The interviewer must confirm his/her identity to the worker. He/she must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the purpose of the interview is to determine whether the required wages are being paid. If a worker does not want to give particular information, the interviewer should not insist.

7.7.2.4 Using the Interview Information

After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.

7.7.3 Withholding Funds Based on Non-compliance with Labor Standards

If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the grantee may withhold funds due the prime contractor. Only an amount considered necessary to validate payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld in order to meet Labor Standards requirements.

If it is necessary to estimate the withholding amount, prompt action must be taken to determine an exact amount and disburse any applicable excess to the prime contractor according to invoices presented for payment. The following steps should be taken:

1. The grantee must notify the prime contractor of the withholding and provide the second notice of underpayment.
2. The grantee must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed.
3. If restitution is not made within 30 days of the second notice of underpayment, or if there is disagreement regarding the finding of wages owed, HUD must be notified.
4. If HUD determines it appropriate, the grantee will be notified.
5. The grantee must disburse wages owed from the withheld funds to the respective workers to whom they are due.
6. The grantee should contact HUD for information on the proper procedure for disbursement of funds.

7.7.4 Withholding Funds Based on Non-compliance with CDBG-DR

If a Labor Standards violation(s) does occur that results in the grantee not being in compliance with the approved CDBG-DR program, HUD may suspend payment on the next "Request for Payment." For example, if the grantee fails to validate the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the grantee may be considered as being non-compliant with CDBG-DR program requirements.

7.7.5 Corrective Actions Regarding Labor Standards Violations

7.7.5.1 Inadequate Payroll Information

The payroll format, Appendix 7-7, contains the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must contain the necessary information as on WH-347. If a contractor's alternate form is not sufficient, the contractor will need to provide the necessary information on an acceptable form or provide a supplementary statement.

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

7.7.5.2 Handwritten Corrections on Face of Payroll by Reviewer Not Allowable

The grantee, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. The reason is that such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the grantee wishes to provide written clarification of a minor payroll item, a note with the reviewer's name and date may be attached.

Chapter 8 – Civil Rights

8.1 Introduction

This section presents summaries of the key regulations and requirements of civil rights, fair housing, equal opportunity, and equal employment opportunity laws applicable to the administration of the City of Joplin CDBG-DR funds.

The civil rights laws and related laws and regulations are designed to protect individuals from discrimination on the basis of:			
1.	Race	**5.**	Color
2.	National Origin	**6.**	Sex
3.	Religion	**7.**	Age
4.	Familial Status	**8.**	Disability

In 2012, **Federal Register** / Vol. 77, No. 23, HUD issued a rule to provide equal access to HUD programs for LGBT individuals (Appendix 8-1). This rule is made applicable to the HUD CDBG-DR Program at 24 CFR 570.3 and 24 CFR 5.403 under the definition of family. In this rule, HUD states that families or individuals that are otherwise eligible to qualify for HUD programs, may not be excluded because one or more members of their family may be LGBT or perceived to be LGBT.

The City of Joplin is committed to the CDBG-DR Program objectives of civil rights, equal opportunity, and non-discrimination. Each project is monitored to ensure civil rights compliance. For a summary of program requirements and civil rights laws, executive orders and regulations, see Appendix 8-2.

As they apply to the City of Joplin CDBG-DR program, these laws protect individuals from discrimination in:			
1.	Housing	**3.**	Employment
2.	Benefits created by CDBG-DR projects	**4.**	Business Opportunities

Population groups specifically protected by provisions of these laws include:			
1.	Minorities (specifically - Blacks, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives)	4.	Persons with Disabilities
2.	Women	5.	Family Status
3.	Groups distinguished by age	6.	LGBT Equal Access Rule

The applicable laws and regulations provide for:	
1.	Nondiscrimination
2.	Equal Opportunity
3.	Affirmative Action (to reduce past discrimination)

8.2 Civil Rights Requirements - Laws and Statutes

Civil Rights laws applicable to the City of Joplin CDBG-DR programs are set forth in the Statutes and Executive Orders which follow:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of: 1. Race, 2. Color, or 3. National Origin
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment and other economic opportunities, should be directed to: 1. Low and very low income persons, and 2. Business concerns which provide economic opportunities to low and very low income persons.
Title VIII of the Civil Rights Acts of 1968, as amended, (Fair Housing Act)	Prohibits discrimination in housing on the basis of: 1. Race, 2. Color, 3. Religion, 4. Sex, or 5. National Origin. 6. Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing
Section 504 of the Rehabilitation Act of 1973, as amended	No otherwise qualified individual shall, solely, by reason of his or her handicap, be: 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of: 1. Race, 2. Color, 3. National Origin, or 4. Sex

The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in: 1. Housing (and related facilities) provided with federal assistance 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of $10,000.
Equal Access to HUD-assisted or Insured Housing - § 5.105 (a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status. (new regulation effective 3/5/2012)

8.3 Strategies and Procedures

This section presents strategies and procedures for complying with various civil rights, equal opportunity and affirmative action laws, regulations and requirements outlined above.

As a CDBG-DR grant recipient, grantees must assure that all CDBG-DR funded activities undertaken as part of a program are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disability, or age. This applies as it relates to employment opportunities, contracting opportunities and housing assistance.

The information that follows can be used in whole or in applicable part to assure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

8.3.1 Nondiscrimination, Equal Opportunity and Affirmative Action in Employment

Strategies and procedures to comply with applicable civil rights, equal opportunity, and affirmative action laws, regulations and requirements as it relates to employment:	
1.	Maintain employment data that indicates staff composition by race, sex, disabled status and national origin.
2.	Develop or review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.
3.	Advertise as an equal opportunity employer.
4.	Publish an annual statement of nondiscrimination and/or include such statement in any publicity on CDBG-DR programs.
5.	Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspaper and public service channels.
6.	Utilize information points throughout the community to advertise employment opportunities.
7.	Develop or implement an Affirmative Action Plan.
8.	Develop a Section 3 of the HUD Act of 1968 compliance plan.
9.	Display Equal Opportunity posters prominently.
10.	Take affirmative action to overcome the effect of past discrimination.

8.3.2 Nondiscrimination, Equal Employment Opportunity and Affirmative Action in Contracting

Strategies and procedures to comply with applicable civil rights, equal opportunity, and affirmative action laws, regulations and requirements as it relates to contracting:	
1.	Advertise as an equal opportunity employer in bid solicitations.
2.	Solicit bids from minority, women and locally owned businesses.
3.	Maintain a list of locally owned businesses that were awarded contracts.
4.	Require a Section 3 of the HUD Act of 1968 clause in all contracts.
5.	Inform contractors of equal opportunity requirements at pre-construction conference or through other means of notification.
6.	Require contractor to submit monthly utilization reports.
7.	Monitor contractor compliance at work site.

8.3.3 Nondiscrimination, Equal Opportunity and Affirmative Action in Housing

Strategies and procedures to comply with applicable civil rights, equal opportunity, and affirmative action laws, regulations and requirements as it relates to housing:	
1.	Information concerning housing services and activities should be disseminated through agencies and organizations which routinely provide services to protected groups.
2.	Contract documents used by grantees and lending institutions participating in local programs should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.
3.	Criteria for selecting recipients of housing assistance should be evaluated for any discriminatory effect.
4.	Acceptable Fair Housing Activities.
5.	Publicize that the recipient will assist persons experiencing discrimination in housing.
6.	Development and adoption of a fair housing policy with identification of methods of enforcement.
7.	Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.
8.	Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.
9.	Work with local banks to post "equal lending opportunity" advertisements.
10.	Use "equal housing opportunity" slogan and logo on city letterhead.
11.	Sponsor fair housing seminars and campaigns.
12.	Work with minority and women leaders in the area to promote housing development and increase minority and female participation.
13.	Assist local housing developers in developing outreach programs to attract minorities and females.
14.	Review zoning ordinances and comprehensive plans to insure they promote special de-concentration of assisted housing units.
15.	Create a local housing authority.
16.	Publicly advertise the city as a "fair housing city."
17.	Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

8.3.4 Complaints

A complaint may not always refer to a violation of a particular civil rights law or laws. A complaint should be reviewed as a civil rights complaint when the complaint:

1. Indicates the belief that he or she has been denied opportunities, treated differently, etc.
2. States his or her race, ethnicity, gender, status as a handicapped person, or age.

Any person, or any specific class of persons, who believes that he or she has been subject to discrimination may file a complaint. A complaint may be filed by the complainant or a representative. A Section 3 of the HUD Act of 1968 Complaint Register is included in Appendix 8-3. The form contains all of the necessary components of the complaint process. The information provided on this form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine if the allegations of non-compliance are valid.

With the exception of complaints filed under Executive Order 11246, civil rights complaints must be referred directly to the Department of HUD, Office of Fair Housing and Equal Opportunity (FHEO) (1-800-669-9777). Section 3 of the HUD Act of 1968 complaints are required to be filed at the appropriate HUD FHEO Regional Office in which the violation occurred within 180 days from the date of the action or omission upon which the complaint is based. Complaints filed under Executive Order 11246 must be referred to the regional Office of Contract Compliance Programs, Department of Labor. Confidentiality is mandatory. The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the Department of HUD. The City should, however, be notified that a complaint has been registered.

Within the context of the City of Joplin CDBG-DR program a civil rights complaint alleges discrimination based on race, national origin, religion, color, sex, age, handicap, or familial status in program-related benefits, employment, contracting, or fair housing practices. If a complaint arises, a full report should be sent to the office of Planning and Community Development. The Planning and Community Development office will then forward the information to HUD and a corrective action will be decided upon. CDBG-DR grantees, including counties, are to have local policies in place that provide a mechanism for processing Fair Housing complaints within their jurisdiction, such as a complaint procedure for processing a complaint under its adopted Fair Housing Ordinance or Fair Housing Resolution.

8.3.4.1 State Procedures for Handling Civil Rights Complaints of Discrimination

Civil Rights complaints relevant to the City's CDBG-DR Program alleging discrimination based on race, national origin, religion, color, sex, age, handicap, or familial status in program-related benefits, employment, contracting, or fair housing efforts. When a written complaint is sent to the City office of Planning and Community Development, either directly by a complainant from a CDBG-DR funded program, the office of Planning and Community Development will refer the matter to the grantee's designated local intake officer for resolution. If the matter is not resolved at the local level, the office of Planning and Community Development will refer the complaint to the Missouri Commission on Human Rights, or, the appropriate HUD office.

Fair Housing Hub
U.S. Department of Housing and Urban Development (HUD)
Kansas City Region VII Office
Office of Fair Housing and Equal Opportunity
Gateway Tower II
400 State Avenue, Room 200
Kansas City, KS 66101-2406

Phone: 913-551-6958
Toll Free: 800-743-5323
TTY: 913-551-6972

Other field office in Missouri:
U.S. Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity
1222 Spruce Street
St. Louis, MO 63102

Phone: 314-539-6322
TDD: 314-539-6331

Additional Resources
National Fair Housing Alliance
1101 Vermont Ave. NW, Suite 710
Washington, DC 20005

Phone: 202-898-1661
http://www.nationalfairhousing.org/

8.4 Developing and Implementing a Fair Housing Program

The Federal Fair Housing Law provides that "…no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions including lenders, builders and homeowners insurance companies" (24 CFR 100.5).

8.4.1 Addressing Impediments and Furthering Fair Housing

As a recipient of Disaster Recovery funds, grantees must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5));(E.O.12259(1-202));(24 CFR 570.601). This basically takes the form of promoting and publicizing Fair Housing laws as explained below. Fair Housing compliance requires grantees to take two annual official actions to educate and inform its citizens about the state and federal fair housing laws each year that the grant is open. The first of these official actions is to address an identified Impediment to Fair Housing Choice. Appendix 8-4 displays the findings from the 2014 study indicating impediments to fair housing choice. The second one is an official action to affirmatively further fair housing. Appendix 8-5 offers suggestions of activities which can be undertaken which will be determined to "further Fair Housing". Grantees must also agree to develop and maintain records of the efforts taken to assure fair housing and must be available when HUD conducts its on-site monitoring.

For recommended actions to address impediments or to affirmatively further fair housing go to:

1) www.ded.mo.gov - Click on "communities" click on "state programs" click on "Community Development Block Grant" click on "CDBG Forms" Scroll to "Civil Right" to access DED's list of recommended annual impediment actions
2) http://labor.mo.gov/mohumanrights/fair_housing_project - Missouri Commission on Human Rights
3) http://ehocstl.org/

The documentation must identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided. As a prerequisite for performing various Fair Housing activities, grantees need to be aware of the different possible infractions that constitute discriminatory conduct. A list of regulations that categorize and explain the different types of discriminatory conduct under federal law and provides contact information in the event a person feels they have been discriminated against is included in Appendix 8-6 and includes a sample Utility Bill Stuffer and a Fair Housing flyer.

8.5 Section 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754) requires that local grantees shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. Missouri CDBG-DR grantees are required by Federal law and program regulations to conduct a self- evaluation of accessibility to determine if their current programs, services, policies, and practices meet the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA).

Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance". The local grantee is responsible for compliance with Section 504 by the developer in economic development programs.

8.5.1 Minimum Requirements for All Grantees

In order to comply with Section 504, the following actions must be initiated:

1. Each grantee shall submit an assurance to HUD that the CDBG-DR Program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the grantee for the period during which federal financial assistance is extended.

2. Each grantee shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed within six months of receipt of any grant award after July 1988.

3. The self-evaluation shall designate all buildings and structures as "new" or "existing" depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services

for the public can be approached, entered, and used by persons with disabilities. At minimum the following items should be addressed in the self-evaluation:

a. Parking - Spaces, Curbs, Ramps,
b. Routes and Pathways - Slopes, Levels, Ramps, Notices,
c. Entrance Ways - Widths and Heights,
d. Interiors - Door Grasp, Pressure, Pathways, Elevators, Service - Counter Heights, Notices
e. Auxiliary Services -Telephones, Restrooms, Drinking Fountains

4. Each grantee shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).

5. Each grantee must validate that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

6. Each grantee must maintain data for HUD showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs. The CDBG-DR Model for Self-Evaluation for Section 504/ADA compliance is found in Appendix 8-7.

8.5.2 Other Section 504 Requirements, as Applicable

If the grantee employs fifteen or more persons:

1. A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;

2. The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part. See Appendix 8-8 for sample section 504/ADA grievance procedure.

3. The grantee shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the grantee does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.

   A grantee shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with HUD. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

4. The grantee must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

The regulation requires that you must have available a TDD or equally effective method for communicating with hearing impaired persons. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works from both TDD and voice telephones and while it is applicable in most states, you are still required to list the applicable “800” numbers. If you have been the recipient of prior CDBG-DR funds and have a completed self-evaluation and if applicable, a transition plan, as mentioned above, the three year time period for completing the construction activities specified in a transition plan for most grantees has expired. For “existing” buildings and facilities that house programs and services for the public and are not accessible you must have adopted policies and/or modified practices to achieve accessibility. Prior grantees should prepare a summary of their past compliance activities.

8.5.3 Alternative Accessibility Standard

On May 27, 2014, HUD announced an alternative accessibility standard to the Section 504 accessibility standard. It announced that developers may use the American with Disabilities Act (ADA) 2010 Standards for accessible design as an alternative to the Uniform Federal Accessibility Standards (UFAS) when undertaking new construction or alterations to existing structures on or after May 23, 2014, except for specific design provisions where the UFAS standard affords greater accessibility.

Under Section 504, HUD requires that its programs or activities that are paid for with HUD funds be readily accessible to and usable by persons with disabilities. Section 504 prohibits discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department. Section 504 specifically prohibits the denial of benefits of, exclusion from participation in, or other discrimination against qualified individuals with disabilities in Federally assisted programs or activities because a grantee’s facilities are inaccessible to or unusable by individuals with disabilities.

The regulation requires that the design, construction, and alteration of projects meet physical accessibility requirements.

Prior to May 27, 2014, this meant compliance with the UFAS accessibility standards when using HUD funds. Now, it means that the 2010 ADA Standards may be used as an alternative, except where the UFAS standards provides for greater accessibility.

8.6 Meeting Section 3 of the HUD Act of 1968 Compliance

The objective is to provide greatest extent feasible preference for economic opportunities, such as, job training and employment that arise through HUD-assisted projects, to be directed toward Section 3 residents, and businesses. Below describes eligibility requirements for section 3 persons or businesses.

Section 3 persons are defined as:	
1.	Low and Very Low-Income residents of public assisted-housing.
2.	Persons meeting the LMI income limits, who live in the grantee's jurisdiction. Such preference shall be given first to LMI residents inside the specific jurisdiction covered by the project, followed by LMI residents in the county in which the project is located.

Section 3 businesses are defined as:	
1.	Businesses with an ownership that represents at least 51% Section 3 residents.
2.	Businesses employing 30% Section 3 residents in full-time positions.
3.	Businesses that subcontract with other entities that provide economic opportunity to Section 3 residents; that is, 25% of the dollar amount of its project contracts will be awarded to Section 3 businesses.

Note that the State's list of Disadvantage Businesses Enterprises (DBE) businesses may be used to meet Section 3 procurement solicitation requirements. The state's DBE list may be found at:

Missouri Department of Transportation:
www.modot.org/business/contractor_resources/External_Civil_Rights/mrcc.htm or
www.modot.org/business/index.htm

8.6.1 Compliance

Section 3 compliance requirements are triggered when a recipient of Disaster Recovery CDBG-DR assistance that invests $200,000 or more into projects/activities involving housing construction,

rehabilitation, or other public construction. If Section 3 of the HUD Act of 1968 is triggered for the grantee, then contractors/subcontractors whose contracts exceed $100,000 must also comply. Sample Section 3 Certification Forms are located in Appendix 8-9

The Section 3 clause must be included in all Section 3 covered contracts. See Section 6 – Procurement Methods and Contractual Requirements, Subsection 16.0 "Section 3 of the HUD Act of 1968 Covered Contracts Requirements" for explanation of this clause. This clause is a part of the CDBG Compliance Provisions for Construction Contracts within Appendix 6-2.

The standards and procedures contained herein are to ensure that the objectives of Section 3 of the HUD Act of 1968 are met.

8.6.2 Employment Requirements

The grantee may demonstrate compliance with Section 3 by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires for the project, for a one year period.

Contractors and subcontractors may demonstrate compliance with Section 3 by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires for the project, for a one year period.

This requirement extends only to full-time jobs which may be permanent, temporary or seasonal and contracts which are a direct result of this project. It does include any hiring by the local government or contractor for employees hired to work on the project.

8.6.3 Employment Guidelines

The following examples can be used in an effort to validate that the employment objectives of Section 3 are met. These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for employment opportunities should not be considered all inclusive.

Employment Objectives Examples	
1.	Post advertisements of the employment opportunities, identifying the positions, qualification requirements, and where to obtain additional information about the application process, in housing developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
2.	Contact community organizations and resident organizations and request assistance in notifying residents of the employment positions to be filled.
3.	Sponsor a job informational meeting in the service area of the project.
4.	Arrange assistance in conducting job interviews and completing job applications for residents of the service area where the project is located.
5.	Arrange for a location in the service area of the project where job applications may be collected by the grantee or contractor representative.
6.	Consult with State and local agencies administering JTPA or JOBS, probation and parole agencies, unemployment compensation programs, etc., to assist with recruiting Section 3 residents for employment.
7.	Advertise the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio.
8.	Employ a job coordinator, or contract with a business concern that will undertake the efforts to match eligible and qualified Section 3 residents with the employment positions to be filled.
9.	Where there are more qualified Section 3 residents than there are positions to be filled, maintain a file of eligible qualified Section 3 residents for future employment positions.
10.	Undertake job counseling, education and related programs in association with local educational institutions.
11.	After selection of bidders, but prior to execution of contracts, incorporate into the contract a negotiated provision for a specific number of Section 3 residents to be trained or employed on the Section 3 project.

8.6.4 Contracting Requirements

The grantee and contractor may demonstrate compliance with Section 3 by committing to award to Section 3 business concerns at least 10 percent of the total dollar amount of all Section 3 covered contracts for construction.

The grantee must also commit to award at least 3 percent of all other contracts to Section 3 business concerns; i.e., administration, engineering, etc.

A grantee or contractor/sub-contractor who has not met the goals set forth has the burden of demonstrating why it was not feasible to meet these goals. Documentation must be maintained as to the action taken by each in order to attain the goals and any impediments encountered.

The following are examples of efforts which can be utilized in reaching the specified goals in employment and contracting (efforts must be documented):

8.6.4.1 Contracting Guidelines

The following examples can be used in an effort to validate that the contracting objectives of Section 3 are met. These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for contracting opportunities should not be considered all inclusive. For additional information on contracting, see Section 6 - Procurement Methods and Contractual Requirements.

Examples of Validating Contract Objectives	
1.	The use of small purchase procedures (contract may not exceed $100,000) such as soliciting quotations from a minimum of 3 qualified sources. At the time of solicitation, inform the parties of the Section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain 3 quotes from qualified sources must be made and documented.
2.	In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract. See Appendix 8-10 for a sample Section 3 Plan.
3.	Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4.	Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5.	Providing written notice to all known Section 3 business concerns of the contracting opportunities.
6.	Follow up with Section 3 business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
7.	Coordinating pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.

8.	Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
9.	Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
10.	Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
11.	Where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns.
12.	Contacting agencies administering HUD Youth build programs and notifying these agencies of the contracting opportunities.
13.	Advertising the contracting opportunities through trade association papers, local media, such as television, newspapers and radio.
14.	Developing a list of eligible Section 3 business concerns.
15.	Establishing numerical goals (dollar amounts, and number of awards) for contracts to Section 3 business concerns.

8.6.5 Other Employment and Business Related Economic Opportunities

Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies, and hiring Section 3 residents in part-time positions. A grantee or contractor may provide other economic opportunities to establish, stabilize, or expand Section 3 business concerns.

These other opportunities, if provided, may be viewed by HUD as a defense as to why it was not feasible to meet the numerical goals should a challenge be issued by a Section 3 resident or business concern that either the grantee or contractor is not following Section 3 requirements.

8.6.6 General Information

Section 3 does not require the creation of economic opportunities for anyone, nor does the extension of employment opportunities to Section 3 residents preclude the necessity for that individual to be qualified for the job.

Section 3 does not mandate certification or evidence of a person's Section 3 status; however, the grantee or the contractor, have the express right to request documentation which will support their claim to Section 3 preference. An example of evidence is the receipt of public assistance, or evidence of participation in a public assistance program, i.e., residency in a public housing development or evidence of a Section 8 certificate or voucher assistance, or participation in JTPA, AFDC, or JOBS, or receipt of welfare assistance. It does not have to be proof of income. Low and moderate income is determined by total household income.

8.6.7 Section 3 Reporting

The grantee will have to report to HUD information on Section 3 new hires and contracts awarded to Section 3 business concerns. This report will be due at the time of closeout and will be included in the Program Completion Report.

HUD Section 3 Reports are due annually, on October 15th, each year. The reporting period is based on the Federal fiscal year (October 1st to September 30th) and grantees must only report the contracts the grantee awarded during the Federal fiscal year reporting period. The Grantee must report both professional service contracts and construction contracts that were awarded. Reports are submitted on the Section 3 Summary Report form designated as HUD-60002. See Appendix 8-11.

To ensure appropriate documentation on a timely basis, the CDBG-DR program has developed a Contract Solicitation Record for use in maintaining an internal record of efforts to involve target group (MBE/WBE and Section 3) businesses in a project. This can be a helpful tool in verifying solicitation of bids, price quotations, and proposals from all participating contractors and professional service providers. The Contract Solicitation Record form may be used as a reference in completing the Contract and Subcontract Activity Report, formerly known as the Minority Business Participation Report, which must be submitted to CDBG-DR by October 2 each year for activities occurring within the previous twelve-month federal fiscal year period. See Appendix 8-12.

The following items are required to be reported to show Section 3 Compliance:

Employment and Training	Construction	Non-Construction
1. Job Category	1. Total CDBG-DR dollar amount of all contracts awarded on the project	1. Total CDBG-DR dollar amount of all non-construction contracts awarded on the project
2. Number of new hires	2. Total CDBG-DR dollar amount of contracts awarded to Section 3 businesses	2. Total CDBG-DR dollar amount of non-construction Contracts awarded to Section 3 businesses
3. Number of New Hires that are Section 3 Residents	3. Percentage of the total dollar amount that was awarded to Section 3 businesses	3. Percentage of the total dollar amount that was awarded to Section 3 businesses
4. Percentage of Aggregate number of staff hours of New Hires that are Section 3 Residents	4. Total number of Section 3 businesses receiving contracts.	4. Total number of Section 3 businesses receiving non-construction contracts.
5. Percentage of Total Staff Hours for Section 3 Employees and Trainees, Number of Section 3 Trainees.		

8.7 Record Keeping

All grantees are required to maintain equal opportunity records. The content of these records should include the following information:

National Objective	Required Documentation
Population Data	This includes population data by census tract or smaller geographic areas which includes prevailing population characteristics relating to race, ethnic groups, sex, age, head of household and handicapped.
Employment Data	(For communities with 10 or more employees) EEO form 4; Personnel Policies; Affirmative Action and/or Section 3 plans (if applicable); copies of any advertisements for employment; documentation of special efforts to identify, train, involve and/or hire minority and lower-income residents.
Minority Business Participation	Documentation of efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses.
Section 3 Business Participation	Documentation of efforts to solicit locally owned businesses; maintain data concerning the number and dollar amount of contract awarded to locally owned businesses.
Fair Housing	Document efforts to affirmatively further fair housing; copy of fair housing policy.
Contractor Compliance	Records of any monitoring trips to project site and any findings; copies of contractors' monthly utilization report.
Project Beneficiaries	Record of applicants, and direct and indirect beneficiaries by race, color, sex, national origin, age and handicap.
Displacement and/or Relocation	Data on race, head of household, age and income of persons affected.
See Section 4	Records Management for full records management requirements

Chapter 9 – Environmental Review

9.1 Introduction

Projects that are undertaken with CDBG-DR funds and all activities related to that project are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations found at 24 CFR Part 58. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any CDBG-DR funds can be accessed for program-eligible activities. In addition, no work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds. In other words, environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. A violation of this requirement may jeopardize federal funding to this project and disallow all costs that were incurred before the completion of the Environmental Review.

The primary objectives of the HUD environmental review are to identify any environmental factors that may be encountered at potential project sites and to develop procedures to validate compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

Laws and regulations which contain environmental provisions which require compliance include:			
1.	Noise	**7.**	Manmade Hazards
2.	Historic Properties	**8.**	Water Quality
3.	Coastal Zones	**9.**	Air Quality
4.	Environmental Justice	**10.**	Endangered Species
5.	Floodplains	**11.**	Farmland Protection
6.	Wetlands		

All CDBG-DR funded projects and activities must have documentation that they are in compliance with NEPA and all other environmental requirements. The purpose of this Section is to provide guidance necessary to prepare the Environmental Review Record (ERR) as required by NEPA and related laws. The grantee is responsible for evaluating how the project could affect the environment and what impacts the environment can have on the project. The ERR serves as a tool to measure the environmental consequences of all CDBG-DR funded projects and activities.

9.2 Timetable for Reviews

Each project is unique and this is reflected in the amount of time it takes to complete the ERR. There are many factors which contribute to this timetable. For example, a project that is located in a wetland or is in an area of noise concern will require a longer amount of time to complete the ERR, while a project that is not eligible for National Register and takes place outside the floodplain will require a shorter amount of time to complete the ERR. Further - while studies, professional services, replenishment of inventory, down-payment assistance may take only days to complete, this is not the case where the new construction of an apartment complex or the rehabilitation of single-family housing may take up to four or five months to complete.

A grantee, at its own risk, may begin the ERR process at any time. If reimbursement will be requested, HUD suggests that the grantee begin the ERR process once the activity is verified to be eligible and meets a national objective. If the grantee submits a pre-application and the pre-application is approved, there is ample assurance that the project will be approved. If no pre-application is submitted, the grantee must use its own judgment to determine when the risk is low enough that that the activity will not be denied. It should be noted that a grantee must properly procure any environmental contractor it hires if the grantee plans to be reimbursed for these services. See Section 6 for procurement guidelines.

9.3 Environmental Review Procedure

There are several steps that the grantee should take to begin the environmental review process. These steps are important because they will help guide the grantee in the approach to this process and help the grantee to avoid needless mistakes and time delays. The grantee is responsible for determining the type of environmental review, establishing and maintaining the ERR, providing a public comment period, complying with NEPA, and certifying environmental findings and records. Refer to Appendix 9-1 for the environmental review process general flow of review procedures.

The grantee should begin its environmental review as soon as it receives its copy of the executed grant agreement from CDBG-DR, although the grantee may choose to begin the process at the time a project or activity is accepted by CDBG-DR. Because the environmental review process, often times, becomes a lengthy and complex endeavor it is important that the grantee begin this process as soon as practicable.

9.3.1 Limitations on Activities Pending Clearance

HUD's regulations at 24 CFR 58.22 state neither the grantee nor any participant (including public or private non-profits or for-profit entities or any of their contractors) may commit HUD/CDBG-DR funds on any activity or any project that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an ERR. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions.

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later

deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

9.3.1.1 Property Acquisition

If there is intent to apply for HUD funds and/or the NEPA review for a project proposed with HUD funds has begun, it is critical that formal property acquisition does not occur prior to the completion of the environmental review and CDBG-DR Environmental Review Officer's issuance of environmental approval. Property acquisition is a choice-limiting action (§58.71) and acquiring property prior to completion of the environmental review exhibits a bias for a specific site without evidence of an evaluation of that site or of other sites that may be suitable or even more appropriate for the project. This includes all types of easements. Further, it does not afford the public an opportunity to review and comment on the project. A well-prepared environmental review justifies the selection of a site.

Undertaking property acquisition prior to the environmental review is not in line with the goal of the environmental review process and could in fact jeopardize people and property. Examples of this include the acquisition of contaminated property, property with significant noise issues that are infeasible to attenuate, property located in close proximity to explosives and flammable operations, or property located in the floodplain.

An option agreement on a proposed site or property is allowable before the completion of the environmental review as this option does not limit the choice of reasonable alternatives. The option is only allowed on real property and the amount of the option is not reimbursable by CDBG-DR. See HUD's sample agreement (Appendix 9-2). The sample agreement may be modified to suit a particular project. Contact HUD Regional Compliance officer if assistance is necessary.

NOTE: Do not enter into any real estate agreement, other than HUD's option agreement to purchase real estate, or similar agreement, prior to completion of the environmental review process and CDBG-DR Environmental Review Officer's issuance of environmental review approval.

9.3.2 Designate the Person(s) Responsible For Preparing the Environmental Review

When a grantee accepts Disaster Recovery funding, the grantee agrees to assume the legal responsibility as the "Responsible Official" as defined by NEPA. The local chief official is required to serve as the environmental "Certifying Officer" and to accept full responsibility for the completeness and accuracy of the reviews. This environmental duty may not be delegated, although consultants' staff and/or the HUD resources may provide technical assistance to support local efforts.

The grantee's Certifying Officer has three principal responsibilities:

1. To represent the grantee on environmental matters and be subject to the jurisdiction of the Federal Courts if the grantee becomes involved in environmental litigation;
2. To verify that all environmental, procedural, and record requirements are fully and properly satisfied.

3. To verify and/or perform all necessary coordination functions required for environmental reviews. This includes consultation with the appropriate agencies directly concerned with environmental issues or having environmental responsibilities associated with the grantee's project. The Certifying Officer must also validate that the public comment process is carried out appropriately.

Commonly Used Options for Environmental Preparer	
1.	Use of existing City of Joplin staff persons (engineer, planner, public works, city administrator, economic or community developer, county clerk, etc.)
2.	Local Regional Planning Commissions & Regional Councils of Governments
3.	Private Grant Consultants & Grant Administrators
4.	Other Federal or State Environmental and/or Funding Agencies
5.	Licensed/certified Engineers, Planners and/or Architects
6.	Private Environmental Consultants/Agencies

9.3.3 Create the Environmental Review Record (ERR) (24 CFR 58.38)

Grantees are required to create and maintain an Environmental Review Record (ERR) which is a legal document that aids in proving compliance with applicable laws and regulations. Grantees may contract with an environmental consulting firm to do the work and create the record. However, the grantee is responsible for all material in the ERR. This ERR must contain a concise description of the grantee's project/activity and a record of all relevant documentation pertaining to the environmental review process and results. Grantees should start to establish this record as soon as the activity is approved as an undertaking.

The ERR must provide a comprehensive project description and evidence of the process, but not limited to, the following:	
1.	Complete, detailed project description including all activities proposed by all funding sources
2.	Description of pre-existing environmental conditions of the project site and surrounding area
3.	Completion of current CDBG-DR environmental forms applicable to the level of review required
4.	Acceptable support documentation; color maps (U.S.G.S, aerial, zoning, FEMA floodplain, soil survey, etc.), web-based material, color photos, documented site visits & phone calls, agency consultations, site plans, architectural/engineering reports, prior environmental studies, agency comments and clearances, etc.
5.	Proof of compliance with NEPA and related laws and authorities – (Documentation required)
6.	Conditions for environmental approval (mitigation measures) and proof of required implementation
7.	All required environmental studies for the project are completed

8.	Consideration has been given to project and activity alternatives and the basis for the chosen alternative is well documented
9.	Environmental notices
10.	Evidence of opportunity for public involvement as required
11.	Environmental determination (Finding) signed by the Certifying Officer
12.	CDBG-DR Request for Release of Funds/Certification (RROF/C)
13.	CDBG-DR Authority To Use Grant Funds - formal release of funds/environmental approval
14.	Other information as requested by CDBG-DR and Federal and State environmental regulatory agencies

9.3.4 Develop the Project Description

The project description is critical in determining the level of environmental review required. The description should clearly state the scope, scale, nature and extent of a proposed project. A complete and clear project description is the foundation of the environmental review process. The project description should capture the maximum anticipated scope of the proposal. It should include all contemplated actions that are a composite part of the project.

At a minimum, the project description should contain the following:	
1.	All proposed project activities by all funding sources, described in detail
2.	Entire project scope and all phases of the project from beginning to end
3.	Exact project location(s)/area(s), supported by a locational map
4.	Color photographs, site plans, project plans, renderings and maps (e.g., topographic, aerial)
5.	Total project costs by all funding sources including in-kind (donated labor and materials) activities
6.	Existing environment on and around a project site and how it is expected to change due to a project
7.	Temporary impacts anticipated by construction activities and a timeline for construction
8.	Other information as recommended by CDBG-DR, environmental agencies, and project professionals

9.3.4.1 Project Aggregation

Activities should be aggregated according to the regulations at 58.32. All individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions should be grouped together and evaluated as a single project. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street, paving and construction of a water line would be grouped together as one project. Aggregating (grouping) activities allows the grantee to consider the combined environmental effect of a project. Aggregation will lessen the number of Environmental Review Records that a grantee must complete.

The term “project” means an activity or a group of integrally related activities designed to accomplish, in whole or in part, a specific goal. The term “activity” means an action that a grantee takes on as part of an assisted project, regardless of whether its costs are born by CDBG-DR assistance or are eligible expenses under the program. Activities make up the project. For the purpose of environmental review requirements, an activity may be funded in whole, in part, or not funded with federal funds but nonetheless has been made a part of the project as contained within the funding application.

9.3.5 Determine the Level of Environmental Review

24 CFR Part 58(Appendix 9-3) provides guidance for conducting the environmental review process. Every CDBG-DR project requires some level of environmental review. Project activities will fall into one of three (3) types of environmental review categories:

1. Exempt activities;
2. Categorically Excluded activities; and
3. Environmental Assessment (EA) activities.

Any project or activity that is categorically excluded does not need to address the requirements of NEPA. These projects or activities fall into one of two separate categories:

1. Subject to the Laws of 58.5 [24 CFR part 58.35(a)] or
2. Not Subject to the Laws of 58.5 [24 CFR part 58.35(b)]

The level of effort needed to prepare a review and depth of analysis is based on the category. Each of these categories involves a progressively more detailed and more complex process of requirements and procedures. It is important to determine the appropriate level of review at the beginning of the project or activity.

9.3.5.1 Exempt Activities (24 CFR 58.34)

Exempt activities have no physical impact or result in no physical change on the environment. Exempt activities are mainly planning activities and are reimbursable even if the rest of the project does not move to fruition. Exempt activities must complete an ERR by documenting the level of review as Exempt, but it is not necessary to comply with actions under NEPA and other provisions of laws or authorities cited in §58.5. Funds from any source may be used for Exempt activities once the Finding of Exemption form is completed and submitted to HUD. There are certain activities that can be pulled and exempted from a more complicated project.

Exempt activities are as follows:	
1.	Environmental and other studies, resource identification and development of plans and strategies. Examples include appraisals, archaeological surveys, wetland delineation and the like.
2.	Information and Financial Services.
3.	Administration and management activities. Examples include salaries and consultant costs.
4.	Public Services that do not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.

5.	Inspections and Testing of Properties for Hazards or Defects. Examples include inspections and testing of properties for lead-based paint or asbestos.
6.	Purchase of Insurance. Examples may include flood insurance.
7.	Purchase of Tools. Examples include payment of reasonable and eligible tool purchases. However, this does not include equipment purchases.
8.	Engineering and/or Design Costs. Examples include architectural design.
9.	Technical Assistance and Training.
10.	Assistance for temporary or permanent improvement that does not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disaster, imminent threats, or physical deterioration. This category has a very narrow window of use and can only be used immediately after a disaster.
11.	Principal and Interest Payments. This category is for loans made or obligations guaranteed by HUD.

Other Exempt Activities

Only those projects determined Categorically Excluded Subject To §58.5 review of laws and authorities at 58.5 (CEST) may be converted to Exempt, provided that there were no statutory compliance issues that need to be addressed after completion of the statutory checklist. If the project is converted to Exempt, no publications, comment periods, or Request For Release of Funds would be required.

In order to convert to Exempt, the following must be applicable	
1.	Only projects determined Categorically Subject To review of laws and authorities at 58.5 (CEST).
2.	The Statutory Checklist review must result in no adverse effects on protected resources, with no mitigation needed, no permitting or agreements required, etc.
3.	The project cannot occur in a floodplain or wetland.
4.	The Section 106 Review for assessing Historic Properties must result in a "No Historic Properties Affected" determination by the SHPO.
5.	Projects requiring the use of Tiering cannot be converted to Exempt.

9.3.5.2 Categorically Excluded Projects (24 CFR 58.35) – 2 Classifications

If an activity is not determined Exempt, the project should be evaluated to determine if it is categorically excluded. Categorically Excluded projects are those excluded from NEPA requirements, but may be subject to review under other Federal laws and authorities listed in 24 CFR 58.5. There are two classifications of Categorically Excluded activities; those listed under §58.35 (a) "Categorically Excluded Subject To" (CEST) and those listed under §58.35(b) "Categorically Excluded Not Subject To" (CENST).

Categorically Excluded Activities Not Subject To §58.5 (CENST)

HUD has determined the following activities do not alter any conditions requiring a review of compliance determination under Federal laws and authorities cited in §58.5.

Categorically Excluded Activities Not Subject To are as follows:	
1.	Tenant-based rental assistance
2.	Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services
3.	Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
4.	Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations
5.	Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy-downs, and similar activities that result in the transfer of title
6.	Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact
7.	Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47

Categorically Excluded Activities Subject To §58.5 (CEST)

The following activities may be subject to review under authorities listed in §58.5:

Categorically Excluded Activities Subject To are as follows:	
1.	Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
2.	Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons
3.	Rehabilitation of buildings and improvements when the following conditions are met: a. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed b. In the case of multifamily residential buildings: i. Unit density is not changed more than 20 percent ii. The project does not involve changes in land use from residential to non-residential

	iii. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation c. In the case of non-residential structures, including commercial, industrial and public buildings: i. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent ii. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
4.	An individual actions: a. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or combination in between b. An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site c. Paragraphs (4a) and (4b) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (3a) of this section)
5.	Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use
6.	Combinations of the above activities

9.3.5.3 Environmental Assessment (EA) (24 CFR 58.36)

If the project/activity does not fall in either the Exempt or Categorically Excluded categories, an Environmental Assessment will be required. An Environmental Assessment (EA) enables the grantee to determine the degree of significant impact that a project/activity may have on the environment. The EA permits all interested parties, including policy agencies, community groups and individuals to examine the environmental data developed and to comment on the environmental impact findings and/or course of action determined by the grantee. Once actual and potential impacts of each project alternative are identified, mitigation measures may be determined necessary to undertake the project. This is discussed further in the Conditions for Approval (9.8.1) section. Once the EA is completed, project feasibility is determined and the most suitable project alternative is selected.

Grantees must make a recommendation of the appropriate assessment finding at the end of the process and document this on the EA. A Finding of No Significant Impact (FONSI) means that the project is not an action that will result in a significant impact on the quality of the human environment. A Finding of Significant Impact (FOSI) means that the project is an action that may significantly affect the quality of the human environment. If significant impacts are anticipated with no reasonable means of mitigation apparent, the project may be rejected or an Environmental Impact Statement (EIS) may be required. In all circumstances, the completed EA must provide sufficient evidence and analysis for determining whether to prepare an EIS.

9.3.5.4 Environmental Impact Statements (EIS) (24 CFR 58.37)

An Environmental Impact Statement is the highest level of review typically required after completion of an EA or CEST where the project is determined to have potentially significant impacts on the environment.

Pursuant to 40 CFR 1508.27, NEPA requires consideration of both context and intensity for measuring the severity of impacts.

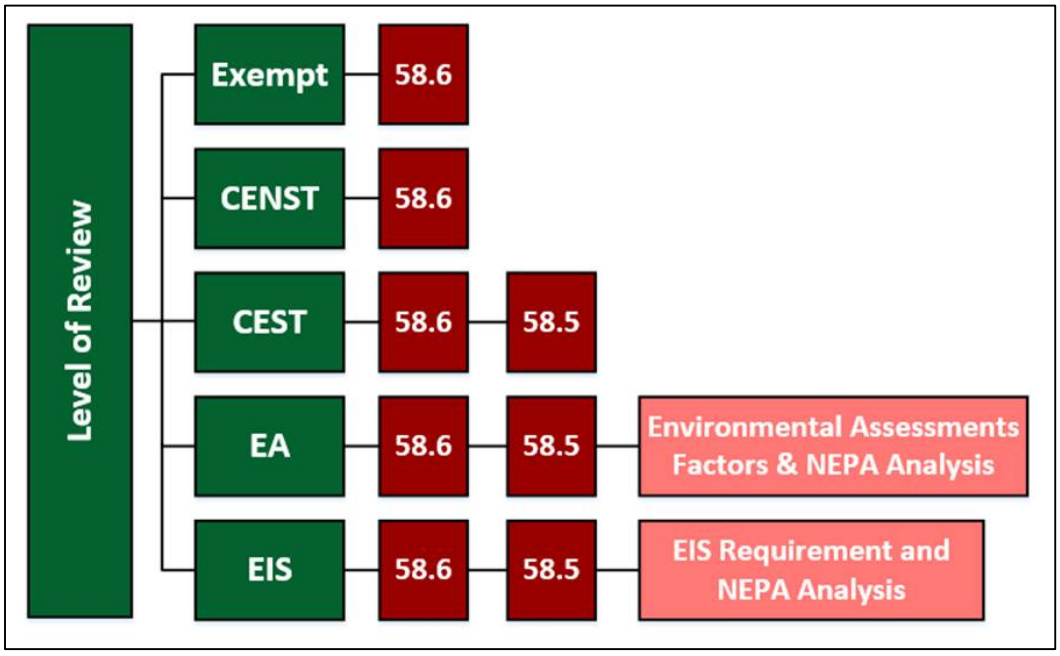
1. Context is the significance of an action relative to its setting. An impact can be of local, regional, and/or global importance. For example, if an action is occurring on a specific site, the significance of the impact would likely be greater on a local level rather than world-wide. Short-term and long-term impacts are relevant when assessing the context of an action.
2. Intensity is the severity of an impact. Whether an impact is adverse or beneficial, significant effects may exist. When evaluating the intensity of an action, the following should be evaluated:
    a. Degree of threat to health and safety;
    b. Impacts to unique characteristics - local resources, historic resources/properties, endangered species, rivers, etc.
    c. Whether a project or actions are highly controversial or have the ability to establish a precedent for future actions with significant effects
    d. Significant cumulative, long-term impacts of actions
    e. Whether actions could violate Federal, State, or local laws specific to protecting the environment

An EIS is normally required for the following circumstances:	
1.	Environmental Assessment concludes in a Finding of Significant Impact
2.	Complexity of the project exceeds the scope of an environmental assessment
3.	Noise levels exceed 75 decibels (unacceptable noise zone)
4.	Noise levels are between 65 and 75 decibels (normally unacceptable noise zone) and the project site is largely undeveloped or will encourage incompatible development
5.	Regulations [58.37(b)(1),(2), & (3)]: a. Project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds b. Project would remove, demolish, convert, or substantially rehab 2,500 or more housing units, or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units c. Project would provide enough additional water and sewer capacity to support 2,500 or more housing units. A project doesn't have to be intended specifically for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.
6.	Extraordinary circumstances exist and elevate the level of review including: a. Actions that are unique or without precedent; b. Actions that are substantially similar to those that normally require an EIS; c. Actions that are likely to alter existing HUD policy or HUD mandates; or d. Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environmental or in which the environment could have a significant impact on users of the facility.

A project causing significant impacts to a small rural community may not pose the same of level of significance to a large urban community. Context and intensity are keys in evaluating the significance of impacts. Refer to Appendix 9-4 for the EIS checklist.

9.3.6 Procedures for Applicable Levels of Environmental Review

Water resource projects must comply with 36 CFR Part 297(Appendix 9-5). Per Executive Order 12898 - Environmental Justice (Appendix 9-6) environmental justice must be addressed for each project, especially as it relates to minority and low income individuals. Reviews may be subject to 24 CFR 58.6, 24 CFR 58.5, environmental assessment factors, and the analysis under the National Environmental Policy Act. See the chart below for a breakdown of which components are required for each type of review.



9.3.6.1 Exempt Projects and/or Activities (§58.34)

The following steps will be followed after the grantee determines that the project/activity falls into one of the EXEMPT categories listed above:

1. Complete the "Determination of Level of Environmental Review" form (Appendix 9-7).
2. Complete the CDBG-DR **"**Certification of Exemption/CENST**"** form (Appendix 9-8) identifying all Exempt activities in your project.
3. File forms in the ERR and submit copies to CDBG-DR Environmental Review Officer. It is acceptable to fax or e-mail clear, signed copies; however, also mail originals to HUD. If your project includes only Exempt activities, no further action is required. However, if there are any changes in the scope of the project, they are subject to environmental review requirements.
4. Upon approval, HUD will send the grantee the "Notice of Acceptance of Exemption" and the grantee may incur costs.

When a project includes Exempt activities as well as those activities requiring a higher level of environmental review, complete the **"**Certification of Exemption/CENST**"** form for all Exempt activities. Then determine the level of review required for the project as a whole and complete the procedures required for that level of review. All Exempt activities included in your project must be documented in order to inform HUD that compliance has been met and project funds are allowable for those Exempt activities.

9.3.6.2 Categorically Excluded Levels of Review – 2 classifications:

Categorically Excluded Not Subject To §58.5 (CEST)

1. Complete the "Determination of Level of Review" form (Appendix 9-7).
2. Complete the CDBG-DR **"**Certification of Exemption/CENST**"** form (Appendix 9-8) identifying all Exempt activities in your project.
3. Submit forms to CDBG-DR Environmental Review Officer for review. It is acceptable to fax or e-mail clear, signed copies; however, mail originals to HUD. Upon receipt and review by HUD, the environmental review process is complete.

Categorically Excluded Subject To§58.5 (CEST)

The following steps will be followed once the grantee determines that the project or activity falls within one or more of the Categorically Excluded Subject To 58.5 categories:

1. Complete the 'Determination of Level of Environmental Review' form (Appendix 9-7).
2. Complete the "Certification of Categorical Exclusion Subject To 58.5" form (Appendix 9-9).
3. Complete and submit the "Section 106 Project Information Form" (Appendix 9-10) and attachments to the SHPO and all Indian tribes identified for the county. SHPO has a minimum 30-day review period upon receipt of information. If the SHPO requests more information be submitted, a second 30-day review period will commence upon receipt of the additional information. In some instances, this review period may be longer. It is wise to plan for a longer review. Tribes have no specific deadline to respond - See 9.10.1 for additional details.
4. Submit project information to appropriate environmental agencies (i.e., US Army Corps of Engineers, US Fish and Wildlife, MO Dept. of Conservation, applicable DNR divisions, FEMA and SEMA, EPA, etc.)
5. If the project lies in a floodplain or wetland then compliance with Executive Order 11988 – Floodplain Management(Appendix 9-11), Executive Order 11990 – Protection of Wetlands(Appendix 9-12), and 24 CFR Part 55 – Floodplain Management and Wetland Protection (Appendix 9-13), including the "HUD 8-Step Decision Making Process" (Appendix 9-14) is required.
6. Once all environmental clearances applicable to the project are received, submit to HUD: Statutory Checklist and all supporting documentation including copies of submittals to and responses from environmental agencies. After HUD's review, publish the "Notice of Intent to Request Release of Funds" (NOI). Refer to Section 9.3.7 for additional details.
7. Complete the Certification Procedures. Refer to Section 9.3.8 for additional details.

9.3.6.3 Environmental Assessment Level of Review (EA) (§58.36)

If a project is not Exempt or Categorically Excluded, it requires completion of an Environmental Assessment (EA) including applicable environmental notices and comment periods described below.

1. Complete the 'Determination of Level of Environmental Review' form (Appendix 9-7).
2. Complete and submit the "Section 106 Project Information Form" (Appendix 9-10) and attachments to the SHPO and all Indian tribes identified for the county. SHPO has a minimum 30-day review period upon receipt of information. If the SHPO requests more information be submitted, a second 30-day review period will commence upon receipt of the additional information. In some instances, this review period may be longer. It is wise to plan for a longer review. Tribes have no specific deadline to respond - See 9.10.1 for additional details.
3. Submit project information to appropriate environmental agencies (i.e., US Army Corps of Engineers, US Fish and Wildlife, MO Dept. of Conservation, applicable DNR divisions, FEMA and SEMA, EPA, etc.)
4. Complete the "Environmental Assessment" (Appendix 9-15) and document a Finding (FONSI or FOSI). Submit to HUD: EA and all supporting documentation including copies of submittals to and responses from environmental agencies. After HUD's review, publish applicable environmental public notices.
5. If the project lies in a floodplain or wetland then compliance with Executive Order 11988 – Floodplain Management(Appendix 9-11), Executive Order 11990 – Protection of Wetlands(Appendix 9-12), and 24 CFR Part 55 – Floodplain Management and Wetland Protection (Appendix 9-13), including the "HUD 8-Step Decision Making Process" (Appendix 9-14) is required.
6. Once all environmental clearances applicable to the project are received, submit to HUD: Environmental Assessment and all supporting documentation including copies of submittals to and responses from environmental agencies. After HUD's review, publish the "Notice of Intent to Request Release of Funds" (NOI). Refer to Section 9.3.7 for additional details.
7. Complete the Certification Procedures. Refer to Section 9.3.8 for additional details.

9.3.7 Required Public Notices

Exempt and Categorically Excluded Not Subject To §58.5 do not require a notice. For Categorically Excluded Subject To §58.5, Environmental Assessment and Environmental Impact Statements, the Notice of Intent to Request for Release of Funds (NOI-RROF) (Appendix 9-16) is required for at least 7 days if published or 10 days if posted. For Environmental Assessment, if the grantee concludes its assessment with a FONSI, then posting/publishing notices informing the public of the FONSI and the "Notice of Intent to Request Release of Funds" (NOI/RROF) from HUD are required for at least 15 days if published or 18 days if posted. These notices are often posted or published as a combined notice which merges the FONSI and the RROF (Appendix 9-17).

These notices must be distributed to local news media, individuals and groups interested in the project and appropriate local, state and federal agencies. Refer to (Appendix 9-18) for an example distribution list. All comments based on the public notice process must be considered and made a part of the ERR. If

these comments require a revision to the FONSI/RROF, then the project or activity must be re-evaluated accordingly. It is acceptable to fax or e-mail clear, signed copies to expedite the comment period; however, also mail originals to HUD CDBG-DR.

Below is guidance for calculating comment periods, followed by templates of HUD's environmental notices.

9.3.7.1 Local Comment Period

Local Comment Periods (Initial comment period on the local government level)**:**

The local comment period begins the day after the date the notice is published. If the last day of the local comment period should fall on Saturday, Sunday or Federal holiday, comments periods shall be extended to the next business day.

1. The grantee may extend the comment period for any reason. For example, if the project is highly complex, controversial, multi-phased, etc., the grantee may wish to extend the comment period in order to provide adequate opportunity for public comment.
2. If comments are received, the grantee must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before submittal of the RROF.
3. The RROF/C may be submitted to HUD no earlier than one day after the local comment period (8th day for Notice of Intent only; 16th day for the Combined Notice). If there is a significant time lapse between the last day of the local comment period and the date the RROF/C is submitted to HUD, the grantee may be required to re-publish the public notice, observe a second local comment period, re-submit the RROF/C, and observe the comment period.

9.3.7.2 HUD Comment Period

HUD's 15-day comment period commences the day after the RROF/C is submitted to HUD. If the last day of the comment period should fall on Saturday, Sunday or Federal holiday, comments shall be extended to the next business day. The day after the end of HUD's comment period (16th day) the Authority to Use Grant Funds form shall be issued pending resolution to any comments received. Review the permissible bases for public objections at 58.75.

9.3.8 Certification Procedures

The grantee must follow the steps below after the Environmental Assessment and the public notice requirements are complete:

1. Complete and submit the Request for Release of Funds and Certification (RROF&C) form (Appendix 9-19).
2. Submit a copy of the published public notice (if published in a newspaper) or a copy of the public notice, plus a list of all places the notices were posted, as well as the dates it was posted (if posted).

3. The City of Joplin must allow for a 15-day public objection period once a copy of the publication(s), affidavit(s) of publication, proof of distribution to environmental agencies, Request for Release of Funds and Certification forms are submitted to HUD.
4. If no objections are received, CDBG-DR will issue a notice of "Authority to Use Grant Funds/Completion of Environmental Review Requirements" (Appendix 9-20) for projects that have been awarded CDBG-DR fund. Review the permissible bases for public objections at 58.75 (Section 9.3.8.1 below).
5. However, the Notice will not be sent until the grantee has satisfied all program requirements. Once this Notice is received, the grantee may begin to request payment of these release funds.

Grantees must conclude the Environmental Assessment by indicating the appropriate finding at the end of the process and document this on the EA checklist.

9.3.8.1 Request for Release of Funds

HUD will not approve the Request for Release of Funds before 15 calendar days have elapsed from the time of receipt of the Request for Release of Funds/Certification form (RROF/C). All objections must be received by HUD within the comment period. HUD will consider objections of a grantee's noncompliance with environmental requirements based on any of the grounds listed below.

These are the only bases upon which CDBG-DR will not approve the Request for Release of Funds/Certification:	
1.	The certification was not in fact executed by the grantee Certifying Officer.
2.	The grantee has failed to make one of the two findings pursuant to §58.40 or to make the written determination as required, either a Finding of Significant Impact (FOSI) or Finding of No Significant Impact (FONSI) to the environment.
3.	The grantee has omitted one or more of the steps for the preparation and completion of an environmental review including publishing applicable notices and observing required comment periods, and completion of an Environmental Assessment (EA).
4.	Another Federal agency has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.
5.	The grantee has omitted one or more of the steps for the preparation and completion of an Environmental Impact Statement (EIS).
6.	The grantee or other participants in the development process have committed funds, incurred costs, or undertaken activities not authorized by 24 CFR Part 58.75 before the release of funds and approval of the environmental certification by HUD.
7.	No opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on a property listed on the National Register of Historic Places or found to be eligible for such listing by the Secretary of the Interior.
8.	With respect to a project where environmental circumstances cause a reevaluation of assessment findings, the use of prior environmental impact statements, or the use of supplemental impact statement, the grantee has failed to include in the Environmental Review Record (ERR) the written decision required, or its decision is not supported by facts specified by the objecting party.

9.4 Preliminary Engineering & Architectural Reports

Projects requiring an Environmental Assessment (EA) or Statutory Checklist (CEST level) may require a preliminary engineering (PER) and/or architectural report (PAR). Engineering reports are generally required for public infrastructure improvement projects such as water, sewer, storm sewer, utilities, roads, bridges, etc. Architectural reports are required for new construction or rehabilitation of buildings. Both types of reports may be required. Appendix 9-21 refers to items commonly included in PERs and PARs, but it is not an all-inclusive list. Reports must be written to address the specific details of and need for a project. The level of effort needed to prepare the report and the depth of analysis within should be proportional to the size and complexity of the proposed project.

9.5 Tiering (24 CFR §58.15)

Tiering is a means to environmentally assess a project in the early stages of development or when site-specific analysis is not currently feasible, resulting in a more focused evaluation once additional information and/or sites are known. Tiering is commonly used for demolition only projects in which some structures proposed for demolition may be known at the time of the Tier I Review with additional structures being considered later in the project. Tiering is also common for Downtown Revitalization and Micro-enterprise Loan projects. It may be beneficial to consult with CDBG-DR if considering a tiered review. Following are guidelines when using the tiered review approached:

9.5.1 Tier I Review: Broad Review

The Tier I Review is completed to obtain environmental approval for the project as a whole with the understanding that additional activities and/or sites will be added later in the project. Establish a plan for the site-specific or subsequent reviews that addresses impacts that may occur and/or an explanation provided of those impacts that vary by site. Provide a geographic designation of the area or region of potential Tier II sites. For large-scale county-wide or multi-county projects, designate specific priority areas within the counties and explain why they are areas of interest.

Address all laws and authorities for known sites and activities via the Environmental Assessment or Statutory Checklist, whichever is applicable to the level of review required, publish the applicable public notice(s) (NOI or Combined Notice and floodplain notices, if applicable) and observe the related comment periods. Public notices must clearly state that a tiered review approach will be used (e.g., “A Tiered Review approach is being used for this project. As additional activities and/or properties become known, they will be assessed for relevant environmental impacts. Any mitigation measures required to alleviate or minimize adverse impacts will be implemented.”)

Submit the Request for Release of Funds and Certification (RROF/C) to CDBG-DR after local comment periods expire. HUD will issue environmental approval conditional upon completion of the Tier II Reviews for specific sites and activities identified later in the project.

9.5.2 Tier II: Site-Specific Review

Using the CDBG-DR Tier II form, complete a review specific to each additional site identified through the course of the project. Submit to HUD for review and comment. If the Tier II Review addresses sites and activities that were established in the Tier I Review and there are no significant and/or unanticipated impacts at each tiered site, then public notices and the RROF/C process are not required and site-specific activities may commence. See Appendix 9-22 for Tier II review form.

9.5.2.1 Industrial Parks

In the case of industrial parks for economic development projects, particularly those that have experienced little to no development, a suggested approach to the environmental review is to identify the entire boundary of the industrial park, even land that has not yet been acquired or designated but is a consideration for inclusion in the future. Conduct the environmental review on the entire area, to the extent possible, in the Tier I Review. Where CDBG-DR funds are proposed later, site-specific Tier II Reviews would be completed for any additional infrastructure and company activities.

9.6 Multi-Year/Phased Projects [24 CFR §58.32(d)]

The following are guidelines for preparing a multi-year or multi-phased environmental review for projects proposed to evolve over several years, as commonly used for large-scale and/or regional water and wastewater projects.

The environmental review should consider the relationship among all components of the multi-year/phased project, regardless of the source of funds, when addressing and evaluating the cumulative, direct, and indirect environmental effects of all proposed activities. Include local and regional trends such as projected growth and any future goals for the area such as new housing development and/or development of commercial areas that could not be accomplished without the CDBG-DR-assisted project. Comprehensive plans help ensure all related project activities are in conformance with plans and typically explain the future goals and trends planned for an area or community.

The ERR shall contain a clear description of all known activities proposed throughout the course of the project, a timetable or schedule of the activities, and how the environmental review is intended to encompass the project over time. Each phase must be explained in as much detail as possible at the time of the initial review. The estimated total project cost shall also be listed.

Monitor the project to ensure it is progressing as planned in order to continue verifying the validity of the environmental review and finding. Update the ERR as necessary to include any changes to the scope, magnitude or location of project activities. Remember to contact environmental agencies for review and comment, as well as Indian tribes, when significant changes are proposed prior to implementation.

9.7 Other Federal/State/Local Agency Environmental Reports [24 CFR §58.14]

Grantees must coordinate efforts with all appropriate local, state and federal agencies that may have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project or activity. Cooperation with other agencies will reduce duplication between NEPA and comparable environmental review requirements were appropriate. Grantees must document the above coordination or consultation and make this part of the ERR. Such documentation is normally in the form of written correspondence. However, appropriate websites are becoming increasingly popular as an acceptable form of consultation.

A single EA may be prepared by one agency and used by other agencies participating in the same or geographically and functionally-related projects. Some information may be proprietary (e.g., ASTM Phase I Environmental Site Assessments, asbestos/lead paint inspections, historic surveys, geotechnical reports, etc.) and permission may be required prior to obtaining or using such information. Grantees must have all supporting data for analyses and findings (for example, maps, surveys, charts, tables, technical opinions) contained in the ERR. Other agencies' environmental reports/assessments must be current and all project activities regardless of funding source must be included. Reports and assessment must be supplemented, as necessary, to include HUD/CDBG-DR environmental compliance requirements.

(Appendix 9-23) shows a letter that can be submitted to environmental agencies requesting their review and input for a project.

When partnering other agencies with CDBG-DR in a project, the environmental report may be used to the greatest extent practicable to assist in achieving compliance with NEPA and HUD requirements, provided the following are met:	
1.	Other agencies' environmental reports/assessments must be current and all project activities regardless of funding source must be included.
2.	Reports and assessment must be supplemented, as necessary, to include HUD/CDBG-DR environmental compliance requirements. To ensure all requirements are met, it is helpful to use the 'CDBG-DR Environmental Impact Checklist' (Appendix 9-4).
3.	Other agency environmental reports/assessments must be reader friendly and easy to follow and understand.
4.	The Certifying Officer must independently evaluate the report to ensure its accuracy and validity and sign off on the document, certifying his/or approval of and accepting responsibility for the information included to meet HUD compliance.

As is customary, a copy of the entire environmental assessment and all supporting documentation must be submitted to HUD for review and comment. Once HUD evaluates the document and if no significant impacts are determined, the required HUD/CDBG-DR public notices would be published and comment periods would be observed.

NOTE: Other agency environmental notices might not meet HUD compliance. The grantee must publish HUD/CDBG-DR Environmental Notices, (Combined Notice, Notice of Intent, Floodplain Notices, etc.) and observe applicable CDBG-DR comment periods.

9.8 Revisiting the ERR

Environmental review records may need to be updated even after the environmental review has been completed. The three major reasons for revisiting a review are to record mitigation measures, reevaluate the project, and add another source of funding.

9.8.1 Conditions for Approval

When reviewing project activities for potentially adverse environmental impacts, it may be determined that certain conditions be met to alleviate or minimize the effects during the course of the project. Once the environmental review process is complete, including the identification of any environmental conditions for approval and plan for implementation, HUD would issue environmental approval (release of funds) with conditions for approval. The conditions might be determined to be necessary during the environmental review process or after it is completed. Some examples of conditions that might be included in design plans or construction contract documents are certain recommendations, mitigation measures, or controls. Evidence that conditions were appropriately implemented would be reviewed during the project and/or at the time of project close out monitoring.

Complying with local zoning, codes and ordinances and consultations with project architects/engineers or authorized environmental agencies are some of the resources that can be used to determine whether conditions for approval are required in the project, as well as how to document that compliance is achieved.

Conditions for approval could include, but are not limited to, any of the following:	
1.	Federal, state, and/or local permitting and controls (i.e., air, water, storm water discharge, solid waste, floodplain management, permits to construct, permits to operate, etc.)
2.	Project design approval from other State agencies including water and wastewater engineering design by DNR, MODOT rights-of-way, railroad rights-of-way, and projects with transportation engineering, etc.
3.	Recommendations from environmental agencies for implementation of construction best management practices
4.	Local laws and ordinances requiring control of construction staging, noise, traffic, fugitive dust, etc.

9.8.2 Re-evaluation of Environmental Assessments and Other Environmental [24 CFR §58.47]

The re-evaluation of an environmental assessment or other environmental findings are required when new activities are added, unexpected conditions arise, or substantial changes are made to the nature,

location, magnitude or extent of an existing or previous project. Environmental Review Record (ERR) must be re-evaluated with respect to any changes in project scope to determine if the original finding [Finding of No Significant Impact (FONSI or Finding of Significant Impact (FOSI)] remains valid, and the FONSI notice has already been published, no additional FONSI notice is required for publication.. The existing CDBG-DR environmental review record must be amended to document new activities/sites and environmental impacts associated with any changes proposed in the project prior to implementation. The grantee is responsible for maintaining copies of ERRs previously completed. HUD records are archived and destroyed after a specified time period – do not rely on HUD to provide copies of prior ERRs. If the original finding is no longer valid, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) must be prepared.

9.8.3 Supplemental Assistance

Additional HUD funding sources are sometimes added to a project after the environmental review has been completed. For these new sources of HUD funding a CENST environmental review can be performed if the original environmental review and the additional sources of funding are the same and the same responsible entity is performing the review. Otherwise, a new CEST environmental review or environmental assessment must be completed.

If new funding sources are added prior to the completion of the environmental review, and all of the funding sources are under the same part, then the new funding can be included in the existing environmental review.

9.8.4 Amending the Original Environmental Review Record (ERR)

An amendment to an existing environmental review record is required prior to finalizing any new project sites and implementing any new activities. All proposed changes must conform to the original project scope. The "Amendment to the ERR" form (Appendix 9-24) must be completed and all supporting documentation attached. Submit to HUD for review and comment. The Certifying Officer and the Preparer must sign and date the final submission. Amendments must be included in the ERR.

9.9 Economic Development Projects

Economic Development projects will follow similar process to CDBG-DR projects. Timing is a common concern with Economic Development (ED) projects, so it is critical that the environmental review be initiated as soon as possible to minimize delays and to prevent actions from occurring that could jeopardize CDBG-DR funding for use in a project. Individual activities must not be parsed out separately in an attempt to avoid environmental review requirements.

All parties in the project (e.g., CDBG-DR applicants, key company personnel, economic developers, RPCs/RCOGs, private grant consultants, etc.) should be informed of HUD's environmental review requirements as soon as possible. A project may involve more than one activity funded by several sources including other federal and state agencies, cities or counties, banks and other lending institutions, private individuals, companies, etc. Communication among all parties is critical to the success of the environmental review. Responsible Entities and companies should be provided the most

current environmental review information available so thoughtful decisions can be made when designing the project in the early stages of development.

Below are key points to consider when proposing CDBG-DR funds for an ED project:	
1.	Environmental review is authorized and regulated by Federal law.
2.	Initiate the environmental review as soon as the project is substantially known. If there is intent to apply for CDBG-DR funds, the environmental review should be considered as early as possible in the project development process.
3.	The environmental review cannot be waived. Once the level of environmental review is determined for a project, all steps in that process are required for completion prior to beginning the project.
4.	All activities proposed by all funding sources must be included in the environmental review. Environmental reviews are not conducted solely on activities proposed with CDBG-DR funds.
5.	No construction, acquisition, rehabilitation, modifications, excavation, and no expenditures for working capital or installation of machinery and equipment proposed in the project must occur prior to the completion of the environmental review applicable to the project. Doing so will jeopardize CDBG-DR funds for use in the project.
6.	Environmental reports, assessments, reviews, etc., completed by other agencies, may not fulfill all CDBG-DR requirements. However, this information may be adopted by the city of Joplin for use in completing the CDBG-DR environmental review.
7.	Ensure there is a detailed description of a company's operations along with their proposed activities.
8.	In the case of industrial parks for economic development projects, particularly those that have experienced little to no development, it is suggested that the entire industrial park be identified and addressed to the extent possible in the Tier I Review. Where CDBG-DR funds are proposed later, site-specific Tier II Reviews would be completed for any additional infrastructure and company activities.

9.10 Consulting with Indian Tribes during the Section 106 Review Process

9.10.1 Overview

Reasonable good faith efforts to identify and contact Indian tribes as part of the Section 106 Process must be made. However, not all projects require consultation with Indian tribes; only projects that have the potential to affect historic properties of religious and cultural significance to tribes require consultation. For assistance in determining when it is required to contact interested Tribes, refer to the "Determination to Consult with Tribes under Section 106" form (Appendix 9-25).

There are no federally-recognized Indian reservations in the State of Missouri. Since the National Historic Preservation Act (NHPA) does not restrict tribal consultation to federally-recognized tribal lands alone, consultation is also required for off tribal lands. Off tribal lands may be the ancestral homelands

of tribes containing historic properties of religious and cultural significance. HUD's Tribal Directory Assessment Tool (TDAT) can be used to identify tribes and obtain contact information.

9.10.2 Consultation Process

Tribes should be provided a draft scope of the project during planning stages that clearly identifies the proposed Area of Potential Effect (APE). Consultation should be respectful of tribal sovereignty in a manner that recognizes and is sensitive to tribal preservation interests. Consultation without thoughtful regard to tribal interests and sensitivity to tribal sovereignty could result in mistrust and miscommunication which would prolong the review. Consultation must be initiated by the Certifying Officer through a letter to the leadership of each tribe. The Certifying Officer has sole responsibility in preparing submittals to tribes and in carrying out consultations, but may consult with other persons.

Tribal Historic Preservation Officers, or THPOs, are the counterpart to the State Historic Preservation Officers (SHPOs). There are currently no THPOs in the State of Missouri. As a result, these tribes designate who will represent them in consultation for proposed undertakings off tribal lands. Tribes without THPOs (off tribal lands) have the same rights as tribes with THPOs, to serve as consulting parties in the Section 106 Process.

9.10.3 Time Frames

The agency official should allow no less than 30 days for response for tribes upon receipt of project information. It is acceptable to submit project information by email (read receipt option encouraged) or regular mail (certified mail encouraged).

If a tribe has not responded within the designated time frame indicated in the initial letter (Appendix 9-23), it may be assumed that the tribe has no comment about the proposed project undertakings. A second letter may be submitted to the tribe allowing at least 14 additional days as a second opportunity to comment and participate. A second attempt should be made particularly for projects that involve ground-disturbing activities on undeveloped land, large-scale complex projects, and/or projects that are controversial in nature.

If any Indian tribe responds with concerns, recommendations and/or mitigation measures, contact the SHPO (Section 106 Staff and/or CDBG-DR for guidance and consult in cooperation with the Indian tribe(s)

9.10.4 Discoveries during Construction

If properties of religious or cultural significance are discovered during construction, excavation in the area of the resources must immediately stop until tribal consultation can occur. The City of Joplin must notify tribes, the Advisory Council on Historic Preservation, and the SHPO within 48 hours of the discovery.

If the discovery includes human remains, they should be respectfully covered over and secured. The City of Joplin should contact law enforcement authorities as well as tribes and other consulting parties. If the human remains are determined to be Indian burials, the guidance in the "Advisory Council on Historic

Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" should be followed.

Chapter 10 – Acquisition and Relocation

10.1 Introduction

In executing CDBG-DR projects, grantees may need to acquire real property to complete specific activities. Prior to acquiring real property or attempting to undertake a relocation project, a determination must be made as to whether or not the requirements of the Uniform Relocation Assistance (URA) and Real Property Acquisition Act of 1970 (as amended Uniform Act in 1986) apply. Requirements for acquisition and relocation activities are described in the Department of Housing and Urban Development's Handbook 1378: Real Estate Acquisition and Relocation Policy and Guidance, located at:

http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm

The URA also intends to establish a uniform policy for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

Whether or not particular requirements of the URA pertain, is dependent upon, among other factors, determining if the proposed acquisition and/or relocation activity(s) is voluntary or involuntary. Under Section 104(d) of the Housing and Community Development Act of 1974, as amended, CDBG-DR grantees have the responsibility to minimize the displacement of households that results from their CDBG-DR funded project. Additionally, HUD has approved waivers that modify the URA and HCDA Section 104(d) requirements. See Subsection 10.2.3.

Before a property can be acquired or donated, the environmental review process must be completed. See Chapter 9- Environmental Review for details.

10.2 Overview

10.2.1 Uniform Act

The Act authorized the U.S. Department of Transportation to be the lead agency to develop the regulations to implement the Uniform Act for 18 Federal Agencies. The Uniform Act regulations govern the acquisition and relocation activities of grantees that use Federal funds in a project that they receive from any of those 18 agencies. The UA regulations may be found in the Code of Federal Regulations (CFR) at 49 CFR Part 24. Therefore, any project that receives federal-assistance, here CDBG-DR funds, the project becomes subject to the processes and procedures of the Uniform Act.

The Uniform Act was passed to achieve the following public policy intent:	
Real Property Acquisition	
1.	Encourage and expedite the acquisition of real property by amicable agreements with property owners
2.	Avoid litigation and relieve congestion in the courts
3.	Assure consistent treatment for property owners in Federal programs
4.	Promote public confidence in Federal land acquisition practices
Relocation Assistance	
1.	Establish a uniform policy for fair and equitable treatment of persons that are displaced as a result of federally-assisted programs
2.	Provide assistance as specified in the applicable provisions of the Uniform Act; or, if applicable, under Section 104(d) of the Housing and Community Development Act
3.	Ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means and help improve the housing conditions of displaced persons living in substandard housing

The 3 main Uniform Act rights for property owners are:	
1.	Right to Just Compensation based on an appraisal if the property is valued at more than $10,000; or, a grantee may use "review of available data" such as recent sales data to support a determination of "market value" if the value of the property is estimated to be $10,000 or less. Under 24.102c ((2) (ii) C, HUD may allow the $10,000 threshold to be exceeded up to $25,000 at the formal request of the grantee.
2.	Right to an Appraisal and a Review Appraisal if the value of the property is greater than $10,000; and, the right to accompany the appraiser during the appraisal of their property.
3.	Right to a formal Notice of their Uniform Act Rights provided by the CDBG-DR applicant or grantee to the property owner(s) to inform them of their rights under the Uniform Act. This is usually accomplished by providing the owner with a preliminary acquisition notice letter and the applicable HUD Uniform Act brochure.

10.2.1.1 When does the Uniform Act Apply?

Property acquisition under the Uniform Act begins with the grantee's formal decision to "acquire" a specific property or properties for a CDBG-DR funded project. As such, the project's acquisition activities become subject to the requirements of Subpart B of the Uniform Act, at 49 CFR 24. Typically, the acquisition and relocation regulations of the Uniform Act are applicable to a project from the date of the grantee receives funding. The procedures of the Act apply when a grantee has decided that ultimately it will use their power of eminent domain to acquire the land or easement should the Uniform Act acquisition process fail.

The Act applies to the following types of project acquisitions:	
1.	Permanent easements and temporary easements necessary for the project
2.	Parcel of land
3.	Long-term leases of 50-years or more
4.	Rights-of-way

10.2.1.2 When does the Uniform Act Not Apply?

The acquisition activities that are not subject to the Uniform Act are:	
1.	Temporary easements exclusively for the benefit of the property owner; that is, it is "not necessary" for or directly related to the CDBG-DR project.
2.	When a grantee or a subgrantee does not intend to use their power of eminent domain or does not have the power of eminent domain. Note: The grantee should explicitly state in the preliminary notice that they will not use or do not have the power of eminent domain.
3.	When the acquisition of property is from a government agency; plus, the acquiring grantee does not have the power of eminent domain.
4.	Acquisitions that were made and recorded prior to the release of CDBG-DR funds.

10.2.2 Applicable Regulations

There are three major regulations that cover relocation and acquisition activities in CDBG-DR programs:	
1.	URA regulations, effective February 2005, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24)
2.	Section 104(d) of the Housing and Community Development Act of 1974 (HCDA) and the implementing regulations at 24 CFR Part 570.496(a)
3.	24 CFR 570.606 of the CDBG-DR Regulations which requires compliance with the regulations listed above

An over-riding principle in implementing a CDBG-DR program and the URA is that the grantee shall assure that it has taken all reasonable steps to minimize displacement.

10.2.3 Waived Requirements

To speed the recovery effort and simplify the administration of disaster recovery projects, HUD has waived requirements of Section 104(d) of the HCDA dealing with one-for-one replacement of lower-income dwelling units demolished or converted in connection with the CDBG-DR assisted development project for housing units damaged by one or more disasters.

HUD has also waived the relocation assistance requirements contained in Section 104(d) of the HCDA to the extent that they differ from the URA (42 USC 4601 et seq.) and HUD has approved waivers that modify the URA requirements. As a result of these waivers, URA does not apply:

1. To an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person;

2. To the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, rental assistance to reduce the tenant costs to 30 percent would not be required;
3. To the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is also provided with referrals to suitable, available rental replacement dwelling where the owner is willing to participate in the TBRA program and the period of authorized assistance is at least 42 months (also waives HUD 60 month calculation-42 month is FEMA calculation);
4. To the extent that they require a grantee to offer a person displaced from a dwelling the option to receive a "moving expense and dislocation allowance: based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displaced dwelling, whether the person owns and move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301." Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.
5. To the extent that it requires optional relocation policies to be established at the grantee or state recipient level. Unlike the regular CDBG-DR program, States may carry out disaster recovery activities directly or through subrecipients.

10.2.4 Timing of URA Coverage

It is important for grantees to know that the timing of an acquisition can trigger URA requirements. Regardless of the source of funds, any acquisition of property made by a state agency, on or after the date of submission of the individual project application for financing of an activity using that property, is subject to the URA.

If an acquisition took place prior to project application submission, it can be subject to the URA if the City of Joplin finds clear evidence that the purchase was done in anticipation of obtaining CDBG-DR funds for an activity. The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project's end result is a federally-assisted project.

The chart below highlights the timing of required notices.

URA Timeframes For Notices				
ACTIVITY:	Approval of Project	Site Selection	Appraisal	Property Closing
ACQUISITION NOTICES SENT:		↑ Notice to Owner or Notice of Intent to Acquire	↑ Notice of Just Compensation	
RELOCATION NOTICES SENT:		↑ General Information Notice to Occupants	↑ Notice of Eligibility for Relocation Benefits	

10.3 Voluntary vs. Involuntary

Grantees must understand the critical difference between voluntary and involuntary sales to validate compliance with all applicable rules. See Appendix 10-1 for general process for each type. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain.

10.3.1 Voluntary Acquisition

Voluntary acquisition occurs when the grantee acquires real property at fair market value from an owner who has submitted a proposal to the community for purchase of their property in response to a public advertisement. The grantee may undertake a voluntary acquisition when a site needed for a CDBG-DR project can be satisfied by more than one property. Property owners can then voluntarily, in response to the advertisement, let the grantee know of the availability of their property and enter into negotiations for the sale of the property. Voluntary acquisition is not subject to the URA.

10.3.1.1 Voluntary Acquisition Policy

The grantee must have or prepare a formal, written policy that authorizes voluntary acquisition. The policy in Appendix 10-2a should be used. The public invitation or solicitation should include a description of what the grantee wants to buy and all of the rest of the conditions of which a seller should be aware, as stated in Appendix 10-2b. The solicitation must also indicate that if a mutually satisfactory agreement cannot be reached, the grantee will not condemn the property for the same purpose.

Relocation eligibility only becomes effective when a written agreement has been negotiated between the grantee and the owner of the property. If the grantee intends to require owner occupants to waive relocation assistance as a condition of voluntary acquisition, this condition and other pertinent information should be included in the public solicitation and the waiver form should be attached to the purchase offer.

10.3.1.2 Voluntary Acquisition Property Valuation

Valuation of parcels of property will need to be established and may be done by the appraisal process or by a knowledgeable person. A knowledgeable person may be a real estate broker, salesperson, banker, or some other type of locally recognized authority on the value of local property. If the appraisal process is used a review appraisal is not mandatory because voluntary acquisition is not subject to the URA.

If a knowledgeable person does a valuation of the property it must be in writing. The valuation does not need to be complicated or detailed. The written opinion ("written valuation") is not required to be based on a selection of chosen "comparables" as is often the case with a formal appraisal. The written valuation should be signed and dated, but does not have to be notarized, and should be made a part of acquisition records.

The knowledgeable person should state at least three things in the written opinion:	
1.	His or her qualifications in one short paragraph
2.	Brief description (but not an official legal description) of the location of the property
3.	Estimate of the value of the property

10.3.1.3 Caution

A word of caution—voluntary acquisition is a useful technique in certain situations. It is not a way to "get around" the URA. HUD can provide advice early in the process which can assist in structuring the grantee's policy and any public solicitations to avoid the very unpleasant "clean up" that is necessary if voluntary.

10.3.1.4 Non-Profit Organizations (NPOs)

The acquisition activities of NPOs are subject to the URA if such activities are for a Federal or federally-assisted program or project. Pertinent considerations in determining whether an acquisition is "for" a program or project include but are not limited to (1) when HUD assistance was requested and (2) whether the acquisition is integrally related to the program or project.

10.3.2 Involuntary Acquisition

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. In accordance with the requirements of the URA, for involuntary transactions, the grantee must follow the steps outlined within Subsection 10.5.1, "Steps for Meeting URA Requirements".

10.4 Acquisition Types Not Applicable to URA

Four types of acquisition are not subject to the requirements of the URA; however, these types of acquisition are still subject to Missouri law and specific CDBG-DR requirements. These four types are within the following table:

Not Subject to URA	
Type	**Example**
Acquisition from Another Public Agency	A municipality acquires a water well site from another agency for a CDBG-DR funded project. This acquisition is not subject to the URA.
Temporary Construction Servitudes/Easements	A grantee is constructing a new sewer system with CDBG-DR funds that will serve 100 homes. It is determined that these homes qualify for service line connections under the CDBG-DR program. The grantee must obtain temporary construction servitude from each homeowner before beginning work on each respective parcel of property. Acquisition of the 100 temporary construction servitudes would not be subject to the URA.
Short Term Leases (less than 15 years)	A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is needed for only five more years at which time a new force main system will be installed which will render the lift station obsolete. The grantee chooses to obtain a ten year lease, not automatically renewable, from an appropriate property owner. Acquisition of the ten year lease would not be subject to the URA.
Voluntary Acquisition	A parcel is needed for a CDBG-DR funded fire station. The fire station could be placed on many different parcels. The grantee adopts a Voluntary Acquisition Policy. The grantee chooses to advertise in the local newspaper for a parcel of property for the fire station. Acquisition of the parcel for the fire station is not subject to the URA.

10.4.1 Procedures Required for Acquisition not Subject to the URA

The grantee is required to validate compliance for all types of acquisition, whether or not subject to the URA.

The minimum requirements for acquisition of property which are not subject to the URA include the following steps:	
1.	Determination of ownership
2.	Valuation of the property
3.	Offer and acceptance
4.	Act of sale, donation or transfer
5.	A statement of settlement costs
6.	Recordation
7.	In general, any documentation of acquisition activity from start to finish

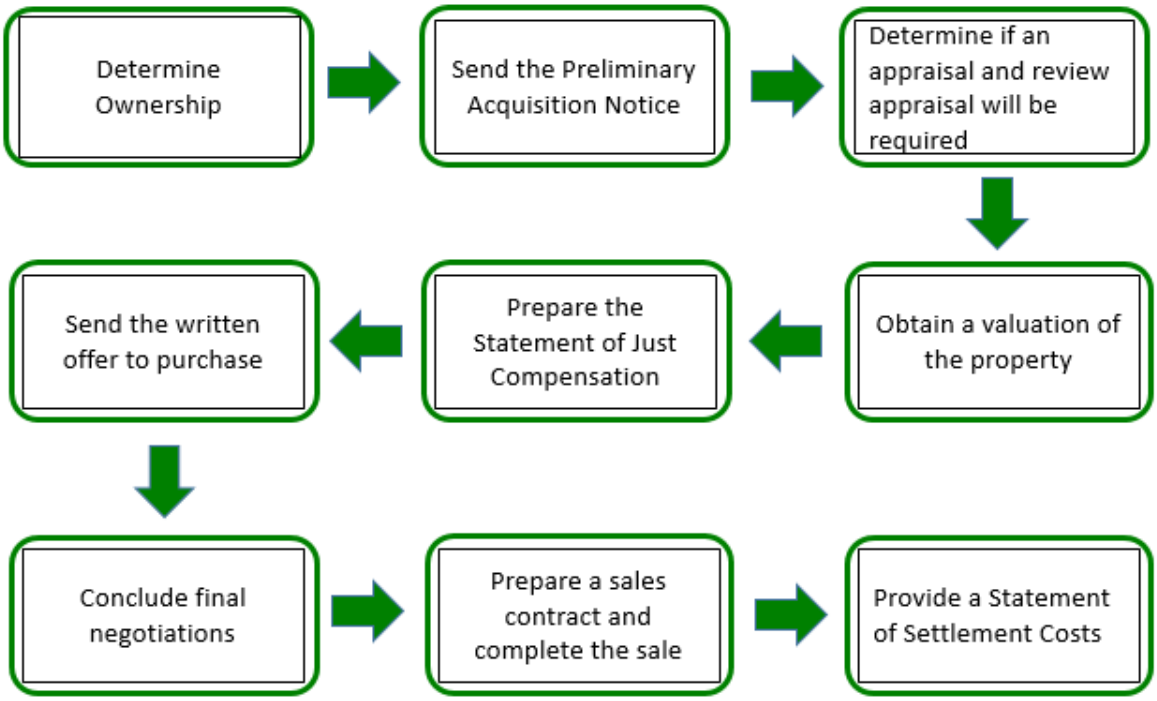
10.5 Acquisition Types Applicable to URA

Specific types of acquisition require additional steps to validate compliance with the URA. All involuntary acquisitions are subject to the URA. Examples of these types of acquisitions are outlined in the following table:

Subject to URA	
Type	**Example**
Acquisition of Specific Parcels of Property by Purchase	1) A certain parcel of property owned by John Doe, a citizen of the community, is needed by the grantee for a fire station. It has been determined by the grantee that this specific parcel is the best location for the fire station. CDBG-DR funding has been awarded for the project. The acquisition of this parcel by the grantee would be subject to the URA. 2) A parcel of property owned by Private Enterprise, Inc., is needed for the installation of a water well involving a CDBG-DR funded project. The life expectancy of the water well is estimated to be as much as 40 years. Private Enterprise, Inc., is willing to enter into a lease with the grantee for the long-term use of the parcel for a water well. Acquisition of a leasehold agreement by the grantee would be subject to the URA. 3) The grantee needs to obtain permanent roadside rights of way for sewer lines that are part of the installation of a new sewer system which is funded, in part, with CDBG-DR funding. Some of the rights of way are expected to be donated while others are expected to be purchased. Acquisition of such rights of way, whether by donation or purchase, would be subject to the URA.
Acquisition By Private Entities	The grantee, on behalf of Widget Incorporated, has been funded for an Economic Development project. A parcel, now privately owned and next to the widget plant, is to be acquired by Widget, Incorporated. HUD will provide funds for infrastructure associated with the expansion but Widget Incorporated will be the entity that acquires the parcel of adjacent land. Such acquisition would be subject to the URA.
Purchases, Donations, Partial Donations	John Doe, a citizen of the community, donates his property to the grantee to build a fire station. The fire station is building constructed using CDBG-DR funds. This donation is subject to URA.
Additional Rights of Way- Street Projects	The grantee must obtain land for Widget Corporation, an entity that does not have Eminent Domain, to widen a road.
Leases which are for a duration of 15 years or longer or less than 15 years but are automatically renewable	A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is the community's permanent solution and will be needed for at least fifteen years. The grantee chooses to obtain a fifteen year lease that is automatically renewable, from an appropriate property owner. Acquisition of the lease is subject to the URA.

10.5.1 Steps for Meeting URA Requirements

Certain steps regarding acquisition of property are necessary to meet CDBG-DR and URA requirements. Refer to Appendix 10-3 for detailed acquisition process steps from the HUD Handbook 1378. The steps for the purchase of property under the URA and the order in which they should occur are outlined in the following diagram:



Notices, letters, and other documents regarding acquisition sent by the grantee must be sent by certified or registered mail, return receipt requested, or hand delivered with receipt documented. The grantee should maintain any documentation from start to finish of the acquisition process. See 10.16.1 for additional details.

If the owner or occupant does not read or understand English, the grantee must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

10.5.1.1 Determine Ownership

The grantee is responsible for determining ownership of property which may be needed for a CDBG-DR project. A title search to determine ownership is often necessary.

10.5.1.2 Send the Preliminary Acquisition Notice

As soon as possible after the grantee decides to acquire property a Preliminary Acquisition Notice must be sent to the owner (Appendix 10-4).

The Preliminary Acquisition Notice:	
1.	Explains that it is not a notice to vacate
2.	Does not establish eligibility for relocation payments or assistance
3.	Must be accompanied by the brochure, When a Public Agency Acquires Your Property
4.	Must be accompanied by the grantee's Acquisition Policy if different but more stringent than the guidance in the brochure

Permanent and Temporary Easements Acquisitions

An easement is the right to use and/or enter onto someone's real property without obtaining possession of that real property. When acquiring an easement, the grantee should provide the CDBG-DR Easement brochure (Appendix 10-5) to the property owner(s) as the grantee's formal notice to inform the owners of their rights under the Uniform Act. The easement brochure must be provided to each property owner whether Rural Development, Department of Natural Resources, or any other agency also has funds in the project.

10.5.1.3 Determine if an Appraisal and Review Appraisal will be Required

Either of two conditions will trigger an appraisal:

1. The value of the property is estimated to be more than $10,000; or
2. The owner of the property wants an appraisal. If an appraisal is required the owner of the property must be invited to accompany the appraiser.

When an appraisal is required, a review appraisal will automatically be required and must be maintained in the grantee's acquisition file for each individual property owner. (See Subsection 10.5.2 below)

10.5.1.4 Obtain a Valuation of the Property

Regardless of whether an appraisal is required it will be necessary to obtain valuation of the property in order to prepare the Statement of Just Compensation as discussed in the following subsection.

If an appraisal and review appraisal are required, then the valuation will be based on the appraisals. However, if the review appraisal is higher in monetary valuation than the first appraisal, it is considered to be the controlling document.

If an appraisal and review appraisal are not required, then a knowledgeable person may provide a written opinion as to the value of the property ("written valuation"). See subsection 10.3.1.2 for details of the written valuation requirements. In all cases the scope of the service and cost of the service to provide a written valuation should be substantially lower than the cost of an appraisal and review appraisal.

10.5.1.5 Prepare the Statement of Just Compensation

After valuation of the property, the Statement of the Basis for the Determination of Just Compensation ("Statement of Just Compensation") must be prepared. The amount determined to be just compensation must be based on the fair market value as determined in the valuation. A sample Statement of Just Compensation is included as Appendix 10-6.

Statement of Just Compensation must contain the following elements:	
1.	Legal description and location of the property
2.	Description of the interest to be acquired (e.g., full ownership, servitude, etc.)
3.	Inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property
4.	The amount of the offer
5.	A statement to the effect that the amount offered is the full amount believed by the grantee to be just compensation, is not less than the fair market of the property, disregards any increase or decrease in the fair market value attributable to project for which the property was acquired, and does not include any consideration or allowance for relocation costs
6.	Definition of fair market value
7.	Explanation of the method used to value the property
8.	In the case of tenant-owned improvements, the amount determined to be just compensation for the improvement and the basis as set forth in Handbook 1378
9.	In the case of the owner retention of improvements, the amount determined to be just compensation for these improvements and the basis as set forth in Handbook 1378
10.	Any purchase option agreement should be attached
11.	If only a part of the parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages and benefits to be remaining portion

10.5.1.6 Send the Written Offer to Purchase

The grantee should send the owner a written Offer to Purchase (Appendix 10-7), along with the written Statement of Just Compensation. The Offer to Purchase must specify the amount of the offer, the date on which negotiation for the sale of the property will begin (initiation of negotiations), and should provide for a reasonable response date from the property owner (14-30 days per 24.102(f)). As with all notices, it should be sent certified or registered mail, return receipt requested. The initiation of negotiations is the trigger date for issuance Notice of Eligibility for Relocation Assistance (Appendix 10-8). For more details on Relocation Procedures and Anti displacement under Section 104(d) of the Act, refer to HUD Handbook 1378.

10.5.1.7 Conclude Final Negotiations

The sale is negotiated on the date specified within the Offer to Purchase. The owner may accept the fair market value and the grantee can enter into an agreement with no further action necessary by the City of Joplin. The owner must be provided an opportunity to discuss the offer, propose a higher value and document that higher value. Every attempt should be made to negotiate an amicable agreement; since it is believed that the cost of condemnation proceeding or resulting delays in project implementation would be greater than the owner's proposed value, if it is reasonable.

There may be occasions when an owner proposes or insists on more than the fair market value. If this occasion arises, the grantee may:

1. Obtain a new valuation;
2. Initiate expropriation proceedings (See Subsection 10.5.5);
3. Decide not to acquire; or
4. Request approval from HUD to proceed with the purchase at the price higher than the fair market value.
5. The use of CDBG-DR funds which are in excess of fair market value and are not approved prior to disbursement by HUD will be disallowed.
6. Documentation of negotiation proceedings should be placed in the project acquisition file.

10.5.1.8 Prepare a Sales Contract and Complete the Sale

Following successful negotiations, an act of sale must be prepared and executed and transfer of documents secured and recorded at the office of the County Recorder of Deeds. The grantee must also reimburse the owner to the extent deemed fair and reasonable for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages, etc.). The grantee is not responsible for any costs required to perfect the owner's title.

10.5.1.9 Provide a Statement of Settlement Costs

The grantee must give the owner a Statement of Settlement costs (See Appendix 10-9) which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. If a title or escrow company is used, their standard form is acceptable. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction.

The grantee must also be able to prove the payment of the purchase price by retaining a copy of the canceled check and the Act of Sale.

10.5.2 Appraisals under the Uniform Act

10.5.2.1 Selecting Appraisers

The local government must select an independent appraiser. Under Missouri's statue RSMO 339.535, State certified real estate appraisers and state licensed appraisers shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the appraisal standards board of the appraisal foundation. The appraiser should have no interest in the property or be related to, or in business with, anyone having any interest in the property to be acquired. The appraiser should be qualified, reputable and professional. Generally, only people who obtain at least 50 percent of their income from doing appraisals and who belong to a professional association that has a code of ethics should be considered. Look for appraisers who have had experience doing the types of appraisals you need. For instance, an appraiser who usually establishes values for vacant, unimproved land may not be appropriate to establish accurate values of houses. State-certified or licensed real estate appraisers eligible to perform appraisals for federally related transactions are now listed on the Internet.

The National Registry of State-Certified or Licensed Appraisers' Website is: http://www.asc.gov

The local government should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values exceed $100,000, it is recommended that two independent appraisals be conducted. A review appraisal must be prepared for each appraisal conducted.

10.5.2.2 Procuring Appraisal Services

The local government must execute a professional services contract with the independent appraiser. See Chapter 6 – Procurement Methods and Contractual Requirements, for the steps required to be followed when procuring these professional services. Appendix 6-12 contains an appraisal contract that has the required elements for use in the CDBG-DR program. This contract may be used or another that is prepared which contains the elements found in Appendix 6-12. The local government should go over the contents of this contract with your appraiser. The contract must require the appraiser to invite the property owner to accompany the appraiser during the property inspection and not to consider race, color, religion or the ethnic characteristics of a neighborhood in estimating the value of residential real property. Compensation for an appraisal shall not be based on the amount of the valuation. The appraiser shall disregard any decrease or increase in fair market value of the real property caused by the project to the extent permitted by applicable state law.

Appendix 10-10, which states the "Uniform Appraisal Standards for Federal Land Acquisition" sets forth standard requirements for appraisals involving federally funded acquisitions. Standard FHA appraisal forms may be used if they cover all the requirements of the appraisal contract covered in Appendix 10-11.

1. **Property Valued at $250,000 or More**
   A contract (fee) appraiser making a "detailed appraisal" on property valued at $250,000 or more must be certified and licensed in accordance with State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), P.L.101-73 and must be currently active on the Missouri State Certified Appraisers General Appraisal list. The review appraiser must also be on the State's General Appraisal list.
2. **Property Valued at Less Than $250,000**
   For property valued below $250,000, the grantee may use a General Appraiser or a Residential Appraiser. This is also applicable to the review appraisal.

10.5.2.3 Owner Invitation

Before the first appraisal is undertaken, the local government or the appraiser on behalf of the local government must formally invite the property owner to accompany the appraiser during inspection of the property (Appendix 10-12). This notice should be in writing and a copy placed in your property acquisition file along with evidence of receipt of the owner. The requirement to invite the property owner to accompany the appraiser is optional for the review appraisal.

10.5.2.4 Servitude Appraisal Forms

Appendix 10-13 is an example of a short form that can be accepted for an appraisal establishing the value of servitude. This form summarizes complete documentation which the appraiser must have on file.

10.5.2.5 The Review Appraisal

Once the appraiser has prepared and submitted the appraisal a review appraisal must be obtained. The review must be done by a qualified licensed Missouri appraiser, independent of the original appraiser. The review appraiser should be required to visit the property. The review appraiser cannot be from the same firm as the original property appraiser and should be required to visit the property independently. The review must be written, signed and dated. It should assess the adequacy of the appraiser's supporting data, the appraisal procedures used, and the soundness of the appraiser's opinion of fair market value.

The review appraisal must also include the reviewer's recommendation of the fair market value of the property. Appendix 10-14, the "Sample Review Appraisal Report", contains the required elements needed in a review appraisal. If the review appraiser disagrees with the fair market value of the original appraisal, the locality can request that the original appraiser modify and document any changes in the original report. When judging between differences in the first appraisal and the review appraisal and if differences are not resolved by the modification of the first appraisal then the review appraisal is to be considered authoritative. The local government will also have the option of obtaining another "first appraisal" and review appraisal.

10.5.2.6 Acquiring Property without an Appraisal

(42 USC 4651 (2); 49 CFR 24.102 (c) (2)): If the local government can determine that the valuation of a parcel of land or servitude is uncomplicated and that fair market value of the property does not exceed $10,000, and if the owner does not desire an appraisal, then an offer can be made to the owner(s) of the property without a formal appraisal but a written valuation of the property by a knowledgeable person will be required. If an appraisal is not required then a review appraisal will not be required.

An option to increase the $10,000 valuation amount to $25,000 may be requested in writing from HUD.

10.5.3 Deciding Not to Acquire

If the grantee decides not to buy or expropriate a property at any time after the Preliminary Acquisition Notice has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the grantee does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This Notice of Intent Not to Acquire (Appendix 10-15) must be sent within 10 days of the decision not to acquire.

10.5.4 Donations

The procedure to be followed for donations is somewhat different. If a property is to be fully donated, the grantee should inform the owner of his rights under the URA and obtain a signed waiver. A sample Property and/or Servitude Acquisition Waiver is included as Appendix 10-16. The owner must be given a

copy of the HUD brochure, "When a Public Agency Acquires Your Property". If property is to be partially donated, the grantee must follow the procedures of the URA as detailed in the steps herein and the property owner must sign a waiver of his/her rights for the donated portion of the property.

An appraisal may not be required if the owner is donating the property and releases the grantee, in writing with a signed waiver of their UA appraisal obligation, Waiver of Just Compensation and Appraisal Rights form(Appendix 10-17). If the right to an appraisal was not waived, the grantee must appraise the property and present the “Waiver of Only Just Compensation Right” form (Appendix 10-18) to the owner. If donations are being made by elderly, very poor, functionally illiterate or non-English speaking persons, the grantee should carefully document the efforts made to insure the owner-occupant understands their rights in order to demonstrate the owner is not persuaded or coerced into donating their property.

10.5.5 Expropriation

After unsuccessful negotiations, a final offer letter should be sent to the property owner (Appendix 10-19). The letter must not be coercive and the response deadline must be reasonable (14-30 days). If the grantee cannot negotiate the sale, expropriation proceedings may be instituted. Inexperienced localities sometimes think expropriation is cheaper than negotiated sales. When the owner is an individual, especially elderly or infirm, courts may be very generous and expropriation can be substantially more expensive than negotiation. The grantee is required to pay the amount established by the court.

10.5.5.1 Initiation of Expropriation Proceedings

Expropriation is a legal action and must be carried out by the grantee’s attorney. The local governing body should authorize the proceedings by resolution. Copies of surveys and maps relating to the subject property in the county are recorded. Expropriation proceedings can then be initiated in the district court of the county in which the property is located. The grantee will have to deposit the amount determined to be "just compensation" in escrow with the court.

The court will establish the compensation to be paid for the property. The judgment of the court will vest full ownership title to the property expropriated in the grantee. When title is vested, the grantee may enter upon the property taken and takeover and dispose of existing improvements.

10.6 General URA Policy Requirements

The URA covers all types of displaced persons, including both residents and businesses. It also covers the temporary relocation of existing occupants. As defined in 570.606, the grantee shall develop, adopt, and make public a statement of local policy indicating the steps that will be taken, consistent with other goals and objectives of the CDBG-DR program, to minimize displacement of persons from their homes and neighborhoods and to mitigate the adverse effects of any such displacement on low and moderate income persons.

The grantee’s Relocation Policy must contain, at a minimum, the provisions within the recommended local Relocation policy/Grievance procedure policy (Appendix 10-20).

Maintain a separate file for each project relocation. Grantees may not propose that a displaced individual or family waive their relocation benefits under 49 CFR 24.207(f). However, a displaced household may waive their acquisition rights. An individual or household may, after being fully informed of their Uniform Act acquisition rights, be allowed to voluntarily donate their property without just compensation and an appraisal under 24.108. Here, the property owner's acquisition waiver must be in writing. In planning relocation activities, grantees should consider and rectify adverse impacts of displacement on minorities, the elderly, large families, and disabled persons where applicable. Also, the Uniform Act provides that the displaced person/family be provided the choice of relocating in their present neighborhood or other neighborhoods, consistent with the grantee's responsibility to affirmatively further fair housing (49 CFR 24.8(o), 24.205(a)(1), and 24.205(c)(2)(ii)(D).

10.7 Displaced Person

As property is acquired that is subject to URA; the grantee is responsible for ensuring that all displaced persons receive proper URA benefits.

10.7.1 URA Definition

Under the URA, the term "displaced person" means:

1. A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:
    a. The date the grantee submits a project application for CDBG-DR funds for the project that is later approved, if the grantee has site control; or,
    b. The date the grantee obtains site control, if that occurs after the project application is submitted and approved.
2. A person who moves permanently from the real property after the initiation of negotiations, unless the person is a tenant who was issued a written notice of the expected displacement prior to occupying the property (otherwise known as a "Notice of Eligibility for Relocation Assistance")
3. A person who moves permanently and was not issued a Notice of Nondisplacement (Appendix 10-21) after the application for CDBG-DR funds is approved.

Even if there was no intent to displace the person, if a Notice of Nondisplacement was not provided, HUD has taken the position that the person's move was a permanent, involuntary move for the project since the person was not given timely information essential to making an informed judgment about moving from the project.

The URA also protects the following “displaced persons”:	
1.	A tenant-occupant of a dwelling who receives a Notice of Non-displacement but is required to move to another unit in the building/complex may be considered displaced, if the tenant moves from the building/complex permanently and either.
2.	The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project.
3.	Other conditions of the move within the project were not reasonable.
4.	A tenant who moves permanently after the building has a change from residential use to a public use as a direct result of a CDBG-DR assisted project (for example, the building now leases units to serve persons who were homeless or require supportive housing). Under the CDBG-DR program, leases of 15 years or more are considered acquisitions for the purposes of the URA.
5.	A nonresidential tenant who receives a Notice of Non-displacement, but moves permanently from the building/complex, if the terms and conditions under which the tenant may remain are not reasonable.

10.7.2 CDBG-DR Definition

The CDBG-DR regulations define a “displaced person” as someone who moves after a specific event occurs:

1. This event establishes a presumption that a project may begin (e.g., date of submission of an application). It is presumed that displacement before this date did not occur "for the project" and is not covered by the URA, unless rebutted by convincing evidence to the contrary.
2. It is also presumed that a permanent, involuntary move on or after that date is a displacement "for the project," unless the grantee or state determines otherwise.

CDBG-DR regulations also define a “displaced person” as:

1. A tenant who moves permanently after the CDBG-DR funded acquisition or rehabilitation, and the increased rent is not affordable (they are “economically displaced”).
2. The CDBG-DR program regulations cover "economic displacement," while the URA is silent on this issue. If rents are increased after the CDBG-DR project is complete, and the new rent exceeds 30% of the tenant’s monthly income, they would be “economically displaced.”

10.7.3 Persons Not Considered a “Displaced Person”

If a comparable dwelling unit is available to the displaced person at a monthly cost (rent plus estimated average monthly utility cost) that does not exceed the total tenant payment per month or a Section 8 certificate or voucher is made available to that person.

10.8 Denial of Relocation Benefits

HUD must concur in a determination to deny a person relocation benefits on this basis:

1. When an owner either evicts a tenant or fails to renew a lease in order to sell a property as “vacant” to a grantee for a HUD-funded project, HUD will generally presume that the tenant was

displaced “for the project.” (Evictions for serious or repeated violations of the lease are permissible, but the owner must follow State tenant-landlord laws governing eviction.)

2. In cases where the tenant was wronged, the grantee is responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the grantee can demonstrate that the move was not attributable to the project.

The Uniform Act allows a relocation applicant the right to appeal a grantee’s denial of eligibility of their relocation assistance claim, or to appeal the grantee’s determination of the amount of relocation assistance. All grantees must incorporate this right of appeal in their project’s adopted guidelines and grievance procedure.

10.9 Demolition

For each unit demolished to complete a project funded by CDBG-DR funds, the grantee must comply with the requirements under Code of Ordinances for the City of Joplin, Article IX. – Demolition of Structures. Prior to demolishing a unit, the grantee must verify that the unit was not able to be rehabilitated in a cost efficient manner and that the unit was vacant.

See Chapter 4 – Records Management for documents that are required to be maintained for projects that involve demolition.

10.9.1 Re-use Plans

A lot or property re-use plan must be submitted by a grantee when a parcel or lot has be acquired and cleared for future redevelopment. The reuse of the cleared lots must meet a HUD national objective and constitute a HUD eligible activity. The reuse requirement applies to both residential and commercial demolition projects.

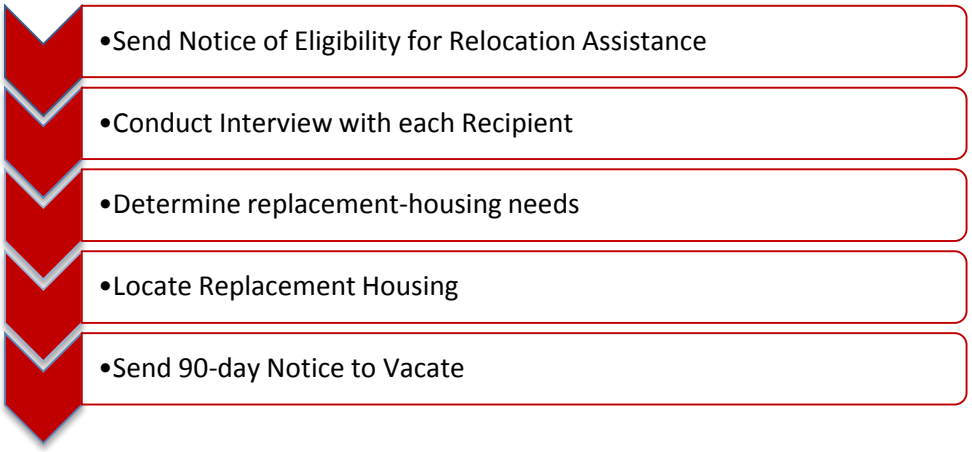
If the acquisition and demolition activities are based on meeting the LMI benefit national objective, the grantee must submit a reuse plan to HUD to document that a LMI benefit will or has occurred. The reuse plan must be submitted and approved by HUD prior to the grantee’s reuse activity on the cleared lot/parcel. For example, the reuse plan stated that the cleared lots will only be used to donate to LMI families to build affordable homes on those cleared lots. After HUD approves the grantee’s reuse plan, then the grantee may begin to implement the activities of that plan. HUD must approve the reuse plan prior to the demolition/clearance activity.

However, for a demolition-only project, a reuse plan is not required. Here, demolition-only projects are not designed for immediate post-project redevelopment, so a reuse plan is not applicable to this type of project.

With a commercial demolition project, a reuse plan is required if the redevelopment activity of that lot will immediately follow the project’s demolition activity. In that reuse plan, the grantee must document that the demolition activity meets one of HUD’s slum and blight criterion and/or a LMI objective. For example, the cleared lot will be used to build a senior center, which meets the LMI limited clientele national objective of benefiting only senior citizens. Also, a senior center is a HUD eligible activity.

10.10 URA Process – Permanent Relocation

Displaced persons who are eligible for relocation benefits should be identified as soon as possible. The following diagram shows the process that must occur for each recipient:



10.10.1 Document HUD National Objective

The LMI national objective requires that recipients expend 70 percent of their CDBG-DR funds to meet the LMI national objective. The Slum & Blight national objective addresses one or more of the conditions which have contributed to the deterioration of an area designated as a slum or blighted area. The focus of activities under this national objective is a change in the physical environment of a deteriorating area. Grantees must maintain records that funded activities meet one of the national objectives. The records depend on the national objective category. The "LMI Benefit-Household National Objective Determination" form (Appendix 2-2) and/or the "Slum and Blight National Objective Determination" form (Appendix 2-3) can be used to document that each project acquisition, relocation, and demolition met a HUD National Objective in each property owner's and tenant's relocation file.

10.10.1.1 Demolition Activities/ Slum & Blight National Objective

There are three categories that can be used to qualify activities under the Slum & Blight National Objective:

1. Prevent or eliminate slums and blight on an area basis
2. Prevent or eliminate slum and blight on a spot basis
3. Be in an urban renewal area

The grantee's official slum and blight determination to document the grantee's demolition national objective may be:

1. Housing Inspector's infeasibility write up
2. Housing Inspector's dangerous building or nuisance ordinance write up.
3. FEMA or a local disaster recovery committee's damage assessment determination, for a buyout project

10.10.1.2 Rehabilitation/Acquisition Activities:

A grantee must make an official determination that a house is not feasible to rehabilitate in order to provide relocation assistance. The grantee's rehab inspector must document that a family's house is not feasible to rehabilitate to health and safety HQS standards; and therefore, it must be demolished.

A house is considered not feasible to rehabilitate if the housing inspector's cost estimate exceeds rehabilitation cost limit of $15,000, or $15 per square foot to rehabilitate the home to health and safety HQS standards. A grantee must maintain the inspector's written cost estimate and the completed feasibility determination form in the household's individual project files to show they have made an official feasibility determination. This determination must be made before issuing any acquisition and relocation notices.

10.10.2 Notice of Eligibility for Relocation Assistance

As part of advisory services, the URA requires that all occupants receive notices informing them of their various rights.

The notices must:

1. Be written in plain, understandable language;
2. Be hand delivered with receipt documented, or sent certified mail, return receipt requested;
3. Contain the name and phone number of a person who may be contacted for answers to questions or other needed help; and,
4. Be made available in appropriate translations if relocates do not speak or read English.

A Notice of Eligibility for Relocation Assistance (Appendix 10-8) must be sent to all owner occupants or tenants in occupancy within 30 days of the written offer to purchase the property if the occupant is going to be relocated. This Notice must be accompanied by a copy of the relocation procedures or the appropriate brochure. A copy of the Grievance Procedure taken from the grantee's local Relocation Policy should be sent with these materials.

10.10.2.1 HUD Relocation Brochures

The applicable HUD relocation brochure (and acquisition brochure, if applicable) must be provided with the preliminary acquisition and relocation notice(s). There are 4 HUD Relocation Brochures:

1. Relocation Assistance to Tenants Displaced From Their Homes
2. Relocation Assistance to Displaced Homeowners
3. Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms
4. Relocation Assistance to Tenants Displaced From Their Homes (Section 104(d)

10.10.3 Recipient Interview and Survey

As soon as these initial notices are sent out, each recipient must be interviewed, in person, to determine his/her need for assistance. A sample interview format, the first section of a Sample Household Case Record (Appendix 10-22), is provided to show the type of information that is required. It is very important that all significant contacts with displacees be logged into the Household Case Record.

A primary purpose of the household survey is to provide the information needed to determine replacement-housing needs. All replacement housing must be "decent, safe and sanitary" and be "functionally similar" to the acquired unit with respect to the number of rooms and living space. See Subsection 10.10.5.

At the same time the interviewers are conducting the family survey, the relocation process should be reviewed with the relocate. Special attention must be given to:	
1.	The assistance to be provided
2.	The benefits available
3.	The fact that replacement housing payments cannot be made unless the household relocates into a standard unit
4.	The importance of keeping in touch
5.	The need to notify the grantee before they move

10.10.4 Locate Replacement Housing

The grantee must inventory available housing resources to meet the replacement housing needs of the displaced person. In doing this, the grantee must be aware of affirmative action criteria that must be met when relocating low-income and minority persons. The regulations require:

1. The community make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available.
2. If there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of the community, low-income or minority relocatees must be given at least one replacement housing choice in those areas before the grantee can give such relocatees a 90-day notice to vacate.
3. The grantee is required to make available provide special counseling and related services (e.g., transportation and escort services) to low-income and minority families. These services may be secured through fair housing or civil rights groups.

The following provides guidance in inventorying available resources:	
1.	Contact landlords, realtors, and movers; read the classified ads; and tour neighborhoods looking for "For Rent" and "For Sale" signs
2.	When a landlord puts a vacancy sign on his/her building, those most likely to learn about the vacancy sign are neighborhood residents interested in moving out of their current quarters
3.	Depending on the timing of displacement, these listings can be inspected; and, if found to be decent, safe and sanitary, placed on a list to be used for referrals
4.	Public housing resources may prove less helpful than anticipated
5.	Displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular)
6.	Also, there have been cases in which the public housing authority has failed to cooperate by refusing to disclose the number and size of vacancies it has, or by refusing to grant preference to displacees

The process of finding comparable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to rehousing resources, and accompany displacees to inspect possible dwellings. Up-to-date information on the availability and prices of comparable sales and rental housing must be provided. All units must be inspected and certified as meeting local housing and occupancy codes before being placed on a referral list.

10.10.5 Comparable Replacement Dwelling Units

The grantee must make referrals to the replacement housing units (comparables) for displaced residential households. It is also recommended that the grantee inspect the comparables to determine if they are in decent, safe and sanitary condition (including ensuring they are lead safe) prior to making referrals.

1. The regulations stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. However, HUD requires the grantee to document the case file if three comparable dwellings are not identified.
2. A comparable replacement dwelling means a dwelling which is: Decent, safe and sanitary;
3. Functionally equivalent to the displacement dwelling: The term functionally equivalent means that it performs the same function, and provides the same utility.
4. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present.
5. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used.
6. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the grantee may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
7. Adequate in size to accommodate the occupants;
8. If the displaced household were over-crowded, the comparable must be large enough to accommodate them;
9. In an area not subject to unreasonable adverse environmental conditions;

10. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
11. On a site that is typical in size for residential development with normal site improvements, including customary landscaping;
12. Currently available to the displaced person on the private market (unless they are displaced from subsidized housing as described below);
13. Within the financial means of the displaced person;
14. A replacement dwelling is considered to be within the person's financial means if a grantee pays the appropriate replacement housing payment.

For a person receiving government housing assistance before displacement, relocation is to be to a dwelling that may reflect similar government housing assistance. (For example, a comparable unit for a tenant who had a Housing Choice Voucher prior to displacement must be offered another unit where the Voucher could be used or is accepted.) When the government housing assistance program has requirements relating to the size of the replacement dwelling the rules for that program apply.

Grantees may use Appendix 10-23: HUD Form 52580 Section 8 Existing Housing Program Inspection Checklist to determine whether a comparable unit is decent, safe and sanitary. Since replacement housing units must meet all local codes and housing standards, an inspector must be familiar with these requirements to validate that displaced persons move to standard housing.

Appendix 10-24: HUD Form 40061 may be used to identify the most representative comparable replacement dwelling units for purposes of computing a replacement housing payment.

The grantee should then provide the potentially displaced household with a Notice of Eligibility for Relocation Assistance (Appendix 10-8). The notice must identify the cost and location of the comparable replacement dwelling(s).

10.10.5.1 Last Resort Housing Measures

When undertaking relocation activities, grantees must be sure to provide a comparable replacement dwelling in a timely manner. If the grantee cannot identify comparable replacement housing, they must seek other means of assisting displacees under the “Last Resort Replacement Housing” provisions of the regulations. This situation can occur in communities where there is a limited supply of available comparable units.

The Last Resort sections of the URA require grantees to take alternate measures to assist displaced persons to be able to afford to move to a decent, safe and sanitary comparable unit. Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of regulatory limits; construction of new units; relocation of a replacement dwelling; removal of barriers to the disabled in a replacement dwelling; and meeting the handicapped adaptability and accessibility design and construction requirements.

10.10.5.2 Early Movers: Relocation Prior to Notice of Eligibility

Some relocatees will not wait for the grantee to locate comparable units. They will search for their own units and relocate themselves. Self-relocations can prove to be a problem. Occupants who relocate themselves risk not receiving the compensation to which they are entitled. This can happen because:

1. The occupants do not know they are entitled to money and fail to apply;
2. The locality is unable to trace them to their new quarters; or,
3. The new quarters are substandard (in which the relocatees still receive moving expenses).

Self-relocatees who do not inform the grantee of their plans forego a pre-move inspection of their new quarters.

An inspection after a move is often ineffective in securing needed repairs. The grantee has little leverage with the landlord at this point. Neither does the occupant unless they initiate code enforcement proceedings. However, actions of this kind can result in a tenant's eviction, either as a result of retaliation by the landlord or because the required repairs are so extensive that they cannot be made until the building is vacated.

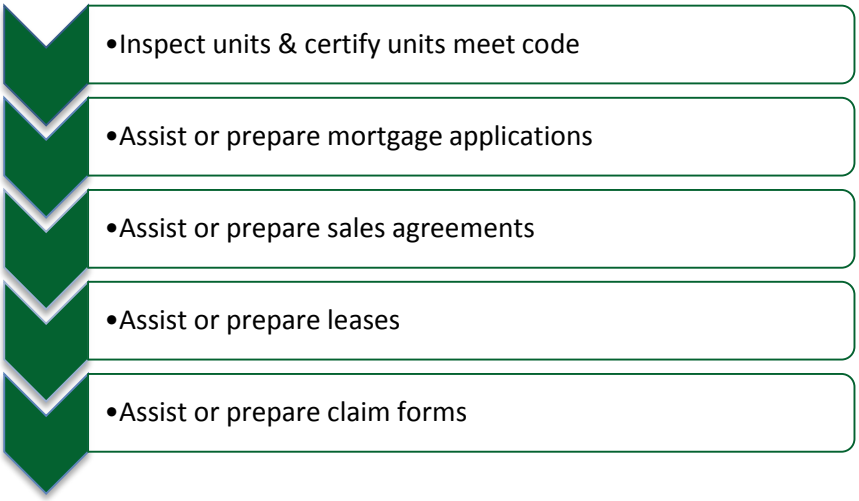
10.10.5.3 Self Relocation into a Substandard Unit

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary, the grantee must try to upgrade the unit to minimum code in order to entitle the relocatee to benefits. This can include providing any assistance for which the unit is eligible with CDBG-DR funds or securing comparable assistance from other sources. In the event that the grantee cannot get the unit brought up to code, the grantee must inform such relocatees that if they remain in or move to another substandard unit, they will not be eligible for replacement housing payments although they will be eligible for moving expenses. The grantee must also inform them that if they move into a standard dwelling within one year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment. A sample of letter to relocate in a substandard unit is included as Appendix 10-25.

10.10.6 90-day Notice to Vacate

When the grantee has made a reasonable choice of comparable replacement housing opportunities available to the relocatee, the grantee may issue the 90-day Notice to Vacate (Appendix 10-26). This notice cannot be issued before the Notice of Displacement has been issued or before a reasonable choice of comparable replacement housing has been made available that meet HUD's decent, safe, and sanitary standards(24.2(a)(8)). The notice must state the date by which the property must be vacated, and indicate that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 30 days after the grantee has obtained title to the property or legal right of possession, whichever comes earlier. This means that if negotiations for acquisition drag on for six months, the occupant cannot be required to move until at least 30 days after the grantee has obtained the title. Thus, timing of the notices is very important.

Prior to, and following, sending the notices, the grantee should continue to work with the relocatees to perform the following tasks, as appropriate:



10.11 Permanent Relocation Benefits under the URA

Residential occupants who will be displaced are entitled to receive a range of benefits under the URA. These include:

1. Advisory services;
2. Offer of a comparable replacement unit;
3. Replacement housing payments; and,
4. Moving expenses.

10.11.1 Advisory Services for Displaced Households

The grantee should work with the household that will be displaced throughout the process to validate the household is provided appropriate and required advisory services.

1. Grantees must provide counseling and appropriate referrals to social service agencies, when appropriate.
2. Grantees must offer or pay for transportation (e.g., taxi, rental car) to inspect housing for all displaced persons
3. When a displacee is a minority, every effort should be made to verify that referrals are made to comparables located outside of areas of minority concentration, if feasible.
4. The grantee must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings" (see the section below for more information on comparable replacement dwellings).

10.11.2 Replacement Housing Payments

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants. This is the purpose of the Replacement Housing Payment (RHP). Relocation payments are not considered "income" for purposes of the IRS or the Social Security Administration.

The revised regulations do not allow a grantee to encourage or ask a displaced person to waive their relocation assistance; however, a fully informed person may choose not to apply for financial benefits and must acknowledge that decision in writing by clearly describing the assistance for which he/she will not apply.

10.11.2.1 180-day Homeowner Eligible for a Replacement Housing Payment

This person must have owned and occupied the displacement dwelling that they are living in at least 180 days prior to the initiation of acquisition negotiations and purchased and occupied a decent, safe, and sanitary comparable replacement house. This payment may exceed $22,500.

The 180-day Replacement Housing Payment is calculated by summing the:

Full price differential between the displacement home and the replacement home:

Replacement dwelling purchase price:	$31,500
Less Displacement dwelling purchase price:	-$12,500
Differential	=$19,000
Plus all increased mortgage interest cost, necessary to retain the same monthly mortgage payment and based on buy-down method (example: mortgage buy-down and other debt service cost), if applicable;	+$2,000
Plus all incidental expenses (e.g., recording fees, prorated taxes, appraisal fees, notary fees, boundary surveys, termite inspection, title insurance, deed preparation, etc.);	+$1,300
Total Housing Replacement Payment	=$22,300

A 180-day claim form must be filed with the grantee by the displaced family before the grantee may process the relocation payment.

An alternative method to the above example is for the displaced family to donate their displacement dwelling and receive the full price of the replacement dwelling. This step avoids the appraisal process costs, but accomplishes the purchase of the same replacement unit. Applied to the above example, the displaced family would donate their displacement unit and receive a $31,500 relocation assistance payment, instead of $22,300, to purchase the same replacement dwelling. The differential is the value of the dwelling purchased by the grantee and the most comparable replacement dwelling.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.11.2.2 90-day Tenants or Homeowners Eligible for a Replacement Housing Payment

This person must have:

1. Occupied the dwelling from which they will be displaced for no less than 90 days immediately prior to the initiation of the acquisition negotiations,
2. Rented or purchased and occupied a decent, safe, and sanitary replacement unit; and
3. Filed their relocation assistance claim form with the grantee within one year of moving to their replacement dwelling.

The 90-day tenant or homeowner is eligible to choose between one of the following two forms of payment: Rental Assistance or Down Payment Assistance.

Rental Assistance Payment (not to exceed $5,250*)

1. Payment may be made in a lump sum or averaged over several months for at least 42 months, per waiver
    a. Payments are calculated by adding the monthly rent and estimated utilities cost of the lesser of either the comparable replacement unit or the actual replacement unit and then subtracting the same monthly costs of the displaced dwelling.
    b. A claim form for a rental assistance payment must be approved by the grantee and maintained in their relocation file

Example:	
Replacement unit monthly rent	$275.00
Replacement unit average monthly utilities	+$100.00
Replacement unit base monthly cost	$375.00
Less displaced dwelling base monthly cost	- $250.00
Average monthly differential	$125.00
X 42 months	x 42
Rental Assistance Payment	$5,250.00

*The displaced dwelling monthly cost may also be calculated using 30% of the displaced person's average monthly gross household income or the amount designated for rent and utilities if the displaced person is receiving a public assistance payment. For determining the amount of the relocation payment, the lesser of these two calculations should be used.

The replacement rental unit selected by the displaced person must be inspected by the grantee and found to meet HUD's decent, safe, and sanitary standards(24.2(a)(8)).

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

Down Payment Assistance Payment (also limited to $5,250)

1. The relocation assistance payment is available to a 90-day tenant who purchases a replacement home.
2. This dwelling must also meet HUD's decent, safe, and sanitary standards.
3. This payment is calculated in the same way as the above rental assistance payment.
4. The displaced family must file a down payment assistance claim form with the grantee.
5. A claim form must be processed before the grantee can make payment.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.11.3 Moving Expenses

"Actual" or "fixed" moving expenses must be documented with a moving expense claim form. A grantee must have a completed, signed claim form in order to make a moving expense payment to a displace family or individual. A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and regulations.

Displaced homeowners and tenants may choose to receive payment for moving and related expenses either by:

1. Commercial mover selected through competitive bids obtained by the grantee paid directly to the mover or reimbursed to the household; OR
2. Reimbursement of actual expenses for a self-move, OR
3. Receipt of a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA).
4. The updated regulations at 49 CFR 24.301(b) clarified that grantees cannot allow residential self-moves based on the lower of two bids. If reimbursement of actual expenses for a self-move is chosen, the grantee must determine that the expenses are reasonable and necessary and include only eligible expenses. See Appendix 10-27 for a list of eligible moving expenses.

If the displaced homeowner/tenant chooses a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), the following apply:

1. A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a fixed moving expense payment as an alternative to a payment for actual reasonable moving and related expenses.
2. This payment is determined according to the applicable schedule published by FHWA.
3. The payment reflects the number of rooms in the displacement dwelling and whether the displaced person owns and must move the furniture. If a room or an outbuilding contains an unusually large amount of personal property (e.g., a crowded basement), the Agency may increase the payment accordingly (i.e., count it as two rooms). HUD’s website will contain the latest version.

4. Occupant of Dwelling with Congregate Sleeping Space (Dormitory). The moving expense for a person displaced from a permanent residence with congregate sleeping space ordinarily occupied by three or more unrelated persons is $100.
5. Homeless Persons. A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a permanent residence and, therefore, is not entitled to a fixed moving expense payment. (Such a person may, however, be eligible for a payment for actual moving expenses.)

In addition to the moving expenses, the updated regulations at 49 CFR 24.401(e)(4) added professional home inspection to the list of eligible incidental expenses for displaced owner occupants only.

The URA also allows grantees to pay for non-refundable security deposits but clarifies that refundable security and utility deposits are ineligible.

10.12 URA Process – Temporary Relocation

Agencies administering housing rehabilitation programs should establish written policies for temporary relocation of both owner-occupants and tenants. These policies should be a part of the Grantee's URA Policy. Any temporary relocation must be for a 12 month period or less (no longer than one year) or the household is considered displaced. Agencies must administer their temporary relocation activities consistently and treat all people in similar circumstances the same. All terms must be "reasonable" or the temporarily-relocated household may become eligible as a "displaced person".

10.12.1 Determining if Temporary Relocation is Required

The Lead Safe Housing Rule, 24 CFR Part 35, contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities.

Under the lead regulations, circumstances when temporary occupant relocation is ***not required*** include:

1. Treatment will not disturb lead-based paint or create lead-contaminated dust; or
2. Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards: or
3. Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided; or
4. Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day, occupants have safe access to sleeping areas, bathrooms, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

If these above conditions are not met, then the temporary relocation of the household ***is required***.

Tip: Elderly residents living in units undergoing lead hazard reduction activities may waive the requirement to relocate but only if the grantee obtains a written and signed waiver (See Appendix 10-28 for a sample Elderly Waiver).

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, grantees are required to verify that units used for temporary relocation are lead safe. This means that temporary housing units were built after 1978 or have undergone a visual assessment and dust wipe sampling to validate no lead hazards are present.

10.12.2 Temporary Relocation of Owner-Occupants in Rehabilitation Projects

An owner-occupant who participates in a CDBG-DR grantee's housing rehabilitation program is considered a voluntary action under the URA, provided that code enforcement was not used to induce an owner-occupant to participate. If a grantee chooses to provide temporary relocation assistance to owner-occupants, the grantee must adopt an Optional Temporary Relocation Assistance Policy.

10.12.2.1 Guidance for Owner-Occupant Temporary Relocation in Rehabilitation Projects

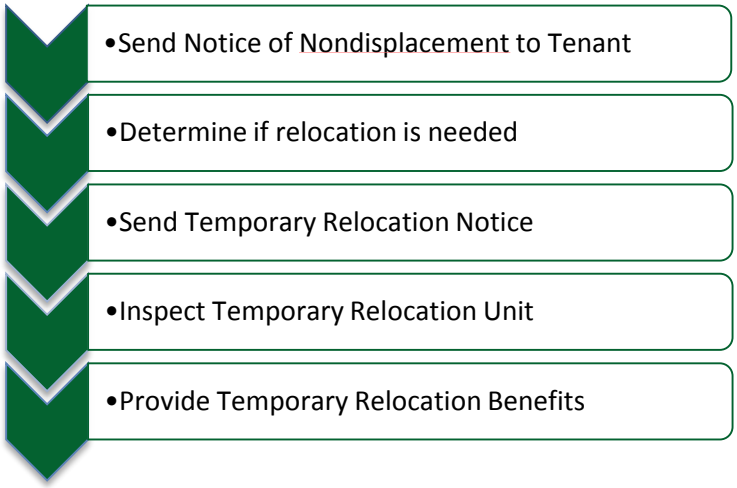
Because the URA does not cover owner-occupants who voluntarily participate in housing rehabilitation programs, the grantee has broad discretion regarding payments to owners during the period of temporary relocation. The grantee must include the conditions for providing temporary relocation payments within their URA Policy. The grantee should notify owner-occupants of their temporary relocation policies as early as possible in the application stage so occupants can make suitable arrangements to move from of their homes with the least amount of disruption.

The owner-occupant may be encouraged to stay with family or friends (noting the requirement to inspect these units to validate the units are decent, safe and sanitary and lead-safe), but if there are circumstances in which there is no suitable alternative, and the owner would be faced with a hardship, the agency may describe what constitutes a "hardship" within their URA Policy and provide a certain level of financial assistance.

A grantee may negotiate with various hotels to establish an attractive rate and pay the negotiated rate on the owner's behalf. The hotel units must be decent, safe and sanitary, and cannot present a lead-paint hazard to occupants. Grantees should inspect the hotel units prior to signing an agreement to use them as a resource. In addition, agencies may provide a stipend for meals if the temporary unit does not have cooking facilities.

10.12.3 Temporary Relocation of Tenants in Rehabilitation Projects

Tenants are protected by the URA during temporary relocation. HUD's Handbook 1378 suggests that at least 30 days advance notice be given to tenants prior to the temporary move. The following illustrates the process for providing URA benefits for temporary relocation:



10.12.3.1 Notices

The tenant must receive a Notice of Non-displacement (Appendix 10-21) which advises a person that they may be or will be temporarily relocated. Once it becomes evident that the tenant will need to be temporarily relocated, the grantee should send a Temporary Relocation Notice to inform households who will be temporarily relocated of their rights and of the conditions of their temporary move. (See Appendix 10-29 for a sample Temporary Relocation Notice.)

The Notice of Non-displacement is very important when dealing with temporary relocation because it helps prevent temporary moves from becoming permanent.

10.12.3.2 Inspection of Temporary Relocation Property

The grantee should be aware that the temporary unit need not be comparable, but it must be suitable for the tenant's needs. It must be inspected, found to be decent, safe, sanitary, and lead safe. Appendix 10-23, HUD Form 52580, Section 8 Existing Housing Program Inspection Checklist may be used to document the inspection. If the tenant claims to be paying rent to a friend or family member, the grantee should document that rent was paid and the housing was suitable.

Temporary Relocation Benefits

The tenant that is temporary relocated must be provided:

1. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at such housing. (They are still responsible for paying their share of the rent for the unit undergoing renovation.)
2. Appropriate advisory services, including reasonable advance written notice of:
    a. The date and approximate duration of the temporary relocation;

b. The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

3. The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex upon completion of the project; and the provisions of reimbursement for all reasonable out-of-pocket expenses.

10.12.4 Guidance on Tenant Temporary Relocation

To assist with the temporary relocation of tenants, the grantee could encourage tenants to identify their own temporary housing (within the established guidelines), but ultimately the agency is responsible for finding suitable shelter until rehabilitation is complete. In addition, the agency could use hotel rooms and provide a meal stipend if there are no cooking facilities. The stipend could vary depending on the age of the children in the household (if any).

The terms and conditions of the temporary move must be reasonable or the tenant may become "displaced". The tenant must be provided adequate advance notice to move out of their unit and back when rehabilitation work is complete. Anything in excess of one year is considered permanent displacement and the steps outlined within Subsection 10.10 must be followed. If the owner of the property is planning to raise the rent or offer a different unit in the property (that exceeds the greater of: their former rent or 30% of gross monthly income), the tenant must be notified of these changes before moving back. If the cost of rehabilitation including lead hazard control work causes the rent to be increased and creates a rent burden ("economic displacement"), the tenant is protected by the URA and could be eligible for relocation assistance.

The term "economic displacement" is used to cover households who lived in the project prior to the federally-funded activity (acquisition or rehabilitation) and whose rent is raised resulting in a move because they can no longer afford to remain. If the rent will be increased and the household can no longer afford to stay, the grantee should treat the household as a displaced person and provide them with all of the assistance outlined under Subsection 10.10 including: notices; a Replacement Housing Payment; offer of a comparable unit; and moving expenses.

10.13 Business Relocation under the URA

Displaced businesses (including non-profit organizations and farm owners) are entitled to advisory services and relocation assistance under the URA. A business is defined for this purpose as a for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved.

To qualify for assistance, the business must meet the definition of a "displaced person" discussed earlier in this Chapter. It must move permanently as a direct result of an assisted project involving acquisition, rehabilitation, or demolition.

The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

10.13.1 Business vs. Residential

URA coverage for moving expenses is similar for residential and non-residential displacees:

1. Qualified businesses may choose between a fixed payment or actual moving expense. The fixed payment is based on a formula, rather than a schedule.
2. A displaced business is eligible to choose a fixed payment if the grantee determine that:
    a. The business either (a) discontinues operations, or (b) it relocates but is likely to incur a substantial loss of its existing patronage; and
    b. The business is not part of a commercial enterprise having more than three other entities which are not being displaced by the grantee, and which are under the same ownership and engaged in the same or similar business activities; and
    c. The business contributed materially to the income of the displaced person; and
    d. The business operation at the displacement property is not solely for the rental of that real property to another property management company.

Actual moving expenses provide for reimbursement of limited reestablishment expenses. There are differences between coverage for residential and non-residential displacees:

1. A 90-day Notice to Move may be issued without a referral to a comparable site.
2. Businesses are entitled to temporary moving expenses; however, displaced businesses are not eligible for 104(d) assistance.
3. Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

10.13.2 Business Relocation Notices and Inspections

The grantee must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice (GIN) tailored to the situation when a Notice of Interest (Notice to Owner) is issued to the property owner. See Appendix 10-30 for a sample GIN to use for businesses (non-residential tenants). The GIN should include:

1. An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance. (See Appendix 10-31 for a sample of this notice.)
2. A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business. See Appendix 10-32 for a copy of this HUD information booklet for businesses.
3. Information that they will receive reasonable relocation advisory services to help locate a replacement site, including help to complete claim forms; Information that they will not be required to move without at least 90 days' advance written notice.
4. A description of the appeal process available to businesses. If a business must be displaced, a tailored Notice of Relocation Eligibility (NOE) must be provided as soon as possible after the initiation of negotiations (see Appendix 10-31 for a sample notice).

This Notice should:

1. Inform the business of the effective date of their eligibility.
2. Describe the assistance available and procedures.
3. If necessary, a 90-day Notice to Move may be sent after the initiation of negotiations.
4. The business must be told as soon as possible that they are required to:
    a. Allow inspections of both the current and replacement sites by the grantee's representatives, under reasonable terms and conditions;
    b. Keep the grantee informed of their plans and schedules;
    c. Notify the grantee of the date and time they plan to move (unless this requirement is waived); and,
    d. Provide the grantee with a list of the property to be moved or sold.

Grantees need to be aware of when a property will be vacated. In many situations, the grantee must be on-site during a business move to provide technical assistance and represent the grantee's interests. In accordance with state law, any property not sold, traded or moved by the business becomes the property of the grantee.

To be certain that the move takes place at a reasonable cost; an inventory containing a detailed itemization of personal property to be moved should be prepared and provided to the grantee.

The grantee should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

10.13.3 Business Relocation Benefits

10.13.3.1 Advisory Services

Non-residential moves are often complex. Grantees must interview business owners to determine their relocation needs and preferences. Displaced businesses are entitled to the following:

1. Information about the upcoming project and the earliest date they will have to vacate the property;
2. A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives;
3. Assistance in following the required procedures to receive payments;
4. Current information on the availability and cost to purchase or rent suitable replacement locations;
5. Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished;
6. Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds; and,
7. Assistance in completing relocation claim forms.

10.13.3.2 Personal Property Left or Replaced

A business is eligible for either a "Direct Loss" or "Substitute Equipment" payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

Payment Type: Can be made: Payment based on the lesser of:

Payment Type:	Can be made:	Payment based on the lesser of:
Direct Loss	For personal property that will not be moved or as a result of discontinuing the business of the nonprofit or farm.	1. The fair market value of the item for continued use at the displacement site, minus the proceeds from the sale, or 2. The estimated cost to move the item, with no allowance for the following: storage, or reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
Substitute Equipment	When an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site.	1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or 2. The estimated cost to move and reinstall the item, but with no allowance for storage.

10.13.3.3 Replacement Location Search Expenses

Certain costs incurred while searching for a replacement location are also eligible:

1. Businesses are entitled to reimbursement up to $2,500. Grantees can pay more than this if they believe it is justified.
2. Costs may include reasonable levels of such items as:
    a. Transportation;
    b. Meals and lodging away from home;
    c. Time spent while searching, based on a reasonable pay salary or earnings; and,
    d. Fees paid to a real estate agent or broker while searching for the site (Note that commissions related to the purchase are not eligible costs).

10.13.3.4 Reimbursement of Actual Moving Expenses

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

1. Only businesses that choose actual moving expenses - versus a fixed payment – are eligible for a reestablishment expense payment.

2. Grantees should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.
3. Businesses may choose to use the services of a professional mover or perform a self-move.

10.13.3.5 Other Moving and Related Expenses

The grantee may pay other moving and related expenses that the grantee determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses' may be limited by the grantee to the amount determined to be least costly without causing the business undue hardship.

There may be instances where a person is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization. Eligible expenses for moving the personal property are listed above.

Businesses may have personal property that is considered low value, high bulk such as stock piled sand, gravel, minerals, metals or other similar items in stock. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the grantee, the allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site; or,
2. The replacement cost of a comparable quantity delivered to the new businesses location.

See Appendix 10-33 for a sample claim form for moving and related expenses for businesses.

10.13.3.6 Reestablishment Expenses

Only certain small businesses are eligible for reestablishment expenses, up to $10,000. "Small businesses" for this purpose are defined as those with at least one, and no more than 500 people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

Eligible items included in the $10,000 maximum figure are:

1. Repairs or improvements to the replacement site, as required by codes, or ordinances;
2. Modifications to the replacement property to accommodate the business;
3. Modifications to structures on the replacement property to make it suitable for conducting the business;
4. Construction and installation of exterior advertising signs;
5. Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting;
6. Other licenses, fees, and permits not otherwise allowed as actual moving expenses;
7. Feasibility surveys, soil testing, market studies;
8. Advertisement of the replacement location;
9. Estimated increased costs of operation for the first two years at the replacement site for such items as:

a. Lease or rental charges;
b. Utility charges;
c. Personal or property taxes; and,
d. Insurance premiums.

10. Other reestablishment expenses as determined by the grantee to be essential to reestablishment.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.13.4 Fixed Payments

A displaced business may select a fixed payment instead of actual moving expenses (which includes reestablishment expenses) if the grantee determines that the displacee meets the following eligibility criteria:

1. The nature of the business cannot solely be the rental of property to others.
2. The business discontinues operations or it will lose a substantial portion of its business due to the move. (The latest regulations state that a business is presumed to meet this test unless the grantee can demonstrate it is not "location sensitive".)
3. The business is not part of an operation with more than three other entities where:
    a. No displacement will occur, and
    b. The ownership is the same as the displaced business, and
    c. The other locations are engaged in similar business activities.
4. The business contributed materially to the income of the displaced business.
5. The term "contributed materially" means that during the two taxable years prior to the taxable year in which the displacement occurred (or the grantee may select a more equitable period) the business or farm operation:
6. Had average gross earnings of at least $5,000; or
7. Had average net earnings of at least $1,000;
8. Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;
9. If the grantee determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

10.13.4.1 Fixed Payment Amount

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation. To calculate the amount of the fixed payment the following steps should be taken:

1. Calculate any compensation obtained from the business that is paid to the owner, the owner's spouse, and dependents before federal, state, and local income taxes for a two year period.

a. The two-year period should be the two tax years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used.
b. If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
c. If a business has been in operation for a longer period of time, and a different two year period of time is more equitable within reason, the fixed payment should be based on that time period.

2. Divide this figure in half.

The minimum payment is $1,000; the maximum payment is $20,000.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

10.13.4.2 Entities Entitled to Fixed Payments

When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

1. Shared equipment and premises, and
2. Substantially identical or inter-related business functions and financial affairs that are co-mingled, and
3. Entities that are identified to the public and their customers as one entity, and
4. The same person or related persons own, control, or manage the entities.
5. Businesses must furnish grantees with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:
    a. Income tax returns;
    b. Certified or audited financial statements;
    c. W-2 forms, and,
    d. Other financial information accepted by the grantee.

10.13.4.3 Required Form

Optional form HUD-40056 "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (Appendix 10-34) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail as described within HUD Form 40056 (Appendix 10-34).

10.14 Owners of Manufactured Homes

Mobile home owners who lease a homepad and who must relocate to a new homepad as the result of acquisition of their pre-disaster homepad are entitled to URA relocation benefits and replacement housing payments, regardless of the homepad owner's voluntary participation. A person who rents both the mobile home and homepad is considered a tenant and would be compensated using assistance outlined for tenants.

Displaced mobile home owners who rent their homepads are entitled to assistance detailed below in 10.14.1 and either 10.14.2 or 10.14.3. However, in only rare cases may the combination of the two types of URA assistance exceed $22,500.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.14.1 Homepad Rental Assistance

The displaced mobile home owner and homepad renter is entitled to compensation for rental and utility increases resulting from renting a comparable homepad and moving expenses as detailed in the section for tenants. Compensation for homepad rent increase is also 42 times the amount which is obtained by subtracting the "base monthly rent" for the displacement homepad from the monthly rent and average monthly cost of utilities for a comparable replacement homepad. The rental increase payment may not exceed a total of $5,250.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.14.2 Replacement Housing Assistance

For URA purposes the displaced mobile home owner is considered to be involuntarily displaced from his or her residence due to the homepad owner (landlord) selling that property. Therefore, if the mobile home is purchased, the displaced mobile home owner is also entitled to replacement housing assistance to compensate for his or her need to find replacement housing.

Compensation for mobile home replacement is equivalent to the amount which is obtained by subtracting the value of the displacement mobile home from the cost of a new replacement mobile home. In acquisition projects where the mobile homes are intact and are being relocated to new homepads, there is no difference. The replacement housing payment may not exceed a total of $22,500.

If the owner is also being compensated for homepad rental increase, then the combination of rental and relocation assistance may not exceed a total of $22,500.

Note: Refer to Subsection 10.4.2 Waived Requirements and Appendices 1-1 to 1-3 to determine if a waiver applies.

10.14.3 Costs to Move a Manufactured Home

If the manufactured homeowner wishes to move their existing home to a new site, rather than sell it, those moving costs are eligible. The reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, anchoring the unit, and utility hook-up charges are included.

10.15 Completion of Relocation

The grantee should make every effort to expedite relocation since claims may be filed up to 18 months following the completion of the move. This means that claims can be filed months, perhaps years, after the conclusion of the program.

Therefore, if the grantee has unsettled relocation cases at the time of project close-out; the grantee should show maximum payments for each potential claimant as unpaid costs on the Close-out Form.

Otherwise, HUD may cancel the funds remaining in the grantee's Letter of Credit and the grantee would be financially liable for relocation costs. For more detail on close-out procedures, refer to the Chapter 13 – Close-out. Claim forms for relocation payments –included in the Appendices. They include: Claim for Moving Costs, Appendix 10-35; Claim for Replacement Housing Payment for Homeowners, Appendix 10-36; and Claim for Rental Assistance or Down payment Assistance, Appendix 10-37. Instructions for completing each claim form are provided.

10.15.1 Timely Payment

The grantee is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following the submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the grantee must document that the payment was used for the purpose intended. The grantee should have the recipient sign a letter acknowledging receipt of relocation payments (Appendix 10-38).

10.15.2 Use of Relocation Payments

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment must be made in a lump sum unless the recipient specifically requests otherwise. The grantee has no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

10.16 Record Keeping

10.16.1 Acquisition

It is important that the grantee keep records sufficient to document compliance with the provisions of the Uniform Act. Every acquisition document, correspondence, or form required by the UA

acquisition process must be found in each individual property owner's project file for HUD's project monitoring review. Always maintain a separate file for each property owner. Acquisition files should be maintained for a 5-years period after the official close-out of the project by HUD.

For each project, the grantee's files shall include a list identifying all parcels, easements or rights of way to be acquired for the project. An Acquisition Composite List (Appendix 10-10) must be completed on CDBG-DR projects having any acquisition.

HUD's Acquisition and Relocation Handbook 1378, 6-3 Recordkeeping Requirements specifies the following documents that a Grantee must maintain in each property owner's acquisition file:

Each Property Owner's Acquisition File must have:

1. Identify the property owner(s) of record- with a deed from the Recorder of Deed's Office.
2. Documentation that the property owner was informed of their Uniform Act rights: copy of preliminary acquisition notice, inclusive of HUD Acquisition Brochure; or, copy of CDBG-DR/RD Easement brochure.
3. Copy of appraisal and review appraisal reports, and evidence that property owner was invited to accompany appraiser during the appraisal inspection of their property.
4. Copy of the Offer Letter and the Statement for the Basis for the Offer of Just Compensation; or, a determination of value if $10,000 or less, with supporting data.
5. Copy of real estate contract and/or documents conveying the property; and the recorded deed or easement.
6. Copy of closing statement listing all incidental expenses paid on HUD-1 form.
7. Evidence that the property owner received payment of just compensation, i.e., copy of cancelled check.
8. Copy of any appeal and the agency's response, or condemnation report, if applicable.

For additional acquisition record keeping requirements, refer to Chapter 4 – Records Management.

10.16.2 Relocation

The grantee must maintain a separate case file on each displaced household for five years after final project closeout or after the relocation payments, whichever is later.

In addition, the following information at a minimum shall be maintained for at least three years after each owner of the property and each person displaced from the property have received the final payment to which they are entitled.

For each project, the grantee's files shall include a list or lists identifying the name and address of:

1. All persons occupying the real property at the beginning of the project. Generally, this is the date of the initial submission of the application for assistance by the property owner to the grantee or by the grantee to HUD; however, if site control is not obtained until after submission of the application, the date of site control is usually considered the beginning of the project;

2. All persons moving into the property on or after the date on which the project begins but before completion of the project; and,
3. All persons occupying the property upon completion of the project. For additional relocation record keeping requirements, refer to Chapter 4 – Records Management.

For each project, the grantee's files shall include the following along with the project contact list:

1. Description of Relocation Advisory **Services:** A general description of the grantee's relocation advisory services for which the person may be eligible, including assistance to relocate to a comparable replacement dwelling, basic eligibility requirements, and procedures for obtaining payments. The grantee's advisory services may be described in the form of a booklet or flyer.
2. Offer 3 Comparable DSS Replacement Dwellings: File must contain an offer of 3 replacement properties with addresses, rent/utility costs or sale prices of the dwellings, and documentation to show they are currently available for sale or rent. Designate which property is the "most comparable replacement dwelling."
3. Decent, Safe, and Sanitary Inspection: Have copies of the inspection reports of the offered comparable replacement dwellings. The reports must show the date of inspection and that each dwelling met HUD's DSS Housing Quality Standards (HQS).

Chapter 11 – Property Management

11.1 Introduction

If Community Development Block Grant, Disaster Recovery (CDBG-DR) funds are used to acquire real or personal property, the grantee is responsible for ensuring that the property continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to take care of it, and that if the property is sold, HUD is reimbursed for the CDBG-DR share of the property's value. Grantees must tag and log all property valued greater than $1,000 and update inventory records annually (see Appendix 11-1 for an example of a property control tracking log).

This fairly straightforward proposition about the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector grantee. (The rules are generally more explicit for governmental grantees). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights).

This Section outlines the rules for grantees regarding the ownership, management, and disposition of real and personal property.

Despite the different treatments, there are several key themes applicable to most property that should be emphasized at the outset:	
1.	Property can only be acquired with CDBG-DR funds for a specific purpose that must be approved by the grantee and should be made a part of the CEA.
2.	The use of that property for the approved purpose must continue; in the case of personal property, generally for as long as it is needed, if the grantee owns it and the property is needed for the CDBG-DR activity, and in the case of real property (acquired or improved with CDBG-DR funds in excess of $25,000), generally for at least 5 years following the expiration of the Grantee Agreement.
3.	If the property is owned, accurate records must be maintained for it (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, and other inventory types of data).
4.	The use of the property must be controlled (in accordance with its intended purpose) and good care must be taken to protect it (that is, take adequate steps to prevent its damage, theft, or loss).
5.	If the property is no longer needed, the property must be disposed of according to specific rules (such as paying back HUD, accounting for program income, etc.).

11.1.1 Regulations

The federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for accurate records, the

conduct of regular inventories, adequate maintenance and control, and proper sales procedures. Grantees must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

The following chart summarizes the applicability of specific sections of the regulations to particular categories of property for governmental grantees/subrecipients and private subrecipients and shows the relevant regulations affecting its ownership, use, and disposition.

Rules for Property Management and Disposition:

Property Management and Disposition Regulations 24 CFR 570.503 – all subrecipients (subs) 24 CFR 85.32-85.34, govt. subs 24 CFR 85.32-85.34 non-profit	Real Property (Acquired with CDBD-DR funds)	Personal Property Acquired with CDBG-DR Funds		
		Tangible		Intangible
		Non-Expendable	Expendable	
Typical Example	**Land/Buildings**	**Cars/Equipment**	**Office Supplies**	**Copyrights**
Ownership	See property acquisition. 24 CFR 570.201(a), 201(c), 202, 203(a)	Vested in subs 24 CFR 85.32 24 CFR 84.34	Vested in subs 24 CFR 85.33 24 CFR 84.35	Nonexclusive license to govt. 24 CFR 85.34 24 CFR 84.36
Use & Management	24 CFR 570.505 governs grantees; subrecipients follow 503(b)(7)*	24 CFR 84.32 24 CFR 83.34	24 CFR 85.33 24 CFR 84.35	
Disposition	24 CFR 570.503(b)(7)	Generally, fair-market value or proceeds returned to grantee, with grantee approval, proceeds retained as program income 24 CFR 85.32 and 24 CFR 570.502(a)(8) 24 CFR 84.34 as modified by 570.502(5)(3)(vi)	Residual inventories 24 CFR 85.33 24 CFR 84.35	Nonexclusive license to use remains with govt.

** 570.501(b) requires that units of general local government participating with, or as part of, an urban county, or as part of a metropolitan city, follow the same requirements as are applicable to grantees/subrecipients, except that the 5-year period identified under 570.503(b)(7)(i) begins with the date that the unit of general local government is no longer considered by HUD to be a part of the urban county or metropolitan city, instead of the date that the subrecipient agreement expires.*

11.2 Real Property

The use of real property for programs under the City's jurisdiction is governed by 24 CFR 570.505. For real property acquired or improved in whole or in part with CDBG-DR funds in excess of $25,000, the recipient cannot change the use or planned use of the property (including the beneficiaries of such use) without first providing affected citizens notice and opportunity to comment, and determining that either:

1. The contemplated new use meets one of the National Objectives and is not a building for the general conduct of government.
2. The contemplated new use is deemed appropriate (after consultation with affected citizens) but will not meet a National Objective. In this latter case, the recipient must reimburse the CDBG-DR program in the amount of the current fair market value of the property, less the value attributable to the non- CDBG-DR portion of the acquisition or improvements.

The grantees' CEA must be explicit about the use of any real property under the grantees' control that was acquired or improved in whole or in part with CDBG-DR funds in excess of $25,000. For such instances, 24 CFR 570.503(b) (7) mandates that such real property either:

1. Must be used by the grantee to continue to meet one of the CDBG-DR program's National Objectives for at least 5 years after the expiration of the CEA (or a longer time as specified by the grantee in the CEA); or
2. If a National Objective is not met during this time period, the grantee must reimburse HUD for the current fair market value, less any portion of the value attributable to non-CDBG-DR funds.

11.3 Personal Property – Equipment

Equipment purchased with CDBG-DR funds or other forms of federal assistance must be used by the grantee in the program or project for which it was acquired, and as long as needed, whether or not the program or project continues to be supported by federal funds.

Title to equipment acquired with CDBG-DR funds by the grantee is vested in the grantee, subject to the conditions below:	
1.	The grantee must make the acquired equipment available for use on other projects or programs currently or previously supported by the federal government provided that such use will not interfere with the work on the project or program for which the equipment was originally acquired.
2.	A grantee is prohibited from using CDBG-DR acquired equipment to provide services for a fee to compete unfairly with private companies that provide equivalent services unless specifically authorized by federal statute.
3.	With the approval of HUD, equipment acquired with CDBG-DR funds may be used as a trade-in on replacement property.

11.4 Personal Property – Supplies

24 CFR 85.33 applies as follows: Upon termination of the CEA or award from HUD, the grantee must compensate HUD for the share of such supplies which were acquired with CDBG-DR funds if the following conditions are met:

1. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value, and
2. If such supplies are not needed for any other federally sponsored programs or projects.

11.5 Personal Property – Copyrights

For governmental grantees and subrecipients (24 CFR 85.34) and for non-profit subrecipients (84.36): The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal government purposes:

1. The copyright to any work developed with CDBG-DR funds; and,
2. Any rights of copyright which a grantee or a contractor purchases with CDBG-DR support.

11.6 Management Requirements

For equipment (including replacement equipment) acquired in whole or in part with CDBG-DR funds, the grantee must have procedures and control systems in place to:

1. Keep adequate equipment records, which must include information on:
    a. Property description;
    b. Identification;
    c. Funding source (grant number);
    d. Title holder;
    e. Acquisition date and cost;
    f. Federal share of cost;
    g. Location, use, and condition.
    h. Unit acquisition cost; and,
    i. Disposition data.
2. Conduct a physical inventory of the property at least once per year, with a reconciliation of the inventory results with the equipment records.
3. Validate adequate safeguards for preventing loss, damage, or theft of property.
4. Maintain the equipment in good condition**.**

To adequately manage all property, the grantee must maintain all property details on the Property Control Tracking log (See Appendix 11-1 for Property Control Tracking form and a sample).

11.6.1 Personal Property

Additional management requirements for personal property may be required and vary based on if the property is expendable or not.

Non-expendable personal property must be identified by a tag permanently affixed to it which provides:	
1.	The CDBG-DR grant information and year
2.	ID number

Expendable personal property, such as that used in housing rehabilitation projects, there must be:	
1.	Adequate records of the receipt of goods, issuance of goods, and balance of items on hand
2.	Documentation of the person who authorized the issuance of goods
3.	Documentation of the location to which the goods were delivered
4.	Documentation of the individual who received the goods

11.7 Disposition

When original or replacement equipment acquired with CDBG-DR funds is no longer needed for the original project or program or for other activities currently or previously assisted with federal funds, it must be transferred to HUD for the CDBG-DR program or can be retained by the grantee after compensation to HUD (per 24 CFR 570.502(b)(3)(vi)(B)). If, as part of close out, the grantee is directed to compensate Federal government for its share of the property, then the method used to determine fair market value should be noted.

The following rules of disposition will apply to governmental grantees.	
1.	Equipment with a current per-unit fair market value of less than $5,000 may be retained, sold, or otherwise disposed of by the grantee after notice to HUD, subject to the conditions in 3 below.
2.	Equipment with a current per-unit fair market value of $5,000 or more may, after notice to HUD, be retained or sold by the grantee with HUD having the right to compensation in an amount equal to multiplying the current fair market value or the proceeds from sale by the federal share (percentage) in the original acquisition price of the equipment.
3.	HUD may reserve the right to transfer title of the equipment to a federal agency or a third party to be used in other activities currently or previously supported by the agency(24 CFR 85.32(g)).
4.	Additionally, per 24 CFR 570.502(a) (8), in all cases when equipment purchased with CDBG funds is sold; the net proceeds are considered program income. (24 CFR 570.502(b) (3) (vi) (A)) Also see Section 5 – Financial Management for additional guidance on program income.

Chapter 12 – Monitoring

12.1 Introduction

Recipients of CDBG-DR funds are required by the Department of Housing and Urban Development (HUD) to monitor and evaluate programs for performance and compliance. Developing the monitoring program and validating statutory and/or regulatory requirements is the responsibility of the City, and the City's Direct Subrecipients. The City and Direct Subrecipients are responsible for carrying out their programs to meet these compliance requirements, including monitoring their project administrators, contractors and subcontractors. CDBG regulation (24 CFR 570.501(b)) states that:

"*[The Subrecipient] is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, Subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under Subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise…"* [1]

The tools provided and methodologies described within this Chapter provide guidance for the City and Direct Subrecipients in developing their own monitoring plan and tools. The Monitoring Plan closely follows the concepts described in the chapter. When the Subrecipient understands the concepts of this Chapter, it is encouraged to develop a Monitoring Plan to review compliance with requirements. A sample monitoring plan is included as Appendix 12-1. The Appendices included as 12-2 through 12-6 may be tailored for monitoring any State or Local Subrecipient implemented programs and projects.

12.2 Monitoring Roles and Responsibilities

Monitoring is the responsibility of the City and its Subrecpients. The City, Direct Subrecipients must monitor to verify compliance with executed agreements, applicable state and federal laws and regulations, and project/program performance criteria. See Table 1 below, for a description of the monitoring responsibilities.

Monitor	Monitored Entity
The City	• Program/Project administrators
	• City's Programs/Projects
Subrecipient	• Direct Subrecipient's Programs/Projects
	• Program/Project administrators, contractors, and subcontractors

1 **Managing CDBG** A Guidebook for Grantees on Subrecipient Oversight, Chapter 5-2

12.3 The Monitoring Strategy

The City staff may perform a desk review or onsite monitoring of the Direct Subrecipient at any time. A review may be a comprehensive program evaluation or it may be oriented toward assessing performance in specific areas. In either case, the Direct Subrecipient is required to cooperate with the City staff and provide them with all records and files pertaining to the program, as well as any other information requested. The City will use Checklists similar to Appendices 12-3 and 12-4 to monitor the Direct Subrecipients and their projects.

An overview of the monitoring strategy is illustrated in the following diagram:



Generally, the City will notify the Direct Subrecipient thirty days prior to beginning a review. An entrance conference will kick off the monitoring review. Upon completion of the review, the City staff will sit down to discuss their findings in an exit conference. At this time, it is recommended that the chief elected official be present for this conference.

To the extent possible, the City staff will work with the Direct Subrecipient on site to correct any issues. Any issues that cannot be corrected will be discussed in a monitoring report letter. The letter will identify areas of merit, any concerns or deficiencies, and findings or corrective actions. A concern is a deficiency in program performance not based on a statutory, regulatory or other program requirement. Sanctions are not necessarily issued for concerns. A Finding is a violation of a statutory, regulatory or program requirement for which sanctions or other corrective actions are issued.

12.3.1 Notice of Deficiency (Finding)

In the event findings are identified during City's monitoring activities, corrective procedures will be executed. The first step in the corrective procedure is for the Office of Community Planning and Development to send a written Notice of Finding(s) to the grant recipient via a monitoring report. The report will describe the deficiency specifically and objectively, describe actions the grant recipient must take in order to remedy the finding, and a deadline for doing so, and describe the consequences for failure to remedy the finding (i.e. administrative sanctions or legal action).

12.3.2 Sanctions

If a finding remains uncorrected, one or more sanctions will be imposed. The choice of the sanction(s) to be issued is governed by the objectives identified in the Introduction, the type of deficiency, and the seriousness of the deficiency. Possible sanctions include, but are not limited to:

1. Required administrative change: For example, if the consultant administering the program is doing a poor job, but the grant recipient has the continuing capacity to administer the grant, the

grant recipient may be required to discharge the consultant and engage someone else to administer the program.

2. Suspension of grant payments.
3. Reduction of grant amount.
4. Termination of grant.
5. Reimbursement of costs disallowed by the Office of Community Development.
6. Disqualification from consideration for other CDBG-DR funds.

If the grant recipient does not address the cited problem after having been sanctioned, additional sanctions may be imposed, or the matter may be referred for legal action.

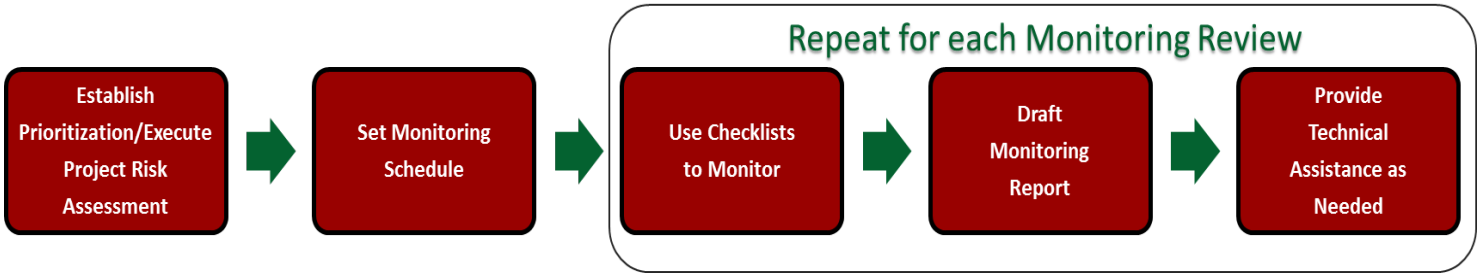
12.3.3 Monitoring Report

The monitoring report letter becomes a part of the record at the City. Accordingly, it is to the Direct Subrecipient's advantage to minimize the number and scope of negative findings.

The City generally allows the Direct Subrecipient thirty to forty-five days to respond to any findings noted in the letter. The Subrecipient must describe the steps taken to resolve the findings (corrective actions) or provide new information or clarification that was not reviewed during the monitoring visit. The corrective actions should generally follow the recommendations made by the City staff. The City staff will inform the Direct Subrecipient if the response is sufficient to permit them to clear the findings or resolve any concerns or deficiencies. All findings from monitoring visits must be cleared prior to the program or project close-out.

12.4 Recommended Direct Subrecipient Monitoring Methodology

Monitoring priority and frequency should be risk-based. The Direct Subrecipient's monitoring plan should include the use of desk reviews and onsite monitoring. Using the tools described in Subsection 6, the Monitor should sample program, project, contractor, or Subrecipient documentation to draw conclusions about performance and capacity. An overview of the Monitoring process is illustrated in the following diagram and discussed in the following subsections.



12.4.1 Direct Subrecipient's Monitoring Coordinator

The Direct Subrecipient should assign a Monitoring Coordinator to validate all monitoring efforts are performed according to the Direct Subrecipient's Monitoring Plan (a sample is included as Appendix 12-1). The Monitoring Coordinator's responsibilities include:

1. Ensuring that subrecipients and contractors/ consultants are monitored soon after the contract is executed;
2. Ensuring that risk assessments are executed;
3. Prioritizing reviews and setting the Monitoring schedule based on the results of the risk assessments;
4. Ensuring proper documentation and tracking of all monitoring efforts;
5. Notifying the City of severe issues;
6. Engaging the City for necessary technical assistance; and,
7. Ensuring Monitoring occurs as outlined within the Direct Subrecipient's Monitoring Plan

If the Direct Subrecipient has engaged an administrative consultant and the Direct Subrecipient's Monitoring Coordinator is the administrative consultant, the Direct Subrecipient must identify a contract administrator responsible for monitoring the administrative consultant.

12.4.2 Monitor

The Monitor is responsible for:

1. Executing the monitoring checklist(s);
2. Identifying issues, corrective actions or technical assistance needed;
3. Confirming performance, recommending appropriate corrective action, confirming development of corrective action plan and following up to assure resolution of the Monitored entity;
4. Drafting the Monitoring Report, including providing the Report to the applicable parties; and,
5. Maintaining documentation of all monitoring efforts within the applicable file.

12.4.3 Subrecipient Monitoring Prioritization/Scheduling

HUD guidance and experience has shown that activities undertaken by Subrecipients are potentially high risk. Therefore, if a jurisdiction is implementing a program or project through a Subrecipient, the program or project should be considered high risk and should not use a risk assessment to classify their Subrecipients. The City should focus their attention on Subrecipient oversight by monitoring the Subrecipient as soon as possible once the binding agreement has been executed. The purpose of this review is to verify initial performance and identify any technical assistance needs.

The Core Checklist described in Subsection 5.1 and included as Appendix 12-3 should be used to monitor the Subrecipient during this first review. Once the Subrecipient has been monitored using the Core Checklist, the City should review a sample of the Subrecipient's projects (see Subsection 5.2.1) using the Project Checklist (see subsection 5.2).

12.4.4 Project/Program Risk Assessment and Prioritization/Scheduling

At least one onsite review must be performed for each of the Direct Subrecipient's projects/ programs prior to closeout. The Direct Subrecipient should prioritize these reviews based on the results of the risk assessment described in Table 2. The risk assessment template that should be used is included as Appendix 12-2.

If the Direct Subrecipient has engaged a Subrecipient, the City should **review a sample** of the Subrecipients projects, as described in Subsection 5.2.1.

Criteria	Description	High Risk	Medium Risk	Low Risk
Total CDBGDR Allocation	The total CDBGDR provided to execute the project.	5	3	1
		$250,000 +	$150,000 - $249,999	Less than $149,999
Complexity	The activities associated with the project or program	5	3	1
		Project Involving Construction	Loan or Grant Project	Other type of Project
Implementation	The entity who is implementing the project.	12	8	4
		Subrecipient	City Staff	Consultant
Relevant Experience	The entity who is implementing the project or program's experience implementing a similar type project or program.	8	5	3
		No Experience	Some Experience	Significant Experience

High Risk: 30 – 22 ***Points Medium Risk***: 21- 15 ***Points Low Risk:*** Less than 15 Points

To execute a risk assessment the following steps should be followed:

1. Each criterion should be scored as high, medium, or low risk for each project
2. Combine the risk criterion scores for each entity within the set to determine the overall risk level.

Once the Direct Subrecipient has completed the risk assessment for all projects/programs, the monitoring reviews should be prioritized so that Direct Subrecipient high risk projects/ programs are monitored first (after any Subrecipients are monitored). Prior to closeout, at least one onsite review should be conducted of all programs/projects implemented by the Direct Subrecipient. Project/program monitoring should occur early enough during program/project execution to provide adequate time for technical assistance and/or corrective action resolution to be completed.

After the first review, additional monitoring should be conducted until closeout. If deficiencies are noted during a monitoring review, the Direct Subrecipient should follow-up with additional reviews in the deficient area(s). Additionally, high risk projects should be given consideration when performing additional reviews.

12.4.5 Executing the Monitoring Review

The steps illustrated in the diagram below and described in the subsequent sections provide the high level process for executing a monitoring review. The roles and responsibilities associated with these steps are described within Subsection 2, Monitoring Roles and Responsibilities.



12.4.5.1 Desk Review

A desk review assesses compliance with program, contractual, HUD, CDBG, and other federal, state and local requirements. A desk review can assist with identifying potential problems early, preventing compliance violations, helping improve performance, and establishing a working relationship The Monitor may use the Monitoring tools included as Appendices 12-3 through 12-5 for desk reviews. These checklists are described in Subsection 6.

Risk assessment results may be used to identify specific areas of concern and to determine the frequency of desk reviews.

12.4.5.2 Onsite Monitoring

Onsite monitoring activities are those activities conducted at a site where the program/project records are maintained, production occurs, or both. Onsite monitoring is an effective way to validate desk review results, identify and/or research discrepancies, and more closely monitor high-risk program components.

During the onsite visit, the Monitor will review the files for compliance with applicable federal and program requirements. It is also recommended that the Monitor will use the information collected during previous desk reviews, such as employee time sheets, financial statements, position descriptions, and policy and procedures manuals provided by the organizations, to prepare for onsite visits. The checklists included as Appendices 12-3 and 12-4 contain specific questions applicable to onsite monitoring. These checklists are described in Subsection 6.

12.4.5.3 Monitoring Report

As a result of the Monitoring review, the Monitor may reach one or more of the following conclusions:

1. Performance was adequate or exemplary;
2. There were significant achievements;

3. There were concerns that need to be brought to the attention of the program participant;
4. Technical assistance was provided or is needed; and/or,
5. There were findings that require corrective actions.

Upon completion of the Monitoring review, the Monitor will prepare a Monitoring Report that describes the results – in sufficient detail – of the areas that were covered and the basis for the conclusions. The Monitoring Report should recognize areas of merit and fully document any deficiency. In the event that deficiencies are found, the Monitor is required to include the condition, criteria, cause, effect, and follow-up corrective actions, if necessary. A Monitoring Report Template is included as Appendix 12-6.

The Monitoring Report for a Core Review should be provided to the Subrecipient and maintained in the Subrecipient file. Additionally, the Monitoring Report for a Project Review should be maintained in the applicable file.

In the event that severe deficiencies are revealed, the Monitoring Coordinator should contact the City for guidance.

12.4.5.4 Technical Assistance

When deficiencies are identified as a result of the Monitoring, it may be necessary to provide technical assistance to assist in the resolving the deficiency. The objective of technical assistance is to aid the Monitored Entity in their day-to-day compliance with HUD and state regulations, and program requirements as they administer their individual programs. The nature and extent of technical assistance should be determined at the discretion of the Monitor. Some examples of technical assistance may include:

1. Verbal or written advice;
2. Formal training; and/or,
3. Documentation and guidance.

The Monitoring Coordinator should contact the City if assistance is needed when providing technical assistance.

12.4.5.5 Follow-Up

In the event that deficiencies are identified during the Monitoring review, follow-up actions should be scheduled to address the progress of the proposed resolution. The timing and frequency of the follow-up communication and activities should be determined at the discretion of the Monitor and should be based on the severity of the deficiency.

If previous deficiencies remain unresolved or uncorrected, these issues will also require follow-up activity. All follow-up actions should be documented and communicated. Target dates should be assigned for resolution of deficiencies.

12.5 Monitoring Tools

There are three monitoring tools included as Appendices to this CDBG-DR Administrative Manual:

1. Core Checklist – Appendix 12-3
2. Project Checklist – Appendix 12-4
3. Contract Administration Form – Appendix 12-5

These tools are described in Subsections 6.1-6.3. The activities associated with a contractor, Subrecipient, project, or program determines which sections of these checklists are used for each review.

It's important to note, when considering contractors, the same federal, state, local and CDBG administrative and monitoring requirements that apply to Subrecipients may not apply to a contracted entity.

12.5.1 Core Checklist

The Direct Subrecipient should use the Core Checklist (Appendix 12-4) during all Subrecipient reviews. The City will use the Core Checklist to monitor the Direct Subrecipients. The primary functions of the Core Checklist are to determine if policies and procedures meet minimum requirements and to verify the adequacy of the financial management system, and civil rights compliance. The Core Checklist includes a review of the following areas:

1. Financial management policies and procedures;
2. Procurement policies and procedures;
3. Contracting policies and procedures;
4. Monitoring policies and procedures;
5. Financial management system validation; and,
6. Civil Rights compliance.

The Monitor may use the Policies and Procedures sections of the Core Checklist to identify technical assistance needs as early in the program/project implementation as possible.

12.5.2 Project Checklist

The Monitor should use the Project Checklist, included as Appendix 12-4, to review 100% of their projects at least once prior to closeout. It should also be used to review a sample of the Subrecipient's projects (see Subsection 5.2.1). The project checklist can be used as both a desk and onsite checklist. Since the activities associated with a project and with a contract vary, all sections of the Project Checklist may not be applicable for each project and associated contract/contractor.

The Project Checklist is comprised of questions related to each of the following compliance areas:

1. Citizen Participation;
2. Financial Management;
3. Procurement;
4. Contracting;
5. Labor;
6. Civil Rights;

7. Environmental Review;
8. Acquisition and Relocation;
9. Property Management; and,
10. Monitoring.
11. Lead-Based Paint, Asbestos, and Mold
12. National Objective and Eligible Activities

12.5.2.1 Selecting a Sample of the Subrecipient's Projects

The Direct Subrecipient should review a sample of the Subrecipient's projects. The following guidelines may be followed to determine the quantity and types of projects to include within the sample.

1. Project samples should include a minimum of four Subrecipient Projects.
    a. If the Subrecipient is implementing four or less projects, all projects should be reviewed.
2. No less than one project from each program activity category (housing, infrastructure, economic development, planning) should be selected, if feasible.
    a. If the Subrecipient does not administer projects that fall within each of the four program categories, the City should document the methodology for selecting the four projects included within the sample.

Additional projects may be added to this selection using a Non-Random Selection Method by:

1. Examining more projects from a specific category;
2. Selecting additional projects to include one from each Direct Subrecipient staff person responsible for project oversight;
3. Including additional projects with the same characteristics, if indicated by the severity or nature of any problems(s) noted during previous reviews (for example, same problem category, same locality staff person, same activities or other characteristics);
4. Including projects with expanded scope or funding, activities considered high risk, and/or unresolved past findings or concerns.

Sample selection can be performed with the assistance of off-the-shelf software (e.g., random number generators, MS Excel function – RAND (random number generator)) to randomly select a sample of projects from a population. The following example illustrates how to determine how to select the project sample for a review.

Subrecipient 1	Subrecipient 2	Subrecipient 3
3 Housing Projects,5 Infrastructure Projects, 2 Planning Projects	Fifteen Infrastructure Projects	One Housing Project/Program
Select 1 Housing Project, 2 Infrastructure Projects, and 1 Planning Project	*Select 4; broaden sample if deficiencies are revealed*	*Review the one Housing Project/ Program*

As time and resources permit, the Direct Subrecipient should continue to monitor the Subrecipient's projects by selecting an additional sample and performing the review. The sample should, to the extent feasible, be different for each review performed. The following exceptions should be noted:

1. Projects that are monitored and result in a high number of unresolved concerns and findings should be included within subsequent reviews.
2. Projects selected through random sampling may be replaced in cases where they either have not started or have progressed within the life of the project.

12.5.2.2 Sampling for the Project Checklist

The first step in completing the Project Checklist is to select a sample of contractors and execute the Project Worksheets. Project Worksheets (included as a part of the project checklist, Appendix12-4b) may be used to draw conclusions regarding procurement, contracting, labor, and Chapter 3 compliance for each project.

Contractor Sample

For each project, the Monitor should select a minimum of two contractors to be reviewed. If only one contractor is engaged, only one contractor is required to be reviewed. The procurement, contracts, invoices, and other documentation associated with the project and contractors will be reviewed to test the Direct Subrecpient's administrative systems. The reasoning for selecting the contractors within the sample should be documented. If a project undergoes more than one review, each review cycle should include different contractors, as applicable. The Monitor always has the option to expand the sample size to include additional contractors for initial testing or retesting.

If the Direct Subrecipient has not engaged any contractors to execute the project (i.e. they are performing the work "in-house"), the responses to the applicable Project Worksheet questions should be based on the "in-house" activities. Table 4 provides an example for selecting the Contractor Sample.

Project 1	Project 2	Project 3 (in house)
Contractor A, Contractor B, Contractor C	Contractor A	Public Works Division
Select two contractors to execute the Project Worksheets	*Execute the Project Worksheets for the one contractor.*	*Execute the Project Worksheets, reviewing the Public Works Department's Records.*

Selecting an Invoice Sample to Review

The Project Checklist requires the Monitor to select a sample of invoices for each contractor being reviewed. The Monitor should use Table 5 to determine the appropriate sample size for monitoring program-processing activities (e.g., closings, applicant file reviews, etc.).

The example below illustrates how to select invoices for using the methodology described in Table 5.

Population	1-99	100-249	250-499	500+
Sample Size **	20%	15%	10%	5%

** Sample will inclued no less than one for review

Project 1		Project 2	Project 3 (in house)
Contractor A	Contractor C	Contractor A	Public Works Division
21 invoices submitted	51 invoices submitted	2 invoices submitted	107 timesheet entries/receipts for the project have been included in the City's Draw Requiet
Select 4 to review	Select 10 to review	Select 1 to review	Review 16 of the timesheet entries/receipts

12.5.3 Contractor Administration Form

Ensuring that contractors comply with the terms of their contracts is a requirement under 24 CFR 85.36 (b) (2). This regulation requires that Direct Subrecipients "*maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."* Contractors procured to implement a specific project (i.e. construction contracts) are reviewed during the Project Review. However, for consultants or other vendors procured to assist with the implementation of multiple projects, the Direct Subrecipient may use the Contract Administration Template included as Appendix 12-5 to track performance with the executed contract.

12.6 Record Keeping

The Direct Subrecipient should document its monitoring efforts and maintain those documents in the applicable Subrecipient, project, or program file. See Chapter 4 "Records Management" of the CDBG-DR Compliance Manual.

12.7 Performance Monitoring

Given the number and type of projects administered by a single entity can be numerous and complex, it often becomes difficult to plan for each project's implementation. Projects may take years to come to fruition once approved. This is often attributed to a lack of planning and oversight. Direct Subrecipients are encouraged to establish goals and timelines within their projects (i.e. performance measures) and track the project's performance against those goals. Performance measurement will help Direct Subrecipients enhance program capacity and performance.

12.8 Audits Management

As cited in 2 CFR Part 200 Subpart D, Post Federal Award Requirements, a sub-award is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. When making sub-awards the City takes on the role of a 'Pass-Through Entity'.

As a pass-through entity, the City is required to ensure that every sub-award is clearly identified to the subrecipient as a sub-award. Additionally all requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and terms and conditions of the Federal award.

Subrecipient agreements are required to specify that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements for:

1. Subrecipient monitoring and management;
2. Statutory and national policy requirements through the period of performance; and
3. Subpart F – Audit Requirements, to include the following procedures:
    a. Verify that every subrecipient is audited as required by Subpart F, "Audit Requirements", when it is expected that the subrecipient's respective fiscal year total Federal expenditures equaled or exceeded the audit threshold.
    b. Consider whether the results of subrecipient's audits, site reviews, or other monitoring reviews indicate conditions that necessitate adjustments to the pass-through entity's own records.
    c. Consider taking enforcement action against noncompliant subrecipients.

12.8.1 Audit Requirements

A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in total Federal awards must have a single or program-specific audit conducted for that year.

The audit must be completed and the data collection forms must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. The Federal Audit Clearinghouse (FAC) is the repository that audits must be submitted to.

The audit is conducted in the following manner

1. **Scope of the Audit** – the audit must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

2. **The auditor must determine** – and report - whether the financial statements, of the auditee/subrecipient, are:
    a. Presented fairly in all material respects in accordance with generally accepted accounting principles
    b. Whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

c. In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of non-compliance over major programs.
d. The auditor must determine whether the subrecipient has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

3. **Audit Findings** – the auditor must report the following as findings in a schedule of findings and questioned costs:
    a. Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs.
    b. Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program.
    c. Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program.
    d. The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion.
    e. Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards.

4. **Corrective Action Plan** – At the completion of the audit, the auditee/subrecipient must prepare, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

    The auditee/subrecipient must initiate and proceed with corrective action as quickly as possible and corrective action should begin no later than on receipt of the audit report.

5. **Audit follow-up** –
    a. The auditee/subrecipient is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to the audit finding.

    b. The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings, and report, as a current year audit finding, when the auditor concludes the summary schedule of prior audit findings, provided by the auditee/subrecipient, materially misrepresents the status of any prior audit finding.

6. **Audit Finding Detail** – Audit findings must be presented in sufficient detail and clarity for the auditee/subrecipient to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision.

12.8.2 Subrecipient Monitoring

In order to effectively monitor the single audit status of subrecipients, the City will include audit requirements in the risk register of subrecipients.

1. On an annual basis, the City will review the status of subrecipient's by conducting monitoring, and executing the "Core Compliance Checklist" found in appendix 12-03. This checklist provides the following reviews:

    a. Single Audit Report Issue Date
    b. Single Audit Report Receipt Date
    c. Total Federal Expenditures, verified from SEFA
    d. That all required sections of the Single Audit Report were submitted
    e. Review Report on Internal Control over Compliance
    f. Review Auditor's Opinion on Financial Statements
    g. Review Auditor's Opinion on the Single Audit
    h. Review schedule of Findings and Questioned Costs

2. As part of this monitoring, the City will validate that audits are submitted to the Federal Audit Clearinghouse (FAC) within 30 days of receipt or within nine months after the end of the audit period.
3. The City will obtain audits from subrecipients for review; and
4. Verify that appropriate corrective action is taken for each CDBG-DR finding within six months after receipt of the audit report.
5. The City will make "Management Decisions" – the management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee/subrecipient action to repay disallowed costs, make financial adjustments, or take other actions. If the auditee has not completed corrective action, a timetable for follow-up should be given.
    a. It is the pass-through entities responsibility for issuing a management decisions for audit findings that relate to Federal awards it makes to subrecipients.
    b. Management decisions must be made within six months of acceptance of the audit report by the FAC.

Chapter 13 – Close-Out

13.1 Introduction

Program or project close-out is the process by which HUD determines that all costs, with certain exceptions, paid with CDBG-DR funds have been incurred, the work has been completed and all responsibilities of the grantee have been completed in accordance with the terms and conditions of the grant agreement or CEA and applicable laws and regulations, or that there is no further (federal or state) interest in keeping the grant agreement open for the purpose of securing performance.

A program/project cannot be closed out until all funds have been expended, all activities associated with the project have been completed, and the National Objective has been met. For example, a project that provides funds for a new sewage collection and treatment system cannot be closed out until the households are connected to the system and the system is fully functional. It is the responsibility of the grantee to submit all close-out documents timely.

13.2 Close-out Process

Grantees are responsible for initiating program/project close-out by submitting the appropriate close-out documents to HUD. There are two stages in the close-out process: 1) Individual Project Close-out, and 2) Final Grantee/CEA Close-out.

In order to complete the necessary close-out documents, grantees must closeout any subcontracts or subrecipient agreements associated with the program/project, and complete financial settlement of any outstanding claims. Subcontractor(s) should be advised to prepare their claims or invoices and submit them to the grantee within 30 days of the completion of the project.

13.2.1 Disposition of Property

Prior to project close-out, the grantee must dispose of all property accordingly.

1. Disposition of Tangible Personal Property - The recipient shall account for all tangible personal property acquired with grant funds.
2. Disposition of Real Property - Proceeds derived after the close-out from the disposition of real property acquired with grant funds are subject to the program income requirements.

For additional guidelines for the disposition of equipment, see Chapter 11 – Property Management.

13.2.2 Project Closeout

24 CFR 85.50 addresses the timing of grant close-outs and states that the close-out process must be completed within 90 days of completion of project activities, with the possible exception of the audit. If multiple projects are identified within a Cooperative Endeavor Agreement (CEA), then each project must be closed out separately at the time of completion. If there are any unutilized funds that should be reallocated, the grantee should complete a Request for Project Amendment. The forms listed below

may be found in Appendix 13-1, and must be completed and submitted as part of the closeout package for each project.

Project Closeout Form Description

Project Closeout Form	Description
Final Project Performance Report (Appendix 13-1a)	Cover/summary sheet for Final Project Performance Report for the project being closed out.
Progress Report/Final Status Report (Appendix 13-1b)	Grantee must submit a final progress report for the project being closed out. This form will also be used throughout the project to report progress every 90 days.
Beneficiary Forms (Appendix 13-1c, i-iv)	Grantee must provide beneficiary information by various categories (income level, race, ethnicity, etc.) for the project being closed out.
Civil Rights Compliance -Displacement of Low and Moderate Income Households (Appendix 13-1d)	Grantee must report on displacement impact of the project being closed out (by income levels and racial category).
Miscellaneous Information Form (Appendix 13-1e)	Grantee must provide miscellaneous information regarding the project being closed out, as outlined in this form.
Section 3: Summary Report (Appendix 13-1f)	Grantee must report Section 3 Economic opportunities information for the project being closed out.
Certificate of Completion Final Statement of Cost/Project Funds Balance (Appendix 13-1g)	The grantee must prepare three Certificate of Completion forms for the project being closed out. This form summarizes all costs incurred for a project that was paid for with CDBG-DR funds and program income. See Chapter 5 -Financial Management for additional guidance regarding program income.
Final Wage Compliance Report (Appendix 13-1h)	Grantee must report contractor wage information for the project being closed out.
CDBG-DR Equipment Inventory Form (Appendix 13-1i)	For each project being closed out, grantees must provide a final report for all equipment purchased with CDBG-DR funds.
Total Project Source of Funds (Appendix 13-1j)	For each project being closed out, grantees must provide the amount, source and status of all funds utilized on that project.

When preparing the close-out forms, these general guidelines should be followed:

1. Identify activities on the forms exactly as they are identified in the contract or as were established by any project amendments.
2. Provide current data on obligated and expended amounts by activity.
3. On all tables, make sure that the rows and columns of figures subtotal accurately.

4. Identify methods used to determine beneficiaries. For new water and sewer systems, the beneficiaries will be determined by the persons actually connected to the new system.
5. Submit two copies of the report to HUD.
6. Submit three copies of the Certificate of Completion Appendix 13-1g, all of which have original signatures.

13.2.2.1 Conditional Close-out Approval

Conditional close-out is given when HUD receives and accepts the entire Final Project Performance Report except for the remaining audit. The grant can be administratively closed if the grantee is paying for the audit. If CDBG-DR funds will be used to pay the audit, the grant will remain open until audit invoices are paid and the audit results have been received and approved by HUD. To receive "conditional" close-out, any outstanding audit/monitoring findings must be resolved and HUD must approve the Final Project Performance Report.

13.2.2.2 Audit

The grantee assumes the responsibility of carrying out the requirement that the CDBG-DR program get audited on an annual basis, in compliance with the Single Audit Act, and forwarded to the Federal Audit Clearinghouse within nine months of the end of the grantee's fiscal year.

Reference 24 CFR 85.36 for the provisions subject to the procurement of audit services. The auditor should be selected through competitive negotiation to reduce the cost of services and allow all qualified accountants to compete.

The audit shall determine and report that:	
1.	The financial statements are presented fairly in accordance with GAAP, and the entity has complied with laws and regulations that may have a material effect on the financial statements.
2.	The entity has internal control systems to provide reasonable assurance that it is managing Federal financial assistance in compliance with applicable laws and regulations.
3.	The entity has complied with laws and regulations that may have a material effect upon each major Federal assistance program. In complying with this provision, the auditor shall select and test a representative number of transactions from each major program.

Single Audit Act of 1984, as amended 1996

The purpose of the Single Audit Act of 1984 is to establish uniform requirements for audits of Federal funds. Audits are not required if less than $750,000 in total Federal dollars were expended in the fiscal year, but necessary records must be kept for HUD review. The Act does not prohibit entities that receive Federal funds indirectly from having additional audit requirements imposed on them by the agency that provides the funding.

13.2.2.3 Final Close-out Approval

HUD will issue a Final Close-Out letter to the grantee upon receipt and approval of the audit conducted in accordance with the 2 CFR Part 200 Subpart F procedures identified in Chapter 5 of this

Administrative Manual, Subsection 8.0, or when HUD determines that a grantee is exempt from the 2 CFR Part 200 Subpart F audit requirements. All projects under the grantee's allocated funding ("grant") as described within its CEA must be conditionally closed out prior to the Final Close-Out. Prompt close-out of the project is most desirable since HUD views it as an indicator of local capacity.

13.2.3 Grantee/CEA Close-out

Once the grantee and HUD staff jointly determine that a grantee is prepared to begin the closeout process, HUD will inform the grantee that the closeout process has commenced and of the next steps to be taken. The grantee should be provided with the Closeout Checklist (Appendix 13-2) and the grantee Closeout Certification (Appendix 13-3). The grantee should return the completed documents, as well as the partially-completed certification, to HUD.

Within 90 days of all projects identified within a CEA being completed (or the contract has been terminated or expired), a Final Grantee/CEA Performance Report (Appendix 13-4) must be submitted, along with a final request for funds since any remaining balance will be de-obligated at the time of closeout. The Final Grantee/CEA Performance Report summarizes the individual projects that have been completed/closed, depicts the final computation of CEA funds (Appendix 13-4a), and describes the grantee's Fair Housing activities (Appendix 13-4b). HUD will review the report and respond with approval and/or provide the grantee with any additional steps necessary to close out the CEA. The grantee must retain all records for a period of five years once the Certificate of Completion is obtained.

13.3 Return of Excess Grant Funds

If grant funds received exceed grant costs, the grantee will be notified by HUD to send a check for the amount of excess grant funds received. Any funds in excess of those allowed by HUD will also have to be returned. Excess funds that have been allocated for outstanding expenditures are not required to be returned.

If unsettled third party claims were included, upon resolution of these claims, the grantee must submit a revised Certificate of Completion for HUD to review before the project can receive a final close-out.

13.3.1 Disposition of Program Income

All program income must be returned to HUD. See Section 5 - Financial Management, Subsection 6.10 for additional guidance regarding program income.

13.4 Grant Suspension and Termination

13.4.1 Suspension

When a recipient fails to comply with the grant award stipulations, standards, or conditions of its grant, HUD may suspend the grant, withhold further payments, or prohibit the recipient from incurring additional obligations of grant funds, pending corrective action by the grantee.

13.4.2 Termination

13.4.2.1 Termination for Cause

HUD may terminate any project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. HUD shall promptly notify the recipient in writing of the termination and the reasons for the termination, together with the effective date. Payments made to a grantee, or a recovery by HUD under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties. For this type of termination, HUD will not honor any costs. If funds have been paid to the grantee, they must be repaid to HUD.

13.4.2.2 Termination for Convenience

HUD or the recipient may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. HUD will consider all circumstances under which a project is to be terminated and on a case-by-case basis determine if any eligible, incurred costs will be honored.

13.4.2.3 Termination Due to Unavailable Funding

The project is contingent upon the appropriation and release of sufficient funds to HUD to fulfill the requirements of the grant. If the appropriate authorities fail to approve and provide an adequate budget to HUD to fulfill the requirements of the grant, the project may be terminated by the grantee or HUD. Grantee shall be paid of all authorized services performed prior to termination.

Chapter 14 – Lead-Based Paint, Asbestos, and Mold

14.1 Introduction

Few areas attract public and political attention as do housing projects. Some are controversial others replete with physical challenges. Many projects are designed as stand-alone efforts, yet others seek to leverage private and public initiatives in order to maximize the impact of CDBG-DR funding. Each directly affects the ability of victims of disasters to resume a safe and comfortable housing standard.

Each housing project has its own specific eligibility standards and grant calculation requirements. Certain projects trigger complex household income verifications or have continuing performance obligations that extend for significant periods of time. To the extent that grantees seek to design or participate in these projects, the grantee must become familiar with the regulatory requirements associated with the housing approach being contemplated in the project. HUD is available to assist the grantee in identifying the regulatory requirements associated with the established projects associated with a particular disaster.

There are requirements pertaining to the health and well-being of families and children that must be evaluated in conjunction with rehabilitation or repair and, perhaps, demolition projects. Key among them is the Lead-Based Paint issue, which is discussed in Subsection 14.2.0 below. Agencies, other than HUD, are involved in resolving problems raised by the presence of asbestos and mold. These requirements are discussed in Subsection 14.3.0 below.

14.2 Lead-Based Paint

14.2.1 Introduction

The primary reason that HUD, and its grantees need to address the presence of lead-based paint and lead-based paint hazards is to protect children and families. A housing provider has a responsibility to provide decent, safe, and sanitary housing to its residents. Part of this responsibility is to protect residents from the health risks of lead hazards.

14.2.1.1 Protecting Children

1. Children under the age of six are particularly at risk of lead poisoning.
2. The households most likely to be affected by lead poisoning are the households most often served by local housing projects. Recent studies have shown that more than 16 percent of young children from low-income families living in older housing had levels of lead in their blood above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent of young children from high-income families.

3. By taking proper precautions when maintenance, repairs, and renovation work is performed in homes known or assumed to contain lead-based paint, children can be protected.

14.2.1.2 Benefits of Addressing the Presence of Lead-Based Paint

There are a number of other reasons why HUD and its grantees need to address the presence of lead-based paint and lead-based paint hazards, including:

1. Reducing Liability - Like any property owner, grantees can face lawsuits for failing to address lead-based paint hazards in a unit if a young child is poisoned. By taking action to reduce lead-based paint hazards, grantees can demonstrate that they are working to provide safe, suitable housing, thereby reducing the risk that courts will find them negligent when deciding lawsuits.
2. Reducing Insurance Costs - Grantees who take action to address lead-based paint may be able to obtain more favorable premiums for insurance coverage.
3. It's Required - Title X of the 1992 Housing and Community Development Act mandated that HUD take action to address lead-based paint in housing receiving federal assistance. HUD published its final consolidated rule on September 15, 1999. This rule requires actions by HUD grantees.

14.2.1.3 The 1992 Housing and Community Development Act included Title X ("Title Ten")

Title X represented a new approach to the lead-based paint issue and it required comprehensive rethinking of HUD's lead-based paint regulations.

1. Former lead-based paint regulations for CPD-funded housing projects focused on the existence of deteriorated paint. Control of identified lead-based paint and lead-based paint hazards did not occur unless a poisoned child was found to live in the unit.
2. Title X called for a three-pronged approach to target conditions that pose health risks to housing occupants and avoid cases of lead poisoning:
    a. Notification of occupants about the existence of these hazards so that they can take proper precautions;
    b. Identification of lead-based paint hazards before a child can be poisoned; and,
    c. Control of these lead-based paint hazards, to limit lead exposure to residents.

14.2.1.4 HUD's Goals in implementing Title X

In responding to Title X, HUD had several goals in mind, as described below.

1. ***Streamline and Consolidate Lead Regulations.***
   In the spirit of the federal government's reinvention activities, HUD revised and consolidated its lead-based paint regulations throughout its projects. Redundant regulation was eliminated, and different projects now have consistent requirements. This consolidation eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD projects.

    a. Before this regulation, many HUD clients received funding from several HUD projects with separate and sometimes inconsistent sets of lead regulations.

b. This regulation groups HUD projects by types of assistance provided. For example, a grantee receiving HUD funds from several different sources to conduct a rehabilitation project will find the lead-based paint requirements for rehabilitation under one subpart of the lead regulation.

2. ***Update Lead-Based Paint Requirements to Better Protect Children and Families.***
In rewriting its lead-based paint regulations, HUD took advantage of new knowledge.

a. The new requirements are based on the practical experience of cities, states, and others who have been controlling lead-based paint hazards in housing.
b. The new requirements reflect the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead-based paint hazards. This knowledge allowed the new regulation to target those conditions that pose the greatest risk to human health.
c. The new regulation also reflects improved lead hazard evaluation techniques. Because we understand more, decisions about lead hazard reduction activities can be more fully informed, and available resources can be better targeted to reduce lead exposures.

3. ***Balance the Need for Cost-Effective Action with the Duty to Protect Children.***
The new regulation balances the practical need for cost effective, affordable lead-based paint hazard notification, evaluation, and reduction measures with Title X's statutory requirements and HUD's duty to protect children living in property that is owned or assisted by the federal government.

14.2.2 Statutory requirements

14.2.2.1 Legislation

1. Lead-Based Paint Poisoning Prevention Act of 1971
2. Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X or Title Ten)
3. Sections 1012/1013 of Title X

14.2.2.2 Lead Regulations Adopted By

1. HUD – Housing and health;
2. Environmental Protection Agency (EPA) – Environment and health;
3. Occupational Safety and Health Administration (OSHA) – Workplace Safety and health; and,
4. Consumer Product Safety Commission (CPSC) – Lead in consumer products conditions that pose the greatest risk to housing residents.

14.2.3 Requirements

The following discussion focuses on the two major aspects of the Lead Safe Housing Rule: disclosure upon sale or lease of residential property; and, approaches to dealing with lead-based hazards, including the Five Key requirements to Lead Safe Housing.

14.2.3.1 Disclosure Rule

Disclosure of Known Lead-Based Paint Hazards upon Sale or Lease of Residential Property (From HUD Occupancy Handbook – 4350.3)

The Disclosure Rule [40 CFR part 745, subpart F and 24 CFR part 35, subpart A – *Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing*], published March 6, 1996, specifies the types of information that owners must give to applicants prior to signing their leases. These requirements apply to all properties built prior to January 1, 1978, including cooperatives, with certain exemptions established by regulation. The list below identifies specific exemptions when the disclosure rule does not apply. If a property is exempt, the owner does not need to comply with the requirements discussed in this paragraph.

Disclosure Rule Exemptions

1. *Residential structures built after January 1, 1978*, are exempt from lead-based paint requirements because Congress banned the use of lead-based paint for residences after this date.
2. *Rental property found to be lead-based paint* free by a lead-based paint inspector certified under the federal certification project or under a federally accredited State or Tribal certification project is exempt.
3. *Zero-room dwelling units*, including single room occupancy (SRO) units, are exempt.
4. *Housing specifically designated for the elderly or persons with disabilities* is exempt, unless a child under age 6 resides or is expected to reside in the unit.
5. *Short-term leases of 100 days* or less when no lease renewal or extension can occur.

Disclosure Rule Overview

For properties where the requirements apply, both owners and tenants need to be aware of lead based paint hazards, such as paint chips, paint dust in units, and contaminated soil in common areas. Lead-based paint is dangerous to adults and children, but especially to children under age 6. Units that are older, are in poor physical condition, have been renovated unsafely, or have exterior lead-contaminated soil are at the most risk. Nevertheless, owners in all applicable properties must provide tenants with basic information on lead-based paint and its hazards, and they must maintain an accurate record of this communication. Compliance with these regulations is also crucial in order to reduce liability and avoid lawsuits, obtain more favorable insurance premiums, and avoid penalties for failing to meet government requirements. This paragraph on lead-based paint focuses on the owners' requirements during the leasing process. Lead-based paint requirements that must be met during the life of the property are discussed in Handbook 4350.1, Multifamily Asset Management and Project Servicing or other current Notices. These requirements include:

1. Visual assessments to identify deteriorated paint or (for assistance over $5,000 per unit annually) risk assessments to identify lead-based paint hazards;
2. Paint stabilization or (for assistance over $5,000 per unit annually) interim controls with clearance testing when appropriate;

3. Ongoing paint maintenance and (for assistance over $5,000 per unit annually) reevaluation every two years to identify hazards;
4. Notification of tenants about the actions above; and,
5. Special actions when a child under six years old is reported to have high blood lead levels.

Compliance with fair housing requirements applies when complying with the lead-based paint regulations. Owners may not refuse to rent to households with children to avoid triggering lead paint requirements, because this would constitute discrimination based on familial status.

Owners may affirmatively market the following types of units to families with children under age six:

1. Units that are built after January 1, 1978; and
2. Units that are built prior to January 1, 1978, and found to be free of lead hazards.

Owners must disclose known lead-based paint and/or lead-based paint hazards in the property and provide the EPA/HUD/Consumer Product Safety Commission (CPSC) Lead Hazard Information Pamphlet (Appendix 14-1) (Protect Your Family from Lead In Your Home) to tenants when leases are renewed, modified, or renegotiated, unless no new information on those subjects has come into the possession of the owner and the owner has already provided the tenants with the disclosure information and the pamphlet. This is in accordance with 24 CFR 35.82(d), in the Lead Disclosure Rule.

14.2.3.2 Disclosure Rule Requirements

Prior to leasing, owners must provide the tenant with two items:

1. ***Lead Hazard Information Pamphlet.*** Owners must provide tenants of a residential property with the Lead Hazard Information Pamphlet (see above), or an EPA-approved equivalent. Owners are required to document that the tenant was given a copy of the pamphlet before signing the lease.

   NOTE: The Lead Hazard Information Pamphlet distributed to meet the Disclosure Rule requirement is the same pamphlet distributed for other lead-based paint requirements (e.g., the Lead-Based Paint Pre-Renovation Education Rule). It does not have to be distributed twice, so long as it is documented that it has been provided.

2. ***Disclosure form.*** Owners must include the disclosure form in the lease packet and obtain the prospective tenant's signature before he or she signs the lease. The disclosure form is designed to document receipt of the Lead Hazard Information Pamphlet(Appendix 14-1) and to meet three disclosure requirements, as follows:
   a. Disclose the presence of known lead-based paint/hazards. Owners of target housing must disclose the presence of known lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that lead-based paint/hazards have been disclosed.
   b. Disclose information on lead-based paint/hazards. Owners must provide applicants with any available records or reports pertaining to the presence of lead based paint and/or lead-based paint hazards. Owners must provide applicants with procedures to obtain access to

any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that copies of all relevant records and reports have been provided to the applicant. The form also documents if there are no records or reports available. (Appendix 14-2)

c. Include contract language. Leasing contracts must include a Lead Warning Statement and an acknowledgment section to be signed by the prospective tenant, the owner and any agent. The owner must present the disclosure form signed by the owner and the Lead Hazard Information Pamphlet to the prospective tenant before the tenant signs the lease. The disclosure form has the Lead Warning Statement printed at the top and a place at the bottom for the applicant to sign acknowledging disclosure and receipt of the Lead Hazard Information Pamphlet.

14.2.3.3 Record-Keeping Requirements

There are specific records that owners must keep to verify their compliance with the Disclosure Rule requirements.

1. Disclosure form. Owners must keep records of the Disclosure Form provided to each tenant for three years from the commencement of the leasing period.
2. Lead Hazard Information Pamphlet. A record of the distribution of the Lead Hazard Information Pamphlet is required under the HUD-EPA Disclosure Rule and the EPA Lead Pre-Renovation Education Rule.

14.2.3.4 General Lead-Based Paint Requirements for all Programs funded through Community Planning and Development.

24 CFR 35			
1.	Subpart A - Disclosure of Known Lead-Based Paint Hazards	**8.**	Subpart D - Project based Assistance Provided by a Federal Agency other than HUD
2.	Subpart B - General Requirements and Definitions	**9.**	Subpart F - HUD owned Single Family Property
3.	Subpart J - Rehabilitation	**10.**	Subpart G - Multifamily Mortgage Insurance
4.	Subpart K - Acquisition, Leasing, Support Services, or Operation	**11.**	Subpart H - Project based Rental Assistance
5.	Subpart M - Tenant Based Rental Assistance	**12.**	Subpart I - HUD owned and Mortgagee-In-Possession Multifamily Property
6.	Subpart R - Methods and Standards for Evaluation and Reduction Activities	**13.**	Subpart L - Public Housing Programs
7.	Subpart C - Disposition of Residential Property	**14.**	Subparts E, and N through Q are reserved for future use

Exemptions (24 CFR 35.115)			
1.	Post -1977 Housing	**6.**	Unoccupied property pending demolition (EPA requirements related to property demolition apply)
2.	Zero-bedroom units	**7.**	Nonresidential part of property
3.	Housing exclusively for elderly or disabled	**8.**	Rehabilitation or maintenance activities that do not disturb painted surfaces
4.	Property certified as lead-based paint-free	**9.**	Emergency actions
5.	Property where lead-based paint was removed		

14.2.3.5 Lead Safe Housing Rule

The Lead Safe Housing Rule requires different approaches to addressing lead hazards in different types of housing. These approaches are summarized in the Lead Safe Housing Requirements Summary Table that can be downloaded as a quick reference to the requirements. Lead Safe Housing Requirements Summary Table is available at: http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/keyrequirements/summarytable.pdf

The requirements for each type of housing are best understood if the following five "Key Requirements" that make up the Lead Safe Housing Rule are considered:

1. Communication with Residents - Grantees must meet the lead disclosure requirements that apply to all housing (assisted or unassisted) at lease or sale and provide certain notices to residents.
2. Lead Hazard Evaluation/Assessment - Any housing that receives HUD funds must undergo some form of evaluation or assessment (unless lead is presumed to be present).
3. Lead Hazard Reduction Methods - After the appropriate evaluation or assessment, the grantee must conduct Lead Hazard Reduction. Such work must be done using lead safe work practices and is not considered complete until clearance is performed.
4. Ongoing Maintenance - Some types of housing projects are subject to ongoing maintenance requirements.
5. Environmental Intervention Blood Lead Levels - For some types of housing projects, specific actions are required for children with Environmental Intervention Blood Lead Levels.

The Lead Safe Housing Rule requires some form of evaluation or assessment for any dwelling unit that receives HUD funding. The specific type of evaluation or assessment depends on the nature of the housing project or activity being conducted or the amount of assistance provided.

For more information on which methods are required for different housing activities, see the Lead Safe Housing Requirements Summary Table and the individual topics:

1. Rehabilitation
2. Tenant-based Rental Assistance
3. Homebuyer

Lead Safe Housing Requirements Summary Table is available at:
http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/keyrequirements/summarytable.pdf

The following describes the methods of evaluation/assessment that are required under the Lead Safe Housing Rule. (For more information on presumption, see Option to Presume.)

14.2.3.6 Methods Required for CDBG Programs

The following evaluation and assessment methods are used with CDBG-funded activities:

1. Visual assessment (Appendix 14-3)- A visual assessment for deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipping paint as well as visible dust, debris and paint chips. Because a visual assessment is not considered a method of lead hazard evaluation, there is no requirement for a Notice of Lead Hazard Evaluation associated with this procedure.
2. Paint testing - Paint testing entails testing painted surfaces to determine if they contain lead-based paint using methods such as an XRF analyzer or laboratory analysis. A certified paint inspector or a certified risk assessor must perform paint testing.
3. Risk assessment - A risk assessment is a comprehensive investigation of a dwelling to identify lead-based paint hazards. It includes paint testing, dust and soil sampling, and a visual evaluation. A certified risk assessor must perform risk assessment. Risk assessment results are summarized in a written report with recommendations for action.

14.2.3.7 Other Methods

There are other methods of evaluation/assessment, but these methods are not required with CDBG-DR funded activities.

1. Paint inspection - A paint inspection is a surface-by-surface investigation to determine the presence of lead-based paint. Because the inspection evaluates all painted surfaces, it is more comprehensive than paint testing. A certified paint inspector must perform paint inspections. Paint inspections are not required for CDBG-DR funded activities.
2. Lead hazard screen - A lead hazard screen is similar to a risk assessment, but is designed for properties in good condition. A screen requires fewer samples than a risk assessment, but uses more stringent evaluation criteria. If the results of a screen indicate that lead based paint hazards are or may be present, a full risk assessment must be conducted. A certified risk assessor must conduct a lead hazard screen. A lead hazard screen is permitted in CDBG-DR funded projects as an alternative to a risk assessment.

14.2.4 Lead Hazard Reduction

Lead Hazard Reduction methods are the specific types of treatments to control lead-based paint hazards. The method of Lead Hazard Reduction required is determined by the type of housing activity being undertaken. There are two Lead Hazard Reduction methods: abatement and interim controls. These methods are discussed below and consolidated into a summary table of reduction methods.

1. ***Abatement*** - A Lead Hazard Reduction method that is designed to permanently eliminate lead-based paint or lead-based paint hazards. Permanent is defined as having 20 year expected life. Abatement must be performed by certified abatement workers who successfully completed an EPA accredited abatement worker course and supervised by an abatement supervisor certified under a State project authorized by EPA.

   Abatement activities include:

   a. Removing lead-based paint and its dust;
   b. Permanently encapsulating or enclosing the lead-based paint;
   c. Replacing components with lead-based paint; and,
   d. Removing or permanently covering lead-contaminated soil.

2. ***Interim controls*** - Lead Hazard Reduction activities that temporarily reduce exposure to lead-based paint hazards through repairs, painting, maintenance, special cleaning, occupant protection measures, clearance, and education projects. A person performing paint stabilization, interim controls, or standard treatments must be trained in accordance with OSHA Hazard Communication requirements (29 CFR 1926.59) and must be supervised by a certified lead-based paint abatement supervisor, or must have successfully completed a HUD-approved training course. Interim control methods require safe work practices and include:

   a. Paint stabilization - Repair any physical defect in the substrate of a painted surface that is causing paint deterioration, remove loose paint and other material from the surface to be treated, and apply a new protective coating or paint.
   b. Treatment for friction and impact surfaces - Correct the conditions that create friction or impact with surfaces with lead-based paint.
   c. Treatment for chewable surfaces - If a child under age six has chewed surfaces known or presumed to contain lead-based paint, these surfaces must be enclosed or coated so they are impenetrable.
   d. Lead-contaminated dust control - All rough, pitted or porous horizontal surfaces must be covered with a smooth, cleanable covering. Carpets must be vacuumed on both sides using HEPA vacuums or equivalent.
   e. Lead-contaminated soil control - If bare soil is lead-contaminated, impermanent surface coverings such as gravel, bark, and sod, as well as land use controls such as fencing, landscaping, and warning signs may be used.

3. ***Standard Treatments*** - May be conducted in lieu of a risk assessment and interim controls. Standard treatments are designed to reduce all lead-based paint hazards in a unit. Standard treatments must be performed on all applicable surfaces, including bare soil, to control lead-based paint hazards that may be present. All standard treatment methods must follow safe work practices. Standard treatments consist of a full set of treatments that include:

    a. Paint stabilization
    b. Creating smooth and cleanable horizontal surfaces
    c. Correcting dust-generating conditions
    d. Addressing bare residential soil

When assistance provided by grantees involves an ongoing relationship with a property, such as TBRA or the HOME Rental properties project, grantees are responsible for ensuring that the owners perform ongoing maintenance to ensure that Lead Hazard Reduction methods are maintained. In other cases, ongoing maintenance is encouraged.

14.2.5 Maintenance

14.2.5.1 Exemptions

Ongoing maintenance activities are not required when:

1. A clearance report indicates that all building components with lead-based paint have been removed, **OR,**
2. A current risk assessment indicates that no lead-contaminated soil or lead-contaminated dust is present.

14.2.5.2 Required Maintenance Activities

Grantees and owners, depending on project size, must ensure that maintenance activities are conducted that minimizes the threat of lead-based paint hazards. Required maintenance activities include:

1. Conduct visual assessments for deteriorating paint and the failure of any lead hazard reduction measures at unit turnover and every 12 months.
2. Address deteriorated paint through paint stabilization unless an evaluation states that there is no lead-based paint.
3. Repair enclosures or encapsulations.
4. Perform other lead hazard reductions, as necessary.
5. If the initial reduction activity required the treatment of soil, identify and treat bare soil.
6. Provide a notice of lead hazard reduction activity.
7. Provide a written notice in the language of the occupant, to the extent feasible, to occupants asking them to report deteriorated paint or failed encapsulation or enclosure. Include the contact name, address, and telephone number. CDBG recommends that the notice be provided every 12 months or at unit turnover.

14.2.5.3 Maintenance Related Requirements

Safe work practices must be followed for all maintenance or renovation work that disturbs paint that may be lead-based paint above the de minimis level.

The de minimis level is maximum amount of surface area containing lead based paint that is permitted without triggering additional lead-based paint requirements. The de minimis level is:

1. 20 square feet on exterior surfaces;
2. 2 square feet in any one interior room or space; or
3. 10 percent of the total surface area on an interior or exterior type of component with a small surface area like window sills, baseboards, and trim.

Lead safe work practices must be used during Lead Hazard Reduction, rehabilitation, and maintenance work that involves surfaces with presumed or identified lead-based paint.

14.2.5.4 Lead Safe Work Practice Exemptions

The ONLY times safe work practices are not required are:

1. If the paint being disturbed has been tested and found not to be lead-based paint, OR
2. If maintenance or Lead Hazard Reduction activities disturb a total surface area that is less than the de minimis amount.

There are four components of safe work practices:

1. ***Occupant Protection***. Appropriate actions must be taken to protect occupants from lead-based paint hazards associated with Lead Hazard Reduction, paint stabilization, maintenance, or rehabilitation activities.
    a. Occupants may not enter the worksite during Lead Hazard Reduction activities.
    b. Occupants must be temporarily relocated to a suitable unit that is decent, safe, and sanitary and free of lead-based paint hazards during Lead Hazard Reduction activity. There are **circumstances when occupant relocation is not required**.
    c. Property owners must protect occupants' belongings from lead contamination by relocating, covering or sealing them, and securing the worksite against entry during non-work hours.

2. ***Worksite Preparation and Containment***.
    a. The worksite must be prepared to prevent the release of leaded dust and debris.
    b. Use practices to minimize the spread of lead dust, paint chips, soil, and debris.
    c. Place warning signs at each entry where Lead Hazard Reduction activities are conducted when occupants are present. The signs are required at the main and secondary entrance to a building, and at exterior worksites signs must be readable from 20 feet.

3. ***Prohibited Methods***. There are some methods that may not be used at any time to remove paint that is or may be lead-based paint. Prohibited methods include:
    a. Open flame burning or torching.
    b. Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
    c. Abrasive blasting or sandblasting without HEPA local exhaust control.
    d. Heat guns operating above 1,100 degrees Fahrenheit, or those that that operate high enough to char the paint.
    e. Dry sanding or dry scraping.

    Note: Four exceptions to this prohibition are:

        i. Dry scraping in conjunction with heat guns;
        ii. Dry scraping within 1.0 ft. (0.20 m.) of electrical outlets;
        iii. Treating deteriorated paint spots that total no more than 2 ft.2 (0.2 m 2) in any one interior room or space; or,
        iv. Treating deteriorated paint spots that total no more than 20 ft. 2 (2.0 m 2) on exterior surfaces.

    f. Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration at 29 CFR 1010.1200 or 1926.59, as applicable to the work.

    Note: Methylene chloride paint strippers may cause cancer and should be avoided. Use of these strippers is prohibited by some jurisdictions.

4. ***Worksite Cleanup***. Worksite cleanup removes dust and debris from the work area. Good cleanup is critical to passing clearance and leaving the unit safe for habitation. Worksite cleanup must be done using methods, products and devices that are successful in cleaning lead-contaminated dust, such as vacuum cleaners with HEPA filters and household or lead-specific detergents.

14.2.5.5 Clearance

Clearance must be conducted of maintenance work unless the work area was below the de minimis level.

14.2.5.6 Maintenance Records

Grantees must keep records of inspections, repairs, and any other lead hazard evaluation and reduction activities for 3 years after the activities cease or for the period required by program regulations. The HOME program requires that records be kept for 5 years.

14.2.5.7 Missouri Requirements for Lead-Based Paint Testing and Abatement

The Missouri Department of Health and Senior Services, Section for Disease Control and Environmental Epidemiology, Bureau of Environmental Regulation and Licensure, Lead Licensing Program is the entity that governs lead-based paint activities in the State of Missouri under authority of RSMo 701.300-701.338.

14.2.6 References

HUD Occupancy Handbook, Handbook 4350.3 Rev-1, Section 1, Leases and Lease Appendices, Chapter 6, Lease Requirements and Leasing Activities, Subsection 6-8, Lead-Based Paint Disclosure Form.

HUD Web Site – Lead Safe Housing Rule: http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/index.cfm Lead-Based Paint - Louisiana Environmental Regulatory Code, Title 33, Part III, Chapter 28: Lead-Based Paint Rule – Recognition, Accreditation, Licensure, and Standards for Conducting Lead-Based Paint Activities: http://www.deq.louisiana.gov/portal/tabid/1674/Default.aspx
Lead Safe Housing Rule - Useful Forms The website is located at: http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/usefulforms/

Crosscutting Federal Requirements Forms **-** These forms are useful for ensuring that federal requirements are being met, regardless of the type of activity:

Crosscutting Federal Requirements Forms			
1.	Abatement and Clearance Reports	**8.**	List of Prohibited Methods of Paint Removal
2.	Meaning of De Minimis Amounts of Paint	**9.**	Pamphlet: Protect Your Family From Lead in the Home (Appendix 14-4)
3.	Disclosure Form – Rental	**10.**	Lead Hazard Evaluation Notice - Sample Form
4.	Disclosure Form – Sales	**11.**	Lead Hazard Presumption Notice - Sample Form
5.	Lead Safe Housing Requirements Screening Worksheet	**12.**	Notice of Lead Hazard Reduction - Sample Form
6.	Lead Safe Housing Requirements Screening Worksheet - Rehab Addendum	**13.**	Elderly Relocation Waiver
7.	Requirements for Ongoing LBP Maintenance Activities	**14.**	Guidance on Relocation

Rehabilitation **-** These forms are useful when undertaking rehabilitation activities:

Rehabilitation			
1.	Calculating level of Rehabilitation Assistance Worksheets (Single Multi-Family Units)	**9.**	List of Circumstances When Occupant Relocation is Not Required
2.	Chart 1: Rehabilitation Process: Application to Assistance Threshold	**10.**	Rehabilitation Job File Checklist
3.	Chart 2: Rehabilitation Assistance up to $5,000	**11.**	Post Construction Certifications
4.	Chart 3: Rehabilitation Assistance $5,000 to $25,000	**12.**	Pre-Construction Conference Checklist
5.	Chart 4: Rehabilitation Assistance Over $25,000	**13.**	Sample Calculation of Level of Assistance in Multi-Family Properties
6.	HUD-EPA Abatement Letter	**14.**	Sample Construction Contract LBP Addendum
7.	Guidance for Volunteer Programs	**15.**	Sample Risk Assessment RFP and Protocol
8.	Guidance on HUD-EPA Abatement Letter	**16.**	Summary of Lead Hazard Reduction Methods Model/sample SF Risk Assessment Report

Homebuyer **-**These forms are useful when undertaking homebuyer activities:

1. Homebuyer Program Lead Compliance Document Checklist
2. Sample Letter to Lender, Realtors, and Title Companies on LSHR
3. Seller Certification (Homebuyer Program) Sample Form
4. Guidance on the Homebuyer's Option to Test

Tenant-Based Rental Assistance **-** These forms are useful for owners accepting tenant-based rental assistance:

1. Requirements for Responding to Notification of Child With Environmental Intervention Blood Lead Level
2. Sample Instructions for Owners of TBRA units
3. TBRA Owner Certification - Sample Form
4. Sample TBRA Resident Instructions
5. TBRA Program Lead Compliance Document Checklist

Reference Documents that Provide Information on Lead Safe Housing Rule -The following documents have been referenced in previous topics:

1. Frequently Asked Questions about the Lead Safe Housing Rule
2. Lead-Based Paint Resources
3. Lead Speak: A Brief Glossary
4. Legislative History of Lead-Based Paint
5. Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X)
6. Summary of Lead-Based Paint Requirements by Activity

14.3 Asbestos and Mold

14.3.1 Asbestos

HUD does not have a specific regulation related to asbestos as it does for lead in the HUD Lead Safe Housing Rule. HUD does have a mission of decent safe and sanitary structures. Federal laws though, particularly the Clean Air Act (CAA) and the Occupational Safety and Health Act (OSHA), could be triggered if there is a renovation or demolition of facilities that contain asbestos materials. The CAA specifies work practices that must be followed during demolition and renovation of buildings.

Initial screening on the statutory checklist form will look at the potential for disturbing any kind of asbestos containing materials. This of course necessitates an inspection of the building prior to work being done. A higher-level screening may be needed to determine extent and type of asbestos present. Therefore, if any kind of renovation or demolition is being considered, structures must be inspected and standardized practices that comply with the CAA and OSHA regulations must be employed if asbestos is found and will be disturbed. Make certain the contract specifications and documents address these practices and include inspection, testing, removal and final clearance procedures that meet or exceed applicable health codes. Contact the state Department of Public Health or Environmental Quality for more information on asbestos.

Additionally, local construction code enforcement agencies may have specific requirements for buildings containing asbestos. State laws may regulate the training and licensing of contractors, inspectors, laboratories, project safety monitors and asbestos abatement actions.

The regulatory requirements usually apply to:

1. Worker exposure to asbestos;
2. Procedures for abating asbestos when a building under goes renovation or demolition; and,
3. Disposal of asbestos containing materials.

14.3.1.1 References

Asbestos	"Asbestos Requirements for Demolition and Renovation Projects." Missouri Department of Natural Resources. 18 October 2007 http://www.dnr.mo.gov/pubs/pub2157.pdf
	"Asbestos: What Is It and Why Is It a Concern?" Missouri Department of Natural Resources. 18 October 2007 http://www.dnr.mo.gov/pubs/pub2077.pdf
	"Natural Disaster Assistance for Missouri Citizens: How to Handle Asbestos Containing Debris." Missouri Department of Natural Resources. 18 October 2007 http://www.dnr.mo.gov/pubs/pub2121.pdf

14.3.2 Mold

HUD does not have a specific regulation related to mold as it does for lead in the HUD Lead Safe Housing Rule. HUD does have a mission of decent safe and sanitary structures. Federal, state and local laws though could be triggered if there is a building that contains mold. The United States Environmental Protection Agency has issued a guide to the identification and cleanup of mold titled: "A Brief Guide to Mold, Moisture and Your Home." This guide provides guidance on who should do the cleanup, cleanup guidelines, mold prevention and control tips, among other topics. It has also issued a guide for situations where there has been a lot of water damage, and/or mold growth covers more than 10 square feet: "Mold Remediation in Schools and Commercial Buildings." Although focused on schools and commercial buildings, this document is applicable to other building types**.**

Additionally, local construction code enforcement agencies may have specific requirements for buildings containing mold. State laws may regulate the training and licensing of contractors, inspectors, laboratories, project safety monitors and mold remediation/cleanup actions.

14.3.2.1 References

Mold	Mold HUD Issues Consumer Guidance on How to Clean Up and Prevent Mold. HUD News release, HUD No. 04-087, http://archives.hud.gov/news/2004/pr04-087.cfm
EPA	*A Brief Guide to Mold, Moisture and Your Home*, EPA 402-K-02-003, www.epa.gov/iaq

Glossary

Abatement (Chapter 14) – Any measure or set of measures designed to permanently eliminate lead-based paint hazards. The four types of abatement methods are removal, enclosure, encapsulation, and replacement. Abatement can only be conducted by a licensed abatement contractor. Rehabilitation and renovation projects are not considered to be abatement, unless the purpose of the project is to eliminate lead hazards.

Acquisition (Chapter 6) – The acquiring by contract of supplies and services (including construction) with the City's Federal program grant funds through purchase or lease-whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition (i.e. procuring of goods and services) begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Administrative Cost (Chapter 5) – Cost activities that are required to meet federal regulations that include things like grants management, monitoring, financials, reporting, etc. General rule of thumb is that if it crosses multiple projects, it is probably an administrative cost. Contact the City/Planning Department for additional guidance and specific examples of activities and under which categories by program area these activities should be budgeted and/or invoiced.

Allowable Cost (Chapter 5) – Costs that are in line with 24 CFR Part 85 and 2 CFR Part 200 Subpart E.

Appraisal (Chapter 10) – A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Architect-engineer services (Chapter 6) – As defined in 40 U.S.C. 1102, means:
a. Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services; b. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; or, c. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Asbestos (Chapter 14) – Asbestos is the name given to a group of naturally occurring minerals that are resistant to heat and corrosion. Prolonged inhalation of asbestos fibers can cause serious and fatal illnesses.

Bid or sealed bid (Chapter 6) – An offer in response to invitations for bids (sealed bidding).

Binding Agreement (Chapter 12) – An agreement that, pursuant to state and HUD regulations, obligates the parties to expend or distribute federal funds and undertake responsibilities as set forth in the agreement.

CFR-Code of Federal Regulations (Chapter 2) – Identifies rules and regulations published in the Federal Register.

Change order (Chapter 2) – A written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

Cleaning (Chapter 7) – Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.

Cognizant Federal agency (Chapter 6) – The Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Concern (Chapter 12) – A deficiency in program performance, which should be brought to the attention of the program participant, and if not properly addressed, could become a finding. Sanctions are not issued for concerns; however specific corrective actions for improvement may be issued.

Contract (Chapter 6) – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

Contract Administrator (Chapter 12) – The individual responsible for ensuring that services outlined in the contract are performed adequately, within a specific time frame, and within budget.

Contracting (Chapter 6) – Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the description (but not determination) of supplies and services required selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contractor (Chapter 8, 12) – An entity competitively selected to provide clearly-specified goods or services. The contract price is established through the procurement process. CDBG-DR funds are paid to the contractor as compensation for the satisfactory provision of the goods and services as specified in the contract. An entity selected in accordance with the procurement requirements at 24 CFR 85.36. In accordance with 24 CFR 85.36(c), such procurement actions must be conducted in a manner that provides for free and open competition.

Contractor's Guide to Davis-Bacon (Chapter 7) – The HUD guide book, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not a required) publication which the grantee may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients as well as construction contractors and those who prepare contractor payrolls. It provides a brief explanation of issues associated with labor standards and Davis-Bacon in particular. The guide may be downloaded from HUD's website at www.hud.gov. Once at the HUD website, type in "Contractor's Guide to Davis-Bacon" in the search box. The search results should include the desired publication.

Corrective Action (Chapter 12) – Required steps to be taken to resolve findings.

Cost analysis (Chapter 6) – The review and evaluation of the separate cost elements and profit in an offeror' s or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

Cost-reimbursement Contracts (Chapter 6) – Provide for payment of allowable incurred costs, to the extent prescribed in the contract.

Debarment (Chapter 7) – An Action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is "debarred.''

Deficiency (Chapter 12) – An inadequacy based on a statutory, regulatory or program requirement.

Demolition (Chapter 7) – Demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages.

Deteriorated Paint (Chapter 14) – Any interior or exterior paint or other coating that is cracking, chipping, peeling, or chalking; or any paint or coating that is otherwise damaged or separated from the surface to which it was applied.

Direct Cost (Chapter 5) – Any project cost/project delivery cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

Encapsulation (Chapter 14) – An abatement method in which a lead-painted surface is coated with a special liquid paint that hardens and prevents lead dust from being released.

Enclosure (Chapter 14) – An abatement method in which a lead-painted surface is covered with paneling, wallboard, or other approved material to prevent lead dust from being released.

Environmental Review Record (ERR) (Chapter 9) – The environmental file.

Expendable personal property (Chapter 11) – All tangible personal property other than nonexpendable personal property.

Expropriation (Chapter 10) – The confiscation of private property with the express purpose of establishing social equity.

Family Members (Chapter 7) – (as it relates to contractor payrolls) – There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.

Federal Deposit Insurance (FDIC) (Chapter 5) – United States government corporation operating as an independent agency created as a result of the Banking Act of 1933 that provides deposit insurance to guarantee the safety of a depositor's accounts in member banks up to $250,000.

Finding of No Significant Impact (FONSI) (Chapter 9) – A document that briefly presents the reasons the proposed action will not have a significant impact on the human environment.

Finding(s) (Chapter 12) – A violation of statutory, regulatory or program requirement for which sanctions or other required corrective actions are issued.

Firm–fixed–price contract (Chapter 6) – Provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

FOIA-Freedom of Information Act (Chapter 2) –The law that gives citizens the right to access federal information.

Grantee (Chapter 12, 13) – The Municipality that has a binding agreement in place with the HUD to administer the CDBG-DR program(s) and/or project(s).

HCDA (Chapter 10) – Housing and Community Development Act of 1974 that created Section 8 housing.

HUD's Handbook 1378 (Chapter 10) – Department of Housing and Urban Development's Handbook 1378: Real Estate Acquisition and Relocation Policy and Guidance, located at http://www.hud.go/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm

HUD-U.S. Department of Housing and Urban Development (Chapter 2) – establishes the regulations and requirements for the CDBG-DR programs and has oversight responsibilities for the use of funds.

Indirect Cost (Chapter 5) – Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

Items to be Posted at the Job Site (Chapter 7) – The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as Appendix 7-2.

Laborers and Mechanics (Chapter 7) – Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that is not normally thought of as a recognized trade. On a wage decision a classification that is not "laborer" is automatically considered as a "mechanic" classification.

Lead (Chapter 14) – A soft, heavy, toxic and malleable poor metal, lead is bluish white when freshly cut but tarnishes to dull gray when exposed to air. Lead is used in building construction, lead-acid batteries, bullets and shot, and is part of solder, pewter, and fusible alloys. While it has some beneficial uses, it can be toxic to humans and animals causing of health effects.

Lead-based Paint (Chapter 14) – Any paint or other surface coating that contains lead in an amount equal to or exceeding defined levels of one (1) milligram per square centimeter; or five-tenths (0.5%) percent by weight.

Lead Hazard (Chapter 14) – Dangerous conditions or circumstances that cause lead exposure at levels that would result in adverse human health effects. Lead hazards could include deteriorated lead-based paint, lead-contaminated dust, and lead-contaminated soil. The term is defined this way for the purpose of Lead in Your Home: A Parent's Reference Guide.

LMI-Low to Moderate Income (Chapter 2) – Family or household annual income less than the Section 8 Low Income Limit, generally 80 percent of the area median income, as established by HUD. LMI limits are set annually by HUD; the grantee should obtain the newest table to determine current limits.

Low-Income Household/Family (Chapter 2) – A household/family having an income equal to or less than the Section 8 Very Low Income limit (50% of the area median income) as established by HUD. LMI limits are set annually by HUD; the grantee should obtain the newest table to determine current limits.

Low-income person (Chapter 8) – Persons or families whose total household income does not exceed 80 percent of the median income for the area.

Monitored Entity (Chapter 12) – The entity that is evaluated during a monitoring review.

National Environmental Policy Act of 1969 (NEPA) (Chapter 9) – The basic National charter that provides policies, goals and tools for the protection of the environment

New hires (Chapter 8) – (as it relates to contractor payrolls) – Full-time employees for permanent, temporary or seasonal employment opportunities.

Non-expendable personal property (Chapter 11) – Tangible personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit.

HUD (Chapter 12) – U.S Department of Housing and Urban Development to administer the CDBG-DR program(s) and/or project(s).

HUD Direct Subrecipient (Chapter 13) – A public or private nonprofit agency, authority or organization that is provided CDBG-DR funds directly from HUD to administer the CDBG-DR program(s) and/or project(s).

Offer (Chapter 6) – A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids"' or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations", not offers.

Offeror (Chapter 6) – Bidder.

Personal property (Chapter 11) – Basically any kind of property other than real property. Personal property can be tangible (such as supplies, furniture, and equipment), or intangible (such as copyrights, patents, and inventions).

Precutting and Prefabrication (Chapter 7) – Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.

Prevailing Wages (Chapter 7) – Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by the U.S. Department of Labor in a document called a wage decision.

Price analysis (Chapter 6) – The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Profit (Chapter 10) – The element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. It does not necessarily represent net income to contractors. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total pre-negotiation objective.

Program Income (Chapter 5, 11) – Gross income received by the grantee directly generated from the use of CDBG-DR funds or matching contributions.

Project Cost (Chapter 5) – Total of CDBG-DR funds, local or other matching funds, and total business investment in the project.

Project Delivery Cost (Chapter 5) – Costs similar to administrative costs, but are used specifically to meet the requirements to complete a particular project, especially as it applies to meeting CDBG-DR requirements.

Project/Program (Chapter 12) – The housing, infrastructure, economic development, or planning endeavor undertaken by the Grantee.

Real property (Chapter 5, 11) – Land, including all the natural resources and permanent buildings on it.

Recommendation (Chapter 12) – A specific course of action issued for concerns that details areas of improvement in program performance.

Release of Funds (ROF) (Chapter 9) – HUD's issuance of a firm approval letter. (This release is executed through HUD form 7015.16).

Request for qualifications (RFQs) (Chapter 6) – Solicitations under negotiated procedures and are used in negotiated acquisitions to procure the services of an engineering or architectural firm.

Request Release of Funds (RROF) (Chapter 9) – A Recipient's request for a firm approval letter, granting funds to an activity. (This request is executed through HUD form 7015.15).

Requests for proposals (RFPs) (Chapter 6) – Solicitations under negotiated procedures and are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals.

Responsible Entity (RE) (Chapter 9) – The entity that assumes environmental responsibility for HUD under NEPA and executes the environmental review. The RE is the last unit of local government to receive the HUD funding.

Review Appraisal (Chapter 10) – A secondary appraisal that is performed to ensure a reasonable property valuation.

Sealed bidding (Chapter 6) – A method of contracting that employs competitive bids, public opening of bids, and awards.

Section 3 Business Concern (Chapter 8) – As related to Section 3 of the of the HUD Act of 1968, a business: that is 51 percent or more owned by Section 3 residents; or whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within 3 years of the date of first employment with the business were Section 3 residents; or that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications.

Section 3 Covered Activity (Chapter 8) – As related to Section 3 of the HUD Act of 1968. Any activity which is funded by Section 3 covered assistance.

Section 3 Covered Assistance (Chapter 8) – As related to Section 3 of the of the HUD Act of 1968, Assistance provided under any CDBG-DR program that is expended for work arising in connection with housing rehabilitation, housing construction, or other public construction projects.

Section 3 Covered Contract (Chapter 8) – As related to Section 3 of the of the HUD Act of 1968, A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. This does not include contracts for the purchase of materials and supplies unless the contract includes purchasing of materials and installation of these materials and supplies. For example: a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and thus is covered by Section 3.

Section 3 Covered Project (Chapter 8) – The construction, reconstruction, conversion or rehabilitation of housing and other public construction assisted with CDBG-DR funds as related to Section 3 of the of the HUD Act of 1968.

Section 3 Resident (Chapter 8) – A public housing resident or an individual who resides in the metropolitan area or Non – metropolitan County in which the Section 3 of the HUD Act of 1968 covered assistance is expended and who meets the definition of low – income or very low – income person.

Service Area (Chapter 8) – The geographical area in which the persons benefiting from the Section 3 covered project reside.

Site of Work (Chapter 7) – The site of work as related to Davis-Bacon is limited to the physical place or places where construction called for in the contract will remain when work has been completed and to adjacent or nearby property used by the contractor which can reasonably be included because of proximity.

Sole Source Acquisition (Chapter 6) – A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

Solicitation (Chapter 6) – Any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids”. Solicitations under negotiated procedures are called ``requests for proposals.'' Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

Subcontract (Chapter 6) – Any contract as defined above “Contract” entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor (Chapter 6) – Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Subrecipient (Chapter 12, 13) – A public or private nonprofit agency, authority or organization that is provided CDBG-DR funds through a State or Local Grantee for use in carrying out agreed upon eligible activities.

Supply and Installation (Chapter 7) – The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. If a supply contract not otherwise covered requires the supplier to install the product, the installation portion of the contract is subject to prevailing wage requirements except when the installation involves only minor construction activity. For example, installation of window shades or draperies would not require Davis-Bacon wage rates; however, installation of an elevator or boiler would.

Taxpayer Identification Number (TIN) (Chapter 5) – The number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

Tenant-based rental assistance TBRA (Chapter 10) – A rent assistance program funded by HUD that provides assistance for paying rent, utility bills, and security deposits.

Tiering (Chapter 9) – The evaluation of an action or an activity at various points in the development process as each proposal or event becomes ready for an Environmental Assessment. For example, a city-wide rehabilitation program may be reviewed to determine the relevant environmental considerations that would need to be examined when specific properties are identified.

URA (Chapter 10) – Uniform Relocation Assistance and Real Property Acquisition Policies Act

USC-United States Code (Chapter 2) – A consolidation and codification by subject matter of the general and permanent laws of the United States.

Very Low-Income Person (Chapter 8) – Persons or families whose total household income does not exceed 50 percent of the median income for the area.

Waiver (Chapter 10) – Granted by HUD to alter typical CDBG-DR regulations and activities.

Appendices

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Chapter 5

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Chapter 9

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Chapter 10

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