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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, must include a relocation plan that adheres to the Uniform Relocation Assistance and Real Property Acquisition Act and cost for relocation 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 Subrecipients to implement their 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 (if developer is also acting as general contractor);
6. mobilization, site prep, and clean up;
7. demolition costs for acquisition/demolitions if declared blighted and existing unit determined unfeasible for rehab;
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;
11. homebuyer education; and
12. sales minus homebuyer financial assistance (developer credit to

homebuyer) minus developer costs of the sale minus developer-contributed real estate fair market value) if developer used previously owned land).

Developer fees shall not exceed 15% of total development cost. General contractor fee shall not exceed 20% of overhead and profit.

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 NCORR's published project application process and associated application. The process establishes the details for application associated deadlines, selection criteria, and the award process.

### 7.1 Application Process

NCORR will use the announcement of funding availability and its website to provide detailed information about the application process and associated timelines. NCORR may use a Letter of Interest process ahead of the application period.

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. plans, specifications, the general contractor (if known), and the construction proposal;
5. how the proposed project relates to the existing neighborhood and evidence of support from the local government and other local stakeholders;

6. affirmative fair housing marketing plan describing how the properties will be leased or sold;
7. a project schedule; and
8. a project budget, (including a pro-forma and unit-mix for rental projects).

## 7.2 Evaluation Process

A review panel will be established by NCORR and will use the following factors to evaluate all submitted applications:

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

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

## 7.3 Awards and Maximum Assistance

The maximum award amount for any individual project as detailed in the Hurricane Florence Action Plan is limited to \$10,000,000 and must represent the gap between the total project cost and other applicable funding sources. As project costs are reviewed, the \$10 million cap may be exceeded if a compelling and significant benefit to resiliency or the local affordable housing stock is realized through project execution. When the cap is exceeded, NCORR will document such exceptions and the rationale behind the decision-making process.

Any project application will be evaluated based on per unit cost and overall cost reasonableness for the size and scope of the project. As a benchmark, most projects funded through the Affordable Housing Development Fund in previous rounds had a per unit production cost between \$120,000 and \$250,000 per unit.

NCORR 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 awards to subrecipients shall be in the form of subrecipient agreement that specifies the grant terms that will include any administrative costs for the UGLG to oversee the program and the cost to implement the respective projects. Any subawards made by the UGLG to development partners must be structured

as non-amortizing loans and will also require a Land Use Restriction Agreement 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. 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 Subrecipients to formulate developer agreements with any developer partners. 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 (87 FR 6364):

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 agencies. 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 rehab/construction standards, estimating rehab/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 rehab or construction Standards, approving plans, specifications and estimates for projects, monitoring the work, and approving draw requests.
- NCORR is responsible for approval of projects for funding and reviewing the information provided by the Subrecipient.
- NCORR is responsible for reviewing and approving draw requests after submission from the Subrecipient.
- Subrecipient should formulate a developer agreement with any developer partners that enforces 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:

- consistency with community planning priorities related to resiliency against future storms;
- two or more feet of building elevation above base flood elevation (BFE);
- use of AAC (Aerated Autoclaved Concrete) as primary building material;
- flood resistant materials;
- use of solar shingles, roof hardening and impact resistant doors and windows to resist wind;
- fire resistant materials and defensible space around a building for wildfires;
- 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
- 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 can be used. 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 the UGLG upon UGLG’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.

#### **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 Rehab/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. rehab 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**

















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 – Round 3 Billing Guide which can be accessed at:

<https://www.rebuild.nc.gov/local-and-tribal-governments/community-development/AHDF#Round3-3071>

### 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 rehab/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.

Additional information about billing and payment structure can be found in the NCORR Affordable Housing Development Fund – Round 3 Billing Guide which can be accessed at:

<https://www.rebuild.nc.gov/local-and-tribal-governments/community-development/AHDF#Round3-3071>

## 14.0 Procurement and Cost Considerations

### 14.1 Cost Estimates

Subrecipient or its developer partners are responsible for producing cost estimates including builder overhead and profit in a form approved by grantee, as follows:

1. Rehab 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 recompute (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:

- a. personnel files;
- b. property management files;
- c. general program files: Files relating to the subgrantee, subrecipient's, or contractor's project
- d. information form to NCORR, the subrecipient agreement, program policies and guidelines,
- e. correspondence with NCORR and reports, etc.; and
- f. legal files: Articles of incorporation, bylaws of the organization, tax status, board minutes,
- g. 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 - Round 3 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 – Round 3 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 – Round 3 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 (SRA) have been fulfilled.
- 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 partner;
- 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
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
LMH	Low/Moderate Housing
LMI	Low/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
UGLG	Unit of General Local Government
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 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.

**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 to 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/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.

**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- to 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.”

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 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 Spec-Building Approach, NCORR and the Subrecipient may reserve the right to award funds on an incremental basis, limiting the number of “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.















## Appendix 2. Rental Housing Development

The Program intends to provide financing, including gap or primary financing, for affordable multifamily rental housing not otherwise seeking LIHTC, particularly projects sponsored by nonprofits and/or public housing authorities and those serving special needs populations.

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 for Households with an annual income between 31% - 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 rehab 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. Rehab estimates will include a 15% contingency line item, and new construction a 5% contingency line item.

### Appendix 2.3 Rehabilitation, New Construction, and Reconstruction

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

