



2020 Community Development Block Grant Disaster Recovery Program

Multifamily Rental Recovery Program

Version 2.0

February 2026

Record of Changes

Number	Date	Description
1.0	December 2025	Original Version
2.0	February 2026	Updated Section 3 thresholds

Table of Contents

DEFINITIONS	4
PROGRAM OVERVIEW	7
MEETING A NATIONAL OBJECTIVE	8
PROGRAM REQUIREMENTS	9
General.....	9
Funding Limits	9
Eligible Applicants	9
Eligible Activities	9
Project Eligibility.....	9
Eligible Costs	10
Duplication of Benefits (DOB).....	10
Duplication of Benefits (DOB) Policy	11
Duplication of Benefits Calculation Procedure.....	12
Special Considerations	21
Recordkeeping	28
Agreement to Repay & Monitoring for DOB	28
Recapture Procedures for Collecting a Duplication	32
Program Income	35
PROPERTY TYPES AND STANDARDS	35
Eligible Property Types	35
Ineligible Property Types.....	36
Construction Standards	36
AFFORDABILITY	41
Rent and Occupancy Requirements	42
Leasing Mixed-Income Projects with Both CDBG-DR Assisted and Non-CDBG-DR Assisted Units.....	44
Record Keeping.....	45
Minimizing Land Acquisition/Relocation	47
Affirmative Marketing Plan	47
Completing Environmental Review	48



Other Federal Requirements49

Fair Housing and Equal Opportunity52

Labor Requirements53

PROJECT SELECTION AND MANAGEMENT 54

Application Documentation55

Evaluating Applications57

Application Review Process59

Project Approval and Commitment of Funds.....59

Appeals60

Written Agreements Between Recipients and Other Entities for CDBG-DR Multifamily Rental Recovery
Program Funds.....60

Contents of Written Agreements61

Procurement62

Disbursement of Funds66

Recapture of Funds69

Project Management70

Records that Must be Maintained71

Access to Records74

Reports Required by ADFA74

Monitoring and Compliance75

Grant Closeout.....76

SCORING CRITERIA..... 77



DEFINITIONS

Affordable Rents: Rents that are at or below Fair Market Rents published by the U.S. Department of Housing and Urban Development (HUD) for different metropolitan areas.

Affordable Units: A "dwelling" that is rented at an Affordable Rent to a Household that earns less than 80 percent of Area Median Income adjusted for Household size as calculated by HUD.

Applicant: Any eligible property Developer that applies for funds pursuant to Applicant eligibility section.

Area Median Income (AMI): The median family income for specific geographic areas, adjusted for Household size, as calculated by HUD for the CDBG program.

CDBG-DR Multifamily Rental Recovery Program Agreement: The contractual arrangement between ADFA and the Developer which sets forth the terms and conditions by which CDBG-DR Funds are utilized.

Code of Federal Regulations (CFR): The acronym used for the Code of Federal Regulations.

Community Development Block Grant-Disaster Recovery (CDBG-DR) Funds: Funds that are appropriated by Congress and allocated by HUD to rebuild disaster-impacted areas and provide crucial seed money to start the long-term recovery process of disaster areas.

Contractor: A properly licensed person or company that Developers hire to undertake a contract to provide materials or labor to perform a service or do a job.

Davis-Bacon Wage Requirements: For Projects that include eight (8) or more dwelling units, the Davis-Bacon and Related Acts (DBRA) requires all Contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar Projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

Deed Restriction: The legal document that sets forth affordability restrictions on rent and occupancy for a specific approved Project. It is issued with the Notice to Proceed and shall be recorded in first lien position against the fee title to the property (as applicable) for the applicable affordability period as required in the CDBG-DR Multifamily Rental Recovery Program Agreement.

Department of Housing and Urban Development (HUD): Federal department through which the CDBG-DR Funds are provided to ADFA.

Developer: A private for-profit or nonprofit organization that owns or has over real property and arranges all financing, professional, technical, and construction services necessary to develop or rehabilitate affordable housing.

Disability: Any disability, including mental or physical disability, that limits a major life activity, including a disability that falls within the definitions in Government Code (G.C.) Sections 11135, 12926, and 12926.1 or within the definition of disability used in the federal Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12102.

Duplication of Benefits (DOB): Financial assistance received from another source that is provided for the same purpose as CDBG-DR Funds, as referenced in Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5155).

Elderly Person: A person at least 62 years of age.

Environmental Review Record (ERR): A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents as required by NEPA regulations. See 24 CFR Part 58.

Fair Market Value (FMR): The hypothetical price that a willing buyer and seller agree upon when they are acting freely, carefully, and with complete knowledge of the situation.

Federal Emergency Management Agency (FEMA): An agency of the United States Department of Homeland Security. The agency's primary purpose 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.

Household: One or more persons occupying a housing unit.

Low- to Moderate-Income (LMI): Low- to Moderate-Income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes year to year and varies by Household size, county and the metropolitan statistical area in the applicable Federal Register Notice governing the use of CDBG-DR Funds.

Minority- and/or Women-Owned Business Enterprise (M/WBE): A business that is owned and controlled (minimum of 51% ownership) by a member of a minority group, or women.

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 or zip code) that meets the following criteria:

- A. 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.
- B. Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and zip codes with high levels of damage, collectively referred to as “most impacted areas”. For this allocation, HUD is defining most impacted areas as the most impacted counties of Jefferson and Perry Counties.

Multifamily Rental Recovery Program (MRRP): The acronym used for the Arkansas CDBG-DR Multifamily Rental Recovery Program

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): Created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. FEMA manages the NFIP.

Notice to Proceed: The legal document that provides an approved Project’s specific description, budget, milestones, construction schedule, reporting requirements and special conditions.

Program Income (PI): Net income derived from the sale of program assets that exceeds \$35,000 in the aggregate, in a single fiscal year, received by the subrecipient and directly generated from the use of housing CDBG-DR Funds.

Project: A multifamily housing development with eight (8) or more total units.

Reconstruction: Demolishing and re-building a housing unit on the same lot in substantially the same manner.

Responsible Entity (RE): Under the ERR requirements at 24 CFR Part 58, the term “Responsible Entity” (RE) means the agency receiving CDBG-DR assistance. The Responsible Entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

Section 3: A Section 3 Business Concern is defined under HUD regulations. The primary goal of Section 3 is to ensure that employment, training, and contracting opportunities generated by certain HUD financial assistance are directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities to these individuals.

Small Business Administration (SBA): SBA's Office of Disaster Assistance (ODA) provides affordable, timely, and accessible financial assistance to homeowners, renters, and businesses, as well as other eligible Applicants. The SBA low-interest, long-term loans are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses.

Special Needs or Special Needs Populations: Agricultural workers, individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental disabilities, serious mental illness, or substance abuse disorders; individuals who are survivors of domestic violence, sexual assault, and human trafficking; individuals who are experiencing Homelessness; individuals with HIV; homeless youth as defined in Government Code (GC) Section 12957(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; frequent users of public health or mental health services, as identified by a public health or mental health agency; Frail Elderly Persons; or other specific groups with unique housing needs as determined by HUD. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.

Substantial Rehabilitation: Defined in 24 CFR 5.100.

Uniform Relocation Assistance and Real Property Acquisition Act (URA): A federal law that establishes minimum standards for federally funded programs and Projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.

PROGRAM OVERVIEW

In December 2019, the U.S. Department of Housing and Urban Development (HUD) allocated over \$2.3 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funding to support long-term disaster recovery in communities impacted by disasters occurring since 2017. Of this allocation, the State of Arkansas (the State) was allocated \$8,940,000 in CDBG-DR Funds to support disaster recovery efforts following flooding of the Arkansas River in May of 2019. This funding is tied to Federal Emergency Management (FEMA) Major Disaster Declaration DR4441, declared on June 8, 2019.

One hundred percent of the CDBG-DR program funding will be distributed through housing programs. This program budget accounts for the programmatic administration requirements in the Federal Register Notice, including the provisions that five percent of the grant total (plus Program Income) may be used for administrative costs. At least 80% percent, \$7,152,000, of the outlined budget will be allocated to the HUD-identified Most Impacted and Distressed areas (MID areas) of Jefferson and Perry counties per the applicable Federal Register Notices.

Any remaining CDBG-DR Funds, up to 20 percent, \$1,788,000, may be made available to support Projects in counties covered by a presidential disaster declaration under DR4441 and identified by the State as most impacted and distressed. The State has identified the following non-HUD MID Counties as

most impacted and distressed due to disaster damage: Desha County, Faulkner County, Pulaski County, and Sebastian County.

The State's CDBG-DR housing programs will only fund Low- to Moderate-Income (LMI) Households. In addition to prioritizing LMI persons, the State will prioritize recovery for vulnerable populations through the implementation of its housing program.

CDBG-DR Funds must be used toward disaster recovery activities, addressing disaster relief, restoration of infrastructure, and housing and economic revitalization, directly related to the 2019 disasters.

The Disaster Recovery Multifamily Rental Recovery Program (MRRP) will facilitate the creation of quality, affordable housing units to help build resiliency and alleviate the rental stock shortage exacerbated by the flooding event. Projects should be designed with the established community in mind to lessen the displacement of families and must commit to the affordability period of fifteen (15) years for the rehabilitation or Reconstruction of multifamily rental Projects with eight (8) or more units and a minimum affordability period of twenty (20) years for the new construction of multifamily rental units with five or more units, in accordance with 83 FR 40320.

In accordance with 24 CFR 570.208, all CDBG-DR funded activities must satisfy a national objective. All Projects will meet the LMI housing national objective. LMI is defined as a person's income that is less than 80% of the Area Median Income (AMI), determined by HUD annually. While proposed Projects may be mixed-income units, CDBG-DR Funds will only be applied to the Affordable Units for occupation by LMI Households.

Along with the 2020 CDBG-DR allocation, ADFA is also administering the 2025 CDBG-DR allocation. ADFA will use eligible administrative funds (up to five percent of each grant award plus up to five percent of Program Income generated by the grant) for the cost of administering both CDBG-DR grants without regard to the particular disaster appropriation from which such funds originated. Although ADFA will use the administrative funds interchangeably, it will track them separately in order to make sure only five percent of each grant is used for administrative purposes. The financial policy and procedures will detail this tracking and reporting. All uses of funds for program administrative activities will qualify as an eligible administration cost.

MEETING A NATIONAL OBJECTIVE

In accordance with 24 CFR 570.208, all CDBG-DR funded activities must satisfy a national objective. All multifamily Projects must meet the LMH national objective, which requires that 51% of units are designated as LMH. Proposed Projects that do not have more than 51% of units as LMI may only be funded for the proportional amount of assisted units, however, pursuant to 24 CFR 570.483(b)(3), if the Project is a rehabilitation Project or a senior new construction Project, the Project must include at least 51% of units as LMI-occupied, or a waiver must be requested from HUD. All waiver requests must document legal and justifiable good cause. While proposed Projects may be mixed-income units, CDBG-DR Funds are limited to the Affordable Units for occupation by LMI Households.

PROGRAM REQUIREMENTS

General

The Program will provide funds for new construction or rehabilitation of affordable multifamily housing in areas affected by the 2019 disasters. ADFA will establish an application submission and acceptance period, award threshold criteria, and award process.

Funding Limits

Developers will be eligible to apply for up to \$3,397,200 as a maximum amount of assistance for a single Project. ADFA has set per unit subsidy limits for CDBG-DR as follows: 0 BR- \$159,500, 1 BR- \$181,500, 2 BR- \$198,000, 3 BR- \$220,000, and 4 BR- \$247,500. Funds will only be used to reimburse approved Eligible Costs (see below). The award of funds is also contingent upon the development securing other funds necessary to complete the Project. CDBG-DR Funds will only be allowed for hard construction costs.

Bedroom Size	Maximum Per Unit Subsidy
0-Bedroom	\$159,500
1-Bedroom	\$181,500
2-Bedroom	\$198,000
3-Bedroom	\$220,000
4-Bedroom	\$247,500

Eligible Applicants

Developers and owners of affordable rental housing, including for-profit Developers, nonprofit Developers, public housing authorities, and ADFA-designated community housing development organizations (CHDOs) are eligible to apply for CDBG-DR funding.

Eligible Activities

Pursuant to 42 USC 5305(a)(4), eligible activities under this statute include clearance, demolition, removal, Reconstruction, and rehabilitation of buildings and improvements (including interim assistance and financing, public or private acquisition for Reconstruction or rehabilitation, and Reconstruction or rehabilitation of privately-owned properties). The eligibility of housing Projects is further established in 83 CFR 40314 which requires grantees to address unmet housing recovery needs with CDBG-DR Funds.

Project Eligibility

Eligibility of multifamily housing Project proposals will be assessed by ADFA. To be considered for funding, the proposed development must meet the following threshold criteria:

- Meet a national objective – at least 51% of the units must be a Household whose incomes do not exceed 80% of the AMI. The proposed Project may be mixed-income units, CDBG-DR Funds will only apply to the Affordable Units for occupation by LMI Households;
- Include an eligible activity, as defined above;
- Be located in a HUD-identified Most Impacted and Distressed area; the HUD-identified MID includes Jefferson County and Perry County;
- Demonstrate a tie-back to the applicable disaster (DR 4441);
- Include Minimum Affordability Requirements;
- Meet Definition of Affordable Rents;
- Meet Green Building Standard Requirements;
- Meet Minimum Quality Standards; and
- Meet Minimum Accessibility Standards.

Eligible Costs

Eligible costs will consist of hard construction costs necessary for Project construction completion as well as architectural and engineering design, permitting fees, Developer fees, mobilization, site preparation, and clean up.

ADFA will reserve the right to question the applicability and eligibility of all costs. ADFA also will ensure that construction costs are reasonable and consistent with market costs for the area where the multifamily construction will take place.

Duplication of Benefits (DOB)

CDBG-DR grants are one of multiple Federal sources which assist disaster recovery. These sources of Federal assistance often can be used for the same purposes by grantees, subrecipients, and disaster survivors. For this reason, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act) and CDBG-DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). The Stafford Act’s prohibition on DOB aims to ensure that federal assistance serves only to “supplement insurance and other forms of disaster assistance.” (42 U.S.C. 5170).

Arkansas’s CDBG-DR grant is also subject to February 9, 2018, notice (83 FR 5860) and the 2019 DOB Notice (84 FR 28836). Supplemental appropriations statutes often reinforce and supplement these authorities.

Duplication of Benefits (DOB) Policy

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, Household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. When reimbursement is permitted by the CDBG-DR grant requirements, unmet needs can include amounts needed for reimbursement.

Applicable Law

Section 312 of the Stafford Act and CDBG-DR appropriations acts require that CDBG-DR grantees prevent DOB when administering grants. Federal Register notices governing CDBG-DR awards impose these DOB requirements on grantees. The “necessary and reasonable” cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) similarly prohibit grantees from charging to the grant a cost paid by another source.

Stafford Act

The Stafford Act is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to ensure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). That section also makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

The Stafford Act also provides that, when assistance covers only a part of the recipient’s disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). CDBG-DR assistance may only pay for eligible activities to address unmet needs. This notice advises grantees on the calculation of unmet needs through a duplication of benefits analysis.

On October 5, 2018, the DOB provision in section 312 of the Stafford Act was amended by section 1210 of the DRRRA. The 2019 DOB Notice (84 FR 28836) describes corresponding changes in HUD’s policies and grant requirements. Those changes are discussed in detail in section V.B.2. and V.B.3. of the 2019 DOB Notice.

Necessary and Reasonable Requirements

The Cost Principles applicable to all CDBG-DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to States by 24 CFR 570.489(p) and to local governments by 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that states shall have fiscal and administrative requirements to ensure that grant funds are used “for reasonable and necessary costs of operating programs.”

Under the Cost Principles, a cost assigned to a grant “is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost” (2 CFR 200.404).

ADFA will consider factors described at 2 CFR 200.404(a) through (e) when determining which types and amounts of cost items are necessary and reasonable.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

The question of reasonableness is particularly important when the [non-Federal entity](#) is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the [non-Federal entity](#) or the proper and efficient performance of the [Federal award](#).
- b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, [state](#), local, tribal, and other laws and regulations; and terms and conditions of the [Federal award](#).
- c) Market prices for comparable goods or services for the geographic area.
- d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the [non-Federal entity](#), its employees, where applicable its students or membership, the public at large, and the Federal Government.
- e) Whether the [non-Federal entity](#) significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the [Federal award](#)'s cost.

Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

Duplication of Benefits Calculation Procedure

The Stafford Act requires a specific inquiry into assistance received by each Applicant. The 2019 DOB Notice (84 FR 28836) refers to the subject of a DOB review as an “Applicant” or “CDBG-DR Applicant” and uses the term “Applicant” to include individuals, businesses, Households, or other entities that apply to

the State grantee or a subrecipient for CDBG-DR assistance, as well as entities that use CDBG-DR assistance for an activity without submitting an application (*e.g.*, ADFA, other state or local departments or agencies, or local governments).

ADFA is prohibited from making a blanket determination that CDBG-DR assistance under one of its programs or activities does not duplicate another category or source of assistance. ADFA must conduct an individualized review of each Applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that Applicant. A review specific to each Applicant is necessary because assistance available to each Applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

This procedure establishes the primary considerations that must be part of a DOB analysis when providing CDBG-DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. ADFA has developed these policies and procedures to be consistent with the requirements of the notice.

Assess Applicant Need

ADFA must determine an Applicant's total need. Total need is calculated based on need estimates at a point in time; total need is the current need. However, if the action plan permits CDBG-DR assistance to reimburse costs of CDBG-DR eligible activities undertaken by the Applicant before submitting an application, the total need also includes these costs. Generally, total need is calculated without regard to the grantee's program-specific caps on the amount of assistance.

For rehabilitation, Reconstruction, or new construction activities, the need is relatively easy to determine from construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity.

For special economic development activities, total need should be guided by standard underwriting guidelines (some CDBG-DR grants require grantees and subrecipients to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 when assisting a for-profit entity as part of a special economic development Project).

The grantee's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it calculates need and makes the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not "financial assistance" that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG-DR assistance for unmet need because the donated goods or services reduce activity costs.

Identify Total Assistance

To calculate DOB, ADFA is required to identify “total assistance.” Total assistance includes all reasonably identifiable financial assistance available to an Applicant.

Types of Resources Included in Total Assistance

Total assistance includes resources such as cash awards, insurance proceeds, grants, and loans received by or available to each CDBG-DR Applicant, including awards under local, state or federal programs, and from private or nonprofit charity organizations. At a minimum, the grantee’s efforts to identify total assistance must include a review to determine whether the Applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., State disaster assistance programs) generally available to Applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the Applicant’s account), retirement accounts, credit cards and lines of credit, in-kind donations (although these non-cash contributions known to the grantee reduce total need), and private loans.

A private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG-DR Applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, e.g., the loan is not forgivable. For DOB calculations, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

By contrast, subsidized loans for the same purpose are to be included in the DOB calculation unless an exception applies.

Availability of Resources Included in Total Assistance

Total assistance includes available assistance. Assistance is available if an Applicant: (1) Would have received it by acting in a reasonable manner or, in other words, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; or (2) has received the assistance and has legal control over it. Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. For example, if a local government seeks CDBG-DR assistance to fund part of a Project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the Project, but subsequent increments remain unfunded until certain Project milestones are met.

Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled. For example, it may be reasonable for an Applicant to elect to receive an immediate lump sum insurance settlement based on estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the Applicant but is administered by another party instead of being directly deposited with the Applicant. For example, if an entity administering homeowner rehabilitation assistance pays a Contractor directly to complete the rehabilitation, the assistance is still considered available to the Applicant.

By contrast, funds that are not available to an Applicant must be excluded from the final CDBG-DR award calculation. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an Applicant if the Applicant does not have legal control of the funds when they are received. For example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are treated as a DOB and reduce the amount of CDBG-DR Funds the grantee may provide for rehabilitation.

Potential DOB Sources include:

- Other HUD funds, including CDBG and CDBG-DR
- Federal Emergency Management Agency (FEMA) Public Assistance (PA) or Individual Assistance (IA) funds
- United States Forest Service (USFS) funds
- U.S. Army Corps of Engineers funds
- U.S. Department of Transportation (DOT) funds

- Federal Economic Development Agency funds
- Small Business Administration (SBA) loans (NOTE: the 2019 DOB Notice states that declined or cancelled loans are no longer considered a DOB)
- National Flood Insurance Program (NFIP) funds
- Private insurance funds
- Local and state funds
- Other federal program funds
- Private and nonprofit organization funds

Exclude Non-Duplicative Amounts

Once a grantee has determined the total need and the total assistance, it determines which sources it must exclude as non-duplicative for the DOB calculation. Grantees must exclude amounts that are: (1) Provided for a different purpose; or (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost). Below, each of these categories is explained in greater detail.

Funds for a Different Purpose

Any assistance provided for a different purpose than the CDBG-DR eligible activity, or a general, non-specific purpose (e.g., “disaster relief/recovery”) and not used for the same purpose must be excluded from total assistance when calculating the amount of the DOB.

Insurance proceeds for damage or destruction of a building are for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance provided for a different purpose (e.g., insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG-DR Funds). However, a grantee may treat all insurance proceeds as duplicative if it is impractical to identify the portion of insurance proceeds that are non-duplicative because they are for a different purpose than the CDBG-DR assistance.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (e.g., in conjunction with a buyout) are for a different purpose than funds provided for interim housing (e.g., temporary assistance for rental housing during a period when a Household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

Funds for Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose (the CDBG-DR eligible activity) must be excluded when calculating the amount of the DOB if the Applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use (cost) of the CDBG-DR assistance (e.g., the purpose is housing rehabilitation, the use of the other assistance was roof replacement and the use of the CDBG-DR assistance is rehabilitation of the interior of the house). Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG-DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG-DR grantee is administering a homeowner rehabilitation program and an Applicant to the program can document that he/she previously received and used FEMA funds for interim housing costs (i.e., rent). If FEMA permitted the Applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the Applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If ADFA thinks the actual use of the FEMA assistance may be allowable, ADFA will contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation, including assistance provided for temporary or minor rehabilitation, is for the same purpose as CDBG-DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR). For example, if the other assistance is used for minor or temporary rehabilitation which enabled the Applicant family to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake remaining work necessary to complete rehabilitation. The grantee's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

ADFA will contact HUD for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

Identify DOB Amount and Calculate the Total CDBG-DR Award

The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, ADFA will:

- (1) Identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the amount of the DOB; and (4) subtract 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, ADFA 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, ADFA 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). 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. 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, as discussed later in this section.

Third, the Applicant's CDBG-DR award may increase if a reassessment shows that the Applicant has additional unmet need, as discussed in the 2019 DOB Notice.

Duplication of Benefits Worksheet

1. Identify Applicant's Total Need Calculated at a Point in Time		\$
2. Identify Total Assistance Available:		\$
	Potential	Actual DOB
a. Other HUD funds, including CDBG or CDBG-DR		\$
b. FEMA PA or IA Funds	Interim Housing (e.g.,rent)	\$
	Permanent Housing (e.g., repair/rehabilitation)	\$
c. USFS Funds		\$
d. US Army Corps of Engineers funds		\$
e. US DOT funds		\$
f. Federal Economic Development Agency funds		\$
g. SBA loans		\$
h. National Flood Insurance Program (NFIP) funds		\$
i. Private insurance funds		\$
j. Local and state funds		\$
k. Other federal program funds		\$
l. Private and nonprofit organization funds		\$
Totals		\$
(3) Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable uses)		\$
(4) Identify Total DOB Amount (Item 1 less Item 3)		\$
(5) Calculate Maximum Award (Total Need Minus Total DOB Amount)		\$
(5) Program Cap (if applicable)		\$
(6) Final Award (lesser of Items 4 and 5)		\$

A completed DOB worksheet will be placed in each Applicant's file and should be in each subrecipient's file. DOB worksheets such as the one above will be dated and signed by staff, or the ADFA Federal Housing Programs Division, as well as by the ADFA Compliance Officer doing the QA/QC check.

Third-Party Verification of Assistance Received

All sources of funding received must be verified for amount of assistance received and purpose of the assistance. Third-party verification is defined as acquiring documentation from a third-party source (i.e., a source other than the Applicant) that verifies the amount received from the funding source. For example, insurance third-party verification is generally a form that is sent to the insurance company that the Applicant has listed as their insurance provider at the time of the disaster. The form should include the policy number, the date of the flood, the amount of assistance the Applicant claimed to have received, and a section where the third-party verifier can confirm the amount or provide the correct amount. This step should be followed even when the Applicant reports no assistance received from primary sources such as FEMA, SBA, and any named insurance firm on the application.

ADFA will do its due diligence by attempting to third-party verify all sources of funds received by the Applicant. If no third-party verification can be obtained by ADFA, then complete a note to the file explaining why the third-party verification was not possible to receive. After attempting to get a third-party verification with no response, an Affidavit of Funds Received may be signed by the Applicant as a last resort.

Data Sharing Agreements

On July 15, 2019, ADFA requested through the Arkansas Department of Emergency Management (ADEM) that FEMA provide ADFA with information relating to the application for disaster assistance that FEMA provided for FEMA-4441-DR-AR. This information was provided pursuant to 44 CFR 206.110(j)(1)(ii) and the "routine use" provision of the Privacy Act of 1974, 5 U.S.C. 552a. ADFA requested disclosure of this information under routine use (H) (3) of DHS/FEMA-008, Disaster Recovery Assistance Files, 78 Fed. Reg. 25,282 (Apr. 30, 2013).

This information was provided to ADFA on July 23, 2019, by ADEM, with a note that, since everyone that needed the information is a state employee, a signed agreement with FEMA was not necessary.

Due to the relatively low number of activities expected to be carried out through the various CDBG-DR activities proposed in this Action Plan, ADFA intends to build off of existing interservice partnerships to perform duplication of benefits checks, including obtaining SBA loan data. In addition, the Arkansas Insurance Department is in the process of finalizing an interservice agreement with FEMA with which to collect this information. ADFA will also work to secure data from the National Flood Insurance Program

(NFIP). This will be used to determine if Applicants seeking disaster recovery funding assistance have received other federal funding for the same purpose.

Reassess Unmet Need When Necessary

Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in an Applicant's circumstances can affect that Applicant's remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include: A subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or Army Corps), and reduce the need for CDBG-DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the Applicant, the grantee may provide additional CDBG-DR Funds to meet the increased unmet need. The most recent available data will be used to ensure compliance.

ADFA must be able to identify and document additional unmet need, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

Special Considerations

Programmatic Considerations

The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

Assistance for Infrastructure

State grantees may assist state or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR Funds used directly by state and local governments for public facilities and improvements or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated

or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).

Payments made under the Uniform Relocation Assistance and Real Property Acquisition Act (URA)

ADFA may provide a displaced person (as defined under 24 CFR 570.606) with rental assistance payments under the URA. To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the URA or as part of a FEMA Individual Assistance Award). The URA also prohibits payments for the same “purpose and effect” as another payment to a displaced person (49 CFR 24.3).

Subsidized Loans

84 FR 28841 updates guidance on the treatment of subsidized loans in a DOB analysis as the result of recent statutory changes. Private loans are not “assistance” and therefore are not a duplication (see above for a discussion of private loans).

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 the Exceptions When Subsidized Loans are Not a Duplication section below. 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.

CDBG-DR supplemental appropriation acts typically provide that CDBG-DR Funds “may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers.” This prohibition (or similar prohibitions) in CDBG-DR appropriations acts applies to loans even if the loans would not be treated as a DOB under the exceptions in V.B.2. below.

Subsidized Loans

For 84 FR 28841, subsidized loans (including forgivable loans) are loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other sources. Subsidized loans are assistance that must be included in the DOB analysis, unless an exception applies.

Exceptions When Subsidized Loans Are Not a Duplication

Short-term subsidized loans for costs later reimbursed with CDBG-DR

Federal Register notices governing CDBG-DR grants generally permit grantees to reimburse costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR Funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

Declined or cancelled subsidized loans

The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined unless the loan qualifies under the exclusion discussed in one of the sections below.

Declined SBA Loans

Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the Applicant, meaning the Applicant never signed loan documents to receive the loan proceeds. The CDBG-DR supplemental appropriation for 2017 disasters 3 provides “the Secretary and any grantee. . . shall not take into consideration or reduce the amount provided to any Applicant for assistance from the grantee where such Applicant applied for and was approved, but declined assistance related to such major declared disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

ADFA shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). If a grantee’s DOB policies and procedures treat declined loans as a DOB, the grantee must update its policies and procedures.

ADFA is only required to document declined loans if information available to ADFA (e.g., the data the grantee receives from FEMA, SBA, or other sources) indicates that the Applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the Applicant declined the loan. If ADFA is aware that the Applicant received an offer of loan assistance and cannot ascertain from available data that the Applicant declined the loan, the grantee must obtain a written certification from the Applicant that the Applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

Cancelled Loans

Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the Applicant. The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement.

The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the Applicant; or (b) a legally binding agreement between the CDBG-DR grantee (or local government or subrecipient administering the CDBG-DR assistance) and the Applicant that indicates that the period of availability of the loan has passed and the Applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. The documentation described above must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, ADFA must notify the SBA that the Applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

Use of CDBG-DR for Reimbursement of Costs Paid by Subsidized Loans Following DRRA Qualifying Disasters

As a general rule, CDBG-DR grant funds are available only to pay for new activities. However, most Federal Register notices governing CDBG-DR grants permit payment of costs dating back to the date of the disaster that led to the CDBG-DR grant award. These Federal Register notices require grantees to adhere to reimbursement requirements previously established by HUD when reimbursing Applicants' costs. Reimbursement is not permitted if payment of the cost with CDBG-DR Funds will cause a DOB because an exception does not apply or violate the requirement that CDBG-DR Funds shall not be used for activities reimbursable by, or for which funds are made available by, FEMA or the Army Corps of Engineers.

84 FR 28842 establishes a new policy for grantees that received CDBG-DR grants made in response to DRRA Qualifying Disasters. Subject to conditions of 84 FR 28842, grantees that received CDBG-DR grants in response to DRRA Qualifying Disasters may grant CDBG-DR Funds to reimburse individuals and businesses (other than ADFA or subrecipients) for some costs of CDBG-DR eligible activities that were paid with subsidized loans. The conditions for payment of these costs are:

- 1 ADFA must document in the Applicant's file that all federal assistance (including CDBG-DR and subsidized loan assistance) is used toward a loss suffered as a result of the major disaster or emergency. If the subsidized loan is used to carry out a CDBG-DR eligible activity that addresses a loss suffered as a result of a major disaster or emergency, HUD considers reimbursement of eligible costs paid with that loan to be used toward a loss suffered as a result of the major disaster or emergency. Under the terms of the DRRRA amendments to the Stafford Act, if a federal loan is used for a purpose other than disaster losses, the subsidized loan still duplicates other sources provided for the same purpose.
- 2 ADFA must meet all grant requirements for reimbursement of costs, which are imposed by Federal Register notices that govern CDBG-DR grants.
- 3 If ADFA has already received the application and completed an initial DOB analysis, ADFA must complete a revised DOB analysis that updates the Applicant's unmet needs and assistance from all sources, and excludes subsidized loans used for disaster losses and other nonduplicative assistance from the total assistance to calculate the revised DOB amount.
- 4 ADFA must document that the reimbursed cost was for an activity that was a CDBG-DR eligible activity on the effective date of 84 FR 28843, such as housing rehabilitation costs paid with SBA loan proceeds, or for an activity that is otherwise eligible pursuant to a waiver provided by HUD.

Grantees are prohibited from reimbursing costs that are not otherwise eligible for CDBG-DR assistance, such as compensation for personal property loss or late fees. Payment of interest is not generally an eligible activity, but if permitted by an applicable Federal Register notice granting a waiver, grantees may pay interest due at the time of reimbursement for eligible activities (e.g., interest incurred by the Applicant for the portion of an SBA loan used for a CDBG-DR eligible activity).

5. Statutes or loan documents governing subsidized loans may require the lender to receive payments that reimburse costs paid with subsidized loans. The reimbursement award to the Applicant must require the Applicant to comply with any requirements in the loan documents that the Applicant use amounts received for reimbursement to repay the loan's outstanding principal and interest. When a grantee reimburses costs paid by SBA loans, SBA has determined that it is required to receive the payment. ADFA must notify the SBA of the reimbursement and issue a joint payment to the SBA and the Applicant.
6. Grantees must advise Applicants (either collectively or individually) that submitting an application for CDBG-DR reimbursement assistance does not relieve the Applicant of a duty to make payments on a subsidized loan, and that, until a subsidized loan is satisfied in full, failure to make principal and interest payments when due could result in a referral to collection agencies, reporting to credit bureaus, or other significant consequences.

7. ADFA must document compliance with environmental requirements at 24 CFR part 58 prior to reimbursement for a CDBG-DR eligible activity. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program.
8. CDBG-DR Funds are provided principally to benefit LMI persons. Therefore, as a condition of reimbursing costs paid with SBA loans, ADFA must submit a substantial action plan amendment to HUD describing the activity and must meet the following requirements:
 - a. The needs analysis in the action plan must include an updated unmet housing needs assessment to reflect the remaining total number of housing units with damage;
 - b. ADFA's action plan must identify the number of eligible Households yet to be served who have applied to ADFA's CDBG-DR housing assistance programs and identify how ADFA shall address all remaining unmet needs of its Applicants for housing assistance;
 - c. ADFA shall reimburse costs paid with subsidized loans for all LMI Applicants before reimbursing Applicants with incomes greater than 80 percent of area median income (AMI) but less than or equal to 120 percent AMI;
 - d. The total aggregate amount ADFA designates for reimbursement of costs paid with subsidized loans to Applicants with incomes over 80 percent AMI shall not reduce the overall LMI benefit applicable to the grant.
 - e. ADFA shall only grant CDBG-DR Funds to reimburse costs paid with subsidized loans for Applicants with incomes that exceed 120 percent of AMI when ADFA requests, and HUD approves, a hardship exception for the Applicants.

Before requesting a hardship exception, ADFA must specify in its action plan the criteria it will use to define a hardship for Applicants with incomes that exceed 120 percent AMI and establish a policy that provides full or partial reimbursement to alleviate the hardship. ADFA's hardship criteria must include the following elements: (1) A demonstration of the Applicant's financial necessity for full or partial reimbursement of costs paid with subsidized loans; (2) a definition of financial necessity that is sufficient to distinguish between Applicants with significant need for full or partial reimbursement to enable the Applicant to pay for basic Household or business expenses, and Applicants who are not eligible for a hardship exception because they seek reimbursement for

reasons other than financial necessity; and (3) a requirement that the amount of the full or partial reimbursement shall not exceed the amount needed to address the Applicant's financial necessity. ADFA must also develop policies and procedures that identify the information ADFA will use to make the determination of financial necessity.

HUD will consider requests for hardship exceptions for Applicants based on HUD's determination that ADFA's hardship criteria in its action plan comply with 84 FR 28843, and the hardship exception requests are consistent with ADFA's hardship criteria as provided for in its action plan.

9. HUD will evaluate the impact of policies provided in 84 FR 28843 using data provided by its grantees. To conduct this evaluation, one year from the approval of the substantial action plan amendment required in paragraph (viii) above, ADFA shall submit to HUD an assessment and supporting data that provides: (1) The total amount of CDBG-DR Funds used for the reimbursement of SBA and other subsidized loans; (2) the total number of Households and the number of LMI Households that have been reimbursed; and (3) the SBA loan number and the FEMA Registrant ID of each individual Household that was reimbursed for its SBA loan costs. HUD will also coordinate with FEMA on reports required by section 1210(a)(5) of Public Law 115-254, which will report on efforts to improve coordination between Federal agencies and clarify the sequence of delivery of disaster assistance to individuals.

Any future grantee request for a waiver of the overall benefit requirement applicable to a CDBG-DR grant will be evaluated by HUD in light of the amount of assistance ADFA has or plans to use to reimburse Applicants with incomes in excess of 80 percent AMI for costs paid by SBA and other subsidized loans.

Order of Assistance

CDBG-DR appropriations acts generally include a statutory order of assistance for Federal agencies.

Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR Funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps. This means that grantees must verify whether FEMA or Army Corps funds are available for an activity (i.e. the application period is open) or the costs are reimbursable by FEMA or Army Corps (i.e., ADFA will receive FEMA or Army Corps assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or Army Corps are accepting applications for the activity, the Applicant must seek assistance from those sources before receiving CDBG-DR assistance. If the Applicant's costs for the activity will be reimbursed by FEMA or the Army Corps, ADFA cannot provide the CDBG-DR assistance for those costs. In the event that FEMA or Army Corps assistance is awarded after the CDBG-DR to pay

the same costs, it is the CDBG-DR grantee's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the Army Corps.

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, the CDBG-DR grantee must collect duplicative assistance it provides.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG-DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG-DR assistance duplicates other sources received before the CDBG-DR for the same purpose and portion of need. Any amount received from other sources before the CDBG-DR assistance that is determined to be duplicative must be collected by ADFA. The mandatory agreement to repay (discussed below) can be used to prevent duplication by assistance that is available but not yet received. If the duplicative assistance is received after CDBG-DR, ADFA must collect the DOB or contact HUD if it has questions about whether another Federal agency is responsible for collecting the duplication.

Recordkeeping

ADFA must document compliance with DOB requirements and will be careful to sufficiently document the DOB analysis for activities the State is carrying out directly. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

When documenting its DOB analysis, ADFA cannot rely on certification alone for proof of other sources of funds for the same purpose (unless authorized by 84 FR 28845, see above). Any certification by an Applicant must be based on supporting evidence that will be kept available for inspection by HUD. For example, if an Applicant or Applicant to a subrecipient certifies that other sources of funds were received and expended for a different purpose than the CDBG-DR Funds, ADFA must substantiate this assertion with an additional source of information (e.g., physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that, as soon as possible after a disaster, ADFA and other agencies advise the public and potential Applicants to retain all receipts that document expenditures for recovery needs. ADFA will contact its CPD representative with questions about the sufficiency of documentation.

Agreement to Repay & Monitoring for DOB

The Stafford Act requires grantees to ensure that Applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. To address any potential DOB, each Applicant must also enter into an agreement with the CDBG-DR grantee to repay any assistance later received for the same purpose for which the CDBG-DR Funds were provided. This agreement can be in the form of a

subrogation agreement or similar document and must be signed by every Applicant before ADFA disburses any CDBG-DR assistance to the Applicant.

Subrogation Agreement

All respective CDBG-DR awardees may be required to enter into a “Subrogation Agreement” to repay any assistance later received for the same purpose as the CDBG-DR Funds. The agreement must also include the following language: “Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.”

The CDBG-DR grantee and subgrantee are responsible for identifying a method to monitor compliance with subrogation agreements. The subgrantee must maintain up-to-date records regarding subrogation agreements. A subgrantee must notify the State regarding any changes to such agreements for a reasonable period of time, the duration of the contract between the State and the subgrantee.

The contract will read as follows:

In consideration of ‘Applicant’ receipt of funds or the commitment by the Grantee to evaluate Applicant’ application for the receipt of funds (collectively, the “Grant Proceeds”) under the Community Development Block Grant – Disaster Recovery Program (the “Program”) administered by the Grantee, Applicant hereby assigns to the Grantee all of Applicant’ future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of any grant funds obtained from presidentially declared disasters in the State of Arkansas in 2019 to the extent of Grant Proceeds paid or to be paid to Applicant under the Program and that are determined in the sole discretion of ADFA to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds not listed on the Duplication of Benefits Certification form, Applicant agrees to immediately notify the Grantee who will notify ADFA of such additional amounts, who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the Grantee, to be retained and/or disbursed as provided in this Agreement.

Applicant agrees to assist and cooperate with the Grantee elect to pursue any of the claims Applicant has against the insurers for reimbursement of DOB Proceeds under any such policies. Applicant’ assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Applicant’ name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and

cooperation reasonably requested by the Grantee. Applicant further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Applicant would be entitled to under any applicable Disaster Program.

If requested by the Grantee, Applicant agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the Grantee, to the extent of the Grant Proceeds paid to Applicant under the Program, the Policies, any amounts received under the Disaster Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the Grantee to consummate and make effective the purposes of this Agreement.

Applicant explicitly allows the Grantee to request of any company with which Applicant held insurance policies, or FEMA or the SBA or any other entity from which Applicant has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the Grantee to monitor/enforce its interest in the rights assigned to it under this Agreement and give Applicant's consent to such company to release said information to the Grantee.

If Applicant (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Applicant agrees to promptly pay such amounts to the Grantee, if Applicant received Grant Proceeds under the Program in an amount greater than the amount Applicant would have received if such DOB Proceeds had been considered in the calculation of Applicant' award.

In the event that the Applicant receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits form ("Subsequent Proceeds"), Applicant shall pay such Subsequent Proceeds directly to the Grantee, and ADFA will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Applicant. Subsequent DOB Proceeds shall be disbursed as follows:

- 1. If the Applicant has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be remitted to the Grantee.*
- 2. If the Applicant has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by the Grantee to reduce payments of the Grant Proceeds to the Applicant, and all Subsequent DOB Proceeds shall be returned to the Applicant.*
- 3. If the Applicant has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Applicant; and (B) any remaining Subsequent DOB Proceeds shall be remitted to the Grantee.*

4. *If the Grantee makes the determination that the Applicant does not qualify to participate in the Program or the Applicant determines not to participate in the Program, the Subsequent DOB Proceeds shall be returned to the Applicant, and this Agreement shall terminate.*

Once the Grantee has recovered an amount equal to the Grant Proceeds paid to Applicant, the Grantee will reassign to Applicant any rights assigned to the Grantee pursuant to this Agreement.

Applicant represents that all statements and representations made by Applicant regarding Proceeds received by Applicant shall be true and correct to the best of their knowledge.

The person executing this Agreement on behalf of the Applicant hereby represents that he\she understands that making a materially false/misleading written statement to obtain the Grant Proceeds can result in the Applicant facing debarment from receiving future funding, administrative recoveries of funds, civil lawsuits and criminal prosecution. In any proceeding to enforce this Agreement, the Grantee shall be entitled to recover all costs of enforcement, including actual attorney's fees.

Monitoring

The process for identifying and then monitoring for DOB begins with the review of each grant application—whether it is for a specific Project or an individual beneficiary of CDBG-DR Funds. An Applicant must provide detailed information about other sources of funds that were received—or that may be received—related to the activity for which CDBG-DR Funds are being requested. The ADFA Grants Division or contracted program management staff review and verify the other funds to determine if they are for the same activity and exceed the need for recovery assistance. Once CDBG-DR Funds are awarded (minus any determined to be a DOB), Applicants are required to notify the ADFA Grants Division of the receipt of any additional funds received for the same activity. Program staff review individual pay requests and Project amendments to determine if other funds have been received that represent a DOB. In the event that additional funds are determined to be a DOB, funds will be withheld from future pay requests, and the approved Project budget will be amended. In the event that all funds have been expended and a DOB is identified, the Applicant will be required to repay the funds to ADFA for return to the U.S. Treasury.

Except as provided in the paragraph below, monitoring of competitive grants and state direct grants for compliance with this policy shall be included as part of regular on-site monitoring visits. Primary responsibility for monitoring compliance with this policy lies with the Grants Management Division.

ADFA is required to establish a method to monitor each Applicant's compliance with the Subrogation Agreement for a reasonable period after Project completion (i.e., a time period commensurate with risk). The ADFA Grants Division will monitor compliance with the Subrogation Agreement for one year following the completion of the activity for which funds were awarded. All CDBG-DR activities will be monitored using the On-site Monitoring Checklist, which includes monitoring for duplication of benefits, at least once a year per fiscal year before Project close-out, more often if deemed necessary by initial risk analysis, per the Monitoring Plan.

In addition, one year from the approval of an action plan amendment that addresses the treatment of subsidized loans, ADFA is required to provide HUD with the following information:

- Total amount of funds used for reimbursement of SBA and other subsidized loans;
- Total number of Households and LMI Households reimbursed; and
- SBA loan number and FEMA ID for each individual Household that was reimbursed for its SBA loan costs.

In each agreement between ADFA, or a subrecipient, and a beneficiary, two clauses are included: a Duplication of Benefits Clause and a Subrogation Clause. The Duplication of Benefits Clause requires the beneficiary to disclose all sources of possible duplicative assistance to ADFA and must include the following language, "Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C 287, 1001, and 31 U.S.C. 3729." The Subrogation Clause requires any person who receives further assistance to repay that assistance, if the amount of assistance exceeds the funding required for the Project.

Recapture Procedures for Collecting a Duplication

Review

If a potential DOB is discovered after CDBG-DR assistance has been provided, ADFA must reassess the Applicant's need at that time. If additional need is not demonstrated, CDBG-DR Funds shall be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the Applicant for the same purpose. This determination, however, may depend on what sources of assistance were last received by the Applicant.

Notification of Collection

If ADFA determines the Applicant did not meet contract or program eligibility requirements, or if there has been a duplication of benefits, it will use its best efforts to recapture the funds. In such an event, ADFA's procedure will include, at a minimum, the following steps:

1. ADFA will document the reason(s) for recapture.
2. ADFA will send a written notice to the Applicant, including the reason(s) for recapture and the amount to be recaptured. The notice will call for a response within 30 days, which may be one of the following:
 - a. Full repayment;
 - b. Partial repayment with a request for an installment plan for repaying the full amount; or

- c. An appeal of the recapture determination, contesting repayment.
- 3. If the Applicant appeals, the Applicant will provide information or documentation supporting its appeal within 30 days. ADFA will consider the information and make a final determination.
- 4. If the Applicant fails to respond to the written notice, continues to contest a recapture determination after appeal, or otherwise fails to make payment within 30 days of a final determination by ADFA, ADFA may refer the matter to the State Attorney General's office for further proceedings.

CDBG-DR Duplication Receipt Process

- Incoming checks are directed to be sent to ADFA PO Box.
- Fiscal Division opens PO Box mail, logs incoming checks, and forwards CDBG-DR checks to Business Finance Division.
- Business Finance forwards the checks to Grants Division Compliance Officer or Administrative Specialist to post into IDIS and the CDBG-DR system of record.
- ADFA Grants Division forwards checks and IDIS receipt reports to Fiscal division.
- Fiscal Division posts the deposit into AASIS state accounting system, accounting ledger, and forwards deposit back to ADFA Grants Division.
- Fiscal Division completes deposit with the treasury and files receipt once acknowledgment is received from the State Treasury.

Corrective Actions for Failure to Recapture DOB

If a grantee fails to recapture funds from an Applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and Federal Register notices, as applicable. Also, HUD reminds grantees that the Stafford Act states that "A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source." If ADFA does not recapture the duplicative assistance, that individual Applicant will still be liable to the United States government.

ADFA staff will be responsible for:

Overview of DOB Procedures for CDBG-DR		
Responsible Party	Task	Contact Information
All Applicants	Sign Consent to Release Form, DOB Certification, and Agreement	ADFA Grant Coordinator

ADFA Federal Housing Programs Manager and designated staff	Review Applications, utilize third-party verification system, complete DOB Worksheet and adjust payments, if needed.	Lori Brockway, ADFA Federal Housing Programs Manager 501-682-3339
ADFA Federal Housing Programs Manager and designated staff	Q/C all files prior to sending a letter of approval.	Lori Brockway, ADFA Federal Housing Programs Manager 501-682-3339

Program Income

ADFA manages Program Income (PI) through the provisions in the CDBG-DR Multifamily Rental Recovery Program Agreement, which all Developers must sign to receive funding from ADFA. If PI is generated, Developers must report the PI to ADFA through a request for payment and must expend PI prior to additional grant funds being drawn. PI may only be used for eligible Project or activity delivery costs related to the awarded Project. Developers must provide monthly reports to ADFA on PI generated and retained. Per 83 FR 5844, ADFA must report all PI to HUD through the DRGR Quarterly Performance Report (QPR). PI remaining at the end of each quarter and at the expiration of the CDBG-DR Multifamily Rental Recovery Program Agreement in excess of \$35,000.00 must be remitted to ADFA.

Any PI remaining at the end of a CDBG-DR Multifamily Rental Recovery Program Agreement, in excess of \$35,000.00, is remitted to ADFA during closeout where it is tracked and reported as revenue until it is obligated through a new CDBG-DR Multifamily Rental Recovery Program Agreement. PI held by ADFA and awarded is tracked through AASIS, similarly to HUD grant funds.

All CDBG-DR Funds will be allocated in the form of a forgivable loan to the recipient; therefore, no Program Income will be generated. If PI is generated, ADFA will act in accordance with procedures submitted with the Financial Management and Grant Compliance Certification.

PROPERTY TYPES AND STANDARDS

ADFA will use CDBG-DR Funds for specific types of properties that meet certain property standards. This section details the types of properties that are eligible and the property standards to which they must be built or rehabilitated. All ADFA CDBG-DR funded rental properties must meet Universal Design Standards. Owners must maintain the property in accordance with property standards throughout the affordability period. This will require periodic property inspections, as described in the section below on inspections.

Eligible Property Types

- CDBG-DR rental Projects may be one or more buildings on a single site under common ownership, management and financing.
- The Project must be assisted with CDBG-DR Funds as a single undertaking.
- The Project includes all activities associated with the site or building(s).
- CDBG-DR Funds may be used to assist mixed-income Projects, but only persons who are at or below 80% AMI may occupy CDBG-DR assisted units.

Ineligible Property Types

- CDBG-DR Funds may not be used for development, operations or modernization of public housing financed under the 1937 Act (Public Housing Capital and Operating Funds).
- CDBG-DR Funds may be used in a Project that also contains public housing units, provided that CDBG-DR Funds are not used in the public housing units and the CDBG-DR units are separately designated.
- Emergency shelters with limited occupancy requirements.
- All types of student housing.
- Projects where Developers/Contractors do not have a valid Arkansas contractor's license.
- Any Project that does not demonstrate a specific tie-back to DR4441.

Construction Standards

The purpose of construction standards is to ensure that housing is not occupied unless it is decent, safe, and sanitary. The properties must meet the property standards established in 24 CFR 5.703 (Uniform Physical Condition Standards).

Housing Codes/Standards

- Housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act implemented at 28 CFR parts 35 and 36, as applicable, and the Fair Housing Act as implemented at 24 CFR 100.205.
- Housing must be constructed to mitigate the impact of potential disasters in accordance with State, local codes, ordinances, or other requirements as HUD may establish (where applicable).
- ADFA's Design Standards Manual for New Construction and Rehabilitation must be used in designing multifamily developments.

Building Codes

- Arkansas building codes are mandatory statewide, but local jurisdictions may amend the codes to make them more stringent. ADFA requires that Recipients, owners, sponsors, and Developers comply with the building codes adopted in their jurisdiction.
- In the absence of an applicable State or local code, Projects must meet the International Code Council's (ICC's) International Residential Code or International Building Code.

- Several related codes, such as the fire code and plumbing code, are incorporated into the Arkansas building codes.
- Most work governed by building codes requires that licensed Contractors obtain permits prior to starting the work.

International Energy Conservation Code

All new construction work must also conform to the International Energy Conservation Code (IECC) and applicable state or local energy conservation codes. Additionally, ADFA requires that all new building construction complies with the Arkansas Energy Code. ADFA CDBG-DR program Recipients must document compliance using the Certificate of Compliance for the Current Arkansas Energy Code.

Rehabilitation Standards

ADFA has adopted written standards for rehabilitation for rental Projects whether the work is done by Recipients, Contractors, or nonprofits.

- Health and Safety – Must identify life-threatening deficiencies that must be addressed immediately, if housing is occupied.
- Uniform Physical Condition Standards – The properties must meet the property standards established in 24 CFR 5.703 (Uniform Physical Condition Standards).
- Capital Needs Assessment – For multifamily rental housing Projects, a capital needs assessment will be required to determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the Project.
- Major Systems – Must estimate (based on age and condition) the remaining useful life of these systems, upon completion of each major system. Major Systems are structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.
- Lead-based paint – Housing must meet the lead-based paint requirements at 24 CFR part 35.
- Accessibility requirements – Housing must meet, as applicable, in accordance with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act.
- Disaster Mitigation – Housing must be constructed to mitigate the impact of potential disasters in accordance with State, local codes, ordinances, or other requirements as HUD may establish (where applicable).

- State and local codes, ordinances, and zoning requirements – Housing must meet all applicable State, local codes, ordinances, and requirements or in absence of a State or local building code, the International Existing Building Code of the International Code Council.
- For all Projects, a capital needs assessment will be required to determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the Project.
- Waivers can be requested for rehabilitation developments if structural constraints prohibit adherence to the minimum design standards. Waiver requirements are detailed as part of ADFA’s Design Standards Manual for New Construction and Rehabilitation.

Green Building Standards

In the implementation of the CDBG-DR program as referenced in 83 FR 5861, residential structures must meet at least one of the following green building standards for all new construction of residential buildings and replacement of substantially damaged residential structures, including:

- ENERGY STAR (certified homes or multifamily high-rise);
- Enterprise Green Communities;
- LEED (new construction, midrise, existing buildings operations and maintenance, or neighborhood development);
- ICC–700 National Green Building Standard;
- EPA Indoor AirPlus (ENERGY STAR certification is a prerequisite); or
- Any other equivalent comprehensive green building program acceptable to HUD.

For rehabilitation of non-substantially damaged residential structures, the Applicant must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, to the extent applicable.

Universal Design Standards

All CDBG-DR assisted rental Projects must include the following design criteria in accordance with Arkansas Usability Standards in Housing: Guidance Manual for Constructing Inclusive, Functional Dwellings (AUSH).

- Seven percent of all residential units within the Project must comply with the Level 5, “All-Inclusive” usability criteria as set forth in the AUSH.
- Each unit that is required to meet the Level 5, “All-Inclusive” usability criteria set forth in the AUSH must have at least one bathroom with an “accessible roll-in” shower facility with minimum dimensions of 60”x 34” or 42”x 42” if a corner shower facility.

- All ground level residential units in any building and all residential units with elevator access in any building in the Project must comply with Level 1, “Visitable” usability criteria as set forth in the AUSH.
- All exterior and interior doors intended for passage must provide for a minimum clear opening of 34”.
- All residential units in the Project will have “closed fist” operability throughout the unit, e.g., single handle door levers vs. doorknobs, push stick lighting and environmental controls, cabinet doors that can be opened with a closed fist, and single handle faucets in bathrooms and kitchen.
- All environmental controls must provide visual and tactile cues. For lighting, a “rocker” type switch is sufficient. For thermostats, programmable and digital control with raised buttons is required.
- All primary entries, not in a breezeway, must have a minimum roof covering of 5’x5’.
- All primary entries must have an entry pad measuring at least 5’x5’.
- All sidewalks must be at least 5’ wide.

Multifamily Housing Design Standards. Construction of the development must be in accordance with ADFA’s Design Standards Manual for New Construction and Rehabilitation, as well as all applicable local State and national building codes.

A certification from the design architect or licensed engineer must be submitted with the application confirming that the proposed development will be constructed in compliance with:

- ADFA’s Design Standards Manual for New Construction and Rehabilitation;
- All Federal and State accessibility laws, and
- All applicable local, State and national building codes.

Applicability of Design Standards to Rehabilitation Developments: If structural constraints prohibit adherence to ADFA’s Design Standards Manual for New Construction and Rehabilitation, Applicant may seek a waiver from ADFA for the standard concerned. Such waiver request must be in writing and include the following:

- Certification by the design architect or licensed engineer that the standard concerned cannot be met due to structural constraints;
- Certification by the design architect or licensed engineer that no alternative design can be undertaken to achieve the benefit of the required standard due to structural constraints; and

- Statement by Applicant that it will implement any alternative identified by the design architect or licensed engineer.

Section 504 and Fair Housing

New construction Projects with more than five (5) units will be subject to accessibility requirements of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Section 504, Fair Housing and other applicable construction and design provisions which requires 5% of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility impairments, and an additional 2% of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with hearing or visual impairments. ADFA reserves the right to require more units than the federally required minimum for Projects that will serve specific target populations such as special needs, veterans with physical Disabilities, etc.

To ensure compliance with accessibility in Projects with four (4) or more units, additional requirements apply. For buildings without elevators, all ground floor units, public, and common use must be designed to the Fair Housing Act design and construction standards, additionally, for buildings with elevators, all units, public, and common use areas must also conform to the Fair Housing Act design and construction standards.

After completion, Projects must comply with Uniform Physical Conditions Standards (UPCS), the UPCS checklist must be used to conduct inspections during the Affordability Period and to ensure ongoing maintenance and compliance of the property.

Multifamily dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).

Greater choice of housing opportunities. A Recipient's Project must comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504, Executive Order 11063 and HUD regulations issued pursuant thereto so as to promote greater choice of housing opportunities.

Broadband Infrastructure: Per 24 CFR 570.202(g), any Substantial Rehabilitation or new construction of a building with more than four (4) rental units must include installation of broadband infrastructure, except where the Applicant documents that: 1) The location of the new construction or Substantial Rehabilitation makes installation of broadband infrastructure infeasible, 2) 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 3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

AFFORDABILITY

In return for providing CDBG-DR Funds for a Project, ADFA requires that the CDBG-DR assisted units remain affordable to income eligible Applicants for a specified period of time called the affordability period. This section discusses the following:

- Basis and length of the affordability periods,
- Units that are subject to the affordability period requirements,
- Rent and occupancy requirements,
- Lease requirements, and
- Monitoring and inspection schedules.

At a minimum, the following thresholds must be adhered to in all programs:

- ADFA will confirm Affordable Rents in multifamily Projects by utilizing the current the Fair Market Rents (FMR).
- All Projects will meet the LMI housing national objective. Therefore, any Project funded under the MRRP must designate 51 percent of the Project's units to be available for lease to tenants with an income of up to 80 percent of the area median income based on regulatory and program requirements. While proposed Projects may be mixed-income units, CDBG-DR Funds will only be applied to the Affordable Units for occupation by LMI Households. This distinction is important for compliance during the affordability period.
- The number of CDBG-DR assisted units in a Project must be specified at Project commitment.
- Additionally, for properties with both assisted and non-assisted units, the CDBG-DR assisted units shall be "floating" units. Floating units may change over time as long as the total number of CDBG-DR assisted units in the Project remains constant. The owner must ensure that the CDBG-DR assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features, and number of bedrooms.
- Developments must meet the following affordability requirements:
 - A minimum affordability period of 5 years for an investment of less than \$15,000 per unit.
 - A minimum affordability period of 10 years for an investment between \$15,000 and \$40,000 per unit.
 - A minimum affordability period of 15 years for an investment over \$40,000 per unit.
 - A minimum affordability period of 20 years for the new construction of multifamily rental units with five or more units.

If a rental Project that requires rehabilitation or Reconstruction is subject to existing affordability requirements associated with other funding sources, ADFA will allow that the 15-year affordability period required by the CDBG-DR funding may run concurrently (or overlap) with the affordability requirements associated with such other funding.

Multifamily Rental Activity	Investment Per Unit	Minimum Affordability
Rehabilitation or	Under \$15,000	5 years
Rehabilitation or	\$15,000- \$40,000	10 years
Rehabilitation or	More than \$40,000	15 years
New Construction	5 or more	20 years

Rent and Occupancy Requirements

- During the affordability period, ADFA requires that rent and occupancy agreements for CDBG-DR assisted units be enforced through:
 - Covenants running with the property; or
 - Deed restrictions.
- Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed- in lieu of foreclosure.

Initial Occupancy

CDBG-DR assisted units in a rental housing Project must be occupied by Households that are eligible as LMI families, as defined by HUD.

- If the housing units are not occupied by an eligible tenant within 6 months following the date of Project completion, ADFA will require the owner to submit current marketing information and, if appropriate, submit a revised marketing plan to lease the housing units as quickly as possible.
- If the housing units are not occupied by an eligible tenant within 18 months following the date of Project completion, ADFA will require the repayment of all CDBG-DR Funds invested in the unit.

Rent Limits

Every CDBG-DR assisted unit is subject to rent limits designed to help make rent affordable to LMI Households. These maximum rents are referred to as “CDBG-DR Rents.”

- ADFA must review and approve the rents for each CDBG-DR assisted rental Project each year to ensure that they comply with the CDBG-DR limits and do not result in undue increases from the previous year.

- HUD will annually publish FMRs and calculations of rents.
- The published rents are inclusive of utilities. The rents must be reduced for any tenant paid utility. Recipients must use the HUD Utility Schedule Model or determine the allowance based upon the specific utilities used for the Project to calculate utility allowances to account for tenant paid utilities. See section below on Maximum Allowable Rents and Utility Allowances.
- Based on changes in area income levels or market conditions, rents, as calculated by HUD annually, may increase or decrease.
- ADFA will use the HUD published rents to establish CDBG-DR rents and will inform CDBG-DR Recipients of the change in the rents, placed on our website annually.
- Tenants must be given at least 30 days' written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. For example, rents may not increase until the tenant's lease expires.
- CDBG-DR rents may decrease. While Project rent levels are not required to decrease below the CDBG-DR rent limits in effect at the time of Project commitment, decreasing CDBG-DR rents may reflect a change in market conditions that may force owners to reduce rents in order to maintain tenants.
- HUD may permit adjustments to the rent structure if the financial feasibility of the Project is threatened. This is important to lenders providing financing to CDBG-DR assisted Projects.

Maximum Allowable CDBG-DR Rents and Utility Allowances

- The CDBG-DR rents are the maximum rent an owner may charge a tenant (including the approved utility allowance) in a CDBG-DR assisted unit. That is, the CDBG-DR rents limits are inclusive of tenant paid utilities and the maximum allowable CDBG-DR rents must be reduced if the tenant pays for utilities.
- Recipients must use the HUD Utility Schedule Model or determine the allowance based upon the specific utilities used for the Project to determine utility allowances to be used to determine rents for CDBG-DR assisted rental Projects.
- However, Project owners may submit a proposed utility allowance to ADFA for review and approval.
- Utility adjustments proposed by owners/Developers for specific Projects that differ from the HUD Utility Schedule Model's utility allowance must be supported by documentation.
- In rural areas the market rents may be well below the published FMR rents. ADFA encourages owners to charge tenants in CDBG-DR assisted units a rent that is appropriate for the market.

Over-Income Tenants at Recertification

Consistent with rules for other funding programs, including the HOME Investment Partnerships (HOME) program at 24 CFR 92.252(h), if, at the time of tenant recertification, the income of a Household occupying a MRRP Assisted Unit exceeds the income level applicable to new tenants for Affordable Units, the Developer may not evict the tenant, and shall instead take the following specific actions to remedy the temporary noncompliance:

- Increase the tenant's rent to the lesser of:
 - 30 percent of adjusted income;
 - the HUD Fair Market Rent applicable to the unit based on unit size and location; or
 - the rent limitations of another leveraged funding source that applies to the Development; and
- If, within the Development, another unit that is not assisted with MRRP funds becomes available, designate the next available comparable unit as a MRRP Assisted Unit at the income level originally applicable to the Household until the Unit mix required by the CDBG-DR Multifamily Rental Recovery Program Agreement is achieved. A Unit shall be deemed "comparable" if it has the same number of bedrooms, the same or similar features, and is similar in size to the original Unit.

Leasing Mixed-Income Projects with Both CDBG-DR Assisted and Non-CDBG-DR Assisted Units

ADFA requires all units funded with CDBG-DR Funds to remain restricted to LMI Households throughout the affordability period. Owners may maintain a mix of units throughout the affordability period that ensures that the Project always has the correct number of CDBG-DR assisted units. When leasing mixed-income Projects, owners/managers must assure that:

- The CDBG-DR subsidized units are leased or held available for lease to CDBG-DR eligible tenants to meet the income targeting requirements of the program; and
- Rents charged to tenants in the CDBG-DR units are within the rent limits published by HUD.

Inspections

ADFA must inspect each Project during construction/rehabilitation, at completion, and during the period of affordability to determine that the Project meets the property standards applicable under §92.251.

Frequency

- Inspections must take place during the construction/rehabilitation of the Project.
 - These include an initial inspection to determine deficiencies and develop work write-up, ongoing inspections during the work for invoices and progress, and an inspection at completion to determine if all codes and standards are met.
- The first property compliance inspection during the affordability period must occur within 12 months after the Project completion date.
- An on-site inspection will be performed at least once every 3 years thereafter during the period of affordability.
- If there are observed deficiencies for any of the inspectable items in the property standards, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months.
- ADFA will establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (e.g., paid invoice for work order) rather than re-inspection.
- ADFA will inspect more frequently for properties which have been found to have health and safety deficiencies.
- Life-threatening (health & safety) deficiencies must be corrected immediately if the unit is occupied.
- Annual Certification – The property owner must submit an annual certification to ADFA that each building and all CDBG-DR assisted units in the Project are suitable for occupancy.

Sample Size

- For each inspection, at least 20% of the units will be inspected **OR**
- The required sample size for each program funding source will be inspected.

Record Keeping

As for all program activities, CDBG-DR requires documentation for rental Projects to show that all program regulations have been met. Because of the long-term monitoring required for rental Projects, however, record-keeping responsibilities are slightly more substantial. This section briefly describes the record-keeping responsibilities associated with rental housing for ADFA, Recipients, and the property owner.

- **Recipient records.** In addition to the general program and Project documentation described in Part I of Chapter 9, Recipients have the following responsibilities:

- **Records of its regular inspections of each rental Project:** These records should demonstrate that ADFA or the Recipient checked for and enforced compliance with the following CDBG-DR requirements:
 - Property standards: The records should show that a sufficient sample of CDBG-DR assisted units were inspected, as well as exterior and common areas, and that any deficiencies identified were corrected.
 - Rent and occupancy requirements: Inspection records should also show that ADFA or the Recipient reviewed a sample of unit files to verify that CDBG-DR rent and occupancy requirements were met.
 - Lease requirements: In its review of unit files, ADFA or the Recipient should also ensure that leases meet CDBG-DR requirements.
 - Affirmative Marketing. In its review of Project files, ADFA or the Recipient should ensure the owner has adopted written tenant selection policies and criteria.
 - Other items in the written agreement: If the written agreement between ADFA or the Recipient and the property owner contained any other provisions that require monitoring, ADFA or the Recipient's records should reflect that they were monitored.
- **Other Project oversight responsibilities:** The Recipient should also conduct additional oversight of rental Projects by analyzing the Projects for financial stability, management capacity, and other long-term viability issues. This type of oversight will help to identify financial or management issues before they affect the Project's ability to remain a viable component of ADFA or the Recipient's affordable housing stock. During the period of affordability, ADFA will examine at least annually the financial condition of CDBG-DR assisted rental Projects to determine the continued financial viability of the housing and take actions to correct problems, to the extent feasible.
- **Property owner records.** Owner must keep adequate records and demonstrate compliance with CDBG-DR requirements. The owner should keep both Project and tenant records.
 - Project records should include documentation to back-up rent and utility allowance calculations. If the Project's CDBG-DR assisted units are "floating," the owner should also keep records to show how CDBG-DR occupancy targets were met (for example, rental logs to show that, as units were vacated or tenants became over-income, CDBG-DR assisted units were properly replaced).
 - Tenant files should include the documentation necessary to demonstrate that each CDBG-DR assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents, subsequent income recertification documents, and the tenant's lease.
- General rental housing records must be kept for five years after Project completion.

- Tenant income, rent, and inspection information must be kept for the most recent five years, until five years after the affordability period.

Minimizing Land Acquisition/Relocation

If acquisition and/or relocation are required as pursuant to 24 CFR part 570.606(b), the State and the Developer shall make every effort to minimize displacement of families according to the State's Residential Anti-displacement and Relocation Assistance Plan. Additionally, compliance with Federal Acquisition and Relocation laws will be required. Projects should be designed with the established community in mind to lessen the displacement of families.

Developers must comply with all applicable federal, state, and local relocation laws. Pursuant to relocation law, a Developer must have a relocation plan prior to proceeding with any phase of a Project or other activity that will result in the displacement of persons. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of Projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law.

Where the Developer's activities will or may result in displacement, the Developer's development budget shall include enough funds to pay all costs of relocation benefits and assistance. Any modifications to the foregoing process requirements must be approved in advance by ADFA in writing.

Affirmative Marketing Plan

Developers advertise Projects and units to fill vacant units or to develop a waiting list of interested Applicants for the subsidized housing. ADFA applications must include an Affirmative Marketing Plan developed using the Affirmative Fair Housing Marketing Plan (AFHMP) Form HUD-935.2A. Affirmative Marketing involves special outreach and advertising efforts designed to communicate the availability of ADFA assisted housing to those groups or individuals who might otherwise be unlikely to apply. Those groups are identified through analysis of local housing market area demographics using statistics readily available from the U.S. Census Bureau and determining appropriate advertising and outreach efforts to be followed by Developers to reach out to those least likely to apply for the housing opportunity. Affirmative marketing efforts must begin at least 90 days prior to initial or renewed occupancy for new construction and Substantial Rehabilitation Projects, respectively.

Applications shall also demonstrate that the proposed Projects will affirmatively further fair housing and adequate tenant market, which are likely to lessen area racial, ethnic, and low-income concentrations, and/or promote affordable housing in low-poverty, non-minority areas in response to natural hazard related impacts.

Completing Environmental Review

An environmental review must be performed on the Project prior to federal funds and non-federal funds being committed, disbursed, and expended by ADFA and Developers. The environmental review shall document compliance with 24 CFR Part 58, NEPA, and all related laws, authorities, and executive orders. For the MRRP application, each Developer must submit complete Environmental Review Records (ERR) to ADFA. After a CDBG-DR award, ADFA will complete its own Environmental Review on each Project for the purposes of satisfying HUD requirements and, ultimately, submitting a Request for Release of Funds to HUD and receiving an Authority To Use Grant Funds back (unless the Project converts to Exempt). ADFA will not reconstruct or rehabilitate housing units that have been determined to have a Finding of Significant Impact (FOSI).

Applicants will be encouraged to ensure that site control exists for a sufficient period to allow the environmental clearance process to be completed before purchase of the property. Prior to receipt of environmental clearance from ADFA, the Applicant may not undertake, or commit any funds to, physical or choice-limiting actions, including property acquisition, demolition, tenant relocation, rehabilitation, conversion, repair, or construction. Applicants and their counsel should be familiar with the full range of CDBG-DR requirements.

No work may start on a proposed Project, or proposed site acquisition, if applicable, before both the federal environmental review process is completed, even if that work/acquisition is being done using non-federal funds. There can be no choice-limiting actions on the part of the Developer/owner until environmental clearance is received in the form of an Authority to Use Grant Funds (AUGF) or environmental clearance letter issued by ADFA. The concept of prohibiting “choice-limiting” actions is to prevent the Developer from investing in a Project before all necessary environmental clearances are obtained. Market studies, environmental studies, plan development, engineering or design costs, inspections and tests are not considered “choice-limiting” actions. “Choice-limiting actions” are defined as any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition by the Developer/owner (or any subsidiary of the Developer), construction, demolition of buildings, or rehabilitation or Reconstruction of buildings. Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the Project, reimbursement by the Developer/owner to HUD for the amount expended, or suspension of the disbursement of funds for the affected activity.

To process the environmental review for each Project:

1. Developers must submit all [Environmental Review Records](#) (ERRs) to ADFA for review at submission of the Project application. Additional information can be found in the CDBG-DR Manual and [HUD guidance on Environmental Reviews](#).

2. ADFA will complete its Environmental Review and (unless the Project converts to Exempt) ultimately submit a Request for Release of Funds to HUD and received back an Authority To Use Grant Funds.
3. Upon receipt of the AUGF or environmental clearance letter and Notice to Proceed, Developer/owner may incur Project costs and drawdown funds.

Other Federal Requirements

Other federal requirements that must be followed in implementing rental housing activities.

Conflict of Interest: Pursuant to 24 CFR 570.611, Applicants with functions or responsibilities in CDBG activities may not obtain CDBG assisted financial benefits during their tenure or for one year thereafter. Exceptions to this requirement may be granted on a case-by-case basis, provided the Applicant meets specific documentation requirements referenced in 24 CFR 570.611 (d). ADFA will disclose a conflict of interest pursuant to 2 CFR 200.113 and 200.318.

Section 3 Economic Opportunities: Compliance requirements of Section 3 of the HUD Act of 1968 (12 U.S.C. 1701u) ("Section 3") are triggered when a Grantee receives in excess of \$300,000 of HUD funds for the construction, Reconstruction, conversion, or rehabilitation of housing, or other public construction that includes buildings or improvements assisted with CDBG-DR Funds. If Section 3 of the HUD Act of 1968 is triggered for the Grantee, then Contractors/subcontractors whose contracts are paid in full or in part with CDBG-DR funds (which exceed \$300,000) must also comply with Section 3 of the HUD Act of 1968.

Recipients must comply with employment and contracting opportunities pursuant to 24 CFR 570.607(b).

Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with CDBG-DR Funds will be awarded to business concerns that are located in or owned by persons residing in the program service area.

Applicants shall:

- Prepare and utilize a Section 3 Plan for the grantor.
- Designate a Section 3 Coordinator.
- Take affirmative steps to follow the Section 3 Plan and document those efforts.
- Include a Section 3 Clause and the Contractor Certification of Efforts to Fully Comply with Employment and Training Provision of Section 3 in any construction contract in excess of \$300,000.

- Notify potential Contractors for Section 3 covered Projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts.

Section 3 Clause

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and Applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.”

The Developer's Project Completion Report shall also include a Section 3 Summary Report of the total number of labor hours worked by all Contractors and subcontractors, the total number of labor hours worked by Section 3 workers, and the total number of labor hours worked by Targeted Section 3 workers, as required pursuant to 24 CFR 75.25(a). In the event that the number of Section 3 worker labor hours divided by the total labor hours worked by all workers on a Section 3 Project does not meet or exceed HUD's Twenty-five percent (25%) standard, and/or that the number of Section 3 targeted worker labor hours divided by the total labor hours worked by all workers on a Section 3 Project does not meet or exceed HUD's Five percent (5%) standard, the Developer shall provide additional reporting on the qualitative nature of its activities and those its Contractors and subcontractors pursued, as defined at 24 CFR 75.25(b). The standards for hours worked by Section 3 Workers and Targeted Section 3 Workers are subject to change by HUD as published in the Federal Register.

- ADFA will require Applicants to develop a Section 3 plan for employing and/or training persons residing in the Program Area.
- The plan will include:
 - Identification of Program Area,
 - Outreach and marketing avenues,
 - Potential employment opportunities,
 - Possible training opportunities,
 - An estimate of the number of persons reached, and
 - A Projection of the number of persons receiving training and employment opportunities.
- Recipients must submit Section 3 progress reports to ADFA on a quarterly basis. The reporting form is available at ADFA's website at <http://adfa.arkansas.gov>
- ADFA will monitor Section 3 activity throughout the life of the Project.

Minority/Women's Business Enterprise: ADFA will prescribe procedures for a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women. ADFA requires that all Recipients commit to support the participation of Arkansas Minority/Women's Business Enterprises (M/WBE) by establishing a goal to procure contracted goods and services from Arkansas M/WBEs. The Minority & Women Business Enterprises Plan is a part of the application for ADFA CDBG-DR Funds.

Lead-Based Paint: All units in a Project assisted with CDBG-DR Funds must comply with the Lead Safe Housing Rule (LSHR) at 24 CFR Part 35, Subparts A, B, J, K, and R. The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing.

National Floodplain Elevation Standards: ADFA will not fund any Project which contains an FFRMS floodplain on the parcel(s) containing the Project. Furthermore, ADFA will not fund any Project which requires the completion of the 5- or 8-step decision-making process for floodplains.

Broadband Infrastructure: Per 24 CFR 570.202(g), any Substantial Rehabilitation or new construction of a building with more than four (4) rental units must include installation of broadband infrastructure, except where the Applicant documents that: 1) The location of the new construction or Substantial Rehabilitation makes installation of broadband infrastructure infeasible; 2) 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 3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Uniform Relocation Assistance and Real Property Acquisition Act (URA): The URA contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a Project in which HUD financial assistance is provided. The implementation regulations, 49 CFR Part 24, include steps which must be taken with tenant occupants, including those who will not be impacted by the HUD assisted activity. The one-for-one replacement provisions of Section 104(d) of the Housing and Community Project Act of 1974 as amended are not applicable. The remaining requirements of Section 104(d) are applicable.

Additional requirement: If a Project site is occupied at the time the CDBG-DR application is made, the application must include an exhibit explaining either that no relocation of tenants will result, or that such relocation will be temporary (supported by an adequately documented estimate of relocation costs). Applicants may request a waiver of this requirement on a case-by-case basis where permanent relocation may be necessary to otherwise meet the program requirements.

Prohibition Against Eminent Domain: Per the Federal Register Notice, no funds allocated to an Applicant may be used to support any Federal, State, or local Projects that seek to use the power of eminent domain, unless eminent domain is employed only for public use as defined in 83 FR 40314.

Fair Housing and Equal Opportunity

Recipients must comply with the following Federal laws, executive orders and regulations pertaining to fair housing and equal opportunity. They are summarized below.

- **Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.):** States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance based on race, color, or national origin. The regulations implementing the Title VI Civil Rights Act provisions for HUD programs may be found in 24 CFR Part 1.

- **The Fair Housing Act (42 U.S.C. 3601-3620):** Prohibits discrimination in the sale or rental of housing, the financing of housing, or the provision of brokerage services against any person based on race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104(b)(2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified, and maintain records on the analysis, plan, and actions in this regard. Fair Housing Act implementing regulations for HUD programs may be found in 24 CFR Part 100-115.
- **Equal Opportunity in Housing (Executive Order 11063):** Prohibits discrimination against individuals based on race, color, religion, sex, or national origin in the sale, rental, leasing, or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Equal Opportunity in Housing regulations may be found in 24 CFR Part 107.
- **Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101):** Prohibits age discrimination in programs receiving Federal financial assistance. Age Discrimination Act regulations may be found in 24 CFR Part 146.
- **Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225):** Provides comprehensive civil rights to individuals with Disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with Disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense.

ADFA has additional expectations and requires Recipients to:

- Adopt any existing Fair Housing Ordinances in their jurisdictions,
- Adopt any existing Affirmative Marketing Plan developed by their jurisdictions, and
- Implement activities and Projects consistent with the Analysis of Impediments to Fair Housing Choice (AI), specifically the appropriate actions identified to overcome the effects of impediments, in the most current Consolidated Plan.

Labor Requirements

Recipients must comply with certain regulations on wage and labor standards. In the case of Davis-Bacon and the Contract Work Hours and Safety Standards Acts, every contract for the construction of

housing (rehabilitation or new) that contains 8 or more units assisted with \$2,000 or more CDBG-DR Funds triggers the requirements. If multiple funding sources (i.e. CDBG and HOME) are part of the Project, then the stricter program triggers Davis-Bacon.

- **Davis-Bacon and Related Acts (40 USC 276(A)-7):** Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
- **Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333):** Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- **Copeland (Anti-Kickback) Act (40 USC 276c):** Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted Project to relinquish any compensation to which he/she is entitled and requires all Contractors to submit weekly payrolls and statements of compliance.
- **Fair Labor Standards Act of 1938, As Amended (29 USC 201, et. seq.):** Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work and establishes child labor standards.

PROJECT SELECTION AND MANAGEMENT

To be an eligible Project for the CDBG-DR Disaster Recovery Multifamily Rental Recovery Program (MRRP), the Project must be constructed within Jefferson and Perry Counties.

Projects will be evaluated by, but not limited to, the following criteria:

- Confirmation that all parcels containing CDBG-DR-funded units will be outside of the 100- and 500-year regulatory floodplains.
- Assurance that all units will be connected to municipal utilities, including water, sewer, and broadband. Projects relying on wells and/or septic systems will not be eligible.

- Assurance that all construction will meet applicable state and local building codes
- The Project must be located within a HUD Identified Most Impacted and Distressed (MID) area.
- Demonstrated experience of the development team.
- Evidence the Project is ready to proceed.
- Documentation of all other funding sources.
- Proof of site control or ownership by the Developer.
- Budgets aligned with the Project scope.
- To qualify for mitigation incentives, documents showing construction mitigation strategies that address hazards identified in the mitigation need assessment.

Developers will submit an application for funding to ADFA through a competitive application cycle. Applications will be submitted through the Program Portal. Competitive application rounds will be announced for the development of new affordable housing. All applications submitted within a round will be evaluated, scored, and ranked, with awards granted based on those scores.

Application Documentation

The following Application Requirements (the “Requirements”) must be followed. Failure to submit all the following will terminate the application from consideration. This list is not all inclusive.

Financial Commitment Letters: All sources of financial commitments, including but not limited to the following, as applicable:

- Commitment letter(s) from any non-ADFA permanent lender(s) including units of local government. The letter(s) shall be dated within six (6) months prior to the submission of the application and state that a formal application for permanent financing is under serious consideration. The letter must contain:
 - the amount of the loan,
 - amortization period,
 - annual loan payment, and
 - interest rate.

Narrative Description of the Development: A detailed narrative description that includes the type of development, development site and surrounding area, types of financing, tenants served, bedroom mix, percentage of LMI units, involvement of nonprofit support service organizations, Project amenities, energy efficiency, rehabilitation work to be performed, if applicable, and any other relevant descriptive information.

Zoning and Planning Commission Information: A signed letter, dated within six (6) months prior to the Application Deadline, from the appropriate zoning authority (including a planning commission, if applicable) stating the proposed use of the property and that the property is properly zoned for such proposed use.

Site Plan, ALTA/NSPS Survey, and Topographic Survey: A site plan depicting the location and orientation of each existing or proposed building, and all paved areas throughout the development site, including sidewalks and parking areas, must be submitted. An ALTA/NSPS survey and topographic survey of the proposed development site must be performed, signed, and dated by a person authorized to perform such surveys by the Arkansas State Board of Licensure for Professional Engineers and Professional Surveyors. ADFA may require surveys for rehabilitation developments after approval.

Independent Market Study: Applications must include a comprehensive market study conducted by a disinterested party on ADFA's "Market Analyst Firms – Approved List" dated within six (6) months prior to the application submission. The analyst will acknowledge in the study that it is being done for ADFA's use and benefit. ADFA will reject the application if the market study shows:

- inadequate demand for any unit size proposed, based upon the targeted income group for that unit size,
- a capture rate of more than 20% for any unit,
- the proposed development will detrimentally affect other affordable housing in the area,
- the proposed location is or nearly is saturated, or
- any other negative impact.

Capital Needs Assessment: All rehabilitation developments must include a Capital Needs Assessment (CNA) conducted by a firm on ADFA's Capital Needs Assessment Firms – Approved List, dated six (6) months prior to the application deadline/submission date. "As needed" CNA's will not be accepted. ADFA requires an inspection of each unit, and an estimate of the repairs needed for each specific unit. The assessment must involve an interview with the maintenance personnel, and an analysis of the following:

- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utility lines.
- Structural systems, both substructure and superstructure, including exterior walls, balconies and stairways, exterior doors and windows, roofing system and drainage, including but not limited to termite, mold, and water damage.
- Interiors, including unit and common area finishes (carpeting, vinyl flooring, tile flooring, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.

- Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection, and elevators.
- Buildings, facilities, common use areas, residential units, parking areas, curbs, ramps, and railings to ensure compliance with applicable federal, state, and local laws regarding accessibility for persons with Disabilities.
- The report must include a physical inspection of the interior and exterior of each unit, each building, and must specifically identify the scope of work and estimated costs necessary to:
 - Rehabilitate all components examined and analyzed in the development to a new or “like-new” condition.
 - Correct all deficiencies for the development to comply with applicable federal, state, and local laws and requirements regarding accessibility for persons with Disabilities; and
 - Correct all deficiencies to ensure compliance with ADFA's Design Standards Manual for New Construction and Rehabilitation (other than as may be waived). All rehabilitation Applicants must submit a statement that the scope of rehabilitation will include all capital needs set forth in the CNA.

The CNA is to be provided for all Projects a minimum of 60 calendar days prior to the application submission. ADFA staff will review the submitted CNA with the purpose of determining whether the proposed scope of work meets ADFA’s ongoing commitment to providing safe, affordable housing. ADFA’s review of the CNA will include an inspection of the property to be rehabilitated.

Tenant Income Audit: All applications for rehabilitation Projects must include a complete, detailed Tenant Income Audit that identifies all existing tenant Households and their incomes. The audit must separately identify those tenant Households whose income exceeds applicable income limits.

Evaluating Applications

ADFA will evaluate all aspects of the Project, including scope, budget, eligibility, environmental review, and compliance with the eligibility requirements. ADFA will also perform an underwriting analysis to determine the financial feasibility and amount of requested funds needed for a Project to arrive at an appropriate level of CDBG-DR Funds.

Upon approval, the decision shall be documented in a letter to the Applicant.

Underwriting and Subsidy Layering

- The proposed Project must not exceed the HOME per-unit subsidy limits.
- Underwriting is required for all Projects whether the Projects are assisted with other governmental assistance.

- Before committing funds to a Project, ADFA evaluates the Project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or Developer's investment in a Project and must not invest any more CDBG-DR funds, alone or in combination with other governmental assistance, than are necessary to provide quality affordable housing that is financially viable for a reasonable period of time (at minimum, the period of affordability).
- The financial capacity of the Developer as well as their capabilities and experience to undertake the activity proposed are reviewed.
- The proposed Project timeline is reviewed to determine reasonability and absorption rates for units.
- ADFA conducts the subsidy layering review of the following Project documents:
 - *Sources/uses of funds:* Recipients are required to provide ADFA with the sources/uses of funds statement for the Project with supportive documentation that there is a firm commitment to the funds. This statement should reflect the Project development budget and should list:
 - All proposed sources (both private and public) of funds and the dollar amounts for each respective source, and
 - All proposed funds (including acquisition costs, rehabilitation/or construction costs, financing costs, and professional fees) associated with the Project.
 - *Project development budget:* Recipients must provide ADFA with the Project development budget so that ADFA can determine whether the development costs are necessary and reasonable.
 - The budget should include all costs associated with the development of the Project, regardless of the funding sources.
 - "Reasonableness" of costs will be based on all of the following factors:
 - (1) Costs of comparable Projects in the same geographical area,
 - (2) Qualifications of the cost estimators that developed the various budget line items, and
 - (3) Comparable costs published by recognized industry cost index services.
- *Proforma:* ADFA will determine the reasonableness of the rate of return on equity investment by looking at the Recipient's proforma (Project income and expense statement).
- The proforma should include achievable rent levels, market vacancies, and operating expenses.
- It should also specify the consequences of tax benefits, if any, and any other assumptions used in calculating the Project cash flow.

- The proforma should represent, at a minimum, the term of the CDBG-DR affordability requirements, or longer if other funding sources require longer affordability terms.
- The proposed development must have a minimum Debt Coverage Ratio (DCR) of 1.15 for the initial fifteen (15) years of the affordability period.
- As mentioned above, ADFA conducts its cost allocation and subsidy review upfront to determine the appropriate CDBG-DR subsidy or other source of funds to the Project; however, cost allocation and subsidy layering are impacted by any changes in the proportion of CDBG-DR assisted unit to total units in the Project, development cost or financing sources. **This means all CDBG-DR Recipients are obligated to contact ADFA as soon as there are any changes in Project size/scope, cost, or financing sources at any point during the development of the Project.**

Application Review Process

Applications submitted for a proposal of CDBG-DR funding will be subject to a two- phase process: 1) Preliminary review and 2) Underwriting and subsidy layering review. The preliminary review starts when the Portal notifies ADFA staff that an application has been submitted. This review will determine if the application includes a Portal submission of all required forms, certifications, and documentation. Applications with incomplete or missing forms, certifications, or documentation will be notified through the Secure Documents Request (SDR) and will be given ten (10) business days to make the needed corrections. If during the preliminary review and the underwriting subsidy layering review there have been two (2) notifications issued and there are still missing documents/information or no response, ADFA has the right to deny or reject the application request for funding. Once the application is underwritten and reviewed by ADFA staff, the ADFA staff will submit the proposal to the Housing Review Committee (HRC) and provide a report of the underwritten application, including a summary of the project. The report will include the type of development, the total development costs, all the funding sources, the loan terms, and an acceptable Debt Coverage Ratio (DCR). The HRC staff will review the report and make the recommendation of approval/denial for the application. If the application is recommended for approval, it will be reviewed at the monthly ADFA Board Meeting. If the application is awarded or denied, an official letter will be issued to the applicant.

Project Approval and Commitment of Funds

Project approvals may come in the form of a firm approval and commitment via a Notice to Proceed. A firm commitment is an approval of a fully entitled Project with all construction and permanent financing committed, a completed environmental review record, and all conditions from ADFA's application review, if applicable. Any additional closing conditions or outstanding items, as applicable, will be included as special conditions to the Notice to Proceed (NTP). Specific performance goals and performance penalties for the Developer will be outlined in the Notice to Proceed on a Project-by-Project basis.

If at any time those identified and secured funding sources change, the Developer/owner must notify ADFA within 10 days of the Applicant's knowledge that funding sources are changing. The terms and conditions of all financing shall be subject to ADFA's review and approval. ADFA reserves the right to re-review a Project application at any time in the event there is a change in the amount of, or the material terms and conditions of, any third-party financing for the Project. Applicant shall expect any such re-review and approval to be completed within 30 business days upon notification of funding change.

The ADFA shall execute the conditional approval and commitment or Notice to Proceed, as applicable.

Appeals

In cases where Projects are not approved to receive funding, Applicants have the right to appeal the determination. The Applicant must submit their appeal in written form, within 60 days of the award announcement date, via mail:

1 Commerce Way, Suite 602, Little Rock, AR 72202

ADFA shall review the appeal and then discuss the merits of the appeal with the appropriate staff before making an independent decision concerning the appeal. The decision of ADFA shall be final.

Written Agreements Between Recipients and Other Entities for CDBG-DR Multifamily Rental Recovery Program Funds

Written agreements are important legal documents that help ADFA and recipients protect their investment and enforce CDBG-DR and other Program rules.

A written agreement must be entered into before any MRRP funds are committed or disbursed by the Recipient to any entity.

- ADFA will enter into an agreement with all recipients of its MRRP before committing or disbursing funds.

When properly written and executed, a written agreement can be:

- A valuable management tool for verifying compliance and monitoring performance,
- A training tool for all parties using MRRP funds to learn about the rules and regulations of the MRRP Program and other Federal regulations, and
- A Recipient's method of enforcing program requirements and protecting its investment.

Contents of Written Agreements

A written agreement should serve as a concise statement of the relationship between the Recipient and a funded entity/beneficiary of CDBG-DR Funds. It should also clearly state the conditions under which the CDBG-DR Funds are provided.

The discussion below is intended to educate Recipients regarding the required provisions in ADFA CDBG-DR written agreements. The services will be available and required in the county where the development is located.

Required provisions.

- Use of funds: Description of the amount and use of CDBG-DR Funds, including the type and number of housing units, tasks to be performed, schedule for completing tasks (including a schedule of committing funds to Projects that meet the deadlines established by this part), a budget, any requirement of matching contributions, and the period of the agreement in sufficient detail to effectively monitor performance. (For Developers, the duration of the agreement will be in a separate clause.) These items must be in sufficient detail to provide a sound basis for ADFA to effectively monitor performance under the agreement.
- Affordability: This provision requires housing assisted with CDBG-DR Funds to meet the affordability requirements, as applicable, and requires repayment of the funds to ADFA if the housing does not meet the affordability requirements for the specified period. The affordability requirements must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD.
- Reversion of assets/Program Income requirements: States whether Program Income, unexpended funds, or other assets will be returned to the Recipient.
- Uniform administrative requirements: minimum required provisions must be in compliance with applicable Federal administrative requirements (applicable provisions of 24 CFR Part 200 for written agreements for governmental entities or applicable provisions for non-profit entities).
- Other Federal requirements: Requirements regarding non-discrimination and equal opportunity; affirmative marketing and minority outreach; environmental review; displacement, relocation and acquisition; labor standards; lead-based paint; and conflict of interest.
- Affirmative marketing: Requirements for affirmative marketing in the Project of five or more CDBG-DR assisted units.
- Requests for disbursements of funds: Requirement that CDBG-DR Funds may not be requested until funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program Income must be returned to ADFA before any new funding requests will be provided.
- Records and reports: Enumeration of records that must be maintained, and information and reports that must be submitted.

- Enforcement of the agreement: This provision is in the agreement with all parties, including owners, and is the means of enforcing the provisions of the written agreement.
- Prohibited Fees: Prohibits the recipient from charging servicing, origination, or other fees for the costs of administering the CDBG-DR program.
- Template agreements. Recipients must use ADFA template contracts, agreements, and other legal documents as provided by ADFA's Program staff.
- Duration of agreements. The agreement must specify the duration of the agreement. If the housing assisted under the agreement is rental housing, the agreement must be in effect through the affordability period required by the ADFA.
- Amending the documents. Written agreements may be amended by mutual agreement of the parties when regulations and requirements change, or when adjustments to funding levels or other conditions related to a specific Project are needed.

Procurement

Procurement for CDBG programs is governed by those specific requirements set forth under 24 CFR 570.489(g), 2 CFR 200, and Arkansas Procurement Laws and Rules, and all applicable state laws and regulations. These rules and regulations are applicable to all Applicants.

Applicants must conduct all CDBG-DR funded procurements in compliance with 2 CFR 200.318-327, ensuring full and open competition, maintaining written standards of conduct, and following proper solicitation and contract award procedures.

Procurements of Developers and Contractors must adhere to the procurement requirements set forth in state procurement policies and procedures. In working with other state or federal agencies, or within local procurement requirements, the strictest procurement policy will prevail. Construction advertisement and procurement will include notifying minority and women-owned businesses of contracting opportunities available for federally assisted Projects. ADFA will review Developer experience as a part of the Project review process to ensure that Developers have multifamily housing development experience.

In accordance with [2 CFR 200.320](#), recipients must select from one of five methods of procurement based on the type of products and/or services being procured and their cost. Recipients must ensure that they are following the stricter of the federal, state, or local requirement.

Many recipients will be required to utilize a lower threshold for procurement types than the federal requirements.

Micro-Purchase Procedures

Procurement by micro-purchase is the acquisition of supplies and services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, currently defined as \$10,000. To the

extent practicable, the municipality must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the municipality considers the price to be reasonable. Micro-purchases require need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Simplified Acquisition Procedures

Simplified acquisition procedures entail a relatively simple and informal process that can be used when the cost of supplies or services, in the aggregate, is above the micro-purchase threshold, but do not exceed the current simplified acquisition threshold, currently defined as \$250,000. Under this process, the recipient must:

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest responsive and responsible source.
- If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.
- Maintain need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring CDBG-DR-funded construction work. The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an Invitation for Bid (IFB).
- The IFB must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers or trade publications beyond the immediate locality of the work to be completed.
 - All advertisements for construction bids must be consistent with state law (A.C.A. § 22-9-203) which requires publication of advertisement for bids in a newspaper of statewide circulation one time each week for not less than two consecutive weeks. The date of publication of the last notice shall not be less than seven days before the date established for the receipt of bids.

- In addition to statewide newspaper advertisement, recipients may directly solicit prospective bidders and advertise in local newspapers or construction industry trade journals.
- Recipients are required to notify the commission's Minority and Women-Owned Business Enterprise Division of such advertisement.
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- [2 CFR 200.326](#) requires a bid guarantee from each bidder equal to 5% of the bid price. This guarantee serves as an assurance that the chosen Contractor will execute the contract within the time specified.
 - Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.
- The contract is awarded to the lowest, "responsible and responsive" bidder.
- Preparation and signing of a contract formalizing the scope of work and the terms of compensation is required.
- The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

Proposals

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning, and administrative services fall under this category. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

This method is initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections. (RFQ may ONLY be used for architectural or engineering services.) In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the recipient should provide or make available all materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions.

The following requirements apply to the proposal procurement process:

- The RFP or RFQ must be advertised a reasonable amount of time before the opening of bids or the deadline for submission of proposals ([SDCL 5-18A-14](#)). The first publication shall be in each official newspaper of the unit of local government, and the second publication may be in any legal newspaper of the State chosen by the local unit of government. If the unit of government has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the Applicant.
- The RFP must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.
- An RFP should also:
 - Specify that cost and pricing data is required to support the proposed cost,
 - State anticipated start and completion dates, and
 - List evaluation criteria that will be used in ranking proposals.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing.
- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.
- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- The subrecipient must maintain documentation for all services and reasons for selection.
- The subrecipient must send an award letter to the selected Contractor and document the file with it.
- The subrecipient must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- The subrecipient should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

Non-Competitive Negotiations

Non-competitive negotiation is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation **only** when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- There is some public emergency that will not permit delay resulting from competitive solicitation (the recipient must declare an emergency as authorized by law), or
- The results of the competitive negotiations are inadequate, or
- The product or service is available only from a single source.

The following requirements apply to the non-competitive negotiation procurement process:

- Negotiations must be conducted with the selected company regarding a scope of work and price, and
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

Recipients should, to the greatest extent possible and consistent with law, provide preference for the purchase and use of goods and materials produced in the United States. Also, to the greatest extent possible, recipients should purchase or use products and services that can be reused, refurbished, or recycled in accordance with 2 CFR 200.323. Recipients, at a minimum, must make an independent estimate of costs prior to receiving bids or proposals, pursuant to 2 CFR 200.324. Additionally, “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting must not be used.

As applicable, partnering agencies will follow their own procurement requirements. Where there is more than one funding source associated with a Project, the Project is subject to the procurement policy of each funding source; strictest procurement requirements will be applicable.

ADFA’s approval of the procurement process used and contract shall be issued in writing.

Disbursement of Funds

Disbursement of CDBG-DR MRRP Program funds will occur only when all of the following conditions have been met:

- Required environmental review process has been satisfactorily completed.
- Project closing documents are finalized.

The written CDBG-DR Multifamily Rental Recovery Program Agreement will reflect the following:

- A Project completion date acceptable to ADFA and the Recipient of the MRRP funds.
- Payment of the MRRP funds (e.g., how the funds will be disbursed), and
- Provisions for the timing of MRRP fund disbursements.

Administrative requirements prior to disbursement of funds include:

- Complete DRGR setup information has been submitted to ADFA and staff has completed DRGR activity setup.
- The preconstruction conference must be conducted with the development team and an ADFA representative.
- ADFA issues a Notice to Proceed. To ensure that all MRRP Program requirements have been met, no work shall begin until all documentation has been executed, a preconstruction conference has been held, and a Notice to Proceed is issued by ADFA.
- Payment details including timeline for reimbursement will be outlined in the Project closing documents, specifically the CDBG-DR MRRP Agreement.

Disbursement of CDBG-DR MRRP Program funds during construction will occur only when the following conditions have been satisfied:

- Draws will not be processed if the Owner is in default of program regulations
- The Project shall not have been materially damaged by fire or other casualty
- ADFA shall have received evidence satisfactory to ADFA that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction; and
- Owner shall have submitted at least 10 days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by ADFA including, without limitation, the following:
 - Current Contractor Tracking Form and lien waivers must be concurrent with the requested disbursement.
 - Evidence satisfactory to ADFA that the Project and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental impact statement is required.

- Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
- Such other supporting evidence as may be requested by ADFA or its agents to substantiate all payments which are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
- ADFA shall have determined that all CDBG-DR requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of Davis-Bacon compliance.
- ADFA shall have received a current inspection report from an ADFA inspector that verifies satisfactory completion of work to CDBG-DR standards.
- No determination shall have been made by ADFA that the undisbursed amount of the loan is less than the amount required to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

General ADFA requirements regarding reimbursement of costs include:

- Cost incurred prior to MRRP fund allocation shall not be reimbursed (except in the case of an eligible soft cost or an interim construction loan approved by ADFA).
- Retainage will be released after the final inspection is approved and upon ADFA's receipt of pay request and all completion documentation.
- Completion documentation required for release of retainage on rental activities include:
 - Final completed Project Breakdown Pay Estimate Itemization
 - Disbursement Certification Form (ADFA Form 2012)
 - ⊖ Owners Completion Certificate and Authorization of Payment to Contractors--(ADFA 1000)
 - Final Inspection Report by ADFA Inspector
 - Plumbing Certification
 - HVAC Certification
 - Electrical Certification
 - Certificate of occupancy(s) (for all buildings comprising the property)
 - Certificate and Release of Liens (ADFA Form)
 - Certification of Final Inspection (ADFA Form)

- Placed in Service Form (ADFA Form)
- Section 3 Compliance Report and Documentation
- Advertisement/Flyers/and any additional efforts to hire low and very low-income county residents)
- Names, address, telephone number, and type of work for all subcontractors
- Release of Liens by Contractor & Subcontractor(s)
- Cost Certification
- Warranty Information for all Products
- Copy of Tenant Selection Criteria
- Affirmative Fair Housing Marketing Plan Documentation
- Proof of advertisement, proof of flyers, proof of community contact letters being mailed, photo of Project sign, waitlist, and any other lease up marketing efforts)
- Proof of current Hazard/Liability Insurance naming ADFA as additional insured
- Management agreement between owner and agent

- Evidence of Operating Reserve requirements has been satisfied per application (Bank Statements)
- Completion of Project information in the ADFA Housing Registry Database
- Any additional information and/or documentation which ADFA staff may deem necessary and appropriate to ensure compliance

If any CDBG-DR MRRP funded Project has an available balance after development completion release of retainage, ADFA will de-obligate those funds and reallocate such balance of MRRP Program funds to other eligible activities in accordance with ADFA's most recently approved Action Plan or Action Plan Amendment.

Recapture of Funds

A Developer may be required to repay all or a portion of the funds received. The reasons for recapture include, but are not limited to the following:

- A Developer does not comply with the terms of the standard agreement.
- A Developer withdraws from the Program prior to completion of the Project and fails to meet a national objective.

- A Developer does not meet the affordability requirement.
- A Developer is found to have used program funds for an ineligible activity or cost.
- A Developer does not report the receipt of additional insurance, SBA, FEMA, non-profit assistance and/or any other Duplication of Benefits received after award.
- Funds are remaining after the Project is completed, the expenditure deadline has passed, or the CDBG-DR Multifamily Rental Recovery Program Agreement has expired.

The method of recapturing funds and the timeframe for doing so are determined on an individual Project basis. However, the recapture method and timeframe will be consistent with 2 CFR part 200 or other applicable cost principles. Complete recapture provisions will be included in the CDBG-DR Multifamily Rental Recovery Program Agreement with the Developer.

Project Management

Developers will operate the approved MRRP Project in accordance with local requirements, the CDBG-DR MRRP Policies and Procedures Manual, and as set forth in the CDBG-DR MRRP Agreement between ADFA and the Developer.

MRRP Projects funded under this CDBG-DR grant will adhere to standard requirements set by ADFA to ensure compliance, as well as specific requirements set by the governing federal income limits. ADFA will provide technical assistance to Developers to ensure compliance with CDBG-DR requirements and consistency with the MRRP Policies and Procedures Manual. In addition, regular monitoring of the Developer and specific Projects will be conducted to test compliance and ensure timely Project completion.

- A. The Developer shall be responsible for all management functions of the multifamily housing development including construction, rehabilitation, maintenance, selection of the tenants, annual recertification of Household income and size, and managing the units in accordance with program requirements.
- B. The Developer is responsible for all repair and maintenance functions of multifamily housing development, including ordinary maintenance and replacement of capital items. The Developer shall ensure maintenance of residential units, commercial space, and common areas in accordance with local health, building, and housing codes, and the management plan.
- C. The Developer shall ensure that the Multifamily Housing Development is managed by an entity actively in the business of managing affordable housing.

- D. The Developer shall develop a management plan prior to the start of construction. Any change to the plan shall be subject to the approval of the grantor. The plan shall be consistent with program requirements and should include the following:
- The role and responsibility of the Developer and its delegation of authority,
 - Personnel policy and staffing arrangements,
 - Plans and procedures for affirmatively marketing all housing units in a matter that ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor, and achieving early and continued occupancy,
 - Procedures for determining tenant eligibility and selecting tenants as well as notifying Applicants of eligibility and availability of an assisted unit and for certifying and annually recertifying Household income and size,
 - Procedures for notifying ineligible Applicants of the reason for ineligibility,
 - Procedures for maintaining a waiting list of eligible Applicants,
 - Plans for carrying out an effective maintenance and repair program,
 - Rent collection policies and procedures,
 - A program for maintaining adequate accounting records and handling necessary forms and vouchers,
 - Plans for enhancing tenant-management relations,
 - The management agreement, if any,
 - Provisions for periodic update of the management plan,
 - Appeal and grievance procedures,
 - Plans for collections for tenant-caused damages, processing evictions and terminations, and
 - A final supportive services plan for Projects serving Special Needs Populations, including Supportive Housing and/or providing Supportive Services to the general tenant population.

Records that Must be Maintained

This section outlines the records that must be maintained by CDBG-DR Program Recipients by category. Record-keeping requirements vary depending on the type of CDBG-DR activity being undertaken, as well as the type of CDBG-DR Program Recipient undertaking the CDBG-DR Project.

Program Records

The following program records must be maintained:

- Written agreement with ADFA and documentation of compliance with the written agreement,
- A copy of the application originally submitted to ADFA,
- Forms of assistance used, and
- Rental Projects must provide evidence of compliance with requirement that 51 percent of assisted families have incomes at or below 80 percent of median income at initial occupancy, if combined with another program the most restrictive

Project Records

Each CDBG-DR Program Recipient is responsible for maintaining records that are Project specific. The Project records that must be maintained include:

- Description of each Project:
 - Location (address and/or legal property description) (with a map),
 - Form of assistance, and
 - Number and identification of units or tenants associated with CDBG-DR.
- Source and application of funds to include eligibility and permissibility of Projects costs,
- Compliance with underwriting evaluation, maximum per-unit subsidy limits and subsidy layering guidelines,
- Compliance with property standards and lead-based paint requirements upon completion and for the duration of the affordability period,
- Compliance with income-eligibility requirements,
- Compliance with income targeting, affordability, lease requirements and financial conditions,
- If multifamily new construction, results of the site and neighborhood standards review conducted, and
- If pre-award costs, compliance with applicable requirements.

Financial Records

The following financial records must be maintained:

- Source and application of funds,
- Treasury and local federally funded accounts,
- Source and application of Program Income, repayments and recaptured funds, and
- Budget control measures, including periodic account reconciliations.

Program Administration Records

These program administration records must be maintained:

- Compliance with written agreements,
- Copies of written policies, procedures, and systems, including risk assessments and a system for monitoring entities,
- Compliance with applicable uniform administrative requirements, and
- Inspections, monitoring reviews and audits, as well as resolution of any findings or concerns.

Documentation Records

Records documenting compliance with the following additional Federal requirements must also be maintained:

- Equal opportunity and fair housing,
- Affirmative marketing and minority/women's business outreach,
- Environmental review,
- Acquisition, relocation, displacement and replacement of housing,
- Davis-Bacon and Section 3,
- Lead-based paint,
- Conflict-of-interest, and
- Debarment and suspension.

RECORD RETENTION

- The record retention period is three (3) years. This is in keeping with Consolidated Plan requirements.
- **Rental:** For rental housing records:
 - General records must be kept for three years after Project completion, and
 - Tenant income, rent and inspection information must be kept for the most recent three years, until five years after the affordability period ends.
- **Written agreements:** Generally, all written agreements must be maintained for three years after the agreement ends.
- **Displacement and acquisition:** Displacement and acquisition records must be kept for three years after final payment to each displaced person.

Access to Records

- ADFA and its grantees must provide citizens and other interested parties with reasonable access to records. Access must be consistent with applicable state and local laws regarding privacy and obligations of confidentiality.
- HUD and the Comptroller General of the United States, or any of their representatives, have the right to access any records of PJs and Recipients for auditing, excerpt, or transcript purposes.

Reports Required by ADFA

ADFA requires that Developers complete Project Setup and Completion Reports for all Projects.

Project Setup and Completion Reports. Upon Project completion, all CDBG-DR Program Recipients are required to submit a Project Setup and Completion Form to ADFA with request for retainage payment. If the rental unit is vacant at the time of retainage request, the program Recipient must resubmit completion data within 120 days with the Household characteristics once the unit has been leased.

- The forms used differ by activity and are available on ADFA's website.
- ADFA Program Staff will report the data provided by all Recipients in Quarterly Performance Reports in the DRGR system and report completed Projects to HUD.

Monitoring and Compliance

HUD describes monitoring as an integral management control standard and requires any entity receiving HUD funding to monitor and evaluate program performance and compliance (see CDBG Regulation 24 CFR 570.501(b) and Office of Management and Budget (OMB) Uniform guidance at 2 CFR 200 effective July 1, 2015). Therefore, ADFA monitors all CDBG-DR activities. ADFA is required to ensure that its Developers comply with all regulations governing administrative, financial, and programmatic operations, and that they achieve performance objectives on time and within budget. Monitoring enables ADFA to verify compliance with both regulatory and performance requirements.

In the event a Developer disagrees with a finding and/or any accompanying corrective actions or sanction(s) that are associated with such finding, the Developer shall follow ADFA's appeals process.

After a qualified development has been placed in service, ADFA or its representative will initiate compliance monitoring reviews. ADFA's staff will audit each development within 180 days following the first taxable credit year and once every three years throughout the compliance period.

Physical Monitoring

Physical inspections should include the inspection of the exteriors of all buildings and common areas and the inspection of the interior of income restricted units to ensure compliance with NSPIRE or current physical inspection standards. ADFA or its representative will conduct on-site inspections of all buildings in the Project and will randomly select at minimum 20% of CDBG-DR units for inspection.

Program Monitoring

File reviews will be conducted via a desk audit through the Programs Portal. The grantor will correspond with the management staff and review performance under the contract for the following topics:

1. Initial Affordable Rents and subsequent rents during the period of affordability,
2. Initial and annual certification of tenant income LMI benefit (minimum 5 or 20% Affordable Units),
3. Affirmative Marketing requirements, and
4. Fair Housing requirements.

Financial Monitoring

ADFA shall annually review the development's financial statements to ensure the development continues to be operated in a fiscally responsible manner, addressing all debt service obligations and adequately funding Project reserve accounts. Bank statements of operating and replacement reserves will be uploaded to the Programs Portal. Additionally, third party audits are required annually.

Record Retention

All records and books relating to the initial development phase of the CDBG-DR Project (application through Project completion) shall be retained for a minimum period of three (3) years after ADFA notifies the Developer that the grant agreement between HUD and the State of Arkansas has been closed. Subsequent to closeout of the grant agreement between HUD and the State of Arkansas, all records and books relating to the operational phase of the Development shall be retained for the most recent three (3) year period, until three years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by ADFA, HUD, or its representative.

Grant Closeout

The closeout of a grant is a process through which HUD determines that all applicable administrative and program requirements of the grant were completed. In general, a grant is ready for closeout when the following conditions are met:

- All eligible activities were completed and met a national objective
- All grant funds were expended in full, or all remaining funds are planned to be returned to HUD.
- All reporting requirements were completed and submitted (except for the final report that is submitted during the closeout process, if applicable).
- Any special conditions of the grant were met.
- All audit and monitoring issues affecting the grant were resolved.

Developers are required to retain all books and records pertaining to the CDBG-DR Projects for at least three (3) years after ADFA notifies the Developer that the grant agreement between HUD and the State of Arkansas has been closed.

SCORING CRITERIA

<p>Projects providing a greater ratio of affordable rental units to total units (i.e. a Project where more than 51% of the total units are 80% AMI or below)</p> <p>51%-60% greater ratio of affordable rental units</p> <p>61% -70% greater ratio of affordable rental units</p> <p>71% - 80% greater ratio of affordable rental units</p> <p>>81% greater ratio of affordable rental units</p>	<p>20</p> <p><i>Points in this section include:</i></p> <p>51%-60%- 5 points</p> <p>61% to 70%- 10 points</p> <p>71% to 80% - 15 points</p> <p>>81%- 20 points</p>
<p>Resilient Sustainable Construction Measures</p> <p>All new construction activities are required to follow the guidelines specified in the HUD CPD Green Building Checklist and meet an industry-recognized standard that has achieved certification under at least one of the following programs:</p> <ul style="list-style-type: none"> • ENERGY STAR (Certified Homes or Multifamily High Rise) • Enterprise Green Communities • LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development) 	<p>3</p>

<ul style="list-style-type: none"> • ICC 700 National Green Building Standard • EPA Indoor AirPlus (ENERGY STAR a prerequisite) • Any other equivalent comprehensive green building program <p>Substantial Rehabilitations must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, to the extent applicable.</p>	
<p>Site Selection</p> <p>The site location will be evaluated for accessibility and proximity to services appropriate to the type of housing proposed and residential character of the surrounding area.</p> <p>The Application shall identify the name, driving directions, and distance from the development to the site amenities listed below.</p> <p>3 points each for the following site amenities located within three (3) miles of the site. Site amenities must be appropriate for the population served. Distances will be measured by the shortest available driving distance from the development’s address to the applicable address of the site amenity as calculated by Google Maps. Points will only be given for the site amenities listed below:</p> <ul style="list-style-type: none"> • Grocery store or supermarket, • Pharmacy or drug store, • School, daycare or education center (cannot be awarded if 100% elderly only property), • Public Park or Green Space (does not include school grounds), • Book lending public library, • Daily operated senior center or facility offering daily services for seniors (can be awarded only if 100% elderly property), • Hospital, health clinic, or medical doctor’s office (medical doctor’s office must have a general practitioner.), • Public transportation, and • Access to Pedestrian Trails. <p>Site amenities presented for scoring shall be referenced in the Market Study map. All site amenities presented for scoring must list a contact person and a verifiable phone number in the Application.</p> <p>3 Points if at least four residential units are within 0.5 miles of the</p>	<p>27</p>

<p>site boundary and occupied as of the application deadline. Points will be deducted for site selection. There is not a limit on the total number of points that can be deducted.</p> <p>3 Points will be deducted if incompatible uses are adjacent to the site (adjacent is defined as nearby, but not necessarily touching).</p> <p>2 Points will be deducted if incompatible uses are within 0.3 miles (approximately 500 yards) of the site. Distances are measured by lineal distance or “as the crow flies”. The following list of incompatible uses is not exclusive:</p> <ul style="list-style-type: none"> • Junk Yard, Public Dump, or Solid Waste Disposal; • Pig Farm or Chicken Farm; • Prison or Jail; and • Airport <p>Scoring considerations will also include, among other things, site suitability regarding topography (grade, low-lying area, flood plain, or wetlands).</p>	
<p>Total</p>	<p>50</p>

