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Affordable Housing Development Fund – Haywood County Program

State of North Carolina

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Revision History

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1.0 Introduction and Overview of the NCORR Affordable Housing Development Fund Program - Haywood County

In response to the damage caused by Tropical Storm Fred on September 8, 2021, the U.S. Congress appropriated Community Development Block Grant – Disaster Recovery (CDBG-DR) program funding to North Carolina and other impacted states and entitlement communities through Public Law 117-43 and 117-180 that stipulates that these funds be used for necessary expenses for activities authorized and allocated to grantees for disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization and mitigation activities in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

The Affordable Housing Development Fund Program – Haywood County will offer funding for diverse affordable housing alternatives that may include, but are not limited to: projects that involve single-family homeownership development; small-scale affordable housing rental and homeownership developments; scattered site/infill creation of rental or homeownership dwellings; and large-scale affordable multi-family rental new construction and/or rehabilitation/conversion.

This Manual provides options for use of these CDBG-DR funds to:

1. acquire, rehabilitate and resell single-family housing for long-term homeownership affordability;
2. develop new long-term affordable homeownership housing;
3. acquire and convert existing multifamily for affordable rental housing;
4. acquire and rehabilitate existing multifamily for affordable rental housing; or
5. develop new long-term affordable rental housing.

2.0 Program Administration

The NC Office of Recovery and Resiliency (NCORR) is an office within the NC Department of Public Safety (NCDPS) and is the administrator of CDBG-DR funds for the State of North Carolina.

As the CDBG-DR administrator, NCORR must ensure that its programs and expenditures comply with HUD regulations. For this Affordable Housing Development Program, NCORR will enter into a subrecipient agreement with Haywood County¹. NCORR, along with Haywood County, will be responsible for ensuring that all applicable Federal, State, local regulations are followed.

Haywood County serving as the Subrecipient:

- is required to use Federal procurement processes in all CDBG-DR-related

¹ For the remainder of this Manual, Haywood County is synonymous with Subrecipient.

- purchasing of good and services (including conflict of interest provisions);
- may only be reimbursed for actual, necessary, and adequately documented activity delivery costs; and
- is subject to Federal / single audit requirements (if triggered based on total federal funding received).

3.0 Manual Overview

This Manual serves as a resource and general reference guide for NCORR, its agents, Subrecipients, beneficiaries, or other interested parties and includes eligibility requirements, program details, and subrecipient obligations for the NCORR Affordable Housing Development Fund Program - Haywood County (or the Program).

This Manual only addresses the Affordable Housing Development Fund Program - Haywood County and is not intended to be a full compilation of all internal program procedures that NCORR and its agents follow to ensure effective administration of the policies contained in this Manual. This Manual, related State Action Plan and subsequent amendments, and the policy manuals for other North Carolina Disaster Recovery programs are available for public review and use at the link listed below:

<https://rebuild.nc.gov/about-us/plans-policies-reports>

Additional program information can be found on the Affordable Housing Development Fund website at:

<https://www.rebuild.nc.gov/local-and-tribal-governments/community-development>

4.0 Program Objectives

The objective of this Program is to offer an adaptive model that permits a variety of scenarios where CDBG-DR funding can be awarded to projects that result in the creation of long-term affordable homeownership and rental housing units to Low and Moderate income (LMI) households in Haywood County. This objective will be served through program activities such as the acquisition and conversion, repair, rehabilitation, or development of new affordable homeownership or rental housing, on a single site or on scattered sites, to be used as long-term, affordable homeownership or rental housing for LMI households .

Program priorities include:

1. community need and support;
2. site location / suitability;
3. partner capacity;
4. innovative and leveraged approaches to development;
5. set-aside of units for extremely low income and very low income households;
6. set-aside of units for special needs populations;
7. total development cost vs. CDBG-DR share of cost;
8. proposed development's readiness to proceed; and

9. project's coordination with local and/or state recovery priorities and climate resiliency efforts.

5.0 Meeting National Objectives, Requirements and Priorities

In accordance with 24 CFR 570.208, all CDBG-DR funded activities must satisfy a national objective. For this Program, projects will primarily meet the Low and Moderate Income housing national objective. As appropriate, given the ongoing need to alleviate potential emergency conditions for households still recovering from Tropical Storm Fred and the potential to reside in environmental hazardous conditions, the Program may also leverage the urgent need national objective category for instances that help impacted communities secure or access affordable housing options away from conditions that may pose serious and immediate threat to their health or welfare.

6.0 Program Eligibility

In an effort to create maximum flexibility while maintaining NCORR goals and HUD compliance, the Program intends to offer an adaptive model that permits a variety of scenarios where CDBG-DR funding can be awarded to projects that result in the creation of long-term affordable homeownership and rental housing units to LMI households in Haywood County.

6.1 Eligibility Criteria

In order for a proposed project to be evaluated, the following threshold requirements must be met:

1. The property site submitted for application must be located within Haywood County.
2. Proposed activities must be eligible. This will be determined on a case-by-case basis.
3. Tie-back to storm / storm impact must be present. Presence of a project in a MID county constitutes storm tie-back for the purposes of this Program.
4. Property is **not** located within the 100-year floodplain, or floodplain designation is peripheral and distinct from the location of any planned development activity for the project.
5. Site control through ownership or option to purchase.
6. Commitments for all other funding sources necessary to complete the proposed project are required to be identified as either applied for but not yet secured or awarded / secured.
7. Rental projects must have rent and occupancy requirements that ensure that at least 51% of the units are affordable to and occupied by LMI households. The rents of these Program Assisted units are established annually by HUD and are meant to reflect rental payments plus an allowance for utilities. If the project is using Low Income Housing Tax Credit (LIHTC) funding,

the 60% Area Median Income (AMI) affordability requirement will meet NCORR affordability as long as no units exceed the 80% AMI limit.

8. Homeownership development projects must also comply with AMI limits for end-user homeowners and occupancy for the affordability term. One hundred percent of homeownership units must be affordable to households earning 80% or less of Haywood County's AMI.

6.2 Eligible Applicants

Haywood County will solicit projects from qualified non-profit, for-profit, and government agencies which can include property management organizations, developers, Community Housing Development Organizations (CHDOs), Community-Based Development Organizations (CBDOs), and/or any other partnerships comprised of any of the above.

6.3 Site Considerations

The following site considerations should be reviewed before site selection:

1. An Environmental Review Record will have to be conducted to confirm that there are no substantial adverse environmental factors at each site. See section 9.0 for additional information about the environmental review process.
2. Due to environmental requirements, offers to purchase may disqualify sites due to choice limiting actions.
3. If acquiring an existing dwelling unit that is occupied, a relocation plan that adheres to the Uniform Relocation Assistance and Real Property Acquisition Act must be developed and the cost for relocation included in the application budget.
4. Any sites to be considered for funding must be acquired with a valid deed free and clear of all encumbrances at the time of property transfer. If applicant or applicant partner already owns land for development, any existing liens, deed restrictions, land leases or other encumbrances must be disclosed at the time of application for consideration of funding agency.

6.4 Eligible Activities

Eligible activities for this Program include:

1. acquire, rehabilitate and resell single-family housing for long-term homeownership affordability;
2. develop new long-term affordable homeownership housing;
3. acquire and convert existing multifamily for affordable rental housing;
4. acquire and rehabilitate existing multifamily for affordable rental housing; or

5. develop new long-term affordable rental housing.

6.5 Eligible Costs

Eligible costs for this Program include, but are not limited to, the following:

1. activity delivery costs for Subrecipient to implement the Program, including staff time and environmental reviews for funded projects;
2. architectural and engineering design;
3. permitting fees;
4. developer fees;
5. general contractor fee;
6. mobilization, site prep, and clean up;
7. demolition costs for acquisition/demolitions if declared blighted and existing unit determined unfeasible for rehabilitation;
8. construction, reconstruction or rehabilitation costs;
9. land and building acquisition costs (case-by-case basis);
10. reasonable and customary sales fee/commission and marketing costs; and
11. homebuyer education.

Developer fees shall not exceed 15% of total hard costs. General contractor fee shall not exceed 20% of overhead and profit. If applicant is acting as both Developer and General Contractor, the combined fee to be collected from funds would be limited to 20%.

Some types of cost eligibility are dependent upon the type of project submitted for funding.

6.6 Ineligible Costs

Ineligible costs for this Program include the following:

1. funding for supportive services;
2. infrastructure that does not result in the production of housing;
3. mixed-use projects, where a portion of the new development contains non-housing components;
4. pre-application costs and application development costs;
5. advances of any type, including construction.

7.0 Application and Award Process

Proposals will be selected according to the application process and Program evaluation criteria. The application and award process establishes the details for application associated deadlines, selection criteria, and award process.

7.1 Application Process

Haywood County will use a Letter of Interest ahead of the application period. After the Letter of Interest timeframe ends, interested parties will be asked to apply and applications will be reviewed by the evaluation committee.

Selection criteria that will be contained within the application shall include, but are not limited to:

1. information about the eligible project's lead entity and personnel who will oversee the project;
2. information about the proposed project;
3. information about the proposed project site and the readiness of the project to proceed (i.e., site control, correct zoning, adequate infrastructure to support proposed development, any existing drawings or environmental work, etc.);
4. compliance with affordability periods, construction standards including green and resilient building standards, elevation standards, and broadband infrastructure, and other requirements included in the Consolidated Notice for CDBG-DR funds;
5. plans, specifications, the general contractor (if known), and the construction proposal;
6. how the proposed project relates to the existing neighborhood and evidence of support from applicable municipality and other local stakeholders;
7. affirmative fair housing marketing plan describing how the properties will be leased or sold;
8. a project schedule; and
9. a project budget, (including sources & uses; 20-year pro-forma and unit-mix for rental projects).

7.2 Evaluation Process

An evaluation committee, established by Haywood County, will use the following factors to evaluate applications:

1. community need and support;
2. evidence of local support;
3. organizational and financial capacity;
4. evidence of readiness to proceed;
5. innovation
6. consistency with community recovery priorities;
7. considerations for future storm resiliency; and
8. other application content as applicable.

In addition, Haywood County may identify other factors that, if added, will be communicated to interested applicants through the application process.

7.3 Awards and Maximum Assistance

There is \$10,526,000 in CDBG-DR funds allocated to the Affordable Housing Development Fund - Haywood County Program. The maximum amount to be awarded to an individual project is expected to be \$3,500,000. Any project application will be evaluated based on the evaluation criteria which includes per unit cost and overall cost reasonableness for the size and scope of the project. Haywood County reserves the right to award projects in whole or in part, to elect not to fund any of the applications submitted, or to use direct selection as an alternate form of project selection when appropriate.

7.4 Structure of Awards

NCORR's award to Haywood County shall be in the form of a subrecipient agreement that specifies the grant terms that will include any administrative costs to oversee the program and the cost to implement the respective projects. Any subawards made by Haywood County to partner entities must be structured as non-amortizing loans and will also require a Land Use Restriction Agreement (LURA) that further enforces the regulatorily required Affordability Period based upon the type of unit and the amount of CDBG-DR funds provided. Loan commitments are not transferrable without prior approval of NCORR and Haywood County. It is best practice for the subrecipient to require loan commitments to become due and payable in full in the event of noncompliance or default during the term of the loan. NCORR expects Haywood County to formulate partnership agreements with any partner entities. NCORR can provide sample agreements or technical assistance to interested Subrecipients.

For homeownership projects, the affordability period, (as reflected within the CDBG-DR loan award) is as follows:

Homeownership assistance per unit: Under \$15,000	5 years
Homeownership assistance per unit: \$15,000 to \$40,000	10 years
Homeownership assistance per unit: Over \$40,000	15 years

For multifamily rental projects, the affordability period, (as reflected within the CDBG-DR loan award) is as follows:

Rehabilitation or acquisition of existing housing per unit amount of CDBG-DR funds: Under \$15,000	5 years
Rehabilitation or acquisition of existing housing per unit amount of CDBG-DR funds: \$15,000 to \$40,000	10 years
Over \$40,000 or rehabilitation involving refinancing	15 years
New construction or acquisition of newly constructed housing	20 years

Other affordable housing subsidies layered into the financing structure may require additional rental restrictions. In all cases where other federal, state, or local subsidies are a component of the sources used, the most restrictive requirements will be applied.

7.5 Contingent Awards

After the evaluation process is completed, contingent awards will be announced to the successful applicants. Preliminary Awards will be contingent upon the following:

1. Continued availability of CDBG-DR funds from HUD;
2. A duplication of benefit analysis (see Section 8.0);
3. HUD Authority to Use Grant Funds (AUGF) following completion of the Environmental Review process, as applicable (See Section 9.0);
4. Receipt of firm commitments for all other financing needed for the project;
and
5. Other items noted in the initial subrecipient agreement.

7.6 General Responsibilities

Respective general responsibilities of the Subrecipient and NCORR are as follows:

- The Subrecipient is responsible for preparing or adopting plans and specifications that conform to program rehabilitation/construction standards, estimating rehabilitation/construction costs, managing contract awards, and managing the construction process. The Subrecipient's or its Developer (if applicable) assumes all risks of cost overruns in excess of the construction and contingency budget line item in the previously approved Project Budget, unless NCORR approves a revised Project Budget.
- The Subrecipient is responsible for providing and interpreting any applicable rehabilitation or construction Standards, approving plans, specifications and estimates for projects, monitoring the work, and approving draw requests.
- Subrecipient is responsible for approval of projects for funding. NCORR will review the information provided by the Subrecipient and confirm eligibility.
- NCORR is responsible for reviewing and approving draw requests after submission from the Subrecipient.
- Subrecipient should formulate partnership agreements with any partner entities that enforce necessary requirements for this Program.

8.0 Duplication of Benefits

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C.

§5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development's CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

Generally, financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds is considered a duplication of benefit.

As mandated by law, all NCORR projects receiving CDBG-DR funding must evidence an analysis of funds potentially received for the same purpose as the intended CDBG-DR grant, otherwise known as a Duplication of Benefits (DOB) Analysis. All Partners must submit all funding sources, including FEMA awards and private insurance proceeds, to be analyzed. NCORR conducts an analysis to establish that there is no duplication of benefits.

The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Calculation of the total maximum amount of the CDBG-DR award is determined after the grantee:

- identifies total need;
- identifies total assistance;
- subtracts exclusions from total assistance; and
- subtracts the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

Three considerations may change the maximum amount of the CDBG-DR award.

First, the grantee may impose a program cap that limits the amount of assistance an applicant is eligible to receive, which may reduce the potential CDBG-DR assistance available to the applicant.

Second, the grantee may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance, as discussed in section V.C.). Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) The applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and (2) the applicant agrees to repay the CDBG-DR grantee for any duplicative assistance once it is received (subrogation). The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (e.g., due to insurance litigation). HUD requires all grantees to enter agreements with applicants that require applicants to repay duplicative assistance before receiving CDBG-DR assistance.

Third, the applicant's CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need.

8.1 Potential List of Duplicative Benefits – DOB Analysis

The Applicant must consider the total assistance available to them. This includes all benefits, including cash, insurance proceeds, grants from FEMA, SBA loans, as well as any other assistance received by the applicant from other local, state, or federal programs, or private or nonprofit charities. Any benefits received or pending from the following sources should be reported and are frequently sources of duplicative benefits:

- National Flood Insurance Program (NFIP): Insurance proceeds received must be disclosed by the Applicant.
- Private Insurance: All insurance proceeds received must be disclosed by the Applicant. Where necessary, the Program will look for “undeclared” insurance benefits as well as confirming those disclosed by the Sponsor.
- FEMA: FEMA proceeds received must be disclosed by the Applicant.
- Other: Funds received from other sources must be disclosed by the Applicant and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

NCORR will use documentation supplied by the Applicant. If an Applicant can provide documentation demonstrating that the insurance proceeds amount provided by the FEMA database includes items not covered in the evaluation or not paid to cover structural loss, NCORR will use the documentation provided by the Applicant to adjust the insurance payout considered in the DOB analysis. The documentation provided by the Applicant must come from the insurance company that issued the payments.

9.0 Environmental Review

CDBG-DR funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders; therefore, an environmental review must be completed for all project activities prior to obligating Program funds. NCORR will assess the knowledge, understanding and capacity of all subrecipients within this Program and will provide any needed technical assistance. NCORR recommends that all potential subrecipients review 24 CFR Part 58 for further details and requirements for compliance. All projects which involve new construction, change of use (as in adaptive reuse projects), or increase the floor area of an existing residential structure by 20% or more must successfully complete an Environmental Assessment (EA) to receive NCORR funding for their project. For projects which involve substantial rehabilitation of existing residential structures, an abbreviated environmental review may be applicable. Projects may also be subject to the State Environmental Policy Act (SEPA). More details about SEPA applicability can be found at <https://www.deq.nc.gov/permits-rules/state-environmental-policy-act-sepa>. Pre-application technical assistance is available to discuss these matters further.

All awards will be considered conditional until the environmental review is complete. Project specific award letters and Notices to Proceed will not be issued for project activities until the appropriate level of environmental review is completed and an AUGF is received, if applicable. NCORR is the Responsible Entity for environmental reviews through this Program. Federal regulations prohibit obligation, expenditure, or disbursement of CDBG-DR or other project funds and that no “choice limiting actions” occur prior to HUD’s issuance of an official Authority to Use Grant Funds (24 CFR 58.22).

The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508 also apply. Other federal and state laws and regulations (some of which are

enforced by State agencies) also apply depending upon the type of project and the level of review required.

10.0 Construction Standards and Monitoring

All awarded development projects will be required to meet NCORR's adopted guidance of HUD's Decent, Safe and Sanitary dwelling standards and any local building codes. Applicable standards and monitoring expectations are delineated below.

10.1 Property and Construction Standards

Housing constructed or rehabilitated with CDBG-DR funds must meet all applicable local codes, ordinances, and rehabilitation standards, at the time of project completion. Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.21 and must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601- 3619).

10.2 Green and Resilient Building Standards

CDBG-DR projects must meet the Green and Resilient Building Standard for new construction and reconstruction, along with minimum building code standards for CDBG-DR.

Green and resilient building standard for new construction and reconstruction of housing can be found at Federal Register Notice (88 FR 3211).

The Green and Resilient Building Standard applies to:

- all new construction and reconstruction (i.e., demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings; and
- all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls above.

10.2.1 Green Building Standards

If the construction falls under either of those two categories and is assisted with CDBG-DR funds, it must meet an industry-recognized standard that has achieved certification under:

1. Enterprise Green Communities;
2. LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
3. ICC-700 National Green Building Standard Green Resilience;
4. Living Building Challenge; or
5. any other equivalent comprehensive green building program acceptable to HUD.

Additionally, all such covered construction must achieve a minimum energy efficiency energy efficiency standard, such as:

1. ENERGY STAR (Certified Homes or Multifamily High-Rise);
2. DOE Zero Energy Ready Home;
3. EarthCraft House, EarthCraft Multifamily;
4. Passive Housing Institute, Passive Building or EnerPHit certification from the Passive Housing Institute US (PHIUS) or International Passive Housing Association;
5. Greenpoint Rated New Home or Greenpoint Rated Existing Home (Whole House or Whole Building label);
6. Earth Advantage New Homes; or
7. any other equivalent energy efficiency standard acceptable to HUD.

For each project subject to the above, the specific green building technique and standard used will be recorded. Rehabilitation of non-substantially damaged structures must comply with the HUD CPD Green Building Retrofit Checklist to the extent that the items on the checklist are applicable to the rehabilitation. The checklist is available at

<https://www.rebuild.nc.gov/green-building-retrofit-checklist>

Applicants are required to submit documentation providing evidence of selection of the green standards they will apply to the project. In addition, awarded applicants will be required to submit a Certificate of Compliance with the chosen standard's compliance process.

10.2.2 Resilient Building Standards

Depending on the location of the project, resilient construction methods may include:

1. consistency with community planning priorities related to resiliency against future storms;
2. two or more feet of building elevation above base flood elevation (BFE);
3. use of AAC (Aerated Autoclaved Concrete) as primary building material;
4. flood resistant materials;
5. use of solar shingles, roof hardening and impact resistant doors and windows to resist wind;
6. fire resistant materials and defensible space around a building for wildfires;
7. nature-based and other low impact development methods to reduce stormwater and contain runoff to the building site (such as permeable paving, rain gardens, bioswales, etc.); or
8. building outside of both the 100- and 500-year floodplains.

Any mitigation or resiliency measures adopted by the project should align with existing hazard mitigation plans submitted to FEMA or other state, local, or tribal hazard mitigation plans.

If the project is complying with a certain certification program, documentation regarding official certification will be needed for Program documentation.

10.3 Broadband Requirements

The rule below applies only to buildings with more than four units. The installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD is required. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by HUD funding will provide a platform for individuals and families residing in such housing to participate in the digital economy and increase their access to economic opportunities.

HUD defines broadband infrastructure as “cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure—including wireless infrastructure—as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission’s (FCC’s) definition in effect at the time the pre-construction estimates are generated and meets any State or local building codes that may apply to the installation of broadband infrastructure.

This rule only requires that the broadband infrastructure provided be able to receive high-speed Internet that is “accessible” in each unit. It does not require those recipients of funding undertaking new construction or substantial rehabilitation to provide broadband service to current or future residents even if residents pay for such service.

Furthermore, the definition of broadband infrastructure in the rule includes coaxial cable television (TV) wiring that supports cable modem access or even permanent infrastructure that would provide broadband speeds to dwelling units wirelessly. The rule also provides for exceptions to the installation requirements where the installation is too costly to provide due to location or building characteristics.

10.4 Payment and Performance Bond

The Subrecipient shall ensure that any developer or general contractor complies with bonding regulations found at 2 CFR 200.326. If the Subrecipient has bonding policies that can be proven to adequately protect the federal interest in the project, their bonding policies may be used with NCORR’s approval. If such policies or determination have not been made, bid guarantees, performance bonds, and payment bonds should be utilized as appropriate. Bonds shall be made payable to NCORR and Haywood County upon Haywood County’s request in a form approved by NCORR and in compliance with 2 CFR 200.326. The surety issuing the bond must be on the current list of acceptable sureties on federal bonds published by the U.S. Treasury Department.

10.5 Notice to Proceed

Prior to commencement of construction, the Subrecipient must receive a Notice to

Proceed issued by NCORR. The environmental review process must be completed prior to receiving a Notice to Proceed. The Subrecipient may pass on this Notice to Proceed to awarded applicants.

10.6 Retainage

NCORR will retain ten percent (10%) of the total award from each draw until satisfactory completion of the development. The final request for disbursement of retainage will be submitted to NCORR with supporting documentation no later than sixty (60) days after the termination date of the contract.

10.7 Plans and Specifications

The Subrecipient is responsible for completing plans and specifications (or work write-ups) which conform to NCORR's Rehabilitation/Construction Standards and which are in a form approved by NCORR. Plans/specifications and work write-ups will include the following:

1. general requirements for which the builder is responsible (permits, fees, mobilization, site utilities, site security, builder's risk insurance, homebuyer warranty, etc.);
2. site plans, if new structures, fencing, landscaping or other site improvements are being provided;
3. working drawings and materials specifications, for any new construction or substantial rehabilitation;
4. rehabilitation work write-ups that show quantity, size, and materials specification for each work write-up item to enable Subrecipient or its developer partners to create accurate cost estimates; and
5. cost estimates and remediation plans regarding asbestos, lead paint for any homes built before 1978, or other known environmental hazards.

10.8 Construction Monitoring Inspections

Subrecipient is responsible for monitoring the quality, completeness and conformity to specifications of all work performed by third party contractors, and--if Subrecipient is also the Developer--all work performed by Subrecipient's personnel or subcontractors. Subrecipient should have adequate representation in all construction meetings, construction draw inspections, and the punch list inspection.

11.0 Public Participation

As the agency administering the CDBG-DR grants awarded to the State of North Carolina, NCORR is committed to furthering fair housing through established affirmative marketing and outreach activities. As a subrecipient of federal CDBG-DR funds, NCORR is required to take steps based on the Fair Housing Act of 1968 to reduce disparities in housing choice, access, and opportunities based on protected class (e.g., race, color, religion, familial status, sex, national origin, or disability). Toward achieving that objective, NCORR will ensure that its outreach, communication, and public engagement efforts are comprehensive in order to reach as many eligible Applicants as possible.

NCORR's Citizen Participation Plan provides North Carolina citizens with an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR recovery program. The Plan sets forth policies and procedures for citizen participation, in accordance with federal regulations, that are designed to maximize the opportunity for citizen involvement in the community development process. NCORR has attempted to provide all citizens with the opportunity to participate, with particular emphasis on:

- LMI individuals;
- individuals with limited English proficiency; and
- individuals requiring special accommodations due to disabilities.

The NCORR's Citizen Participation Plan ensures that there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for use of CDBG-DR grant funds.

NCORR uses news outlets, print and social media in addition to means such as press releases, posting notices on the North Carolina State Governor's website and/or NCORR's website, to maximize access of program information to the impacted citizens and businesses.

The NCORR Citizen Participation Plan can be accessed at:

<https://www.rebuild.nc.gov/about/plans-policies-reports/action-plans>

11.1 Limited English Proficiency

Federal Executive Order 131661 requires NCORR and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or those deaf/hard of hearing.

As the CDBG-DR administrator, NCORR is required to ensure meaningful access to agency services, Programs, and activities for persons who have Limited English Proficiency (LEP). When applicable, NCORR will identify Applicants who have difficulty speaking or reading English and will ensure that the following services are available to them in accordance with the NCORR Language Access Plan:

- provision of an interpreter who translates to and from the person's primary language; and
- translation of Program documents.

The NCORR Language Access Plan can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

11.2 Accessibility, Reasonable Accommodations and Special Needs

Program subrecipients will ensure accessibility to persons with special needs and will operate in a manner that does not discriminate or limit access to Program services and benefits to persons with disabilities. Additionally, to ensure that the Program is operating in compliance with Section 504 requirements of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA), selected Subrecipients will be required to assign staff in accordance with its Section 504 Compliance Plan who will:

- ensure that all facilities where clients will have face-to-face interaction with Program staff are readily accessible and usable by persons with disabilities;
- appropriately address any identified hearing, visibility, or mobility limitations of the Applicant as required by Section 504 and the Americans with Disabilities Act (ADA); and
- work with a disabled Applicant's designee who has power of attorney or any non-profit organization that is representing the Applicant as needed.

All services listed above can be provided upon verbal or written request from the Applicant. No additional documentation is required.

In addition, NCORR and its subrecipients will comply Section 508 requirements regarding the accessibility to electronic and information technology for individuals with disabilities. NCORR's Program management vendor assists with ensuring that all public communications, including its NCORR website, meet Section 508 requirements.

The NCORR Reasonable Accommodation Policy can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.0 Program Administrative Requirements and Cross-Cutting Federal Regulations

NCORR and its beneficiaries, subrecipients and contractors must adhere to federal and state requirements, as applicable, and provide confirmation of compliance upon request. This section provides a summary of the significant and applicable Federal regulations generally applicable to related Program activities.

12. 1 Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of telecommunications device for the deaf (TDD)/telephone relay services.

NCORR takes affirmative steps to ensure that people with disabilities have equal access to the programs offered by NCORR, and that any services are delivered in the most integrated manner possible. Qualified persons with disabilities are informed of the availability of program services and activities, and NCORR's programs or services are readily accessible to, and usable by, individuals with disabilities. NCORR also ensures that reasonable modifications or changes to policies, practices, or procedures are made to guarantee people with disabilities equal access to services and programs. Additionally, all programs and activities are accessible, both structurally and administratively, to persons with disabilities. NCORR's mandate to conform to the requirements of ADA, flows down to all its stakeholders, including subrecipients, vendors and developers.

12.2 Davis-Bacon Labor Standards

The Davis-Bacon Act and Related Acts (DBRA) applies to contractors and subcontractors carrying out federally funded or assisted contracts in excess of \$2,000 for corresponding work on similar projects in the area. In some cases, North Carolina Prevailing Wage Law is in effect. In these cases, the higher prevailing wage rate between the Federal and State must be adhered to and made applicable. For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week.

Additionally, NCORR, its subrecipients, and contractors must follow the reporting requirements per HUD and U.S. Department of Labor regulations and any NCORR adopted DBRA policies.

The NCORR Monitoring and Compliance Team ensures that NCORR's CDBG-DR program and services are in compliance with DBRA through the submission of certified payroll records and interviews of prime and subcontractor laborers. NCORR currently utilizes SharePoint to track, review, and monitor payroll submissions by contractors. NCORR will utilize SharePoint or a similar system of record to collect, review and report all regulatory compliance requirements.

NCORR's DBRA policy can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.3 Equal Employment Opportunity

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

The NCORR Equal Employment Opportunity Policy can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.4 Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance for housing related activities to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, or marital status.

For Public Housing projects, NCORR enforces the Fair Housing Act by ensuring that all subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements, provide a marketing plan, and report on compliance in accordance with the Fair Housing Act and the associated forms on NCORR's or the RebuildNC.gov website, as applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant or subrecipient will affirmatively further fair housing throughout applicable NCORR disaster recovery programs.

The NCORR Fair Housing Policy can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.5 Fair Labor Standards Act of 1938, as Amended

The Fair Labor Standards Act of 1938, as amended (FLSA), establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under NCORR's CDBG-DR program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

In some cases, North Carolina Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two prevails.

Exceptions to FLSA include:

1. construction contracts of \$2,000 or less;
2. real property acquisition;
3. architectural and engineering fees;

4. other services (such as legal, accounting, construction management);
5. other non-construction items (such as furniture, business licenses, real estate taxes);
6. rehabilitation of residential property designed for fewer than eight families; and
7. debris removal, demolition, and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Contact a NCORR CDBG-DR Labor Specialist for assistance.

12.6 Minority- and/or Women-Owned Business Enterprises

Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned Business Enterprises (MBEs). 2 CFR 200.321 requires the Non-Federal entity to take all necessary steps to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

North Carolina wants to ensure that public entities utilize M/WBE firms through its HUB program managed at the Division of Administration. As noted in Executive Order 25, Section 5, the HUB program works to incorporate HUD's programmatic requirements into contracting opportunities. As such, NCORR ensures compliance with these goals by requiring, as applicable, subrecipients and contractors to make best efforts to achieve the overall M/WBE participation goal that the State has set for the entire contract value.

For all projects and agreements, NCORR will be required to make best efforts to achieve an overall M/WBE participation goal of 10% of the entire contract, per Executive Order 25.

NCORR verifies with NC Department of Administration Historically Underutilized Businesses (HUB) the M/WBE certification, and that the NCORR Monitoring and Compliance Team monitors to ensure compliance with all reporting requirements through SharePoint M/WBE

For all Community Development projects, the NCORR Monitoring and Compliance Team works with applicants and subrecipients to provide the TA, guidance, and one-on-one support, required to implement good faith efforts and meet applicable M/WBE thresholds. The NCORR Monitoring and Compliance Team monitors the level of M/WBE utilization and provides additional support as required.

12.7 Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires that grantees, subgrantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-DR funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. The new

Final Rule for Section 3 was adopted in November 2020 and is found at 24 CFR Part 75.

For those entities that receive more than \$200,000 in HUD CDBG-DR assistance (24 CFR 75.3(a)) NCORR requires that an approved Section 3 plan be in place before the project is awarded and approved. Income for the previous or annualized calendar year must be below the income limit established by HUD. The Final Rule defines a Section 3 worker as any worker who:

- is employed by a Section 3 business concern, or
- is a YouthBuild participant.

The Final Rule further defines Targeted Section 3 workers, for public housing financial assistance, as a Section 3 worker who is also:

- a worker employed by a Section 3 business concern, or
- a worker who currently is, or who was when hired, as documented within the past five years:
 - a resident of public housing or Section 8-assisted housing;
 - a resident of other public housing projects or Section 8-assisted housing or managed by the public housing authority that is expending assistance; or
 - a YouthBuild participant.

HUD has established Safe Harbor compliance, and grantees and subrecipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks and total number of labor hours worked.

If a grantee and/or subrecipient does not meet the benchmark requirements but can provide evidence that they have made qualitative efforts to assist low and very low income persons with employment and training opportunities, the subrecipient is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

On a quarterly basis, the Monitoring and Compliance Team reviews and tracks quarterly reports as well as calculates utilization rates. The Team informs the NCORR Community Development staff of outstanding quarterly reports and of current utilization rates.

Subrecipients of financial assistance must report annually and periodically as requested:

- total number of labor hours worked by Section 3 workers, and
- total number of labor hours worked by Targeted Section 3 workers.

The NCORR Monitoring and Compliance Team may also provide training, TA, and one-on-one support for all projects, especially in terms of developing and reviewing Section 3 plans, as well as implementing best efforts to meet Section 3 goals. The

Monitoring and Compliance Team also reviews Section 3 goal attainment and provides additional on the ground support where required.

For the Program, projects are required to meet Section 3 requirements as shown above. Section 3 goals and objectives are set depending on the date of completion of each project and project bid dates. NCORR staff ensures that Section 3 objectives are addressed through direct TA with individual applicants and file reviews of projects.

The NCORR Section 3 Policy can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.8 Appeal Process

An appeal is defined as a formalized written request by an applicant or tenant, as applicable, asking for a reversal or revision of a program determination that affects their eligibility and/or assistance they may receive from the NCORR program. This policy refers to applicants to a NCORR program and includes those persons actively applying to or participating in any NCORR program or individuals empowered to act on an applicant's behalf. It also applies to persons who may be relocated involuntarily, either temporarily or permanently, due to the activities of a federally funded NCORR program; such persons are referred to here as tenants.

Applicants and tenants may submit a written appeal related to any determination made by a NCORR program that affects their eligibility or assistance they may receive, except in cases of potential fraud, recapture, or revocation of assistance, as determined by NCORR.

The NCORR Appeals Policy and Appeals Procedure can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

The NCORR Appeals Form can be accessed at:

<https://www.rebuild.nc.gov/ncorr-request-appeal-form/open>

12.9 Uniform Relocation Act and Real Property Acquisition (URA)

In order to carry out Program activities in compliance with URA requirements, NCORR has adopted the *Uniform Relocation Act (URA) Policy Manual*. This document provides program staff and contractors with Standard Operating Procedures to meet URA requirements for the temporary and permanent displacement of tenants.

The NCORR Uniform Relocation Act (URA) Policy Manual can be accessed at:

<https://www.rebuild.nc.gov/about-us/plans-policies-reports/policies-and-procedures>

12.9.1 Residential Anti-Displacement

Subrecipients or contractors must provide the following benefits to households or businesses that they displace:

- relocation advisory services;
- a minimum of 90-day notice to vacate;
- reimbursement for moving expenses; and
- payments for added cost of renting or purchasing comparable replacement housing.

12.9.2 Real Property

If CDBG-DR funds are used to acquire real property, NCORR ensures the following:

- The property continues to be used for its intended (and approved) purpose.
- Proper records are maintained to keep track of the property.
- Steps are taken to protect and maintain the property.
- If the property is sold, NCORR is reimbursed for the CDBG-DR share of the property's value.

This approach to 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 subrecipient (the rules are generally more explicit for governmental grantees) or a private-sector subrecipient. Second, real property (e.g., land, buildings) is treated differently than personal property, as required in 2 CFR 200.

The federal requirements relating to real property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for:

- accurate records;
- the performance 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. For the sale of property owned by local governments, competitive disposal procedures are required under Article 12 of Chapter 160A of the North Carolina General Statutes, and generally include public notice of the intended sale, price competition, contract award to the highest responsive, responsible bidder, and governing board approval of the conveyance.

12.9.3 Acquisition of Real Property

Upon notification of permission from NCORR, the subrecipient may proceed with efforts to acquire any real property, including easements and rights-of-way, required for the project. CDBG-DR federal funds, administered by NCORR and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject

to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) and/or Section 104(d) of the Housing and Community Development Act of 1974 as waived by (81 FR 83254) and (82 FR 5591). The applicable federal regulations are located at 49 CFR Part 24 (URA), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378).

Note: Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts.

12.9.4 Voluntary and Involuntary Real Property Acquisition

Subrecipients must understand the critical difference between voluntary and involuntary acquisition of real property to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary acquisitions. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain. Regardless of the form of acquisition used, it is strongly recommended that the subrecipient maintain a log of contacts with the owner in the acquisition file.

Note: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, subrecipients should proceed with caution if federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally- assisted project at any point during the course of a project.

The URA recognizes three general types of purchases as potentially voluntary. Generally, they are:

1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the subrecipient or community states in writing that it will not use this power (e.g., the subrecipient has identified parcel (s) for a project but will not use its powers to obtain the property through condemnation). In this case, the subrecipient and/or buyer must inform the seller of this fact in writing and, if the offer is not accepted, be prepared to look for another property as the condemnation process will not be used to acquire the identified parcel.
2. Purchases where a subrecipient, agency, or person does not have the power of eminent domain (e.g., a nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale). All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
3. Purchases of property from government agencies (federal, state, or local) where the subrecipient does not have the power of eminent domain over the other entity (e.g., a nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase the property if the Corps is not agreeable to their offer.)

Sometimes there is confusion about what is actually considered “voluntary.” A common misconception is that “willing seller” or “amicable agreement” means a transaction is “voluntary.”

This is not true under URA. The applicable requirement of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary, including the following:

- The public notice, advertisements and literature should include a description of what the subrecipients intends to purchase, its reasons, and any conditions of which a seller should be aware.
- The voluntary acquisition policy must state that if a mutually satisfactory agreement cannot be reached, the subrecipient will not buy or condemn the property for the same purpose.
- The subrecipient should indicate that owner-occupants are not eligible for relocation benefits in the public notice and the acknowledgement form should be attached to the purchase offer.

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants) are protected by the URA and are eligible for relocation benefits under the URA.

12.9.5 Voluntary Acquisition by a Subrecipient or Persons Acting on behalf of Subrecipient with the Power of Eminent Domain

To be considered a voluntary acquisition by a subrecipient with the power of eminent domain, the property may not be part of a planned or designated project area where substantially all the property in the area will be purchased within a specified time frame.

The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the subrecipient must be prepared to look in another area for a suitable site. Where a subrecipient wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a subrecipient determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the subrecipient could ultimately acquire the property through condemnation. Thus, the acquisition is **not** considered voluntary.

Note: Temporary or permanent easements are only very rarely not part of a planned project; therefore, easements are discussed at the beginning of this Section and under Involuntary Acquisitions at the end of this Section.

If someone else, such as a private developer or realtor, is authorized to act on the subrecipient’s behalf in negotiating the purchase, and the subrecipient is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered voluntary.

In order to be voluntary, the subrecipient must meet all the requirements listed below and inform the property owner in writing that:

- federal funds are involved in the transaction; however, the subrecipient will not use its power of eminent domain if negotiations fail to result in an amicable agreement; and
- the subrecipient's estimate of the market value for the property to be acquired as outlined below.

To estimate market value in a voluntary acquisition, subrecipients must follow specific procedures:

- A formal appraisal is *not* required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
- While an appraisal for voluntary transactions is not required, subrecipients may still decide that an appraisal is necessary to support their determination of market value, subrecipients must have some reasonable basis for their determination of market value.
- If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file.

After a subrecipient has established a market value for the property and has notified the owner of this amount in writing, a subrecipient may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

Although not required by the regulations, it could be appropriate for subrecipients to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value (if they can demonstrate that the offer was reasonable and necessary to accomplish the project). If subrecipients anticipate they will offer an amount greater than market value, they must submit a request in writing and provide supporting documentation to NCORR for a basis to pay an amount that is more than market value. NCORR must provide approval prior to payment.

Subrecipients cannot take any coercive action in order to reach agreement on the price to be paid for the property.

12.9.6 Voluntary Acquisitions of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Subrecipients and individual buyers do not possess the legal authority to condemn government-owned property.

12.9.7 Property Donations

Voluntary acquisition includes donations of real property; however, the owner must be fully informed of his or her rights under the URA, including the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the subrecipient, in writing, from its obligation to appraise the property. The Subrecipient must retain this acknowledgement in the project file. NCORR shall provide a template for the subrecipients as the “Seller Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act”.

12.9.8 Involuntary Acquisitions

No CDBG-DR funds may be used to support subrecipients for projects that seek to use the power of eminent domain unless eminent domain is employed for a public use. Any subrecipient considering the involuntary acquisition of property must notify NCORR during the application process and/or prior to contacting property owners for review and approval.

NCORR provides subrecipients with templates for: Involuntary Preliminary Acquisition Notice, Invitation to Accompany an Appraiser, Written Offer to Purchase, Statement of Basis of Just Compensation, Notice of Intent Not to Acquire, Donation and Appraisal Waiver, and Administrative Settlement.

NCORR rules, Notices of Funding Availability (NOFAs), applicant certifications and/or written agreements for funds subject to the Uniform Act shall refer to federal and State rules, as appropriate.

Subrecipients with eminent domain authority may only utilize this authority to acquire property using NCORR funding after discussion with and approval from NCORR.

13.0 Financial Management

NCORR has in place proficient financial controls. NCORR, as well as those administering CDBG-DR resources, continuously demonstrate conformity with financial management requirements as shown in 2 CFR 200 and applicable Federal Registers. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and Single Audit provisions pursuant to 2 CFR 200 Subpart F (formerly OMB Circular A-133). NCORR’s financial management system ensures that NCORR funds are managed with high levels of accountability and transparency.

NCORR’s Monitoring and Compliance Team ensures that NCORR’s Financial Management practices adhere to the following:

- Internal controls are in place and adequate.
- Documentation is available to support accounting record entries.
- Financial reports and statements are complete, current and reviewed periodically.

- Audits are conducted in a timely manner and in accordance with applicable standards.

13.1 Program Income

In accordance with 24 CFR 570.489(e), 24 CFR 570.500, 24 CFR 570.504 and Federal Register Notice 5844, net income generated from the use of CDBG-DR funds allocated under this Program is recognized by NCORR as program income. that may be required to be returned to NCORR or may be retained by the subrecipient, subgrantee or other NCORR-allocated subrecipient of CDBG-DR funds, at the discretion of NCORR. Any program income derived by the subrecipient, including interest income from collateral accounts, will be retained by the subrecipient for use in accordance with NCORR's program income policies. Projects that generate program income must include documentation and a plan for treatment of program income for review. Subrecipients must continue to comply with tracking and reporting requirements for program income.

13.2 Reimbursement Requests

Reimbursement Requests (or draws) must be submitted by the Subrecipient to NCORR. NCORR provides detailed instructions on submitting reimbursement requests for the Program in the NCORR Subrecipient Affordable Housing Development Fund – Haywood County Billing Guide.

13.2.1 Construction Draws

Construction draw requests will be presented by the Subrecipient to NCORR along with lien waivers and any other required attachments described on that form. Construction draw requests may include requests for reimbursement of soft costs in the approved project. Construction draw requests may include requests for reimbursement of soft costs in the approved Project Budget, up to the aggregate total amount of the line item budget amounts for construction and soft costs. NCORR may approve draw requests or deny all or a portion of a draw request for cause.

Subrecipient may approve change orders up to a combined amount equal to the rehabilitation/construction contingency budget line item. Subrecipient is responsible for all construction costs exceeding the contingency budget amount, unless NCORR at its sole discretion approves a revised construction budget and Project Budget and reviews and approves a change order for additional scope of work and costs in excess of the total construction budget.

13.2.2 Punch List, Final Inspection and Final Draw

Subrecipient's and NCORR's representatives must jointly approve the punch list during or immediately after the punch list inspection and approve the clearing of punch list items after subsequent inspection(s). All punch list items reasonably required by NCORR must be included. Upon satisfactory completion of the punch list items, and all applicable paperwork, NCORR will issue a notice of final completion to Subrecipient. The final draw will include the payment of any

remaining eligible construction costs, construction retainage, applicable soft costs and the portion of the developer fee payable upon completion of construction.

14.0 Procurement and Cost Considerations

14.1 Cost Estimates

Subrecipient or its partner entities are responsible for producing cost estimates including builder overhead and profit in a form approved by Grantee, as follows:

1. Rehabilitation cost estimates will be completed in a line-item, work write-up format with one work item per line unless an alternative form of estimate is approved in writing by NCORR.
2. Cost estimates for construction of new structures and substantial rehabilitation will be based on take-offs from the working drawings of the quantities of materials and labor required or compilations of costs for similar and recently built or renovated structures.
3. Site improvement cost estimates will be completed for each improvement and based on take-offs of quantities of materials and labor required,
4. If construction work is competitively bid, the cost estimate will be used to determine the cost reasonableness of bids.
5. If work to be completed is to be done by a developer acting as general contractor, the cost estimate for each CDBG-DR project must be reviewed by Subrecipient and NCORR to determine cost-reasonableness and must be approved by NCORR. When approved, the cost estimate becomes a schedule of values which is used by Subrecipient's construction inspector to determine the value of work completed for the purpose of approving draw requests.

Likewise, if a contractor has been simply designated and not selected through a competitive bidding process, the price proposal of such contractor must be reviewed by Subrecipient and NCORR to determine cost-reasonableness and approved by NCORR. When approved (and possibly amended by NCORR), the price proposal becomes a schedule of values which is used by NCORR's construction inspector to determine the value of work completed for the purpose of approving draw requests.

14.2 Bid Packages

Subrecipients should solicit bid packages with the following components for all work being performed by third-party firms: [Note: HUD has issued guidance to the effect that developers (unlike subrecipients) can designate contractors and do not have to competitively bid the work (24 CFR 570.202(b)(1)). However, bidding is a typical industry practice to control costs.] If competitive selection is used, at least three bids must be received, or the project must be rebid at least once. Additional local and state procurement rules should be followed by the Subrecipient.

1. A request for proposals narrative that includes a general description of the

processes for bidding, awards, construction monitoring, lien waivers, and construction draws. The narrative will state that retainage equal to 10% of the contract amount will be held back until the punch list is completed. The narrative will include the method of submitting proposals, a due date, and criteria for selection;

2. Plans and specifications (or work write-up) including general requirements, site plans, materials specifications;
3. A form for describing the bidder's experience and licenses;
4. Evidence of required insurance;
5. A price proposal form;
6. Requirements for complying with Section 3, minority and women's business enterprise provisions, lead hazard abatement and other requirements related to federal funding.

14.3 Cost Considerations

HUD's regulations at 2 CFR 200 outline the requirement to analyze and confirm that all costs associated with a project that include the procurement of services or materials are determined to be necessary, reasonable (2 CFR 200.404), allocable (2 CFR 200.405) to the HUD grant, and otherwise in conformance with the general criteria for allowable costs set forth in 2 CFR 200 Subpart E.

In addition, HUD's regulations at 24 CFR 84, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," require grantees to perform a cost or price analysis for every procurement action, including contract modifications (e.g., "change orders"), using HUD grant funds.

This required analysis of both price and cost will be applied to every application for funding received under this Program.

Use price analysis whenever you are comparing lump sum prices - not cost estimates - received from contractors in a competitive pricing situation (e.g., when sealed bids are obtained).

Cost analysis is used whenever the grantee/subrecipient does not have price competition. A cost analysis is required when:

- Using the *competitive proposal* (or "negotiated") method of contracting (see 24 CFR 85.36(d)(3) for a definition), e.g., for acquiring professional, consulting or architect/engineering (A/E) services. Under the competitive proposal method, offerors are required to submit cost proposals that show the elements (e.g., labor, materials, overhead, profit) of their proposed costs or price.
- Negotiating a contract with a *sole source*, i.e., not soliciting competitive bids or offers. When a sole source is appropriate and justified (see 24 CFR 85.36(d)(4)), you must obtain a complete cost breakdown from the sole source contractor and perform an analysis using the cost principles to establish a fair and reasonable price or estimated cost.

- After soliciting competitive sealed bids, you receive *only one bid*, and it differs substantially from your independent estimate of the contract price. If you determine that the bid is unreasonable and decide to not recompete (e.g., market survey indicates that no competition is available), then the grantee/subrecipient may formally cancel the solicitation and negotiate a contract price with the single bidder. In that case, HUD requires that a cost breakdown be obtained from the single bid price and use cost principles to analyze.
- Negotiating a *modification* (including change orders) to *any* type of contract, if the modification changes the work authorized under the contract, and changes the price or total estimated cost, either upwards *or* downwards. Grantee/subrecipient must obtain a detailed breakdown of the contractor's proposed cost - not a lump sum proposal - before negotiating the change in contract price.

CAUTION: Modifications that change the work beyond the scope of the contract must be justified in accordance with the conditions set forth in 24 CFR 85.36(d)(4) or 24 CFR 84.43. If the out-of-scope change cannot be justified, you must procure the work competitively.

15.0 Recordkeeping, Retention, and File Management

In accordance with HUD regulations, NCORR follows the records retention requirements cited in 2 CFR 200, which includes financial records, supporting documents, statistical records, and all other pertinent records. The subrecipient must retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for three (3) years from the time of closeout of HUD's grant to NCORR or for the period provided in the CDBG regulations at 2 CFR 200.333. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or the retention period, whichever occurs later.

Every subrecipient and contractor is required to establish and maintain at least three major categories of records: Administrative, Financial, and Project/Case Files.

15.1 Administrative Records

These are files and records that apply to the overall administration of the subrecipient's CDBG- DR activities. They include the following:

1. personnel files;
2. property management files;
3. general program files: Files relating to the subgrantee, subrecipient's, or contractor's project
4. information form to NCORR, the subrecipient agreement, program policies and guidelines,
5. correspondence with NCORR and reports, etc.; and
6. legal files: Articles of incorporation, bylaws of the organization, tax status,

board minutes, contracts and other agreements.

15.2 Financial Records

These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

15.3 Project/Case Files

These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

15.4 Reporting

As a subrecipient of CDBG-DR funds, NCORR has established reporting requirements for all subrecipients and contractors in their respective subrecipient and contractor agreements and contracts in accordance with 2 CFR 200. The Program reviews reporting requirements for stand-alone affordable housing projects at five different intervals, as applicable:

1. at execution of agreements;
2. monthly;
3. quarterly;
4. annually; and
5. as required.

Subrecipients and contractors submit the required documents and reports to NCORR at the times indicated in the subrecipient agreement, and in the format prescribed by the Program staff. Deviations from this requirement must be pre-approved by program staff.

NCORR's Affordable Housing Development Fund Program - Haywood County will review reports for projects that are ongoing according to HUD reporting requirements. At the discretion of the NCORR Housing Opportunities Manager, large projects may instead follow the reporting requirements for stand-alone projects as described above.

15.5 Record Retention

Record retention is a requirement of the Program. Records are maintained to document compliance with Program requirements and Federal, State, and local regulations and to facilitate a review or audit by HUD. The NCORR Records Management Program seeks to ensure that:

- NCORR complies with all requirements concerning records and records management practices under federal and state regulations;
- NCORR has the records it needs to support and enhance ongoing

business and citizen service, meet accountability requirements and community expectations;

- These records are managed efficiently and can be easily accessed and used for as long as they are required; and
- These records are stored as cost-effectively as possible and when no longer required they are disposed of in a timely and efficient manner.

15.6 Access to Records

24 FR 570.490 included the following recordkeeping requirements:

- Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt, and use of CDBG funds and necessary to facilitate such reviews and audits.
- The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

The availability of records is subject to the exemptions to public disclosure set forth in North Carolina Public Records Law. All Freedom of Information Act (FOIA) requests must be made in writing to NCORR and will be processed in accordance with these procedures.

15.7 Audit Requirements

In accordance with Subpart F of 2 CFR 200, non-Federal entities that expend \$750,000 or more during their fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions therein. NCORR's Monitoring and Compliance Team is responsible for conducting reviews of these single or program-specific audit reports and for coordinating the issuance of management decisions for audit findings relating to NCORR-provided Federal funds.

15.8 Conflicts of Interest and Confidentiality

Conflicts of interest between covered persons (e.g., applicants, subrecipients, program administrator, contractors, and program staff) and other parties are strictly prohibited by Federal law.

A "covered person" is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or any designated public agencies, or subrecipients that are receiving CDBG-DR funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or

have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict of interest regulations contained in the contract between the subrecipient and NCORR prohibit locally elected officials, state staff, subrecipient employees, and consultants who exercise functions with respect to CDBG-DR activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, from receiving any benefit from the activity either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.

15.8.1 Conflicts of Interest

The Program requires all program staff to disclose any relationship with an Applicant or contractor. NCORR staff, subrecipients, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves, the Applicant, or the contractor. For example, a customer representative may not perform work on the project information form of family. For purposes of this regulation, “family” is defined at 24 CFR 570.489(h).

NCORR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) if NCORR has determined that the subrecipient has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the subrecipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii).

NCORR considers whether the exception provides a significant cost benefit or essential degree of expertise; whether the opportunity was provided for under open competitive bidding or negotiation; whether the person affected is LMI, whether the affected person has withdrawn from his or her functions or responsibilities; whether the interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or whether undue hardship results from failure to grant the exception. In addition, NCORR will take into account conflict of interest prohibitions under state law, including the prohibition against self-benefiting under a public contract (G.S. 14-243) and misuse of nonpublic information for private financial gain (G.S. 14-234.1).

15.8.2 Confidentiality/Privacy

The NCORR Affordable Housing Development Fund Program – Haywood County is committed to protecting the privacy of all individual stakeholders, including the public and those individuals working on the Program. The Program’s policies describe how information is to be handled and protected. The purpose of this privacy policy is to establish when and under what conditions certain information relating to individuals may be disclosed.

The data collected from applicants for the Affordable Housing Development Fund Program – Haywood County may contain personal information on individuals that is covered by the Federal Privacy Act of 1974 and North Carolina state laws. These laws provide for confidentiality and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes.

- Program staff may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.
- Independent Auditors, when hired by the program to perform a financial or programmatic audit of the program, for use in determining program compliance with all applicable HUD and Federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.
- NCORR may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
- Organizations assisting NCORR in executing the CDBG-DR Program must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but is not limited to, HUD, FEMA, FBI, and the Office of the Inspector General.

Data security measures are in place to protect non-public personal information. This includes hardware and software data security protocols and contractors having signed non-disclosure agreements. NCORR also requires that hard copy files containing non-public personal information are kept in locked file cabinets to ensure their physical security and passes this requirement onto subrecipients as well.

15.9 Insurance

For all projects in the Program, all subrecipients must ensure that appropriate insurance is procured and maintained for the duration of the applicable affordability period to protect all contract assets from loss due to any cause, such as theft, fraud, and physical damage. If CDBG-DR funds are used to acquire real property or personal property, the subrecipient is responsible for ensuring that:

- The property continues to be used for its intended (and approved) purpose; and
- The subrecipient continues to monitor the condition of the property.

NCORR subrecipient agreements require that subrecipients incorporate all necessary terms and conditions in any contract entered into under the subrecipient agreement. The terms and conditions require that any contractor providing services to a NCORR subrecipient must obtain and maintain certain types and amounts of insurance coverage. The terms and conditions also provide that NCORR may waive, decrease, alter, or amend these insurance requirements in writing. It is typically the responsibility of NCORR's Chief Financial Officer to approve a waiver

or alteration of insurance requirements.

16.0 Closeout

Closeout is undertaken by the Program once the final project closeout checklists are completed. The project closeout is the process by which NCORR determines that all requirements of the agreement between NCORR and the Subrecipient for a specific project have been completed in accordance with the terms and conditions of the agreement. Project closeout begins when:

- all project expenses (including those to be paid with non-CDBG-DR funds) to be paid have been completed and payment requested;
- approved work has been finished;
- any other responsibilities detailed in the Subrecipient Agreement have been fulfilled; and
- all monitoring or audit findings have been cleared.

Project closeout consists of:

- a closeout request, with applicable project documents attached, submitted to NCORR by the Subrecipient;
- a project closeout checklist completed and approved by the Program and other departments within NCORR; and
- a project closeout letter sent to the partner and to NCORR departments.

In addition, the project's status must be updated in HUD's Disaster Recovery Grant Reporting (DRGR) system, and a final HUD quarterly narrative report must be submitted by NCORR to reflect the project's status. For projects financed by NCORR's CDBG-DR funds as well as other funds, project closeout occurs when all funds are spent and every dollar of NCORR's CDBG-DR is associated with a National Objective.

17.0 Acronyms and Definitions

Acronym	Name
A/E	Architecture/Engineering
ADA	Americans with Disabilities Act
AMI	Area Median Income
BPO	Broker Price Opinion
CDBG-DR	Community Development Block Grant – Disaster Recovery
CEQ	U.S. Council on Environmental Quality
CFR	U.S. Code of Federal Regulations
DBRA	Davis Bacon and Related Acts
DOB	Duplication of Benefits or Duplication of Benefits Analysis
DRGR	Disaster Recovery Grant Reporting System
EA	Environmental Assessment
EPA	Environmental Protection Agency
ERR	Environmental Review Record

Acronym	Name
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FLSA	Fair Labor Standards Act of 1938
FR	Federal Register (Notice)
G.S.	North Carolina General Statutes
HUB	Historically Underutilized Businesses (program), N.C. DOA
HUD	U.S. Department of Housing and Urban Development
HUSM	HUD Utility Schedule Model
ICC-700-2020	National Green Building Standard (published by International Code Council)
LEED	Leadership in Energy and Environmental Design – green building certification
LEP	Limited English Proficiency
LIHTC	Low Income Housing Tax Credit
LMH	Low and Moderate Housing
LMI	Low and Moderate Income
LURA	Land Use Restriction Agreement
M/WBE	Minority/Women-Owned Business Enterprise
MBE	Minority-Owned Business Enterprise
MID	Most Impacted and Distressed
NCDPS	North Carolina Department of Public Safety
NCORR	North Carolina Office of Recovery and Resiliency
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NOFA	Notice of Funding Availability
SBA	U.S. Small Business Administration
SEPA	State Environmental Policy Act
TA	Technical Assistance
URA	U.S. Uniform Relocation Act
WBE	Women-Owned Business Enterprise

18.0 Definitions

100-Year Floodplain - The geographic area defined by FEMA as having a one percent (1%) chance of being inundated by a flooding event in any given year.

Affirmative Outreach - making known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis as defined in 24 CFR 576.407(b). If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to reach persons of any

particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

Affordability Period - The ensure that the CDBG-DR investment in rental properties yields affordable rental housing, NCORR is imposing rent and occupancy requirements over the length of a compliance period, known as the Affordability Period. All NCORR-assisted rental units must be restricted during the Affordability Period for LMI persons/households.

Applicant – Any entity that submits an application for assistance to the NCORR Affordable Housing Development Fund Program.

Appeal – A written request by an Applicant asking for reversal of a determination that affects the eligibility and/or amount of assistance the applicant may receive from the NCORR Program.

Area Median Income (AMI) - The median (midpoint) household income for an area adjusted for household size as published and annually updated by the United States Department of Housing and Urban Development (HUD). Once household income is determined, it is compared to HUD's income limit for that household size. Income limits are adjusted annually for all Metropolitan Statistical Areas.

Broker Price Opinion (BPO) – also known as Broker's Opinion of Value, assessment of value by a real estate broker

Community Development Block Grant – Disaster Recovery (CDBG-DR) – HUD funding allocated to eligible disaster recovery entities via congressional appropriations.

Davis-Bacon Act of 1931 (40 U.S.C. 3141, et seq.) and Related Acts – Federal law that requires that all laborers and mechanics employed by contractors or subcontractors in the performance of work financed in whole or in part with federal assistance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the U.S. Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This applies to rehabilitation, reconstruction and new construction of residential property only if such property contains not less than eight (8) units.

Demolition – The planned razing, or tearing down, of properties acquired under the Program. Demolition will be followed by clearance and safe disposal of the remnants of the former structure.

Developer – Developer is defined by HUD as “[a] for-profit or private nonprofit individual or entity that the grantee provides HUD assistance for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2)

constructing new housing in connection with redevelopment of demolished or vacant properties.” For the purposes of this Manual, Developer responsibilities shall be construed as Subrecipient responsibilities since NCORR will have direct agreements only with the Subrecipient UGLGs.

Disability - For the purposes of the Program, “disability” is consistent with federal law under the Social Security Act, as amended, 42 U.S.C. 423(d), The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12102(1)-(3), and in accordance with HUD regulations at 24 CFR 5.403 and 891.505.

Duplication of Benefits (DOB) - Provision of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) that prohibits a person, business concern, or other entity from receiving financial assistance from federal disaster funds with respect to any part of a loss resulting from a major disaster as to which that person or entity has already received financial assistance under any other program, insurance, or other source.

Environmental Review Record – A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents. All qualified projects must undergo an Environmental Review process. This process ensures that the activities comply with the National Environmental Policy Act (NEPA) and other applicable state and federal laws.

Family - A household composed of two or more related persons. The term “family” also includes one or more eligible persons living with another person or persons who are determined to be important to their care or well-being.

Fair Housing Act - The Fair Housing Act of 1968, 42 U.S.C. 3601-3619, prohibiting discrimination against protected classes of people in the sale or rental of housing, in the provision of housing assistance, or other housing-related activities. The FHA obligates HUD grantees and their subrecipients to take reasonable steps to ensure meaningful access to their programs and activities for protected classes. The FHA also requires HUD and its program participants to affirmatively further the purposes of the FHA.

Federal Emergency Management Agency (FEMA) - The Federal Emergency Management Agency (FEMA) is an agency of the United States Department of Homeland Security. It was created by Presidential Order on 1 April 1979. The primary purpose of FEMA is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

Federal Register - The official journal of the Federal government of the United States that contains government agency rules, proposed rules, and public notices. It is published daily, except on federal holidays. A Federal Register Notice (FRN) is issued for each CDBG-DR funded disaster. The FRN outlines the rules that apply to each allocation of disaster funding.

Flood Hazard Area - Areas designated by FEMA as having risk of flooding.

Flood Insurance - The Flood Disaster Protection Act of 1973, 42 U.S.C. 4012(a), requires that projects receiving federal assistance and located in an area identified by FEMA as being within a Special Flood Hazard Area (SFHA) be covered by flood

insurance under the National Flood Insurance Program (NFIP). In order to be able to purchase flood insurance, the community where the property is located must be participating in the NFIP. If the community is not participating in the NFIP, federal assistance cannot be used.

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

Grantee – Any jurisdiction receiving a direct award of funding from HUD. NCORR is the grantee of CDBG-DR funds from HUD and therefore in this document NCORR is synonymous with the term Grantee.

Green Building Standards - All construction-related activity that meets the definition of substantial improvement, reconstruction, or new construction must meet an industry-recognized standard that has achieved certification under at least one of the following programs: (1) Enterprise Green Communities; (2) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (3) ICC-700 National Green Building Standard Green + Resilience; (4) Living Building Challenge; and (5) Any other equivalent comprehensive green building program acceptable to HUD.

Household - A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other.

Household Income - The anticipated gross amount of income from all sources for all adult household members during the upcoming twelve (12) month period in accordance with the definition of annual (gross) income at 24 CFR Part 5.

HUD - United States Department of Housing and Urban Development; federal department through which program funds are distributed to grantees.

Limited English Proficiency (LEP) - A designation for persons who are unable to communicate effectively in English because their primary language is not English, and they have not developed fluency in the English language. A person with Limited English Proficiency may have difficulty speaking or reading English. An LEP person benefits from an interpreter who translates to and from the person's primary language. An LEP person may also need documents written in English translated into their primary language so that they can understand important documents related to health and human services.

Low Income Housing Tax Credit (LIHTC) - The LIHTC Program is an indirect Federal subsidy used to finance the development of affordable rental housing for low-income households.

Low and Moderate Income (LMI) National Objective - One of three national objectives that any CDBG activity must meet. Activities that meet the LMI objective must benefit households whose total annual gross income does not exceed 120% of Area Median Income (AMI), adjusted for family size. Income eligibility will be determined and verified in accordance with HUD Guidance. The most current income limits,

published annually by HUD, shall be used to verify the income eligibility of each household applying for assistance at the time assistance is provided.

- **Extremely Low:** Household's annual income is up to 30% of the area median family income, as determined by HUD, adjusted for family size.
- **Very Low:** Household's annual income is between 31% and 50% of the area median family income, as determined by HUD, adjusted for family size.
- **Low:** Household's annual income is between 51% and 80% of the area median family income, as determined by HUD, adjusted for family size.
- **Moderate:** Household's annual income is between 81% and 120% of the area median family income, as determined by HUD, adjusted for family size.

Low and Moderate Housing (LMH) – A subordinate HUD National Objective under the LMI (Low/Mod Income) objective

Most Impacted and Distressed (MID) – An area that meets the definition of Most Impacted and Distressed set by HUD in the Federal Register Notice. For purposes of the unmet needs' allocation, HUD has defined Most Impacted and Distressed as an area (county) that meets the following criteria:

- Individual Assistance/Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.
- Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties with high levels of damage, collectively referred to as “most impacted areas”.

Metropolitan Statistical Area – An area with at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core, as measured by commuting ties.

National Environmental Policy Act (NEPA) – Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that could significantly affect the environment.

National Flood Insurance Program (NFIP) – The National Flood Insurance Program (NFIP) is managed by the Federal Emergency Management Agency and is delivered to the public by a network of approximately 60 insurance companies and the [NFIP Direct](#). The NFIP provides flood insurance to property owners, renters, and businesses.

National Objective – A HUD criterion governing eligible uses of CDBG-DR funds.

Notice of Funding Availability (NOFA) – A notice describing the type and amount of funding available on a competitive basis that provides information regarding how to apply, when to apply, and where to submit requests for funding.

Partner – Various entities will be responsible for implementing program activities. The term Partner is used throughout to denote the relationship between NCORR and entities like subrecipients and developers.

Program Assisted Units – a set-aside of no less than 51% of all rental units within the

total project that will be identified as “program/CDBG-DR assisted units” that will be subject to all CDBG-DR regulations, requirements, affordability period and HUD High HOME Rent limit restrictions.

Special Flood Hazard Area (SFHA) – An area identified by FEMA as an area with a special flood or mudflow, and/or flood related erosion hazard, as shown on a flood hazard boundary map or flood insurance rate map.

Special Needs Populations – A specified group of individuals including people experiencing homelessness or imminently at risk of homelessness; people with mental, physical or developmental disabilities; people with substance use disorders; children in foster care and youth aging out of foster care; survivors of domestic violence; adults re-entering the community after being released from correctional facilities; or as defined in local ordinances where the project will be located.

Subrecipient – A non-federal entity that receives CDBG-DR funding from NCORR to carry out recovery activities; but does not include an individual or entity that is a beneficiary of the program.

Subrogation – The process by which duplicative assistance paid to the Partner after receiving award are remitted to the Program to rectify a duplication of benefits.

Uniform Relocation Act (URA) – A federal law that applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted programs or projects. URA’s objective is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects.

Appendix 1. Homeownership Housing Development

The Program provides development financing to support the production of affordable for-sale housing targeted to Low and Moderate income (LMI) buyers by covering “appraisal gaps” (i.e., the difference between total development cost and market value, sometimes referred to as “development subsidy”) and “affordability gaps” (i.e., the difference between an eligible buyer’s purchasing power and the market value of the house).

Program funds can be used to address three types of funding gaps common in the production of affordable homeownership units:

- **Appraisal gap:** It is common for the cost of building a home to exceed its appraised value. This difference is often referred to as the “appraisal gap.” Without a development subsidy to address the appraisal gap, units cannot be produced.
- **Affordability gap:** Even if subsidies are identified to cover the appraisal gap, the appraised value of the home usually exceeds the purchasing power of low and moderate income households. There is an “affordability gap” – in other words, the targeted buyers cannot afford to purchase the home outright, but need help with closing costs, prepaid expenses, and reducing their first mortgage to an affordable level. This is commonly provided in the form of second mortgage assistance to eligible buyers.
- **Financing gap:** Even when appraisal and affordability gap subsidies can be identified, developers of affordable homeownership projects often cannot obtain enough interim or construction financing from private sources to fund the development of the home until sale to the end buyer. There is a “financing gap.”

Appendix 1.1 Homeownership Development Approaches

NCORR strongly encourages that all proposed Homeownership proposals utilize a Pre-Sale Approach for development of homeownership housing units. A pre-sale approach identifies specific buyers for a given unit prior to beginning construction. This may involve the buyer having formally signed a purchase agreement (subject to appropriate approvals by Subrecipient) for the unit or may involve other less binding reservation agreements. For example, a Habitat for Humanity chapter identified as a Developer may have already selected the buyer for a given unit, prequalified that buyer, and begun to recognize sweat equity contributions from the buyer’s volunteer time on other Habitat for Humanity builds even without the buyer having signed a binding purchase agreement.

Although not the preferred method, if a Homeownership proposed project prefers to utilize a Speculation-Building Approach, NCORR and the Subrecipient may reserve the right to award funds on an incremental basis, limiting the number of speculation or “spec” homes under construction without identified homebuyers. Subrecipient should be cautious about building homes without a strong pipeline of potential buyers.

When units are not presold or NCORR and/or the Subrecipient is not satisfied with depth of the buyer pipeline, the Subrecipient or its developer partners must prepare and submit an analysis of the market for the proposed project. Subrecipient or its

developer partners seeking funding to produce houses in multiple neighborhoods must submit an analysis for each neighborhood in which it is proposing to develop. Subrecipient or its developer partners may engage a real estate agent or another qualified party to help assemble the information.

The analysis must:

1. Identify the neighborhood market area in which the housing is proposed.
2. Itemize and summarize residential sales from the past year. Sales should be separately reported by owner-occupied vs. rental, new vs. existing, and price range. For accurate comparison purposes the following data should be provided:
 - number of bedrooms/bathrooms, sq. footage, other amenities, etc.;
 - original list vs. final sales price;
 - “days on market” for each home sale should be listed and an average compiled;
 - seller concessions offered or provided; and
 - cash sales vs. those financed with a mortgage;
3. Itemize and summarize current for-sale properties.
4. Identify and summarize the pipeline of homes under development, including the availability of “build to suit” lots with infrastructure already in place.
5. Based on the information above, the assessment should calculate “months of supply”.

Appendix 1.2 Pricing of Homes and Development Subsidies

Pricing of homes and development subsidies are explained below.

1.2.1 After-Construction/Rehabilitation Market Value

Subrecipient or its developer partners will obtain an after-construction/rehabilitation appraisal. This appraised value will be the asking price for the home. In limited circumstances, with prior approval of NCORR a Broker Price Opinion (BPO) or market study may be used to set the price of the home. The homes produced must be sold to an eligible buyer through a fee simple sale within nine months of completion of construction. Additionally, the value of the homes produced (appraised value after rehabilitation or new construction) cannot exceed HOME and Housing Trust Fund Homeownership Sales Price Limits for the year in which the project is originally funded. Information about HOME Sale Price Limits can be found on the following webpage:

<https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>

The table below shows the Sale Price limits for both existing and new 1-4 unit homes, effective July 1, 2023. These numbers are adjusted annually.

1-Unit	2-unit	3-unit	4-unit
\$261,000	\$334,000	\$405,000	\$502,000

1.2.2 Adjustments in Asking Price

If no qualified offer is received within 60 days of first marketing a home, Subrecipient or its developer partners may reduce the asking price by 5%. If no qualified offer is received after final completion followed by 60 days of best efforts in marketing a home Subrecipient or its developer partners may reduce the original asking price by up to 10%, including previous adjustments, if any. Subrecipient or its developer partners may make additional price reductions only with the written approval of NCORR. In any case, Subrecipient or its developer partners may reduce asking prices only after making diligent and continuous efforts to market and sell a home.

1.2.3 Setting and Adjusting the Contract Price

In executing a home sales agreement, Subrecipient or its developer partners may not agree to a contract price that is less than the amounts described above without the written approval of NCORR, except that the Subrecipient or its developer partners may amend the contract price in a home sales agreement to be equal to the market value of the home as determined by a first mortgage lender's appraisal.

1.2.4 Adjustment in Contract Price

Reduced prices shall be considered to be the current market value of the home, regardless of the value determined by any prior appraisal.

1.2.5 CDBG-DR Development Subsidy When Investment Exceeds Market Value

When development costs exceed market value, the portion of CDBG-DR funds advanced to the project that are above the market value become a development subsidy to the project. Neither the Developer nor the homebuyer is required to repay CDBG-DR funds used for an approved development subsidy. However, the homebuyer will be subject to recapture provisions for the amount of any Homeowner Financial Assistance as defined herein—which subsidizes the contract price of the home and possibly closing costs as well.

1.2.6 Determining Market Value to Establish the Development Subsidy

The development subsidy is calculated with the following formula:

[Total development cost] minus [Current market value] equals [Development subsidy]

If a CDBG-DR home is sold for a price equal to the after-construction/rehab appraised value, then the appraised value is deemed to be market value. Moreover, if the price of a home has been reduced due to a lack of qualified

offers after adequate marketing and sales efforts over a reasonable period of time (as described above), the reduced selling price will be considered market value for purposes of calculating the development subsidy.

1.2.7 Accounting for Expenditures

Subrecipient will account for total CDBG-DR expenditures per home by means of assigning an accounting code for CDBG-DR-funded or reimbursed expenses for each property and another accounting code, if applicable, for non-CDBG-DR funded expenditures (if any). At the time of the sale of a CDBG-DR-assisted home, Developer will provide the Subrecipient and NCORR with a complete list of expenditures, if any. The separate accounting of CDBG-DR and other funds used is required for establishing the maximum allowed sale price and will provide necessary financial data on CDBG-DR-funded expenditures in the event of a HUD audit of program activities.

1.2.8 Repayment of Net Proceeds of Sale

Upon sale of a CDBG-DR-funded home, Developer will transmit the net proceeds of sale to Subrecipient. Net proceeds of sale are defined as follows:

1. The sale price of the home;
2. (Minus) the amount of any Homeowner Financial Assistance provided to buyer, as defined herein and described on the settlement statement;
3. (Minus) Developer costs of sale as documented by the settlement statement, including but not limited to real estate broker fees and seller-paid closing costs;
4. (Minus) The current fair market value of any real property contributed by Developer (e.g. a lot or home), in accordance with Section V below. (Developer cannot be reimbursed for CDBG-DR-funded acquisition costs).
5. (Plus) Any reimbursements to Developer of costs previously paid or reimbursed with CDBG-DR funds, such as pro-rated taxes and assessments.

According to HUD guidance, the net proceeds of sale received by Developer do not constitute program income. NCORR will allow Subrecipient to retain the net proceeds of sale in a restricted asset account, which must be fully used to fund allowed CDBG-DR expenses prior to drawing additional CDBG-DR funds

1.2.9 Reuse of Net Proceeds of Sale

The amount of each repayment to Subrecipient of net proceeds of sale will be added to Developer's allocation of CDBG-DR funds and be available to Developer to perform additional CDBG-DR activities as approved in writing by

Subrecipient during the period of performance in the CDBG-DR Agreement. After that period concludes, any remaining allocation to Developer will expire. Such additional allocation amounts are subject to recapture and reallocation by Subrecipient if Developer fails to perform in accordance with the agreed-upon delivery schedule.

Appendix 1.3 Marketing and Sales of CDBG-DR Homes

This section describes the necessary conditions for marketing and sales of CDBG-DR Homes under this Program.

1.3.1 Responsibility for Marketing and Sales

Developer is fully responsible for marketing CDBG-DR homes and selling them to qualified buyers. If a CDBG-DR home does not sell in a timely manner and thus results in cost overruns that cannot be paid out of contingency funds, Subrecipient or its developer partners will be responsible for paying the additional costs unless, at the sole discretion of NCORR, the Project Budget is revised to provide additional CDBG-DR funding.

1.3.2 Marketing Plan and Budget

Prior to marketing the first completed home, Subrecipient must obtain written approval from NCORR for a program marketing plan and budget. The marketing plan will include the following elements:

1. methods of nondiscriminatory affirmative outreach as defined in 24 CFR 576.407(b) to residents in target audience;
2. other means of advertising homes for sale, including such means as Multiple Listing Service, advertising, flyers, etc.;
3. printed materials and advertisements must include equal opportunity language;
4. approved language for use in flyers, advertising and listings regarding income qualifications of buyers and CDBG-DR financing being offered to buyers;
5. method and timing of prequalifying prospective buyers, in terms of CDBG-DR income eligibility and eligibility for mortgage financing;
6. policy for managing a waiting list of potential buyers;
7. sample disclosure statements to be given and explained to buyers prior to signing purchase agreements and at closing; and
8. provisions for establishing and adjusting sale prices.

More information about HUD marketing plans can be found at:

https://www.hud.gov/program_offices/fair_housing_equal_opportunity/advertising_and_marketing

1.3.3 Establishment of Eligible Homebuyer Wait List

The subrecipient must require that the Developer establish a waiting list of pre-qualified buyers beyond the buyers specifically tied to the project's unit(s) equal to or greater than half the number of units under construction (rounded up to a whole number). For example, if an Applicant is proposing to build six (6) units, then, in addition to the six (6) originally identified buyers, the waiting list must have at least three (3) additional prequalified buyers.

1.3.4 Buyer Eligibility Requirements

NCORR wants to ensure that participating buyers are successful homeowners. The program should target households who are ready for homeownership and provide sufficient assistance to make the home affordable (i.e., the program shall assist mortgage-ready, income-eligible homebuyers). To ensure the program is targeting households prepared for homeownership, participating buyers are required to attend and complete a pre-purchase homebuyer counseling class provided by a HUD-approved counseling agency. At the same time, buyers should only be provided with the assistance they "need" so that the program can serve as many households as possible. NCORR seeks to ensure that assisted buyers are informed consumers and avoid the use of risky lending products.

The following specific eligibility criteria must be met:

1. Applicants must meet the HUD CDBG National Objective: Low- and Moderate-Income (LMI)(80% of AMI).
2. Applicants must attend and complete a HUD certified homebuyer education course. The Homebuyer Education Certificate of Completion must have been issued in the last twelve (12) months.
3. Applicants must agree to occupy the newly constructed home as their primary residence.
4. Applicants must obtain a fixed-rate mortgage loan for, at a minimum, the length of the Affordability Period before assistance from the Program is awarded.
5. Applicants must adhere to Duplication of Benefits (DOB) compliance

Subrecipients should ensure Program eligible Homebuyers/Applicants must comply with the following requirements after assistance is awarded:

1. Homebuyers/Applicants must maintain principal residency in the assisted property throughout the length of the Affordability Period. Cash-out refinancing, home equity loans, or any loans utilizing the assisted property as collateral must be approved during the Affordability Period. A violation of this requirement will activate the loan repayment terms.
2. Homebuyers/applicants must agree to the Affordability Period and lien requirements of the forgivable loan.
 - The lien on the property will be removed upon completion of the terms and conditions of all documents related to the program and completion of the Affordability Period.
 - Forgiveness of the loan will occur annually during the Affordability

- Period with 100% of the loan being forgiven and the lien satisfied at the termination of the Affordability Period.
- Should Homebuyers sell or otherwise convey their ownership interest in the property during the Affordability Period, the remaining prorated amount of assistance will become immediately due and payable and the Subrecipient, representing NCORR, will enforce recapture provisions through a lien.
3. Homebuyers/Applicants must maintain homeowner's insurance for the property during the length of the Affordability Period.

1.3.5 Death of Homebuyer participant(s)

If the Homebuyer becomes deceased during the Affordability Period, an heir may assume the remaining lien and Affordability Period. The heir must meet all eligibility requirements and will be processed for assistance in the same manner as all other Homebuyer/Applicants. After assistance is awarded, the heir will complete all required documentation and must comply with all Program requirements, including to maintain principal residency in the Program home throughout the length of the Affordability Period.

If no heirs are identified within the 6 months after Homebuyer's death, the Subrecipient will have right of first refusal to absorb the property and utilize it for uses eligible under the terms of the CDBG-DR funds.

1.3.6 Homebuyer Household Income

To qualify to purchase an assisted home and receive Homebuyer Assistance, individual applicants must have a gross household income of at least 40% and no more than 80% AMI. HUD publishes income limits, adjusted for household size, for the CDBG program annually. Homebuyer income eligibility is determined using the "IRS 1040" method of determining income.

1.3.7 Homebuyer Education

All adult household members who hold title and/or are party to the senior mortgage must complete pre-purchase homebuyer education provided by a HUD-certified counselor employed by a HUD-certified housing counseling agency within the twelve (12) months prior to receiving Homebuyer Assistance.

Appendix 2. Rental Housing Development

The Program intends to provide financing, including gap or primary financing, for affordable multifamily rental housing.

Program Assisted units may only be leased to Households with an annual income that is less than 80% of the Area Median Income. The proposed Project must meet the following affordable rent requirements and tenant income limits through the duration of the affordability period. At a minimum, Maximum Affordable Rents (inclusive of all utility costs) restricted to Households with an annual income less than or equal to 80% Area Median Income shall not exceed the High HOME rents as designated for the Project area. Sale of a Project during the affordability period is acceptable; however, affordability periods must still be adhered to and included as a deed restriction.

Appendix 2.1 Utility Allowances

As required by HUD regulation for affordable Rental housing projects, tenant net rent will be calculated after applying a HUD utility allowance. NCORR will utilize the most recent utility allowance standard provided by HUD (based upon location) using HUD's Utility Schedule Model (HUSM). This web-based HUD calculator can be found at:

<https://tools.huduser.gov/husm/uam.html>

Appendix 2.2 Acquisition

Subrecipient must obtain approval from NCORR prior to new acquisition of property or accepting contributions of property for the Program by electronically submitting a property information package to NCORR that includes the following:

- a detailed rehabilitation work write-up and cost estimate, or new construction plans, material specifications and cost estimate;
- a development description and Project Budget;
- a preliminary appraisal indicating the as-is property value; and
- a copy of the Notice of Voluntary Acquisition that will be transmitted to the seller.

New construction cost estimates may be based on the plans for one of Developer's standard new home products, which may be substituted later with other plans with NCORR's written approval. Rehabilitation estimates will include a 15% contingency line item, and new construction a 10% contingency line item based on hard costs (excluding any acquisition), general requirements, and profit and overhead.

Appendix 2.3 Rehabilitation, New Construction, and Reconstruction

Below is a list of primary requirements for all multifamily proposals:

1. A submission of the Unit Mix of all proposed rental housing units to be developed.
2. Section 504 of the Rehabilitation Act of 1973 requires that 5% of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional 2% of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with vision or hearing disabilities.
3. All projects that propose to rehabilitate, newly construct or reconstruct eight (8) or more dwelling units are subject to Davis Bacon regulations.
4. All proposed multifamily development projects must prepare and submit an adopted Tenant Selection Plan that includes:
 - Marketing plan; and
 - Tenant household income determinations/income certifications/annual re-certifications.
5. Inclusion of Operating and/or Rent Reserves are permitted within the proposed project development budget.
6. Provisions addressing who will be responsible for maintenance and appearance and maintaining rental compliance during the affordability period should be included.