



**2021 and 2022 Multifamily New Construction Rental
Program Policy Manual**

2.0

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Version History and Version Policy

The version history of the policy manual is tracked in the table below, with notes for each change. The dates of each publication are also tracked in the table.

The State will publish a new version after making substantive changes that reflect a policy change. The updated policy manual will be assigned a new primary version number such as 2.0, 3.0, etc.

After making non-substantial changes, such as minor wording and editing or clarification of existing policy that do not affect the interpretation or applicability of the policy, the State will publish a version of the document with a sequential number increase behind the primary version number such as 2.1, 2.2, etc.

Amendments made to policy may go into effect on the date of the revision or may be applied retroactively, depending on the applicant pipeline and status of applicants in the program intake and recovery process. Whether a policy will be applied proactively or retroactively will be detailed in the version history below and/or within the relevant program sections.

Version Number	Date Revised	Key Revisions
1.0	2023	Multifamily New Construction Rental Program
2.0	April 2024	Added 2022 allocation requirements into the policy

1. Overview

1.1 Introduction

In alignment with the Commonwealth of Kentucky's comprehensive approach to resilient recovery from 2021 Severe Storms, Flooding, Landslides, and Mudslides (DR-4595), 2021 Severe Storms, Straight line Winds, Flooding and Tornadoes (DR-4630), and the 2022 Severe Storms, Flooding, Landslides, and Mudslides (DR-4663) the Commonwealth is launching the Multifamily New Construction Rental Program to support communities in replacing and rebuilding rental housing units that were damaged or lost in the disaster events with a particular emphasis on providing affordable housing units to low income tenants.

In response to the 2021 severe storms- HUD announced in February 2022 and January 2023 that the Commonwealth of Kentucky would receive a total of \$123,936,000 from two allocations to support long-term recovery and mitigation efforts following the 2021 severe storms, flooding, and tornadoes (DR-4595) and the 2021 severe storms, straight-line winds, flooding, and tornadoes (DR-4630) through the Kentucky Department of Local Government (DLG).-

In response to the 2022 severe storm- HUD announced in May 2023, that the Commonwealth of Kentucky would receive \$297,994,000 in funding to support long-term recovery and mitigation efforts following the 2022 severe storms, flooding, landslides, and mudslides (DR-4663) through the Kentucky Department for Local Government (DLG).

Community Development Block Grant-Disaster Recovery (CDBG-DR) funds appropriated by Congress for recovery from 2021 and 2022 (DR-4595, DR-4630 and DR-4663) are the primary funding source for the Multifamily New Construction Rental Program. CDBG-DR grants are allocated to States and local jurisdictions by the U.S. Department of Housing and Urban Development (HUD) and are intended to address "unmet needs" not satisfied by other Federal and local recovery sources.

1.2 Funding Sources

The Commonwealth of Kentucky has received funding from the U.S. Department for Housing and Urban Development (HUD) to respond to the storms of 2021 and 2022.

For the 2021 storms, HUD announced that the Commonwealth of Kentucky would receive a total of \$123,936,000 from two allocations. Initially, \$74,953,000 funding was allocated to support long-term recovery and mitigation efforts following the 2021 severe storms (DR4595 and DR-4630) through publication in the Federal Register, Vol. 87, No. 100, May 24, 2022 (87 FR 6326). This allocation was made available through the Disaster Relief Supplemental Appropriations Act of 2022 (Pub. L. 117-43) and approved on September 30, 2021 (the Appropriations Act). In January 2023, the U.S. Department of Housing and Urban Development (HUD) announced that the Commonwealth of Kentucky would receive an additional \$48,983,000 in Community Development Block Grant-Disaster Recovery (CDBG-DR) funding via publication in the Federal Register (FR), Vol. 88, No. 11, January 18, 2023 (88 FR 3198). This

allocation was made available through the Continuing Appropriations Act, 2023 (Public Law 117–180), approved September 30, 2022.

Additionally, HUD announced in May 2023, that the Commonwealth of Kentucky would receive \$297,994,000 in funding to support long-term recovery and mitigation efforts following the 2022 severe storms, flooding, landslides, and mudslides (DR-4663) through the Kentucky Department for Local Government (DLG). Through publication in the Federal Register, Volume 88, Number 96, May 18, 2023 (88 FR 6393). This allocation was made available through the Continuing Appropriations Act, 2023 (Pub. L.117-180 Division A) and approved on September 30, 2022 (the Appropriations Act).

The funding for this program is provided through HUD’s Community Development Block Grant Disaster Recovery (CDBG-DR) Program, as appropriated by Congress. Funding for 2021 and 2022 disasters through the Kentucky Department of Local Government (DLG) funding is designed to address the needs that remain after all other assistance has been exhausted.

In the future if HUD allocates additional funding for other disasters they will be subject to the terms of interchangeability of funds. HUD allows for CDBG-DR funds to be interchanged between grants received in separate allocations and under prior appropriations. Interchangeability means that those funds can be used without limitation for the same activities related to unmet recovery needs in the MID areas resulting from a major disaster identified in the Appropriations Act as CDBG-DR eligible or in prior or future appropriations acts, when the MID areas overlap and when the use of the funds will address the unmet recovery needs of major disasters identified in the Appropriations Act as CDBG-DR eligible or in any prior or future appropriations acts. In Kentucky some communities have been affected by both the severe storms in 2021 and 2022.

2. Program Description

DLG has established the Multifamily Housing Program (Program), a new construction affordable housing program to help address unmet housing needs resulting from the disasters. The Program will address the need by developing newly constructed multifamily rental units. The Program will offer funding subsidies for the construction of new multifamily structures (five or more units) to replace units in the local market that were impacted by the disaster. The new units will incorporate green and resilient building practices to mitigate future risks of hazards.

3. CDBG-DR Funding Requirements

3.1 Available Funding

The total available Program funding for the 2021 is \$10 million dollars and the total available Program funding for the 2022 round is \$10 million dollars.

3.2 Maximum Award Per Project

The maximum award for any multifamily new construction rental project is:

CDBG-DR Allocation	Maximum Award
2021 (DR-4595 and DR-4630)	\$1,000,000 per project; \$200,000 per unit
2022 (DR-4663)	\$10,000,000 for any new construction project; \$200,000 per new rental unit

2021 (DR-4595 and DR-4630)

The maximum award is \$1,000,000 for any new construction project. This award will include incentives for construction, incentives for applicable mitigation measures, and the cost of compliance such as additional costs incurred paying Davis Bacon wages. Policies will also specify the process by which applications can be reviewed to identify situations where exceeding the maximum award amount may be necessary. To maximize the CDBG-DR investment, ensure a reasonable distribution of units between funding sources, and prevent the over subsidy of the units or the development, a maximum subsidy per unit/cap has been established at \$200,000 per unit.

2022 (DR-4663)

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3.3 Program Timeline and Expiration of Funding

The Program will commence in the summer of 2024 and is expected to run until: a) all funds have been expended, b) all eligible projects have completed closeout, or c) 6 years after execution of the grant agreement with HUD.

Each project must establish a performance and construction schedule that must be approved by DLG. DLG will monitor project process to ensure the project remains on schedule and will meet its expenditure and unit delivery requirements.

3.4 Use of Funds

The funding will only be used to provide gap financing for new, construction multifamily rental projects that have already identified preliminary sources of funding. The project must demonstrate a shortfall of funding between available sources and the projected Total Development Costs (TDC). The funds may be used toward the TDC of new construction, multifamily rental projects only. These costs may be inclusive of but are not limited to:

- Land acquisition;
- Demolition and clearance;
- Hard and soft construction costs;
- Architecture and engineering,

- Legal and consultancy (i.e., environmental, marketing, etc.);
- Real estate fees;
- Financing costs;
- Developer/deferred developer fees;
- Davis Bacon and State Prevailing Wage, if applicable;
- Resiliency, energy efficiency, and mitigation measures and incentives
- Project/activity delivery costs; and,
- Any other cost deemed eligible and necessary for development.

3.5 Timely Use of Funds

Construction of the projects must commence within 12 months of the date of the award letter and construction must be completed within 24 months of commencement. CDBG-DR assisted units must be fully occupied by beneficiaries within 18 months of the completion of construction of award.

3.6 Eligible Counties

The counties eligible for CDBG-DR are those that were the Most Impacted and Distressed (MID) by the disaster; the MID's are identified on the federal and state levels for the 2021 KY disaster.

2021 Severe Storms, Flooding, Landslides, Mudslides, Straight-line Winds, Tornadoes (DR-4630) and (DR-4595)

MID Areas		
HUD-Identified MID Areas	Graves County	Hopkins County
	Breathitt County (41339)*	Warren County (42101)*
Grantee-Identified MID Areas	Boyd County	Letcher County
	Caldwell County	Lincoln County
	Christian County	Logan County
	Clark County	Lyon County
	Clay County	Madison County
	Estill County	Magoffin County
	Floyd County	Marion County
	Fulton County	Marshall County
	Greenup County	Martin County
	Hart County	Morgan County
	Hickman County	Muhlenburg County
	Jackson County	Ohio County
	Johnson County	Owsley County
	Knott County	Perry County
	Laurel County	Pulaski County
	Lawrence County	Rockcastle County
Lee County	Taylor County	
Leslie County		

*Kentucky has decided to expand the HUD-identified MID areas in ZIP codes 41339, and 42101 to include the entire counties of Breathitt, Warren County.

2022 Sever Storm, Flooding, Landslide and Mudslide (DR-4663)

MID Areas		
HUD-Identified MID Areas	Breathitt County	Perry County
	Knott County	Pike County*
	Letcher County	
Grantee-Identified MID Areas	Casey	Lincoln
	Clay	Magoffin
	Cumberland	Martin
	Floyd	Owsley
	Harlan	Powell
	Johnson	Whitley
	Lee	Wolfe
	Leslie	

*Kentucky has decided to expand the HUD-identified MID areas to include the entirety of Pike County.

3.7 National Objectives

Section 105(c)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures may qualify as benefiting L/M income persons only to the extent that the housing is occupied by L/M income persons. (For purposes of meeting the CDBG national objective, the regulations provide that the income of all persons occupying a CDBG-assisted housing unit must be counted, first, without regard to their familial relationships, and second, by treating them (for this purpose only) as though they were all the same family. If the “household/family” income qualifies it as L/M income, the unit is counted as one of the units counted as serving the LMI population. To meet the LMH national objective, 51% of units must be occupied by LMI households.

CDBG-DR does allow the use of Urgent Need to meet a national objective. The Urgent Need national objective may be used on a limited basis and will be capped at a maximum of 30% off the units per project. A minimum of 70% off the units must meet the Low- to Moderate-Income Housing (LMH) national objective. Projects intending to utilize the Urgent Need national objective for units will need approval from DLG based on the program limits and how the use of UN is required to meet local housing needs.

Subrecipients must track all LMI beneficiaries per HUD requirements using the following income ranges and categories:

- 0% - 30% AMI Extremely Low Income (ELI)
- 31%-50% AMI Very Low Income (VLI)
- 51%-80% AMI Low Income (LI)

Household income will be determined based on the total number of persons in the household and total annual income of each household member 18 years and older. See Section 4.13 for additional information on the income verification process.

Urgent Need (UN): HUD allows for the use of the urgent need (UN) national objective when existing conditions pose serious and immediate threat to health/welfare of community, the existing conditions are recent or recently became urgent, and the recipients cannot finance the activities on their own because other funding sources are not available. All assistance and activity delivery costs provided to or on behalf of households with incomes at or above 80% of the AMI will be classified under UN. Each approved application will describe the type, scale, and location of the disaster-related impact that will be addressed through the project.

3.8 Eligible Activities

The following activities under the Housing and Community Development Act of 1974 (HCDA) are eligible: New construction, acquisition, clearance; HCDA Section 105(a)1, 4, 11, 14, and 15; applicable waivers identified in the Allocation Announcement Notice and Consolidated Notice (87 FR 6364) and will include new construction, acquisition, acquisition with new construction. No pre-award costs will be eligible for reimbursement, only costs incurred after an award will be eligible for reimbursement.

3.9 Ineligible Activities

Activities ineligible for assistance from through the MHP program include but are not limited to the following:

- Compensation payments
- Projects located in an NFIP area. Assistance for projects located in communities that do not participate in National Flood Insurance Program (NFIP) because they are prohibited to receive federal assistance.
- Assistance for projects located in a floodway.
 - o A Regulatory Floodway comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. This is the segment of the floodplain that will generally carry flow of flood waters during a flood and is typically the area of greatest risk to structures in the floodplain. HUD financial is prohibited in floodways.

3.10 Eligible Project Types

The following are examples of eligible project types:

- Family Housing
- Senior Housing
- Special Needs
- Permanent Supportive Housing (PSH)

For projects to be eligible, applicants must show that the project will:

- Be comprised of 5 or more units;
- Respond to a demonstrated need;
- Impact vulnerable communities;
- Meet a national objective;
- Prioritizes and targets disaster-impacted LMI households;
- Qualify as a CDBG-DR-eligible activity;

- Be located in a declared disaster-affected area and tieback to the disaster;
- Have a demonstrated financial gap;
- Meet minimum building and construction design standards;
- Meet energy-efficiency, green, and resiliency standards;
- Include broadband infrastructure; and,
- Meet all of the eligibility requirements imposed by DLG.
-

3.11 Eligible Applicants

Local governments (cities and counties) are eligible to apply for Kentucky Multifamily New Construction Program as subrecipients. Developers (non-profit and for-profit) may also apply for Kentucky Multifamily New Construction Program either directly to DLG or through the Unit of Local Government. Subrecipients are responsible for documenting all tenants to meet eligibility requirements below.

Open applications for the 2021 funds will be accepted until the date DLG has posted or until all funds have been obligated. The 2022 funding round will open in the Summer of 2024 and applications will be accepted until all funds have been obligated. DLG will receive the applications and make funding decisions based on competitiveness and completeness of the application, justification for funding, and feasibility of the project. City, county, and tribal governments, along with developers, will work with DLG to develop programs that will fund eligible projects.

3.11.1 Suspended/Debarred Parties

Eligible applicants must not be identified on the suspended or debarment list. Any parties suspended or debarred shall be ineligible to participate in any project that receives resources. If an entity is determined to be ineligible to participate in a project, any related-party entity will also be ineligible. Please refer to DLG for more information.

Any parties found to be in consistent noncompliance with program guidelines or that demonstrate flagrant or serious incident(s) of misuse of funds will not be allowed to participate in the Program. Any person or agency that, except for good cause shown, shall have committed, or failed to perform (as the context may require) an act or omission identified in the related Suspension and Debarment Policy, may be subject to suspension and/or debarment and prohibited from doing further business with or entering into any contractual relationship with DLG.

4. Application Process

This section provides an overview of the application process. In this document, the term applicant refers to units of local government (cities and/or counties), and developers (non-profit or for-profit). The application window for subrecipients will be from . In order for an application to be eligible, subrecipients must establish that their program responds to a demonstrated need, provides an impact to vulnerable communities, meets a national objective, qualifies as a CDBG-DR eligible activity and is located in a disaster affected area.

Application approval and associated funding decisions will be made through evaluation of threshold criteria related to the grant application and subject to funding availability. For the applications to be eligible, the subrecipients application must show that the project will:

- Respond to a demonstrated need
- Impact vulnerable communities
- Meet a national objective
- Qualify as a CDBG-DR eligible activity
- Be located in a declared disaster-affected area

4.1 Application Method

Applications will be accepted until MONTH, DATE, 202X or until all grant funds have been obligated.

All subrecipients must download the CDBG-DR Multi-Family Application located on the DLG website and submit with all attachments to:

- DLG.OFG@ky.gov
- DLG.DR@ky.gov

DLG will conduct a threshold review and any applications that are submitted incomplete or missing attachments may be considered ineligible and not subject to a full review by DLG and/or considered for funding.

- Completeness of application
- Eligible Project Type (specifically no single-family residential projects)
- Notifications of Public Officials
- Project addresses local -market needs
- Firm Funding Commitments for non-KCDBG funds..
- Firm Equity Commitment (if applicable)
- Site meets Flood standards
- Building Plans
- Service Plan for Target Residents (applicable to Permanent Supportive Housing projects)

4.2 Application Requirements

An application is considered complete if it includes the following components:

- A signed, dated, complete original copy of the CDBG-DR Multi-Family New Construction Program Application available on the Kentucky DLG – DRP Grants Website.
- And all of the following:
 - KCDBG_DR Multi-Family Construction Sources and Uses Development Budget template
 - Preliminary site plan and market study for the project
 - Specifications for the size of the multi-family dwelling unit size and amenities
 - Public Hearing documentation and other citizen participation requirements as found in Chapter 1 of the Subrecipient Manual

- Title VI Form – Description found in Chapter 1 of the Subrecipient Manual and the Form (7-2) is found in Chapter 7.
- Documents to Attach:
 - Project Area Map with boundaries
 - Grant administration Plan, please see **Appendix A** o Proposed designs and plans (Project Scope)
 - Authorizing resolution to submit the application adopted by the community’s governing body
 - All funding commitment letters o Kentucky State eClearinghouse Endorsement
 - Letter of determination of eligibility for listing on the Nation Register of Historic Places from the Kentucky Heritage Council, and clearance from the State Historic Preservation Officer when applicable
 - If project involves a non-profit organization, please provide proof of the non-profit organizations 501(c)(3) status to prove eligibility
 - Documentation to substantiate that conflict of interest provisions have been thoroughly discussed with the governing body and possible recipients
 - DLG reserves the right to request any additional information as necessary.
- Withdrawn Applications:
 - Voluntary Withdrawals

Subrecipient applications may be withdrawn by an applicant at any time. All parties who wish to withdraw must clearly provide a written notice of their intent to voluntarily withdraw to the entity they originally applied to with a copy to DLG.
 - Administrative Withdrawals

Subrecipient applications may be administratively withdrawn by DLG for the following reasons:

 - Required documentation or information is not submitted within the deadline provided in the application for participation in the program;
 - DLG determines that there is a duplication of another valid application or conflicting program such as the Hazard Mitigation Grant Program (HMGP);
 - Subrecipient becomes unresponsive.

4.3 Application Scoring and Review Process

4.3.1 Threshold Criteria

All applications will be followed by an application evaluation (threshold criteria) that will determine whether the application is complete and the applicant and project are eligible for funding. These criteria are listed below.

This phase is unscored. DLG will further review only the applications that meet the threshold review criteria.

4.3.1.1 Threshold Criteria

- Application was submitted on time.
- Application is signed and complete.
- Applying entity is an eligible city, county, or developer.
- Applicant's project benefits HUD and/or grantee-identified MID areas.
- Applicant meets either the LMI or the urgent need national objective.
- Application demonstrates the proposed project will address housing needs
- Applicant submitted evidence of compliance with the Public Notice requirement.

4.4 Technical Review

Applications will be reviewed by DLG, unless the application could not meet minimum threshold requirements and as detailed in 5.3 of this section. The application reviewers will determine based on the application review the appropriate prioritization of each reviewed application. The review panel will generate individual scores using the established scoring criteria.

4.5 Clarifications

During the application review process, applicants are required to respond in a timely manner to any DLG requests for information/materials to complete the evaluation process. Any request for additional information will include a definitive due date for return of the requested information. If the applicant needs an extension, clarification, or assistance, the applicant may make its request within the allotted response timeframe. If an applicant fails to provide the requested information/materials or fails to ask for an extension or assistance, the application will be scored accordingly and there will be no additional opportunity to submit the requested materials.

4.6 Prioritization and Ranking

DLG staff review will culminate in projects being placed in one of the following four (4) priorities:

Priority I:

Applications in this category have met all program requirements, exhibit serious housing (including water and sewer) needs, substantiate significant project accomplishments and maximize the impact of CDBG-DR funds. This includes the level of CDBG-DR funds applied to housing versus CDBG-DR funds applied to public facilities activities within the overall housing project. Applications in this category have minimum of 50% match of total project costs.

Priority II:

Applications in this category may or may not have met all program requirements, however are fundable projects. The project needs, accomplishments, and impact of the CDBG-DR funds and/or benefits are less acceptable than a Priority I. This includes the level of CDBG-DR funds applied to housing versus CDBG-DR funds applied to public facilities activities within the overall housing project. Applications in this category have a minimum of 25% match of total project costs.

Priority III:

Applications in this category may or may not have met all program requirements and/or have serious deficiencies, however are fundable projects. The project needs, accomplishments, and impact of the CDBG-DR funds and/or benefits are less acceptable than a Priority I and/or Priority II. This includes the level of CDBG-DR funds applied to housing units versus CDBG-DR funds applied to public facilities activities within the overall housing project. Applications in this category have a less than 25% match of total project costs.

Priority IV:

Applications in this have serious deficiencies and are ineligible or not fundable.

4.7 Negotiation

DLG reserves the right to negotiate funding amounts and payment schedules with selected applicants. Negotiations may be appropriate for, but not limited to, situations such as the demand exceeding the amount of funds available, the existence of project readiness issues, and discrete project components meeting program objectives or grant requirements, such as the LMI benefit.

4.8 Notice of Award

Once award amounts are determined, DLG will send a Notification of Award to successful applicants, which is a preliminary offer to enter into a grant agreement with subrecipients or a loan agreement when funding is awarded directly to developers. Execution of either form of agreement is contingent upon both parties' agreement regarding the terms and conditions, including the project scope, budget (e.g., State and federal construction and financial rules and regulations), and timeliness, among others, and described in greater detail in this policy. Awards will be considered final upon receipt of a signed grant agreement between DLG and the applicant.

4.9 Appeals

All appeal requests related to program activities are processed and reviewed by DLG. Initial review of the appeal will be conducted by a panel made up of DLG staff. This staff is independent from the group that originally made the decision being appealed. Each appeal will be reviewed against program policies and requirements. The panel will make a recommendation to DLG Leadership, and then to the Governor's office, which will approve the final selection.

Appeal requests to DLG must be postmarked within 10 calendar days of the date of service on the original correspondence communicating the decision to be appealed. Appeals must be submitted in writing to:

Department for Local Government
100 Airport Road, 3rd Floor
Frankfort, KY
40601
ATTN: DR Appeals

The applicant's written request should contain the following information:

- Applicant's name
- Applicant's mailing address
- Applicant's telephone number
- Email address (if available)
- The reason(s) the decision or action is being appealed
- Documentation that supports the request to overturn the decision
- Application number

If appropriate, the Office of Legal and Regulatory Affairs may contact the applicant to allow the applicant to provide additional documents to address any deficiency or incomplete information, or to be interviewed to determine the merits of the applicant's appeal. If the action or decision is overturned, notification will specify the corrective action to be taken. The applicant shall be notified of the final determination in writing via certified mail.

4.10 Form of Assistance for CDBG-DR Funds

In the efforts to not impact the ability for a project to secure all necessary funding, the CDBG-DR funding will be provided in the form of a deferred, no-interest loan with a 20-year term that will be forgivable at the expiration of the affordability period. To be eligible for forgiveness at the expiration of the affordability period (defined below), the project must be in good standing and without outstanding or uncured defaults.

4.10.1 Security Instruments and Lien Position

The DLG loan will be in a junior position to other funding, the priority of the position will be determined on a project-by-project basis, as predicated by the other funding sources. To secure its investment, DLG will require an executed promissory note detailing the terms of the funding, and a recorded deed of trust. DLG may also require an Intercreditor and Subordination Agreement (when applicable), defining the order of priority and lien position.

4.11 Affordability Period

In accordance with the HOME affordability requirements defined at 24 CFR 92.252 (e) (1) and the guidance provided in the alternative requirements found in 87 FR 31636, all new construction multifamily rental projects are subject to a minimum Affordability Period, determined by activity type and/or amount of investment. The HOME minimum affordability period requirements will be followed and shall commence after the completion of the project.

DLG will enforce the minimum affordability period of 20 years imposed upon new construction projects. During the affordability period, the projects must remain affordable to - and occupied by - lower income households.

4.11.1 Mechanisms of Enforcement of the Affordability Period

The affordability restrictions will be enforced by one of the following mechanisms, recorded in accordance with State recordation laws: deed restrictions, a covenant running with the land, an

agreement restricting the use of the property, or other mechanisms approved by HUD. During the Affordability Period, the affordability restrictions shall remain and not terminate with regard to the repayment of the loan or transfer of ownership (in part or whole).

At its discretion, DLG may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability, or DLG may permit the termination of the affordability restrictions upon foreclose or transfer in lieu of foreclosure. If, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability restrictions shall be revived according to the original terms.

4.12 Affordable Rents

DLG has adopted the HOME definition for affordable rents. The rent limits apply to the rent plus the utilities or utility allowance. The initial rents will be the maximum rents that conform to HOME rents limits as established in the Action Plan as defined in 92.252(a) and are the lesser of:

- (1) The fair market rent for existing housing for comparable units in the area as established by HUD under [24 CFR 888.111](#); or
- (2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

Rental units that are intended to meet an LMI national objective in a project must be rented to persons of verified LMI income and subject to the 65% HOME rent limits (published annually by HUD). There may be instances where various funding sources with various rent restrictions are being applied, in such instances, the most restrictive rent requirements must be imposed, but less restrictive requirements may not supersede the affordable rents definition used by DLG.

4.12.1 Initial Rent Schedule and Utility Allowance

All applicants and projects will work with DLG to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. The allowances must be based on the HUD Utility Schedule Model or an otherwise determined utility allowance for the project based on the type of utilities used at the project.

DLG approved and reviewed rents proposed by the owner for units will be subject to the maximum rent limitations defined in the Affordable Rents section above. For all units subject to the maximum rent limitations for which the tenant is paying utilities and services, DLG will ensure as part of their programs ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services *(if applicable)*.

4.13 Tenant Eligibility and Income Definition

Tenants must meet the income and rent limits to occupy a CDBG-DR funded multifamily rental project. Tenants must qualify at initial occupancy and must be recertified for eligibility, annually. DLG will require

the use of Part 5 Income Definition when determining tenants' eligibility. The income definition must be established prior to the commencement of the lease-up process and must be consistently used throughout the Affordability Period for that property.

4.14 Development in Special Flood Hazard Areas

DLG will discourage development in the SFHA. However, if that location is the only suitable building location in the community based on topography, construction in the SFHA can be considered. If properties are constructed in this area, the development will be required to meet the elevation standards as described in the program guidelines. Property owners will also be required to obtain and maintain flood insurance during the entire Affordability Period. This requirement will be recorded as a permanent restrictive covenant on the property to ensure that future owners are subject to the flood insurance requirements.

4.15 Environmental Review

Because of the use of CDBG-DR funding, the environmental review process is triggered and must be completed in accordance with the National Environmental Policy Act (NEPA) before construction can begin and before any funding can be committed to or expended on the project. The Environmental Review Process will be managed by DLG, s.

The NEPA process consists of an evaluation of the environmental effects of a federally proposed action and its alternatives. There are three levels of analysis: categorical exclusion, Environmental Assessment (EA), and Environmental Impact Statement (EIS).

- Categorical Exclusion: An undertaking may be categorically excluded from a detailed environmental analysis if a federal agency has previously determined that the action typically has no significant environmental impact, and they have included the action in a list of exclusion categories in their NEPA implementing regulations. A list of activities identified by HUD as categorically excluded from detailed NEPA review can be found at 24 CFR Part 58.35.
- EA: Environmental Assessment. The second level of analysis under NEPA is an EA, which is prepared to determine if a federal action would have a significant effect on the environment. If the answer is no, the agency issues a Finding of No Significant Impact (FONSI). The FONSI may include mitigation measures that are required to mitigate environmental impacts, so they are less than significant.
- EIS: Environmental Impact Statement. An EIS is a more detailed evaluation of the potential environmental effects of the proposed action and alternatives. An EIS can be prepared following the completion of an EA or, if a federal agency anticipates that an undertaking may significantly impact the environment, they may choose to prepare an EIS without having to first prepare an EA. The decision document for the EIS is a Record of Decision (ROD), which states the agency's decision and how the findings of the EIS, including consideration of alternatives, mitigation measures, and agency and stakeholder input were incorporated into the agency's decision making process.

4.16 Tiered Environmental Reviews

4.16.1 Tier 1 Reviews

DLG has employed a tiered approach to NEPA compliance for the Program. With a tiered approach, the “action” is evaluated at various stages in the development process as more information is available for environmental assessment or review. This approach is consistent with and detailed in the “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” 24 CFR 58, specifically 24 CFR 58.15 (Tiering) and 24 CFR 58.32 (Project Aggregation). DLG has already completed the Tier 1 review for the Program for the HUD and State MID counties.

4.16.2 Tier 2 Reviews

While Tier 1 is a programmatic environmental review, Tier 2 reviews is project-specific and must be conducted for each property being evaluated for funding under the Program. The Tier 2 reviews will be conducted in a manner that satisfies the requirements of NEPA and HUD’s NEPA implementing regulations (24 CFR 58).

In addition, the reviews will address compliance with all other relevant Federal environmental laws, regulations, and Executive Orders (EO), such as the National Historic Preservation Act, EOs 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. The environmental review may identify the need for environmental mitigation measures to be incorporated into the scope of work for the proposed action or for the action to be redesigned to avoid certain environmental impacts.

No reconstruction, rehabilitation, elevation, or mitigation work, or reimbursement can begin until the Tier 1 environmental reviews have been completed, a Request for Release of Funds (RROF) has been submitted to HUD, an Authorization to Use Grant Funds (AUGF) has been received, and the Tier 2 ERR has been completed and approved for the subject property. Construction activities must be performed in a manner that fully complies with any requirements identified in the Tier 2 review.

4.17 Construction and Permanent Financing

CDBG-DR funds may be used for construction and/or permanent financing transactions, including but not limited to coordinating the drafting of certain other legal documents such as bond documents, Intercreditor and Subordination Agreement, Development Agreement, etc., and coordinating amongst funders. DLG will provide necessary legal documents such as promissory notes, deed of trust, covenants and deed restrictions, etc.

4.18 Construction Management

CDBG-DR certified 3rd party administrator will manage the construction phase of the development on DLG’s behalf for the CDBG-DR funding invested into the project. These responsibilities during the construction phase shall include but not be limited to:

- Facilitating construction financing and loan closing transaction(s)
- Conducting Pre-construction conference
- Issuing the Notice to Proceed
- Conducting Inspections

- Managing construction contracts
- Processing Progress and Final Construction Draw Requests, in accordance with DLG Disaster Recovery (CDBG-DR) Subrecipient Manual
- Reviewing and approving change orders
- Managing retainage

DLG or its representatives reserves the right to may make scheduled or unscheduled site visits to ascertain extent of completion and adherence to expected standards.

4.18.1 Construction Draws, Change Orders and Final Payments

The construction draw, construction inspection, and change order review/ approval process will be managed by CDBG-DR certified administrator. It is imperative to note that DLG has established a priority of disbursement of funds. For projects that have been awarded amortizing and deferred or forgiven loan funds, DLG will disburse the amortizing loan funds, first. These loans will take priority over the deferred or forgiven loans. Since the CDBG-DR funds will be offered in the form of a silent, deferred loan, the CDBG-DR fund distribution will be made after the distribution of the hard debt funds.

4.18.1.1 Draw Requests/Payments

Upon agreement as to quantities of work completed, a contractor may submit requests for partial or progress payments to DLG through the local CDBG-DR certified administrator. Written inspection reports must accompany the contractor's requests for partial payment. Inspection reports, copies of field measurement notes, photos, and test results used to verify contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of certificates for partial payment and necessary documentation, the subrecipient must check equal opportunity and labor standards compliance files to ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and any discrepancies resolved; and
- Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

The CDBG-DR certified administrator will conduct draw inspections(s) and, upon successful completion, will pay the contractor.

4.18.1.2 Change Orders

CDBG-DR certified administrator will oversee and manage the construction contract, and therefore, change order process. Any and all changes to the contract work write-up require a fully executed change order signed by all parties to the contract. Change orders are needed for any and all substitutions that are made to the project, even if the dollar value of that work item remains unaffected, as well as for time extensions to a rehabilitation construction contract.

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are permissible where the cumulative cost of all such orders do not exceed 20 percent of the original contract price and these changes do not constitute a major alteration of the original scope of work. If the proposed change orders will cumulatively a major alteration of the original scope of work or if proposed

change orders will cumulatively exceed 20 percent of the original contract, the subrecipient must contact DLG for prior approval.

Each change order must be accompanied by a supporting statement that describes why the change is necessary, additional time requested to perform the work, itemized cost estimates (credit, debit, or no change), and any needed plans, specifications, or supporting imagery. The CDBG-DR certified administrator must verify to the satisfaction of the Program that the change order is cost reasonable and approve and authorize change orders before they are given to the contractor.

Change orders should be kept to an absolute minimum and cannot be issued after final payment. Change orders need to be contained in individual project files and those which do not conform to the above requirements may ultimately not be funded.

4.18.1.3 Final Inspections and Final Payments

All properties must meet KCDBG-DR guidelines, local housing codes, and occupancy standards upon completion and prior to final payment and/or release of funds by DLG, a final inspection and Certificate of Occupancy or equivalent (if applicable) jurisdiction must be issued by the local jurisdiction.

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment using the processes as established in the DLG Guidelines. CDBG-DR certified administrator must ensure a final inspection has been completed. Before making a final payment (less retainage), the CDBG-DR certified administrator/Developer/Owner must ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
- Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
- All discrepancies identified through job site interviews have been resolved;
- All other required equal opportunity and labor standards provisions have been satisfied;
- All contract submissions have been received;
- All claims and disputes involving the contractor have been resolved;
- All files are complete; and
- As-built plans have been filed.

Additionally, CDBG-DR certified administrator must ensure that all relevant items noted in Chapter 6 of the Subrecipient Manual are present. If the inspection is satisfactory, the grantee can then issue acceptance of work and final payment, less retainage.

4.18.1.1 Retainage

In accordance with Kentucky Revised Statutes 371.410, DLG will withhold a ten (10) percent retainage from partial payments. DLG will follow the retainage requirements, as established in the Disaster Recovery (CDBG-DR) Subrecipient Manual.

5. Fair Housing, Equity, and Racial Justice

5.1 Affirmatively Furthering Fair Housing

To ensure compliance with 24 CFR 5.151, DLG, the property owner and/or manager will take meaningful and specific actions to affirmatively further fair housing. The CDBG-DR certified administrator will ensure such actions address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. DLG and/or CDBG-DR certified administrator will ensure the project owner develop a project-specific Affirmative Fair Housing Marketing Plan (AFHMP) and a Tenant Selection plan:

5.1.1 Affirmative Fair Housing

The AFHMP is a defined marketing and outreach plan that strategizes how targeted outreach to minority groups in the community that are least likely to apply for housing will be conducted. The AFHMP is required for multifamily developments and manufactured home lots of five (5) or more lots, units, or spaces; or single-family developments/subdivisions where the applicant intends to sell five (5) or more units, or when an applicant's participation in the Program causes or would cause them to exceed the development of five (5) or more dwelling units during the year preceding the application. HUD Handbook 8025.1 extensive guidance on AFHM Plans may be found at:

https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80251

5.1.2 Tenant Selection

Tenant Selection plan is a written plan that identifies policies and procedures that include descriptions of the eligibility requirements and income limits for admission and must comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, sex, religion, national origin, familial status, and disability. In accordance with the U.S. Department of Housing and Urban Development's criteria for race and ethnicity. The Tenant Selection Plan must include whether or not there is an elderly restriction or preference in the admission of tenants. The restriction or preference must cite the supporting documentation to ensure nondiscrimination in the selection of tenants. The contents of the plan also must be consistent with the purpose of improving housing opportunities and be reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Extensive guidance may be found at: [HUD Handbook 4350.3: Occupancy Requirements of Subsidized Programs](#)

5.1.3 Vulnerable Populations

As a part of ensuring efforts are undertaken by the project developer/owner to help impacted residents, vulnerable populations, and members of underserved communities expedite their recovery, the following efforts will be undertaken as part of marketing completed units:

- Performing outreach and engagement to facilitate connections with vulnerable populations.
- Coordinating with local organizations to ensure that refugee and immigrant populations are aware of units being developed.

- Coordinating with local nonprofit organizations that provide services to people with disabilities and historically underserved populations to ensure the promotion of the program and help remove barriers to assistance.

5.1.4 Limited English Proficiency (LEP)

LEP is a designation for persons that are unable to communicate effectively in English because their primary language is not English. DLG and subrecipients are required to ensure meaningful access to agency services, programs and activities for persons who are LEP. From intake to closeout, program representatives 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 KY DLG Language Access Plan:

- Provision of an interpreter who translates to and from the person's primary language
- Translation of Program Documents

As necessary, DLG and subrecipient staff will use the language line providers to communicate with LEP applicants.

5.1.5 Reasonable Accommodations for Persons with Disabilities

The program will provide reasonable accommodations to persons with disabilities, including providing multiple options for how residents can submit applications, ensuring all website materials are Section 508 compliant, ensuring ADA accessibility to applicant centers, providing multiple paths for applicants to receive information from program staff (e.g. over the phone, online, in person, through mobile intake centers, etc.) and building in reasonable accessible design standards.

In addition, in the situation where tenants become displaced and qualify under the Uniform Relocation Act, the State will ensure that tenants with disabilities are relocated to units which meet their accessibility needs.

5.2 Duplication of Benefits

5.2.2 DOB - Developer/Project

Applicants must report all assistance they have been awarded or available to construct or reconstruct multi-family properties from third-party sources such as flood and homeowner's insurance, Increased Cost of Compliance (ICC), Federal Emergency Management (FEMA) assistance, loans from the Small Business Administration (SBA), and any assistance from other government or private non-profit sources. For additional policy and procedures regarding the duplication of benefits under the Program, please refer to Chapter 10 of the Subrecipient Manual. Any funds received from these sources must be considered when the amount of the award is determined. Funds received from these sources for other purposes such as temporary housing and replacement of household contents are not considered a DOB. Funds used for a different but eligible purpose may be excluded from the final award calculation. In some instances, funds provided for the same general purpose as the CDBG-DR funds will have been used by the applicant for a different specific eligible purpose. In these circumstances, if the applicant can document that the funds received were used for a different, eligible purpose, then the funds are not duplicative. If funds are determined to have been expended after time of application, funding will still be required to satisfy owner's DOB sources for the Program.

Funds that an applicant does not have legal control of when they are received, and which are used for a non-duplicative purpose, are not considered a DOB. For example, if a mortgage agreement requires any insurance proceeds to be applied to reduce the lien balance, then the bank/mortgage holder (not the homeowner) has legal control over those funds. In the case of funds being held by a bank, mortgage, or insurance company until rehabilitation or reconstruction begins, the funds will be considered in the DOB calculation. Applicants must agree to subrogate (commit to the State) any future payments they may receive after the award amount is determined from sources that represent a potential DOB. The subrogation agreement, requires the homeowner to notify the State if additional funds are received and to assist the State in collecting any amounts owed to the homeowner from these sources.

5.2.2.1 FEMA Individual Assistance (IA)

- FEMA IA should be determined and verified by the subrecipient through the FEMA NEMIS database. If the subrecipient is unable to verify the FEMA IA amount through the FEMA NEMIS database, it will use the payment amount disclosed by the homeowner at the time of application. If a homeowner can provide documentation demonstrating that the FEMA IA amount provided by the FEMA NEMIS database includes amounts not paid to cover structural loss, the subrecipient will use the documentation provided by the applicant to adjust the FEMA IA payout amount. The documentation provided by the homeowner must come from FEMA.
- FEMA National Flood Insurance Program (NFIP) and Increased Cost of Compliance (ICC) The subrecipient will collect NFIP flood insurance and ICC payment information from the property owners through the application/intake process. In addition, the subrecipient will work directly with NFIP to verify the information provided by the homeowner.

Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits, as long as documentation from the mortgage company shows that the payoff was involuntary. The homeowner will need to provide supporting documentation demonstrating that the mortgage payment was involuntary, and the subrecipient will attempt to verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a duplication of benefits that will be counted against an award.

5.2.2.2 Small Business Administration (SBA) and Other Subsidized Loans

On June 20, 2019, HUD published two FR notices: 84 FR 28836 (June 2019 Duplication of Benefits Notice, here after referred to as the "DOB Notice") and 84 FR 28848 (June 2019 Duplication of Benefits Implementation Notice, here after referred to as the "DOB Implementation Notice"). The following policies will apply to the Homeowner Recovery Program which includes Reconstruction, Rehabilitation, and MHU Replacement. Section V.B Subsidized Loans of 84 FR 28836–June 20, 2019, provided guidance on the treatment of subsidized loans in Duplication of Benefits analysis as follows: "The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in section V.B.2 applies including the exception in V.b.2 (iii) authorized in the DRRRA amendments to section 312 of the Stafford Act (which applies to disasters occurring between January 1, 2016 and December 31, 2021, until the amendment

sunset October 5, 2023). A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds.” The subrecipient shall comply with all parts of the Federal Register Notice on the treatment of declined, canceled, and active loans with disbursed and undisbursed funds as set in the DOB Notice.

5.2.2.3 Declined SBA Loans

Declined SBA loans are loan amounts that were offered by the lender in response to a loan application, but were turned down by the homeowner, meaning the homeowner never signed loan documents to receive the loan proceeds. The program will not treat declined loans as DOB.

The subrecipient will request documentation for the declined loan only if the information received from the third party (SBA database) indicates that the homeowner received an offer for the subsidized loan and the program is unable to determine from that available information that the homeowner declined the loan.

5.2.2.4 Cancelled Loans

Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, were cancelled (such reasons may include the loan commitment terms have expired, the loan has been withdrawn, all or a portion of the loan was not disbursed and is no longer available to the applicant or cancellation was requested by the borrower). Subrecipients will verify that any undisbursed portion of an accepted subsidized loan is cancelled through the SBA database. Without a verification from SBA database, any approved but undisbursed portion of a subsidized loan shall be included in the DOB calculation of the total assistance unless another exception applies.

In cases of cancelled loans where partial disbursements were made prior to the cancellation of the loan, the disbursed funds will be treated as funds disbursed for active loans below.

5.2.2.5 Active Loans with Disbursed and Undisbursed Funds

During the DOB analysis, the program will consider active subsidized loans as a duplication. However, accepted but undisbursed loan amounts will not be considered a DOB, as long as the undisbursed portion of the loan is verified as cancelled in the SBA database. Without a verification from the SBA database, any approved but undisbursed portion of a subsidized loan shall be included in the DOB calculation of the total assistance. In addition, disbursed loan amounts will be considered as nonduplicative provided the funds were:

- Used properly for the same purpose;
- Provided for a different purpose; or
- Provided for the same purpose as the program’s activities, but used for a different, allowable use.

5.2.3 Non-Duplicative Assistance

Funds that were received from other sources may not always be determined to be a duplication of benefit. Examples of non-duplicative assistance are as follows:

- Funds received for the qualifying event but used for a different eligible purpose.
- Funds received for a disaster declaration other than the current qualifying storm event.
- Funds not available to the applicant.

- Funds received from a private loan and not guaranteed by SBA.
- Funds received from SBA or other subsidized loan that meet the exception criteria above. Assets or line of credit available to the applicant.
- Funds received for repair that have already been used to repair the property.

5.2.4 Duplication of Benefits Verification

To comply with the federal prohibition against the duplication of disaster benefits, the CDBG-DR certified administrator will need to work with the Developer/Owner to ensure there is no existence of duplication of benefits to either the Project, the Developer/Owner, or the beneficiaries:

- Determine an applicant’s unmet need before awarding assistance; and
- Verify all sources of disaster assistance received by the applicant by conducting third-party verification, where applicable;
- Ensure beneficiaries sign an agreement to repay duplicative assistance if they later receive other disaster assistance for the same purpose.
- To meet HUD requirements and verify all potentially duplicative funding, the subrecipient will obtain the best available duplication of benefits information before providing assistance to a property owner. During intake, property owners will be asked to provide all documentation related to other sources of funding for the qualifying event and the amounts of assistance provided. Verified duplication of benefits amounts will then be used in the property owner’s award calculation.

6. Construction Standards

The developer and/or builder must comply with local zoning, rules, regulations, ordinances, State Construction Standards, Universal Design and Minimum Design Standards, State Building Code, HUD Housing Quality Standards (HQS) and all applicable federal rules and regulations, including the Fair Housing Act as defined in the DLG Guidelines.

6.1 Federal Construction Standards

6.1.1 Green and Resilient Building Standards & Energy-Efficiency

DLG requires that the subrecipient select and adhere to the Green and Resilient Building Standard for new construction and reconstruction of housing as required by HUD. The subrecipient must meet this standard for all residential new construction projects.

- Each project must meet an industry-recognized standard that has achieved certification under one of the following:
- Enterprise Green Communities
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development)
- ICC–700 National Green Building Standard Green+Resilience

- Living Building Challenge, or any other equivalent comprehensive green building program acceptable to HUD. In addition to the selection options above, the project must also meet one of the following minimum energy efficiency standards such as:
 - ENERGY STAR (Certified Homes or Multifamily High-Rise)
 - DOE Zero Energy Ready Home
 - EarthCraft House, EarthCraft Multifamily
 - Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association
 - Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label)
 - Earth Advantage New Homes,
 - Or any other equivalent energy efficiency standard acceptable to HUD.
- The preferred standard will be outlined in the program policies for CDBG-DR programs. Should the subrecipient wish to select a different set of standards, the subrecipient must contact its DLG program advisor for further discussion. The subrecipient must identify within each project file which of these standards will be used and must also include the appropriate scoring metrics which demonstrates the extent to which the project is in compliance with the selected metric.

6.1.2 Elevation Standards

- In accordance with HUD's Federal Register Notice governing this program (FR-6326-N-01 Section II.B.2.c), the following elevation standards apply to new construction of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA's data source identified in 24 CFR §55.2(b)(1). All structures s, defined at 44 CFR § 59.1 designed principally for residential use and located in the one percent annual chance (or 100-year) floodplain that receive assistance for new construction must be elevated with the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (baseflood elevation).
- Mixed-use structures with no dwelling units and no residents below two feet above baseflood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
- Subrecipients will also be required to comply with all applicable state, local, and tribal codes and standards for elevation, setbacks, and cumulative substantial damage requirements.

6.1.3 Mandatory Elevation

- Properties located within the 100-year floodplain that are not yet elevated 2 ft. above base flood elevation (BFE).
 - Properties located within a Disaster Risk Reduction Area (DRRA) as formally adopted by DLG, within or outside of the 100-year floodplain must also meet this requirement. DRRA adoption is effective as of the date that the DRRA was finalized by DLG.
 - Properties that are required to be elevated by local ordinance or by the local code enforcement officials within and outside of the 100-year floodplain.
- At a minimum, structures will be elevated to 2 ft. above the BFE as required by HUD.

6.1.4 Radon

Radon is a radioactive gas that cannot be seen, smelled or tasted. Radon gas is a natural substance that can be found in the dirt and rocks beneath houses, in well water and in some building materials. It can enter homes through soil, crawlspaces, foundation cracks, floors and walls. Once inside, it can sometimes become trapped in your property. All homes have some radon gas. Breathing high levels of radon can put you at risk for lung cancer. Radon is measured in picoCuries per liter of air (pCi/L). Radon levels inside houses below 4 pCi/L are considered acceptable.

The Environmental Protection Agency (EPA) recommends mitigation for residences with radon concentrations at or above 4.0 picocuries per liter of air (pCi/L) 2. The best way to mitigate radon is to prevent it from entering a building in the first place. Radon generally poses the greatest risk to occupants living at or below ground level. Occupants on the lower levels of structures are not appropriately mitigated, or if they occupy new construction in areas with high radon that is not built using radon resistant construction methods.

Further information on mitigation strategies and maps of radon zones around the country can be found at <http://www.epa.gov/radon>.

6.1.5 Broadband Infrastructure

Any new construction of a building with more than four rental units will include within the scope of work installation of broadband infrastructure, except where determined to be infeasible. Broadband installation may be determined to be infeasible under one or more of the following circumstances:

- The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; or
- The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity, or in an undue financial burden; or
- The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

The program defines broadband infrastructure as the component(s) needed to exist within the property for the end user to access high-speed internet services which generally include network cable and coaxial cable.

For further information see the Federal Register Vol. 81 No. 244 Final Rule: Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing

6.2 Federal and State Accessibility Requirements

6.2.1 Section 504 and Americans with Disabilities Act (ADA)

All federally-assisted new construction housing developments with 5 or more units must design and construct 5 percent of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter. An additional 2 percent of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with

hearing or visual disabilities. For more information on the accessibility requirements for Federally assisted new construction and substantial alterations of existing Federally assisted housing, see Section 504: Disability Rights in HUD Programs.

https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_main and Universal Federal Accessibility Standards at 24 CFR 8.22.

The ADA primarily deals with accessibility of public facilities such as restaurants, hotels, and parks. With respect to housing accessibility, Title II of the ADA covers housing provided by public entities (state and local governments). Title III requires that public and common use areas at housing developments are accessible. Please visit the Department of Justice ADA home page for more information on the ADA.

<https://www.ada.gov/>

6.2.2 Fair Housing Design Requirements

Fair Housing design requirements apply to new construction and all rehabilitation units occupied after March 13, 1991. Developments must comply with all requirements of the Fair Housing Accessibility Requirements of the Fair Housing Act. For more information about Fair Housing Accessibility, visit the Fair Housing First website at www.fairhousingfirst.org.

6.2.3 Davis-Bacon and Related Acts

The construction of eight (8) or more residential units with an investment greater than \$2,000 that is financed in whole or in part with CDBG-DR funds triggers the Davis-Bacon Act and certain Federal labor standards requirements. In accordance with federal requirements, the Program will adhere to the Davis-Bacon and related acts requirements established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

6.2.4 Section 3

In accordance with federal requirements, the Program will adhere to the Section 3 requirements established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

Further information can also be found here:

https://www.hud.gov/program_offices/davis_bacon_and_labor_standards

6.2.4 Section 3

In accordance with federal requirements, the Program will adhere to the Section 3 requirements established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

7. General Administration

In accordance with federal requirements, the Program will adhere to the general administration provisions established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

8. Applicable Laws, Rules, Regulations and Crosscutting Requirements

Federal funding is subject to various laws, rules, statues and crosscutting requirements governing the use of the funds. The projects developed under the Program, may be subject to the requirements listed below.

The Developer/Owner/Project must be in compliance with these and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Affordability Period. These laws, rules, regulations and crosscutting requirements are to be used in conjunction with those included in the DLG CDBG-DR Subrecipient Manual.

8.1.1 General

- Supplemental Appropriations for Disaster Relief Act, 2022 (Pub. L. 117-43);
- The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 et seq.);
- The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);
- Cash Management Improvement Act regulations (31 C.F.R. Part 205);
- Community Development Block Grants (24 C.F.R. Part 570); and,
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200)

8.1.2 Civil Rights

- Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
- Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
- Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
- Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107,
- "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063";
- The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
- The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R.
- 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

8.1.3 Labor Standards

- The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;
- The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145): 29 C.F.R. Part 3;

- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);
- Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and
- Federal Executive Order 11246, as amended.

8.1.4 Employment Opportunities

- Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u): 24 C.F.R. §§ 135.3(a)(2) and (a)(3);
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);
- Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and
- Federal Executive Order 11246, as amended.

8.1.5 Grant and Audit Standards

- Single Audit Act Amendments of 1996, 31 U.S.C. § 7501; and,
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200)

8.1.6 HUD Environmental Standards

- Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and
- HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

8.1.7 Environmental Justice

- Executive Order 12898 of February 11, 1994—Federal Actions to Address
- Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

8.1.8 Environmental Laws and Authorities

- Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);
- National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and
- Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

8.1.9 Historic Properties

- The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, et seq.), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;
- Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c); Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and
- The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, et seq.), particularly section 3 (16 U.S.C. § 469a-1).

8.1.10 Floodplain Management and Wetland Protection

- Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly
- Section 2(a) of the Order (For an explanation of the relationship between the decision making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and
- Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

8.1.11 Farmland Protection

- Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and
- Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

8.1.12 Endangered Species

- The Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.) as amended, particularly section 7 (16 U.S.C. § 1536).

8.1.13 Wild and Scenic Rivers

- The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, et seq.) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

8.1.14 Air Quality

- The Clean Air Act (42 U.S.C. § 7401, et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. §7506(c) and (d)).
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

8.1.15 Suspension and Debarment

- Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);
- General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and
- Non-procurement Suspension and Debarment (2 C.F.R. Part 2424).

8.1.16 Other Requirements

- Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

8.1.17 Acquisition and Relocation

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, et seq.), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

8.1.18 Faith-Based Activities

- Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

8.2 Records Management

Records are to be maintained in accordance with 24 CFR part 570.490 and 24 CFR part 570.506. Records are kept to document compliance with program requirements, with federal, state, and local regulations, and to facilitate audit review by HUD and other designated auditors. CDBG-DR records, including program documents, are subject to the Freedom of Information Act (FOIA). More information on Records Management, please refer to the CDBG-DR Subrecipient Manual Chapter 1 Project Administration.

8.2.1 National Objectives

Subrecipients must maintain records that funded activities meet the LMI national objective. Documentation for all LMI beneficiaries must be kept on file including supporting documentation in order to verify income eligibility.

8.2.2 Beneficiary Records

Subrecipients must maintain records for each household that receive CDBG-DR assistance. For all projects beneficiaries must be tracked by income, race and ethnicity as categorized by HUD, as well as by owner-occupied status, female-head of household (occupied by one or more children under the age of 18), elderly household (62 years of age or older), and disabled household. Subrecipients are advised that additional information may be required for the Program to properly calculate an applicant's grant amount and determine eligibility, and that subrecipient should maintain all records, receipts, invoices and other documentation related to any repairs, construction or clean-up of the property for no less than five years from the date that they close out with the Program.

8.2.3 Audits

In accordance with federal requirements, the Program will adhere to the audit requirements established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

8.2.4 Personally Identifiable Information

In accordance with federal requirements, the Program will adhere to the Personally Identifiable Information requirements established for the CDBG-DR Program and as fully described in the DLG Disaster Subrecipient Manual.

8.3 Closeout Procedures

8.3.1 Project Closeout Procedures

In addition to the Construction Closeout documentation submitted by the general contractor, Program representatives will work with property owners to collect all closeout documentation for their file in accordance with Chapter 6 Labor Standards and Construction Management and Chapter 14 Project Closeout. Landlord files will be closed out in the Project once all documentation, including income documentation for tenant households.

8.3.2 Duplication of Benefits Due Diligence and Monitoring

Upon the closeout of the project, the subrecipient will monitor DOB compliance by contacting the various agencies noted above or listed in the original DOB calculation, and by contacting the recipient of CDBG-DR funds. The property owner must repay any assistance later received for the same purpose as those awarded through CDBG-DR funds. For more information, refer to HUD's Duplication of Benefits Policy Guidance at 87 FR 31636 and Chapter 10 of the Subrecipient Manual.

8.3.3 Program Closeout

As CDBG-DR grant funds are fully spent and the project is completed, DLG must begin the process of closing out a project. CDBG-DR regulations require that the grant between DLG and HUD be closed within 6 years. Therefore, timely closeout with subrecipients is a key factor in DLG meeting that deadline. Chapter 14: Project Closeout of the subrecipient manual describes the steps subrecipients must take to close out the program.