

Subrecipient Manual

Hurricane Ian CDBG-DR

Program Manual Revision History

Version	Date	Revision Description
1.0	12/05/2023	Original Version
2.0	3/28/2024	Updates provided by Capital Access to clarify language surrounding HUD requirements in each Chapter.
3.0	4/26/2024	Chapter 2: Eligible Activities and National Objectives updated to clarify the use of the HUD tool will only be utilized to confirm the LMA service area for all projects using the LMA National Objective.

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1 Subrecipient Manual Introduction

1.1 Overview

The U.S. Department of Housing and Urban Development (HUD) awarded Lee County \$1,107,881,000 in funding to support long-term recovery efforts following Hurricane Ian (FEMA – 4673 – DR) through the Office of Disaster Recovery (ODR) within the Office of Community Planning and Development. Community Development Block Grant-Disaster Recovery (CDBG-DR) funding is designed to address needs that remain after all other assistance has been exhausted.

To meet disaster recovery needs, the statutes making CDBG-DR funds available have imposed requirements and authorized HUD to modify the rules that apply to the annual CDBG program to enhance flexibility and allow for a quicker recovery. HUD has allocated \$1,107,881,000 in CDBG-DR funds to Lee County in response to Hurricane Ian (FEMA – 4673 – DR), through the publication of the Federal Register, 88 FR 32046 (*May 18, 2023*). <https://www.govinfo.gov/content/pkg/FR-2023-05-18/pdf/2023-10598.pdf>. This allocation was made available through PL 117-328: Consolidated Appropriations Act, 2023.

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is the lead and responsible agency for administering the CDBG-DR funds allocated to Lee County. The Action Plan describes SRGA's analysis of the collective local impact of Hurricane Ian (DR 4673), the remaining unmet needs, and the County's plan for distribution of funds to the households and areas of the County most impacted by the storm. Lee County is committed to directing CDBG-DR funds to benefit low- and moderate-income households and areas, in accordance with Section 103 of the Housing and Community Development Act. To ensure that projects are deployed in a timely manner and to streamline the recovery process, HUD provided multiple waivers and flexibilities in 88 FR 32046. Lee County will utilize these waivers and flexibilities as much as possible to ensure quick deployment of funds and a speedy recovery for the community.

The policies and procedures outlined in this Manual provide the framework for the successful implementation and timely completion of CDBG-DR funded programs, projects, and activities. This manual serves as a guide for key staff to utilize required grant and financial management systems to meet the primary objectives of the Action Plan. Those objectives are as follows:

- Create and preserve safe, resilient, and affordable housing opportunities.
- Assist individual property owners to recover from the impacts of the disaster;
- Restore critical public facilities and infrastructure;
- Mitigate future disaster impacts through infrastructure investments;
- Deliver essential public services that support individual and community-wide recovery; and
- Plan for future resiliency.

1.2 Purpose

The purpose of this subrecipient manual is to provide management support to CDBG-DR subrecipients, while ensuring that all subrecipients adhere to federal and Lee County grant rules. It is designed to help subrecipients understand the requirements that apply to the use of federal funds for the delivery of CDBG-DR programs and activities. The Federal Register notice will highlight the modifications to the day-to-day processes of a grant as well as introduce the requirements and changes for each category.

This manual is a supplement to applicable federal, state, and local regulations, standards, and Lee County Standard Operating Procedures (SOPs). The basic program regulations governing management and financial systems for the CDBG-DR programs are contained in the Code of Federal Regulations Title 24 part 570 (24 CFR 570), Title 2 part 200 (2 CFR 200), and 88 FR 32046 dated May 18, 2023.

As necessary, revisions or additions to this manual will be issued to current administrators of CDBG-DR projects. This manual should be retained and kept up to date to ensure effective administration of CDBG-DR grants. The latest versions of the manual can be found on Lee County's website.

1.3 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

1.4 Source Documents

File Name	2023 Lee County CDBG-DR Implementation Plan
File Location/Link	CDBG-DR (arcgis.com)

File Name	2023 Lee County Action Plan CDBG-DR Funds
File Location/Link	Action Plan CDBG-DR (arcgis.com)

File Name	24 CFR part 570
File Location/Link	https://www.ecfr.gov/current/title-24/part-570

File Name	2 CFR part 200
File Location/Link	https://www.ecfr.gov/current/title-2/part-200

2 Eligible Activities and National Objectives

2.1 Overview

All CDBG-DR funded activities must address an impact of the disaster for which funding was allocated. Accordingly, each activity must:

1. Address a direct or indirect impact from the disaster in a most impacted and distressed area;
2. Be a CDBG-DR eligible activity (or be eligible under a waiver or alternative requirement); **and**
3. Meet a national objective.

The appropriations act provides an additional allocation amount for mitigation of hazard risks that does not require a connection to the qualifying major disaster. The requirements for the use of these CDBG-DR mitigation set-aside funds are described in the Lee County Action Plan.

As required by the Federal Register, Lee County will spend at least 70 percent of the overall grant on activities that will benefit persons who are low- and moderate- income. Because the whole of Lee County has been identified by HUD as a most impacted and distressed area (MID), one-hundred percent (100%) of CDBG-DR funds will be spent in the MID.

Ineligible activities are defined in 24 CFR 570.207, these include, but are not limited to, buildings or portions thereof used for conduct of government; general government expenses; political activities; purchase of equipment (except as provided for in 24 CFR 570.201(c)); operating and maintenance expenses; and income payments.

All eligible activities will be required to meet a national objective in accordance with HUD guidelines in 24 CFR 570.208. Applications submitted for CDBG-DR funding must include a description of the nature of the activity, the specific areas and populations served, and the intended national objective for the proposed activity.

Eligible national objectives must align with HUD guidelines based on the eligible activity type. A matrix detailing the national objective by activity type should be reviewed here: <https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Table.pdf>.

For LMA National Objective ONLY: Lee County will use HUD provided data to determine LMI Areas and support the selection of that national objective for applicable activities. HUD provides instructions and resources to perform this analysis at the following website:

<https://www.hudexchange.info/programs/cdbg/cdbg-low-moderate-income-data/>

Lee County will follow the link to the American Community Survey Low/Moderate Income Summary Data from 2011-2015. Using either the online Map Application or the All Block Group data set. Lee County will ensure that each activity file contains the map and or data set demonstrating the total population, LMI population, and LMI percentage of the appropriate block groups in the activity's service area.

For more information regarding HUD's guidance on national objectives and eligible activities, please refer to the Guide to National Objectives and Eligible Activities for State CDBG Programs - HUD Exchange.

Urgent need may be used as an eligible national objective for certain designated activities that are of a particularly critical nature to the recovery or resiliency of a community, but do not meet the criteria for other national objectives. Such activities must demonstrate urgency and impact on recovery.

2.2 Procedure

Subrecipients should refer to the Lee County Action Plan and NOFAs for individual programs for information on eligible activities and national objectives for a specific CDBG-DR program or activity.

2.3 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

2.4 Source Documents

File Name	2023 Lee County CDBG-DR Implementation Plan
File Location/Link	CDBG-DR (arcgis.com)

File Name	2023 Lee County Action Plan CDBG-DR Funds
File Location/Link	Action Plan CDBG-DR (arcgis.com)

File Name	24 CFR part 570
File Location/Link	https://www.ecfr.gov/current/title-24/part-570

File Name	2 CFR part 200
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File Location/Link	https://www.ecfr.gov/current/title-2/part-200
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3 Citizen Participation

3.1 Overview

As required by CDBG-DR program regulations, Lee County has adopted a CDBG-DR Citizen Participation Plan (CPP). The CPP describes the procedures that Lee County will follow to implement the citizen participation process in accordance with the applicable regulations.

For CDBG-DR purposes, Lee County will generally follow the policies outlined in 24 CFR 91.105 while leveraging waivers and alternative requirements provided in the Notices where appropriate. Subrecipients are required to comply with citizen participation requirements established by Lee County. Citizen participation requirements may vary depending on the type of program or activity being carried out by the subrecipient.

3.2 Procedure

1. Subrecipients must ensure that citizens, including persons with disabilities, and individuals with limited English proficiency (LEP) are provided reasonable and timely access to information about the program or activity being implemented. Subrecipients will be required to hold at least one public hearing (virtual and/or in-person) and allow for public comment during the meeting. The public meeting must be completed prior to the submission of the application to receive public input and furnish citizens information, including but not limited to:
 - a. The amount of CDBG-DR funds being requested;
 - b. The range of eligible activities that may be undertaken with the requested funds;
 - c. The amount of CDBG-DR funds proposed to be used for activities that will meet the national objective of benefit to low- and moderate-income persons; and,
 - d. If the proposed CDBG-DR activities will likely result in displacement of homes or business.
2. If required as part of a NOFA or other application process, subrecipients will provide citizens with reasonable advance notice of, and opportunity to comment on, proposed CDBG-DR activities in an application to Lee County. If an activity is substantially changed in terms of purpose, scope, location, or beneficiaries after funding, subrecipients must consult with Lee County regarding the need for additional citizen input.

The subrecipient, at a minimum, must perform the following activities in advance of all public hearings:

- a. Develop the hearing notice with the following elements:
 - i. Public notice of any hearings should be published to provide reasonable notice prior to the scheduled hearing. The subrecipient must demonstrate when and how the hearing was advertised. Each

public notice must include the date, time, location and topics to be considered at the public hearing. Notices could include publication in the newspaper, postings on the subrecipients website and/or other social media, media advertisements, electronic mailings, prominent posts in public buildings and distribution to local Public Housing Authorities and other interested community groups.

- b. Description of the project;
 - c. Description of CDBG-DR funding available and parameters for assistance;
 - d. Amount of CDBG-DR funds being requested and for which activities;
 - e. Anti-displacement plan (if applicable) due to activity undertaken;
 - f. Record of past uses of CDBG-DR;
 - g. Summary of other important program requirements and available technical assistance;
 - h. Information for persons with disabilities on how to request an accommodation, including how to request documents in an alternative format;
 - i. Information how individuals with Limited English Proficiency can access translation services; and
 - j. The Telecommunications Relay Service number, 711.
3. Subrecipients must adopt a written citizen complaint policy that provides citizens with the address, phone number, and times for submitting complaints and grievances. The policy must also provide that timely written answers to written complaints and grievances will be provided within 15 working days where practicable. Subrecipient complaint policies may direct citizens to submit complaints related to CDBG-DR funded activities to Lee County, through any of the following means:
- a. Via email at: recovery@leegov.com
 - b. Online at: www.leegov.com/recovery/cdbg-dr
 - c. Mailed to: Lee County Government County Administration c/o Strategic Resources and Government Affairs, PO Box 398, Fort Myers, FL 33902
4. Subrecipients will provide interested parties with reasonable and timely access to information related to public hearings and the subrecipient's use of CDBG-DR funds.

3.3 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

4 Financial Management

4.1 Overview

Subrecipients must maintain a financial management system that meets the requirements found in 2 CFR Part 200 and the applicable subrecipient agreement. In general, these requirements specify that a subrecipient:

1. Provides effective internal control over the accountability for all funds, property, and other assets; adequately safeguards these assets and confirms the assets are used for authorized purposes.
2. Identifies the source and application of funds for CDBG-DR-funded activities.
3. Establishes procedures to verify cost reasonableness, cost allowability, allocable costs, applicable credits, and the composition of costs as either direct or indirect, as noted in 2 CFR Part 200, Subpart E- Cost Principles.
4. Ensures that the CDBG-DR funds used do not violate any applicable restrictions or prohibitions.
5. Permits the accurate, complete, and timely disclosure of financial results.
6. Minimizes the time elapsed between transfer of funds from the County and disbursement by the subrecipient.

4.2 Procedure

Subrecipients should refer to the Lee County Financial Management Manual for detailed guidance on financial management requirements including:

- Financial Management Systems
- Program Income
- Audit
- Fraud, Waste and Abuse
- Insurance
- Fixed Assets
- Duplication of Benefits

File Name	Lee County Financial Management Manual
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/pages/policies-and-procedures

4.3 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding. To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com
Phone: 239-533-2315

5 Subrecipient Agreement

5.1 Overview

Lee County may engage program partners through formal agreements such as subrecipient agreements and interagency agreements. Lee County will select program partners through competitive application processes that ensure potential subrecipients and other partners have the capacity and expertise required to administer the proposed project or activity. Lee County will provide technical assistance and training to partners on program requirements, applicable federal cross-cutting requirements, and reporting and performance requirements.

After completion of the subrecipient NOFA process, the County will award subrecipient or other applicable agreements with the selected entity using established templates that are reviewed by the County Attorney's Office prior to execution. All subrecipient and other agreements are tracked by the Office of Strategic Resources and Government Affairs (SRGA) staff to ensure performance metrics are met and timely expenditure requirements are being maintained. Any amendments, corrective action plans, or task orders will be tracked in a centralized system to ensure that Lee County is monitoring the entire performance and health of the subrecipient.

This Subrecipient Manual is meant to assist the subrecipient in complying with the provisions of the subrecipient agreement. The guidance in the Subrecipient Manual does not replace or amend any of the provisions included in the subrecipient or applicable agreement and should not be used in lieu of reading the subrecipient or applicable agreement. Should there be any disagreement between the executed subrecipient agreement and information in the Subrecipient Manual, the provisions contained within the subrecipient agreement shall prevail.

5.2 Procedure

5.2.1 *Initial Risk Assessment*

Prior to the finalization of any written agreement with a subrecipient, County staff will conduct a risk assessment to evaluate the capacity of potential subrecipients. Subrecipient capacity will be assessed during the application process (typically a Notice of Funding Availability). Each subrecipient applicant will be required to submit information to demonstrate adequate capacity to administer CDBG-DR funds. Specifics on the areas that are assessed will be included in the NOFA or a similar procurement document.

5.2.2 *Pre-Award Subrecipient Documentation*

Subrecipient documentation is maintained by Lee County in a shared filing system. If an organization fails to submit any required documents by a specified due date, the subrecipient agreement may be withheld, award of funds may be cancelled, or payment withheld until all requirements are satisfied. All documentation must be uploaded within

the recordkeeping system and reviewed by the assigned Program Manager prior to execution of any written agreement.

5.2.3 *Duplication of Benefits (DOB) Review*

Prior to executing an agreement and moving forward with finalizing the scope of work and budget, Lee County SRGA will perform a second DOB check. Applicants will be required to submit new DOB forms during the agreement drafting process. Lee County SRGA will review the forms and supporting documentation to ensure there is a continued unmet need and no duplicate benefit has occurred. For more information on Duplication of Benefits please refer to Program Policies and Procedures.

5.2.4 *Subrecipient Agreement Negotiation and Drafting*

After verification of adequate documentation, the assigned staff will begin drafting the agreement using the subrecipient's application for funding. The scope of work and budget provided through that process will serve as the basis for the draft contract.

Staff will review all cross-cutting and regulatory requirements that are applicable to the project. This may include, but is not limited to, Environmental Review, Section 3, Davis-Bacon Act, Build America Buy America Act, Equal Access Rule, Americans with Disabilities Act, and other regulations. Staff will consult the Federal Register Notice (88 FR 32046) and governing regulations, including but not limited to, 24 CFR 570, to confirm applicable cross-cutting requirements. The assigned staff will ensure that the applicable exhibits and requirements are included within the agreement.

SRGA staff will request an environmental review and complete any necessary reporting and financial management steps prior to the execution of any written agreement or obligation of any funds. Subrecipient agreements are prepared utilizing the standard template for CDBG-DR funds` approved by the County Attorney's Office.

A draft agreement will be provided to the subrecipient after the project award. Subrecipients will be required to participate in an onboarding session with County staff prior to contract execution to review the agreement in its entirety along with all associated deliverables.

Execution by the subrecipient and the county will occur after all federal requirements have been met (i.e., environmental review, Section 504, EEO requirements, etc.). Execution of the agreement indicates understanding and agreement to comply with all Lee County requirements. Lee County reserves the right to cancel any grant award, temporarily suspend payments, or to take other actions in the event a subrecipient's material fails to comply with Lee County requirements.

NOTE: The environmental review must be completed before a subrecipient commits or obligates any CDBG-DR funds (except for exempt activities, such as administration or architectural/engineering services).

5.2.5 *Subrecipient Agreement Amendments*

In the event a subrecipient requests programmatic, budget, or schedule changes, the subrecipient must contact SRGA for review and approval. Staff will review the request and determine if an amendment to the agreement is required. If an amendment to the agreement is required, County staff will initiate the amendment process. Subrecipients should not make any programmatic, budget or schedule changes prior to receiving County approval in writing.

The Board of County Commissioners (through an Agenda Item) must approve the following types of amendments:

- Increases in total budgeted funds
- Changes to program design that impact outcomes or target population
- Changes or additions to the standard provider contract language not for the purpose of correcting original omissions or clarifications of original contract intent.

Fully executed amendments shall be distributed to the following:

- Subrecipient Organization
- Contract File
- Lee County Clerk of Courts Minutes Department (SRGA Distributes)
- Fiscal Department

Amendment processing will be managed by Lee County per standard processes.

5.2.6 *On-Boarding and Technical Assistance*

Subrecipients are expected to familiarize themselves with all applicable federal and Lee County requirements. These requirements include but are not limited to, performance measures, financial management, reporting, and record keeping requirements. Assistance is available from SRGA staff and the Program Management and Implementation vendor in the following areas:

- Orientation
- Training
- Technical assistance.

SRGA will facilitate subrecipient on-boarding for all CDBG-DR subrecipients. This process will include a review of all requirements outlined in the subrecipient agreement, including applicable County established performance metrics and federal, state, and local regulatory requirements. In addition to on-boarding, SRGA Program Managers will collaborate with its Program Management and Implementation vendor, HGA, to facilitate regular technical assistance sessions and office hours for subrecipients. These sessions will reduce potential risks associated with staff turnover and create open lines of communication between Lee County and all its subrecipients.

5.3 Additional Forms

File Name	Subrecipient Agreement Template.docx
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/

File Name	Other Documents to be executed with the subrecipient agreement.docx
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/

File Name	Onboarding Material.docx
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/

File Name	Training Material.docx
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/

5.4 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

5.5 Source Documents

File Name	Managing CDBG: A Guidebook for Grantees on Subrecipient Oversight
File Location/Link	https://www.hudexchange.info/resource/6577/managing-cdbg-guidebook-for-cdbg-grantees-on-subrecipient-oversight/

6 Procurement

6.1 Overview

Lee County will ensure that all procurement activities by subrecipients are undertaken in accordance with 2 CFR 200.318 - 200.327. When expending CDBG-DR funds, 2 CFR 200.318(a) requires subrecipients to “have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward.” Therefore, subrecipients must comply with the “most restrictive” procurement requirements contemplated by Federal and State and local law.

Florida laws relative to the procurement process are found generally in Chapter 255, Florida Statutes and Chapter 287, Florida Statutes.

Federal procurement standards in 2 CFR 200 that subrecipients must follow include:

- All procurement transactions for the acquisition of property or services must be conducted in a manner providing full and open competition.
- Subrecipients must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Other situations considered to be restrictive of competition are outlined in 2 CFR 300.319(b).
- Subrecipients must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition; and
 - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- Noncompetitive procurements can only be awarded in accordance with 24 CFR 200.320(c) and Lee County approval.
- Subrecipients must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include those listed in 2 CFR 200.321(b).

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, [2 CFR part 180](#). The regulations in [2 CFR part 180](#) restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

For more information, please refer to Lee County's Procurement Ordinance located here:

File Name	Lee County Procurement Ordinance
File Location/Link	https://www.leegov.com/procurement/essential-policy-and-procedures1

6.2 Overall Procurement Requirements

6.2.1 *Environmental Review and Bidding*

The environmental review process must be completed prior to bidding to allow for responses from other interested parties and to allow for any modifications or project cancellation based on the environmental review.

Please refer to Lee County's CDBG-DR Environmental Review SOP for more information.

File Name	CDBG-DR Environmental Reviews SOP
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/pages/policies-and-procedures

6.2.2 *Minority Business Enterprises/Women Business Enterprise*

2 CFR 200.321 requires subrecipients to take affirmative action to contract with small and minority-owned firms and women business enterprises. Lee County does not require set asides or participation quotas, but subrecipients are expected to make special efforts to award contracts to MBE and WBE firms. Goals for minority participation in construction are below:

- The nationwide goal for female participation is 6.9 percent.
- Minority goals are specific to "Economic Areas" the goal for Lee County is 15.3 percent.

Subrecipients are required to notify MBE/WBE firms of the opportunity to bid on CDBG-DR funded contracts. Each subrecipient must ensure appropriate outreach has been completed to ensure MBE/WBE firms have the opportunity to participate in the CDBG-

DR program. Subrecipients will need to establish outreach steps to comply with the MBE/WBE requirements. This could include:

- Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- Maintaining a list of qualified small, minority, and female owned businesses.
- Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U. S. Department of Commerce and the Community Services Administration as required.
- Including MBE and WBE firms on solicitation lists and sending them an Invitation to Bid.
- When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs.
- Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs.
- If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.
- Setting aside a percentage of CDBG-DR funds to be awarded to MBE/WBEs.
- Including MBE/WBE criteria with additional points in selection criteria for professional services procurement.

6.2.3 *Section 3*

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD investments, to the greatest extent feasible, are directed to low- and very low-income persons and to business concerns which provide economic opportunities to low- and very low-income persons. The goal is to keep dollars local and help foster local economic development, neighborhood economic improvement, and individual self-sufficiency.

Lee County and its subrecipients will make every effort to ensure subrecipients of Section 3 covered funding as well as their contractors and subcontractors comply with Section 3 responsibilities, as outlined in 24 C.F.R. Part 75, Subpart C which became effective on November 20, 2020.

Section 3 applies to recipients of \$200,000 or more in CDBG-DR assistance. The types of projects that are covered by Section 3 are housing construction, demolition, rehabilitation, or other public construction (e.g., infrastructure or community facilities). Section 3 also applies to the entire project even when the CDBG-DR funds are only a portion of the total funding. For more details on complying with Section 3, please refer to Section 10 of this manual.

6.2.4 *Conflict of Interest and Standards of Conduct*

Subrecipients must adhere to the conflict of interest requirements in 2 CFR Part 200 to prevent conflicts of interest in procurement. This pertains to all employees, officers, agents of the grantee, members of their immediate family, and partners. Subrecipients shall prevent the provision of financial interest or other benefits earned for any of these persons due to a CDBG-DR-related procurement action. These persons also cannot solicit or accept gratuities, favors or other items of monetary value from contractors. No person, business or organization shall be allowed to give, nor shall any Local Officer or County employee accept a gift with a value in excess of \$100 unless such a gift is accepted on behalf of the County by the supervising Contract Employee prior to its receipt.

In accordance with 24 CFR 570.489(h), 24 CFR 570.611, 2 CFR 200.317-318, and 2 CFR 200.112, no Covered Individuals (defined as an employee, agent, consultant, officer, or elected official who exercise or have exercised any functions or responsibilities with respect to CDBG-DR activities assisted, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities), may obtain a financial interest or benefit from a CDBG-DR assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-DR assisted activity, or with respect to the proceeds of the CDBG-DR assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

In addition, State of Florida's Code of Ethics for Public Officers and Employees, adopted by the Legislature as Part III of Chapter 112, Florida Statutes states in section 112.311(5) that no state employee "shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest."

Covered Individuals who have a potential or actual conflict of interest in relation to activities funded in whole or in part with CDBG-DR are required to complete the CDBG-DR Conflict of Interest Disclosure Form. Although not every circumstance will be deemed an actual conflict, all Covered Individuals must disclose a potential, actual, real, or perceived conflict.

6.2.5 Separation of Duties

Subrecipients must be vigilant to eliminate the possibility of fraud in the procurement process. One of the most important checks and balances to limit fraud is through the separation of duties of staff. The person tasked with ordering the goods or managing the procurement process should be different from the person receiving and accepting the goods and the person paying for the order. When this is not possible due to the limited size of staff, subrecipients should have additional rules in place, such as limiting dollar authorizations and periodic reviews by an independent individual. Subrecipients should ensure that only designated individuals have the authority to make binding contracts. If the subrecipient has limited staff, there should be some procedure in place to provide for

independent oversight. The subrecipient's procurement procedures should outline the positions involved in the procurement process and the responsibilities of each person, a formal system of authorization and review, and separation of duties. A good practice is that if an employee touches the money, mail, or goods purchased, that employee should not touch the books.

6.2.6 Open Competition

CDBG-DR procurement must be conducted in a manner that ensures full and open competition consistent with the standard set forth in 2 CFR 200. All services to be provided must be procured in accordance with 2 CFR Part 200 and Lee County's Procurement Code. Actions that might restrict competition would include:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specificizing only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

6.3 Methods of Procurement

Subrecipients must have and use documented procurement procedures consistent with the standards of 2 CFR 200.317, 200.318, 200.319 and the procurement requirements established by Lee County. The following methods of procurement are used for the acquisition of property or services using CDBG-DR funds:

6.3.1 Micro-purchases

Subrecipients may award contracts for the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000, unless further limited by local law, without soliciting competitive price or rate quotations if the subrecipient considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly. To the maximum extent practicable, the subrecipient should distribute micro-purchases equitably among qualified suppliers.

6.3.2 Small Purchase Procedures

The small purchase procedures allow subrecipients to acquire goods and services totaling no more than \$249,999, without publishing a formal request for proposals or invitation for bids. This method of procurement is typically used to purchase commodities such as equipment or other materials. In the event the subrecipient is purchasing materials that will exceed \$249,999, it shall use the sealed bid process or the request for

competitive proposals process. The small purchases method can also be used to acquire eligible types of services, such as consulting, environmental review, or planning.

For the acquisition of professional services¹ subrecipients must comply with Section 287.055, Florida Statutes, known as the “Consultants’ Competitive Negotiation Act” (or “CCNA”). When professional services must be purchased for a project the basic construction cost of which is estimated by the subrecipient to exceed the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FIVE (currently set at \$325,000) or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO (currently set at \$35,000), except in cases of valid public emergencies certified by Lee County, subrecipients must use the competitive proposal method.

The Small Purchase method cannot be used if the services contract exceeds \$249,999 in value or is subject to the competitive selection provisions of the CCNA. If the services contract exceeds \$249,999 or is subject to the competitive selection provisions of CCNA, the subrecipient shall issue an RFP or RFQ under the competitive proposals approach as described below.

In general, the small purchases procedures shall not be used to acquire construction contractors. Subrecipients shall ensure that these acquisitions occur under the sealed bid approach described below or the RFP approach for individual housing rehabilitation or reconstruction contracts as outlined below. Under the small purchase method, subrecipients shall send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, it shall receive competitive written quotations from an adequate number of qualified sources. Each quote should include pricing information that allows subrecipients to compare costs across bidders and ensure cost reasonableness. Documentation of the quotes shall be maintained in the subrecipient’s files. The award shall be made to the lowest responsive and responsible source.

6.3.3 *Sealed Bids*

Sealed bids (Formal Advertising) shall be used for all construction contracts, with the exception of construction contracts for individual housing or reconstruction contracts, or for goods costing more than \$249,999. Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. In order for formal advertising to be feasible, the following minimum conditions must be present:

¹ Professional services mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. Section 287.055(2)(a), F.S.

- A complete, adequate and realistic specification or purchase description is available.
- Two or more responsible suppliers are willing and able to compete effectively for a grantee's business.
- The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.
- When the competitive sealed bid (formal advertising) process is used, the following requirements apply:
 - Publication Period: As per Lee County Ordinance No. 23-21, Section 5.2 the invitation for bids must be publicly advertised and bids solicited from an adequate number of suppliers. The solicitation for any construction project that is projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the County where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation for any project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The Advertisement shall include a general description of the Commodities, Services or Construction to be Purchased, the location where Specifications may be obtained, closing date, and the time and place for receipt of and the opening of the Competitive Procurement.
- All advertisements shall be listed on the official County website.
- Clear Definition: The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for bidders to properly respond to the invitation.
- Public Opening: All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids.
- Selection and Contracting: A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. The "cost plus percentage" and "percentage of costs" method are not allowed.
- Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest.
- Rejection of all Bids: All bids may be rejected when sound documented reasons exist.

- Such documentation shall be made a part of the procurement files and maintained on the System of Record.

6.3.4 *Competitive Proposals*

Competitive proposals are used to purchase services where:

- The total cost of the services will exceed \$249,999: or
- For “professional services” as defined in the CCNA, when professional services must be purchased for a project the basic construction cost of which is estimated by the subrecipient to exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FIVE (currently set at \$325,000) or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO (currently set at \$35,000).

Under this procurement method, a subrecipient must publish a written request for submissions and then review these submissions based on established selection criteria. A subrecipient shall solicit proposals from an adequate number of qualified sources. Under this approach, there are two possible methods of soliciting proposals.

A request for proposals (RFP) method of Procurement is used when it is not practicable for the County to specifically define the scope of work for which the Commodities, Services or Construction are needed. Instead, the County can describe what it wants to accomplish but the methods or means to accomplish the desired outcome cannot be easily defined. Price and compensation shall not be considered in the initial evaluation of Responses as per State law. The method, where price is not used as a selection factor, can only be used in procurement of architecture, engineering, surveying or landscape architecture professional services.

A request for quotation (RFQ) must be used for contraction construction services. The request asks for information on the offeror’s expertise/experience and cost, subject to a negotiation of fair and reasonable compensation.

For example, if a subrecipient were to hire a for-profit CDBG-DR contract administrator and that contract exceeded \$250,000, an RFP would be required. When acquiring architectural or engineering services, either a RFP or a RFQ may be used. If an architectural or an engineering firm is being hired to provide a non-architectural/engineering service that service must be procured using either the small purchases process or an RFP. For example, some engineering firms also provide construction and grants management services. In that situation, an RFQ cannot be used and either the small purchases (if it is less than \$250,000) or a RFP must be used. When Competitive Proposals are utilized, the following requirements apply:

Publication Period: Proposals must be solicited from an adequate number of qualified sources and an advertisement must be published. RFPs/RFQs shall be published in a sufficient timeframe before the proposals/qualifications are due.

Clear Definition: The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.

Technical Evaluation: Lee County must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offeror and the selection for contract award.

Award: Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors shall be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

6.3.5 *Non-Competitive*

Non-competitive procurement may be used only with approval from Lee County and when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
- Where the item is available only from a single source;
- Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods (please refer to the County's emergency procurement procedure here: <https://www.leegov.com/procurement/essential-policy-and-procedures1>); or
- Where after solicitation of a number of sources, competition is determined inadequate.

NOTE: Lee County will not be allowing for Design-Build or Construction Management At Risk (CMAR) projects.

6.4 *Independent Cost Estimate*

2 CFR 200.318 requires subrecipients to perform a cost or price analysis in connection with every procurement action, including competitive sealed bids. Inadequate or incorrect cost analyses can result in cost estimates that are too low and, consequently, low bids coming in over budget. A price analysis is performed when there is adequate price competition and essentially involves comparing lump-sum bids for prices. A cost analysis involves breaking the various cost elements apart and analyzing them individually against market data. A cost analysis should be performed when there is inadequate price competition, when negotiating profit as a separate element, and when a change order involving a budget increase or decrease is necessary.

Such bid overages can unnecessarily delay time-sensitive projects, and rectifying the overage is often costly and time consuming. Subrecipients shall carefully conduct and review their cost estimates and utilize safeguards such as deductible alternates in order to minimize the risk of overages that will require a re-bid. Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. Lee County requires all subrecipients to submit documentation of an independent cost estimate as part of the application or procurement process.

6.5 Procurement of Professional Services

All services to be provided must be procured in accordance with 2 CFR 200, State law, and local procurement codes. When there is a conflict between Federal, State and local requirements, the more restrictive requirement applies.

6.5.1 *Establish Procurement File*

The subrecipient should create and maintain a procurement file in order to document compliance with procurement requirements. The procurement file must contain the following items:

- Tear sheets of advertisements requesting proposals or qualifications;
- A listing of firms that were sent the RFP/RFQ directly;
- A copy of the RFP/RFQ, including a description of the method used to select professional services;
- RFQ qualification statements received or RFP responses received;
- Written evaluation of statements/responses received;
- Written statement explaining the basis for selection; and
- Written evidence that proposals/costs were determined to be reasonable.

6.5.2 *Solicit Proposals*

Subrecipients must first determine the scope of work and then clearly define the services requested and the factors to be used in the evaluation and selection process. The competitive negotiation method must be used to procure professional services subject to the CCNA for which the subrecipient will issue an RFQ that meets the requirements of Section 287.055, Florida Statutes.

6.5.3 *Review Submissions*

After the qualifications from the RFQ or proposals in response to the RFP have been received, the subrecipient should start the review process according to established selection criteria. The process should be thorough, uniform, and well documented. The review should be conducted by a committee composed of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review. Evaluation criteria should include:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the locality and other clients, including quality of work, timeliness and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

The relative importance of each of these factors should be determined beforehand by assigning values to each.

Possible Conflict: Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc

6.5.4 *Prepare the Contract*

Once a firm is chosen and the basis of selection is documented along with detailed costs, the contract can be prepared and signed with the successful individual or firm. Prior to award, the eligibility of the selected firm to be awarded a CDBG-DR funded contract must be verified using <https://SAM.gov>. The subrecipient must verify the vendor is not on any State or County debarment lists, as well.

6.6 Procurement of Construction Services

The steps listed below are required to help ensure subrecipients comply with federal and state procurement requirements when procuring construction services.

6.6.1 *Establish a Contract Procurement File*

The subrecipient should create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- Copies of the invitation for bid;
- Bid solicitation documents that include:
 - Bid specifications
 - Federal labor standards
 - Section 3 documents
 - CDBG-DR funding statement and sample contract
- Newspaper tear sheets advertising the invitation for bid;
- A listing of firms contacted directly;
- Copies of all addenda;
- Evidence all bidders received notice of any addenda;
- Copies of all bids received;

- Bid tabulations and evaluation of bids; and
- Signed minutes of the bid opening.

6.6.2 *Bid for the Contract*

The bid package should be prepared with the correct wage decisions and labor requirements included. (See Section 9 Labor Standards of the Subrecipient Manual for information on preparing bid packages with labor requirements and wage decisions.) Bids must be solicited by public advertising and conform to State and local law with respect to number of times advertised and scheduled.

All construction contracts in excess of \$200,000 must be advertised at least once in a newspaper of general circulation within the County where the project is located at least 21 days prior to the establish bid opening date and at least 5 days prior to any scheduled pre-bid conference. All construction contracts in excess of \$500,000 must be advertised at least once in a newspaper of general circulation in the County where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The advertisement must also call the bidder's attention to the requirement for prevailing wages as well as Section 3, equal opportunity, and other related requirements.

All bid documents for construction shall require a Bid Bond for such projects exceeding the Simplified Acquisition Threshold in 2 CFR 200.326. If required, the Bid Bond will be five percent (5%) of the amount of the bid. Unsuccessful bidders are entitled to full return of their Bid Bond. Upon award by the subrecipient, the successful bidder shall forfeit their Bid Bond, or a portion thereof, upon failure to enter into a Contract within the time prescribed in the bid documents. Subrecipients also have discretion to require bid bonds on contracts under the Simplified Acquisition Threshold if the circumstances warrant such security.

6.6.3 *Addendums*

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any applicable revision to the wage determination must also be distributed as an addendum.)

6.6.4 *Confirm Wage Rates*

One to two days before the bid opening, the subrecipient must contact Lee County to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. The subrecipient should document any changes within the file and the bid documents. If the updated information is not provided in the bid documents before the scheduled bid opening, the subrecipient is liable for the difference between the original and any recently modified rates.

6.6.5 *Open Bids*

All bids received must remain sealed and in a safe place until the bid opening. The subrecipient should announce at the bid opening the name of each bidder and the price submitted in the bid.

The bids must be reviewed for both technical and legal responsiveness of bids. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required.

To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.

Minutes of the opening must denote the apparent low bidder, include a bid tabulation, and be signed and placed in the contract file.

6.6.6 *Award the Contract*

After reviewing the bids, the subrecipient must award the contract to the lowest responsible and responsive bidder if the bid is within the budgeted amount, preferably within 30 days of the opening. (A contract is awarded by official action of the subrecipient.) Contracts are required to be awarded within a 90-day period. If contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract. If bids are held longer than 90 days, the subrecipient must contact Lee County to determine if any wage modifications have occurred.

If the contract is awarded to a bidder other than the low bidder, the subrecipient must prepare a written statement explaining why each lower bidder was deemed non-responsible or non-responsive.

The subrecipient must check the contractor names against the Exclusions List available at <https://sam.gov/content/exclusions>. The subrecipient must document that the contractors and subcontractors are not on this list.

6.6.7 *Performance and Payment Bonds*

In accordance with Section 255.05, Florida Statutes, a Performance and Payment bond is required when a contract exceeds \$200,000. Performance and Payment Bonds are also required by 2 CFR 200.326 for projects exceeding the Simplified Acquisition Threshold in 2 CFR 200.326 Any required bond(s) should be noted in the bid documents. Payment and Performance Bonds shall be for 100% of the Contract price.

6.7 *Additional Forms*

File Name	Procurement Templates, Checklists, and Forms
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File Location/Link	https://www.leegov.com/procurement
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6.8 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

6.9 Source Documents

File Name	Buying Right CDBG-DR and Procurement: A Guide to Recovery
File Location/Link	https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/

File Name	2 CFR part 200
File Location/Link	https://www.ecfr.gov/current/title-2/part-200

7 Environmental Reviews

7.1 Policy

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it complies with the National Environmental Policy Act (NEPA) and related laws and authorities. All HUD-assisted projects are required to undergo an environmental review to evaluate environmental impacts. The analysis includes both how the project can affect the environment and how the environment can affect the project, site, and end users.

An environmental review must be performed before any funds, regardless of source, are committed to a project. Funds are committed when 1) a written agreement is executed with a subrecipient, beneficiary, or contractor, or 2) when funds are committed to an activity in DRGR. HUD's regulations at 24 CFR 58.22 prohibit Lee County and its partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has become "federal." This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions.

Lee County will meet the applicable environmental requirements, listed under 24 CFR Part 58, before the use or commitment of funds for each activity. The subrecipient may draw down funds from the line of credit for an activity after Lee County (as the Responsible Entity), 1) completes environmental review(s) pursuant to 24 CFR Part 58 and receives from HUD an approved Request for Release of Funds and certification (as applicable), or 2) adopts another Federal agency's environmental review, approval, or permit and receives from HUD (or the State) an approved Request for Release of Funds and certification (as applicable)..

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

Subrecipients are responsible for providing information of planned activities to Lee County in sufficient detail to permit the County to carry out its environmental responsibilities. If Lee County is considering an application from a prospective subrecipient and becomes aware the prospective subrecipient is about to take a choice limiting action, the County will take appropriate action to ensure the objectives and procedures of NEPA are achieved.

7.2 Procedure

For Lee County to proceed with the environmental review process, the subrecipient must provide the County with a project description, project location, and project budget. Subrecipients should provide maps, drawings, and other information as requested by Lee County in a timely manner.

Subrecipients are prohibited from the commitment or expenditure of CDBG-DR funds until Lee County issues environmental clearance. Under 24 CFR 58.22(d), an option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the subrecipient and Lee County on the desirability of the property for the project as a result of the completion of the environmental review and the cost of the option is a nominal portion of the purchase price. The environmental review process is described in detail in the Lee County Standard Operating Procedure Environmental Reviews document. Subrecipients should refer to the SOP Environmental Reviews document for detailed guidance. The general process that an environmental review follows is:

1. Determine the Level of Review:
 - a. Exempt;
 - b. Categorically excluded from NEPA, not subject to related laws and authorities at 24 CFR 58.5 (CENST);
 - c. Categorically excluded from NEPA, but subject to the related laws and authorities at 24 CFR 58.5 (CEST);
 - d. Environmental Assessment (EA); or
 - e. Environmental Impact Statement (EIS).
2. Based on the level of review required, Lee County as the responsible entity will carry out the environmental review process.
3. Upon completion of the environmental review process, SRGA staff will notify the subrecipient of any environmental compliance requirements that must be adhered to during implementation of the project or activity.

After completion of the initial environmental review process, a subrecipient must promptly inform Lee County when:

- The Subrecipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
- The Subrecipient proposes the selection of an alternative not in the original finding.

Lee County will review the information submitted by the subrecipient and determine if the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared.

7.3 Contact

Lee County’s Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with environmental requirements.
To connect with SRGA regarding these efforts, please contact: Jen Posey
Email: jposey@leegov.com
Phone: 239-533-2315

7.4 Source Document

File Name	Lee County SOP Environmental Review.docx
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/pages/policies-and-procedures

8 URA

8.1 Overview

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA) is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects.

The objectives of the URA are:

- To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects.
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement.
- To ensure that no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means.
- To help improve the housing conditions of displaced persons living in substandard housing.
- To encourage and expedite acquisition by agreement and without coercion.

The URA applies to any acquisition of real property for programs and projects where there is federal financial assistance in any part of project costs. **All acquisitions “for” a federally-assisted project are subject to the URA requirements, whether or not there is federal assistance in the acquisition itself.**

To minimize the displacement of persons and other entities that may be affected by the activities outlined in Lee County's Action Plan, Lee County will coordinate with all subrecipients, implementation vendors, and Lee County departments to minimize displacement. Should any proposed projects or activities cause the displacement of people, the County has adopted a CDBG-DR specific Residential Anti-Displacement Relocation Assistance Plan (RARAP) policy to ensure the requirements of URA, as amended, are met.

Every effort will be made to minimize temporary or permanent displacement of persons due to the delivery of HUD CDBG-DR Programs administered by SRGA. Cost-efficient, feasible, and reasonable mitigation measures will be considered before the acquisition and demolition of residential units and permanent displacement of residents. The County will comply with the requirements of and utilize the waivers set forth in applicable Federal Register Notices pertaining to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and 24 CFR Subpart C, Section 104(d), (Section 104(d)) including, but not limited to CDBG-DR Notice, 88 FR 32046, 5/18/2023.

SRGA requires subrecipients to adopt Lee County's Residential Anti-Displacement and Relocation Assistance Plan or establish separate optional relocation policies prior to

undertaking any activity assisted with funding from CDBG-DR. The written policy must: be available to the public, describe the relocation assistance that the subrecipient has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

8.2 Procedure

Subrecipients must adopt the Lee County Residential Anti-Displacement and Relocation Assistance Plan (RARAP).

Subrecipients should refer to the documents and regulations listed below for detailed information on program requirements.

- Lee County SOP Acquisition, Relocation, and URA.
- Lee County RARAP.
- [49 CFR Part 24](#) - the government-wide regulation that implements the URA.
- [HUD Handbook 1378](#) - provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.
- [24 CFR Part 42](#) - the regulation that implements section 104(d) of the Housing and Community Development Act.
- 88 FR 32046 – provides URA and Section 104(d) waivers and alternate requirements.
- [URA the HUD Way Training Modules - HUD Exchange](#)
- [GUIDEFORM RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN \(hud.gov\)](#) - guidelines for subrecipients who opt to adopt local RARAP

Subrecipients should be aware that acquisition activities covered by the URA include not only fee title purchases but the acquisition of:

- **Permanent Easements.**
- **Temporary Easements** except for the acquisition of temporary easements which exclusively benefit the property owner and which work may not be done if agreement cannot be reached.
- **Leases.** Under the URA regulations, leases of 50 years or more are considered acquisitions. Under the CDBG-DR programs, leases of 15 years or more are considered acquisitions by HUD for the purposes of the URA.

Subrecipients who are unfamiliar with the URA should contact County staff or their contracted Program Management and Implementation vendor for technical assistance and training.

8.3 Acquisition

Voluntary vs Involuntary Acquisition

The URA regulations have different requirements for acquisitions of a voluntary nature and for acquisitions under threat or use of eminent domain (condemnation). The simple fact that there is a “willing seller” or “amicable agreement” does **not** mean a transaction is “voluntary.”

- Voluntary acquisitions (transactions with no threat or use of eminent domain) must meet the criteria set forth in 49 CFR 24.101(b)(1) through (5);
- Involuntary acquisitions (acquisitions subject to threat or use of eminent domain) are acquisitions that do not satisfy the requirements of 49 CFR 24.101(b)(1)-(5). All involuntary acquisitions trigger the full acquisition requirements of the URA found in 49 CFR Part 24 Subpart B.

8.3.1 *Voluntary Acquisition*

For an acquisition to be considered Voluntary under the URA, the following criteria must be met:

- a) Subrecipients **with** eminent domain authority must obtain the proper easements or voluntary acquisition of property to be eligible to participate in the Program. However, for municipalities that wish to use the power of eminent domain and the property is needed for a critical public service, Lee County will review those applications on a case-by-case basis.
- b) Subrecipients **without** eminent domain authority must complete the following:
 - Notify the owner in writing of the property's market value;
 - Notify the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached; and
 - Provide relocation assistance to displaced tenants.

8.3.2 *Involuntary Acquisition*

The following steps represent the general process a subrecipient must follow under the URA when acquiring property under threat of eminent domain:

1. Notify the owner of the subrecipient's intentions to acquire the property and their protections under the URA.
2. Appraise the property and invite the owner to accompany the appraiser.
3. Review the appraisal.
4. Establish just compensation for the property.
5. Provide the owner with a written offer and summary statement for property to be acquired.
6. Negotiate with owner for the purchase of property.
7. If negotiations are successful, complete the sale and reimburse the property owner for related incidental expenses.
8. If negotiations are unsuccessful, contact County staff to discuss if an administrative settlement is appropriate to complete the sale.
9. If negotiations are still unsuccessful, contact County staff to discuss if the

subrecipient may proceed to acquire the property through the use of eminent domain.

8.4 Relocation

8.4.1 *Relocation Notices*

The URA regulations require three notices to be issued to eligible persons. These notices provide important information about the project, the affected persons' resulting rights, their protections, and their eligibility for relocation assistance and payments under the URA. It is critical for subrecipients to issue appropriate notices to affected persons at the appropriate time.

- **General Information Notice (GIN):** Informs affected persons of the project and that they may be displaced by the project. The GIN is issued as soon as feasible to both owners and tenants to provide preliminary information on the proposed project and potential rights and protections. “As soon as feasible” is typically the time of application for federal assistance or when site control is obtained.
- **Notice of Relocation Eligibility (NOE):** Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments. Eligibility for relocation assistance at Initiation of Negotiations (ION), actual property acquisition, or upon issuance of a Notice of Intent to Acquire, whichever occurs first. Once eligibility begins, the NOE must be issued promptly. “Promptly” is within 7 to 10 days of ION, actual acquisition, or the date of a Notice of Intent to Acquire, whichever occurs first.
- **90 Day Notice:** Informs displaced persons of the earliest date by which they will be required to move. This notice may not be issued unless a comparable replacement dwelling is available and the displaced person is informed of its location and has sufficient time to lease or purchase the property. Permanently displaced household must be provided with a minimum of 90 days written notice prior to being *required* to move. The 90 day notice may not be issued prior to the NOE, but the two notices may be combined.

8.4.2 *Relocation Advisory Services*

In addition to being required by law, relocation advisory services are the single most important part of a successful relocation program. Relocation advisory services are required to be provided to all eligible displaced persons, including nonresidential displaced persons. Key relocation advisory services requirements include:

- Determine the needs and preferences of displaced persons.
- Explain available relocation assistance.
- Explain a person's right to appeal if they are not satisfied with agency decisions.
- Offer and provide transportation to locate replacement housing.
- Offer other assistance (e.g. social services or financial referrals, housing inspection, etc.)
- Provide current and ongoing listings of comparable dwellings for residential

displacements and replacement sites for businesses.

- Supply information on other federal and state programs offering assistance.
- Provide counseling and other assistance to minimize hardship in adjusting to relocation.

8.4.3 *Residential Relocation*

In addition to relocation advisory services, residential displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses and replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling.

- Subrecipients should consult 49 CFR 24 Subpart D https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780 and HUD Handbook 1378 for more guidance on payments for moving and related expenses.
- Subrecipients should consult 49 CFR 24 Subpart E and HUD Handbook 1378 for more guidance on replacement housing payments.
- Subrecipients should consult 49 CFR 24 Subpart F and HUD Handbook 1378 for more guidance on the acquisition and/or relocation of mobile homes.

8.4.4 *Housing of Last Resort*

In accordance with the requirements found at 49 CFR 24.404(a)(2), a determination to exceed the monetary limits established under the provisions found at 49 CFR 24.401 or 24.402 and provide, as appropriate, additional assistance, is based on the following:

There is little, if any, comparable replacement housing available for households who will be deemed “displaced” from units receiving assistance.

Due to the damage and immediate impact relating to the loss of decent, safe, and sanitary affordable rental housing, an assisted property cannot advance to completion and satisfy the timeliness requirements imposed by HUD in the CDBG-DR grant award without “last resort” housing assistance.

The provision of additional assistance that exceeds the monetary limits established under the URA is the most cost reasonable (as tenant-based or project-based housing subsidies are not available). Additionally, the last resort housing assistance is cost effective as special measures such as new construction, physical relocation of housing, and purchase of land and/or housing exceeds the CDBG-DR resources allocated to the Program.

8.4.5 *Nonresidential Relocation*

In addition to relocation advisory services, nonresidential displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses and reestablishment. The URA provides the following moving options:

- Payment for the actual, reasonable moving costs and related expenses, and

- Payment for actual, reasonable reestablishment expenses, or
- A fixed payment “in lieu of” moving and re-establishment costs.

8.5 Contact

Lee County’s Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

8.6 Source Documents

File Name	Lee County CDBG-DR SOP URA-RARAP
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/pages/policies-and-procedures

File Name	HUD Handbook 1378 Tenant Assistance, Relocation and Real Property Acquisition
File Location/Link	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

File Name	49 CFR part 24 URA
File Location/Link	https://www.ecfr.gov/current/title-49/part-24

File Name	24 CFR part 42 Section 104(d)
File Location/Link	https://www.ecfr.gov/current/title-24/part-42

File Name	88 FR 32046 Waivers and Alternate Requirements
File Location/Link	https://www.federalregister.gov/d/2023-10598

9 Labor Standards

9.1 Overview

Subrecipients are responsible for compliance with labor laws on construction work funded with CDBG-DR funds. The labor laws that may apply to CDBG-DR funded construction work include the following:

- **The Davis-Bacon Act** is triggered when construction work over \$2,000 is financed in whole or in part with CDBG-DR funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area.
- **The Copeland Anti-Kickback Act** requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- **The Contract Work Hours and Safety Standards Act** applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$31 per day per violation).
- **Section 3 of the Housing and Urban Development Act of 1968** requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. Please see Section 10 of this Subrecipient Manual.

9.1.1 Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation of residential property containing less than eight units. However, "property" is not limited to a specific building and is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project.
- Contracts solely for demolition, when no further construction is anticipated on the site.
- Force Account work.

- Housing projects that involve fewer than 8 units funded with CDBG-DR dollars.
- Equipment and Installation:
 - When CDBG funds are utilized in whole or in part to finance equipment, the applicability of wage rates to the installation must be determined. The general rule is that installation work performed in conjunction with an equipment supply contract is subject to labor standards where it involves more than an incidental amount of construction activity. Factors requiring consideration include: nature of the prime contract work; type of work performed by employees installing the equipment; extent to which structural modifications to buildings are needed to accommodate the equipment; the cost of the installation work both in terms of absolute amounts as well as in terms of the proportion of the total equipment and project cost.
 - An equipment analysis must be completed in which all items of equipment are included with an explanation of related installation/modification costs and submitted to Lee County to make a proper determination.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property. Exempt equipment purchases would be those that are incidental to the project that require minimal installation costs. Please contact Lee County for equipment installations to determine whether the labor requirements will apply.

9.2 Pre-Bidding Requirements

Subrecipients must ensure that all bid documents, contracts, and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions. This requires the writing of the technical bid specification, usually by an architect or engineer, on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Subrecipients must submit bid documents for review prior to advertising for bids. Please refer to Lee County's Procurement Manual for more guidance on bidding.

Sample procurement documents and guidance for adhering to procurement guidelines can be found at: <https://cdbg-dr-leegis.hub.arcgis.com/pages/references>

File Name	Lee County Procurement Ordinance
File Location/Link	https://www.leegov.com/bocc/Ordinances/23-21.pdf

NOTE: The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to Lee County's Environmental Review Manual for more information.

9.3 Bidding and Contracting Requirements

9.3.1 *Preparing Bid Packages*

Once it is determined that a construction project is subject to federal and/or state labor standards provisions, the following steps must be taken to ensure compliance.

1. *Request Applicable Federal Wage Rate Decision*

The subrecipient may access federal wage rate decisions through the Internet at <https://sam.gov/content/wage-determinations>

However, in order to ensure accuracy, the subrecipient must request the applicable federal wage rate decision from Lee County. Subrecipient should verify that no wage decision updates were made prior to bid opening and contact Lee County for further assistance in the event that updates were made as these must become part of a bid package addendum issued to all bidders.

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. In determining which type of wage decision to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

- Building construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- Residential projects involve the construction, alteration or repair of single-family houses or apartment buildings one to four stories tall.
- Highway projects include construction, alteration or repair of roads.
- Heavy construction is considered for all construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

Lee County should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary.

NOTE: Contractors and subcontractors must also adhere to state wage requirements. Effective September 30, 2022, the Florida minimum wage will be \$11.00 per hour. On November 3, 2020, Florida voters approved a constitutional

amendment to gradually increase the state's minimum wage each year until reaching \$15.00 per hour in September 2026. On September 30, 2022, Florida's minimum wage will increase to \$11.00 per hour. Resuming in 2027, the minimum wage will be adjusted annually for inflation.

2. Add Labor Conditions to the Bid Package

The wage rate decision must be a physical part of the bid package. The bid package must contain the labor standards requirements below.

- Davis-Bacon provisions;
- Contract Work Hours and Safety Standards clause;
- Copeland Anti-Kickback clause;
- Employment of Apprentices/Trainee clause; and
- Applicable wage rate determination(s).

NOTE: If the subrecipient fails to include the correct wage rate determination(s), the subrecipient may have to rebid the project.

3. Equal Opportunity Requirements

Lee County will review all draft bid and contract documents to ensure compliance with equal opportunity requirements and establish procedures for monitoring compliance during project execution. The following equal opportunity provisions and signed contractor and subcontractor certifications must be included in all bid and contract documents:

- Certification of Bidder regarding Section 3;
- Certification of Bidder regarding Equal Employment Opportunity;
- Contractor Section 3 Plan Format (if project exceeds \$200,000 or \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs);
- Certification by Proposed Subcontractor regarding Equal Employment Opportunity;
- Three-paragraph Equal Opportunity Clause for Activities and Contracts not subject to Executive Order 11246 (if contract is less than \$10,000);
- Executive Order 11246 clause (if contract is \$10,000 or above);
- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (if contract over \$10,000);
- Standard CDBG-DR assisted Equal Employment Opportunity Construction Contract Specification (if contract over \$10,000);
- Certification of Non-segregated Facilities clause (if contract over \$10,000);
- Title VI Clause, Civil Rights Act of 1964;
- Section 109 clause, Housing and Community Development Act of 1974;

- Rehabilitation Act of 1973, Section 503 clause (to all employers who have a contract or subcontract that exceeds \$10,000);
- Section 402 Veterans of the Vietnam Era clause (if contract over \$100,000); and
- Age Discrimination Act of 1975 clause.

4. *Female and Minority Participation Goals*

The nationwide goal for female participation is 6.9 percent.

The minority participation goal applicable to Lee County is 15.3 percent.

File Name	Department of Labor Participation Goals
File Location/Link	ParticipationGoals.pdf (dol.gov)

5. *Other Bidding and Contracting Requirements*

- a) The bid package must also include all CDBG-DR-related provisions and Lee County's terms and conditions. The following provisions for CDBG-DR -assisted projects must be included, as applicable:
 - Bonding and Insurance Requirements Clause;
 - Conflict of Interest;
 - Certification of Compliance with Air and Water Acts (if over \$100,000);
 - Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition);
 - Energy Efficiency; and
 - Access to Records/Maintenance of Records.

- b) *Cost and Pricing Format*

The bid package must include cost and pricing formats. Generally, bid specifications should delineate each type of item, estimating quantity, unit price, and estimated total cost. All bid packages should indicate that the subrecipient can reject any and all bids received. The subrecipient must comply with applicable Florida procurement code or federal CDBG/CDBG-DR regulations, whichever is more stringent.

Once the bid document is prepared, it is time to advertise for construction bids. Refer to Lee County's Procurement Manual for specific instructions on how to proceed with the bidding process.

6. *Pre-Bid Conference*

The subrecipient should make reasonable efforts to ensure that responding parties fully understand the nature and requirements of the project being bid as well as any applicable regulatory requirements. It is recommended that a pre-bid conference be held, either on-site or virtually, to address any general or project-specific questions and concerns. A sign-in sheet should be utilized to document which parties are present.

9.4 Pre-Construction Requirements

9.4.1 *Pre-Construction Conference*

Before any work is performed by a contractor, Lee County encourages that the subrecipient, the grant administrator, the engineer or architect, and any other technical advisors to the subrecipient conduct a pre-construction conference with the contractor and property owner or representative to explain contractual requirements and performance schedules. Though no longer required in order to comply with federal labor standards, this conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the subrecipient.

The subrecipient should work with Lee County to prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. The subrecipient should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
 - At this time, the subrecipient should correct any outstanding deficiencies, such as securing signed Section 3 Plans and Certifications of Compliance.
 - Obtain the contractor's Federal Identification Number. This must be a Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).
- Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact Lee County immediately.
- Explain that employee interviews will be conducted during the project.

- Emphasize that both a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the subrecipient with a copy of the state certification of their program.
- If the contract amount is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.
- Indicate that failure to pay workers at least time and a half overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of \$27 per day for every day each worker that exceeded 40 hours a week without being paid time and a half. Subrecipients should contact their Lee County Contract Manager for assistance if a violation occurs.
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. (An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kickback” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.)
- Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.
- Provide contractor with posters for the site, such as “Davis Bacon Act,” “Notice to All Employees Working on Federal or Federally Financed Construction Projects,” “Safety and Health Protection on the Job,” and “Equal Employment Opportunity is the Law.” These posters are located below in Additional Forms.
- Provide the contractor with a copy of Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum which can be downloaded here: <https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/>
- Provide handouts explaining everything covered and obtain the contractor’s signature to document receipt.
- Explain that compliance and monitoring will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will

result in contractor payments being withheld until all such discrepancies are resolved.

9.5 Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, issue a Notice to Proceed to each prime contractor to begin performance of the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

9.6 Contract File Review

A review for each contract file will be conducted to make sure documentation is complete at the time of contract award. The following list of Construction Contract file requirements identifies the items that should already be located in the contract file.

- Preliminary design and cost estimates;
- Final design documents and cost estimates;
- Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- Bid documents;
- Approval of bid documents by authorities having jurisdiction over the project, as appropriate;
- Tear sheet or affidavit documenting the advertisement for bids;
- Pre-bid conference signature sheet;
- Addenda, if any, and evidence of timely distribution to plan holders;
- Signed minutes of public bid opening;
- Certified tabulation of bids;
- Recommendation for Award;
- Notice of Contract Award/Council or Fiscal Court Approval;
- Recommended pre-construction conference report;
- Executed contract and subcontract documents;
- Certification of Insurance/Bonding; and
- Notice to Proceed.

9.7 Payroll Review Requirements

Once construction is underway, the prime contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. The prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and any potential liquidated damages that may be assessed for violations.

Copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance) must be obtained and reviewed to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines.

Certified payroll reports must be submitted by the contractor to the subrecipient within seven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided in additional forms. Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations and a Statement of Compliance, that is included on the WH-347, must accompany each payroll submission.

Payroll reports must be reviewed upon receipt and against all employee interviews so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the reviewer to indicate that they have been reviewed.

It is recommended that any contractors expected to perform no work for the following period note this in their most recent payroll submission. Weeks where there is no work performed must still be accounted for. Contractors must submit a "No Work" payroll for that week.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance (has been completed and signed by the owner or an officer of the firm).

Any discrepancies and/or falsification indicators must be reported, along with the steps being taken to resolve the discrepancies. Where underpayments of wages have occurred, the Lee County and its subrecipients are responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

9.8 Construction Management Requirements

During construction, Lee County or its subrecipients are responsible for monitoring the labor standards and equal opportunity requirements described in this Chapter. In addition to payroll reviews and interviews, proper construction management must be ensured. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control.

Note that written inspection reports must accompany any contractor's request for partial payment. It is also strongly recommended that monthly progress meetings be held to allow the subrecipient, engineer, grant administrator, and funding agencies to review the status of the project, resolve problems, and review requests for payment.

9.9 On-Site Interviews

Construction management requirements include conducting job site interviews with workers using the Record of Employee Interview Form located below.

Lee County or its subrecipients must conduct interviews using the representative sampling technique and the interviews should include a sufficient sample of job classifications represented on the job, as well as workers from multiple vendors, to allow for a reasonable judgment as to compliance. At least 10 percent of the workers on-site, and a least one in each job classification working at the site, should be interviewed.

The following actions must be performed:

- Interviews are conducted at least once during the course of each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage decision, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- A fully completed and signed Record of Employee Interview form is maintained in the contract file.

9.9.1 Interview Protocols

The following guidelines should be observed by persons conducting job site interviews:

1. The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
2. The interviewer should see that the wage determination and other required posters are properly displayed.

3. The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and sub-contractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in Attachment 6-7d. This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.
4. To initiate the interview, the authorized person shall:
 - a) Properly identify themselves;
 - b) Clearly state the purpose of interview; and
 - c) Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
5. When conducting employee interviews, the interviewer should pay particular attention to:
 - a) The employee's full name.
 - b) The employee's permanent mailing address.
 - c) The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
 - d) The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
6. The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
7. If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - a) Ask for any records.
 - b) Arrange to re-interview the employee.
 - c) Enter the worker's statement of their classification.
 - d) Observe duties and tools used:
 - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
 - If there are discrepancies, detailed statements are necessary.
 - **NOTE: If an employee performs duties belonging to another classification, they must be paid accordingly for the time they are performing in the other classification. EXAMPLE: An employee who is classified as a Laborer operating machinery should be paid for that time as an Operator and the rest of the time as a Laborer.**
 - e) Enter any comments necessary.

- f) Enter date interview took place.
- 8. If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731) located below.
- 9. The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission:
 - a) If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form.
 - b) If discrepancies do appear, appropriate action should be initiated.
 - c) When necessary action has been completed, the results must be noted on the interview form.

9.10 Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

9.10.1 Notification to the Prime Contractor

Lee County or the subrecipient will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the subrecipient for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

9.10.2 Computing Wage Restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

9.10.3 Correction Payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #3, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:

- Each employee to whom restitution is due and their work classification,

- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.
- A properly signed Statement of Compliance must be attached to the correction certified payroll.

Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment, however it is recommended. This is to ensure that the subrecipient can adequately enforce the unfound workers requirements.

9.10.4 Review of Corrected Certified Payroll

The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Subrecipients who are unfamiliar with the Davis-Bacon and CDBG Labor Standards should contact Lee County staff and the Program Management and Implementation vendor for technical assistance and training.

9.11 Progress Payments

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

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

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

9.11.1 Retainage from Progress Payments

Although retainage is not a requirement, it is helpful to maintain 10 percent retainage from partial payment until completion. The retainage is withheld until after final inspection and receipt of any/all documentation required to be submitted in case of any

unresolved problems. See below for information on how retainage is addressed in the Final Payment.

9.12 Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders may be considered on a case-by-case basis and must be deemed cost reasonable and necessary by Lee County. A cost analysis is required for all change orders if they will result in either an increase or a decrease to the contract amount.

Each change order must be accompanied by a supporting statement that describes why the change is necessary, additional time requested to perform the work, itemized cost estimates (cred, debit, or no change), and any needed plans, specifications, or supporting imagery. The subrecipient must verify that the change order is reasonable and approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum and cannot be issued after final payment.

Change orders must be submitted to Lee County for evaluation and may be approved in an amount equal to the rehabilitation/construction contingency budget line item. The subrecipient/developer is responsible for all construction costs exceeding the contingency budget amount unless Lee County approves a revised construction budget and reviews and approves a change order for the additional scope of work and costs in excess of the total construction budget.

9.13 Final Payment

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The subrecipient or the architect/engineer should make the final inspection and prepare a written report of the inspection prior to the issuance of a final certificate of payment. Before making final payment (less retainage), Lee County or the subrecipient must ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
- DOL has approved any requests for additional wage classifications;
- Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
- All discrepancies identified through job site interviews have been resolved;
- All other required equal opportunity and labor standards provisions have been satisfied;
- All Section 3 reports have been submitted;
- All contract submissions have been received;
- All claims and disputes involving the contractor have been resolved;
- All files are complete; and
- As-built plans have been filed.

If the inspection is satisfactory, the subrecipient can then issue acceptance of work and final payment, less retainage.

9.13.1 Retainage from Final Payment

Within 30 days from the receipt of all documents, filing of the acceptance of the work, and upon submission of a certification of completion by the contractor, the retainage that has been withheld will be released from each progress and final payment to the contractor.

9.14 Record Keeping

In order to demonstrate Davis-Bacon compliance, Lee County or its subrecipients will maintain a file with the following documentation for each construction contract for a minimum of three (3) years after the completion date of applicable project:

- Labor Standards Officer Designation Form
- Wage Determination Form(s)
- Wage Rate Decision(s)
- Request(s) for Additional Wage Classification and Rate
- Pre-construction conference report minutes and sign-in sheet(s)
- Labor Standards Record
- Eligibility Verification printouts from SAM (for each prime and/or subcontractor)
- Payrolls, with evidence of compliance review (including LSO Payroll Certification)
- Employee interviews
- Interim inspection reports
- Wage violations (amount of restitution, number of hours and days)
- Liquidated damages fees and documentation (if any)
- Certificate(s) of Construction Completion

9.15 Reporting

Local authorities and subrecipients must report to HUD on all DBRA regulated contracts awarded and on all enforcement actions taken each six (6) months. Semi-annual labor reports are due to HUD in April (for the period October 1 through March 31) and October (for the period April 1 through September 30). Lee County monitors its subrecipients for completion of the reports. The Semi-Annual Labor Standards Enforcement Report form (HUD-4710) and Instructions (HUD-4710i) are available on [HUD's website](#).

9.16 Additional Forms

File Name	HUD 4010 Federal Labor Standards.pdf
File Location/Link	https://hudgov.sharepoint.com/sites/FPM/OFPM/DBLS/HQ/Shared Documents/Forms_DBLS/HUD-4010 Federal Labor Standards Provisions/HUD 4010

File Name	HUD 11 Record of Employee Interview.pdf
File Location/Link	HUD-11 Record of Employee Interview

File Name	WH-1321 Davis-Bacon Poster.pdf
File Location/Link	Davis-Bacon Poster (Government Construction) U.S. Department of Labor (dol.gov)

File Name	WH-347 Payroll Reporting Form.pdf
File Location/Link	PAYROLL (dol.gov)

File Name	Minority Participation Goals
File Location/Link	U. S. Department of Labor; Office of Federal Contract Compliance Programs Construction Contractors Technical Assistance Guide (dol.gov)

9.17 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR labor standards. To connect with SRGA regarding these efforts, please contact: **Kevin Loucks**
Email: recovery@leegov.com
Phone: 239-533-2315

9.18 Source Documents

File Name	HUD Handbook 1344.1 Federal Labor Standards Requirements
File Location/Link	https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

File Name	HUD Agency and Contractor Guide
File Location/Link	https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/

File Name	HUD Contractor Guide Addendum
File Location/Link	https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/

10 Section 3

10.1 Overview

HUD requires that CDBG-DR funded programs comply with Section 3 requirements. Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that promotes economic opportunities for low-income individuals and businesses residing in areas where HUD financial assistance is provided for housing and community development projects. As of November 30, 2020, CDBG-DR programs are required to adhere to the reporting and compliance requirements outlined in [CPD Notice 21-09](#) and [24 CFR Part 75](#).

10.2 Applicability

Section 3 requirements apply to all CDBG-DR funded housing rehabilitation, reconstruction, elevation or new construction and any other public construction project that has a total project cost of \$200,000 or more. The project includes the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. Section 3 applies to the entire project even when the CDBG-DR funds are only a portion of the total funding.

In accordance with 24 CFR 75.3(b), Section 3 requirements do not apply to material supply contracts.

10.3 Benchmarks

Lee County subrecipients will make every effort to comply with HUD benchmarks when undertaking applicable projects to satisfy Section 3 requirements. Lee County subrecipients will be considered to have complied with requirements of HUD's Section 3 final rule if it certifies that it has followed the prioritization effort in 24 CFR Part 75.19 and it has met or exceeded the following Section 3 benchmarks:

- 25% of all labor hours are performed by a Section 3 worker
- 5% of all labor hours are performed by Targeted Section 3 workers

In addition to the benchmarks above to the greatest extent feasible, Lee County subrecipients, shall ensure the following:

- Contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located;
- Where feasible, priority for contracting opportunities should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and to YouthBuild programs;

- Employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located; and
- Where feasible, priority opportunities and training should be given to Section 3 workers within the service area or the neighborhood of the project and to YouthBuild programs.

10.4 Section 3 Worker

A Section 3 worker is defined as any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit² established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. Nothing in 24 CFR Part 75 shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

10.5 Targeted Section 3 Worker

A 'Targeted' Section 3 worker for housing and community development financial assistance is defined as a worker that is a Section 3 worker who is also:

- A worker employed by a section 3 business concern; or
- A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or
 - A YouthBuild participant.

10.6 Section 3 Business Concern

A Section 3 business concern is defined as a business concern meeting at least one of the following criteria, documented within the last six-month period:

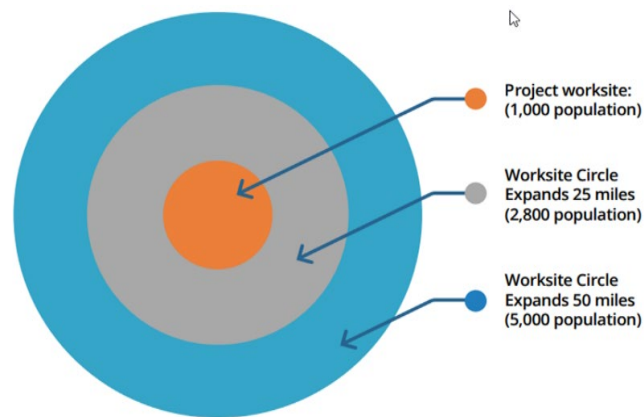
- It is at least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

² The one-person household income limit is used to determine income eligibility. Income limits are available at <https://www.huduser.gov/portal/datasets/il.html>

The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.



10.7 Procurement

All procurements issued by Lee County subrecipients that include funding covered by 24 CFR 75.3 will include notice that Section 3 is applicable to the funding and may include, as appropriate for the specific procurement, points for the quality of a proposed plan to achieve Section 3 benchmarks.

10.8 Contracting

Lee County subrecipients must include language in any agreements or contracts to apply Section 3 to contractors or subrecipients.

Lee County subrecipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

Lee County subrecipients must require all contractors and subcontractors to meet the requirements of 24 CFR Part 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Sample Section 3 contract language can be provided upon request.

10.9 Reporting

Lee County subrecipients will report, monthly, in a tracking form prescribed by Lee County below, the total number of labor hours worked, the total number of labor hours worked by

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

File Name	Section 3 Tracking Report
File Location/Link	https://cdbgdr.leegov.com/

Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to 21 CFR 75.31.

The labor hours reported must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the Lee County subrecipient is required or elects to report. Lee County subrecipients will not include labor hours from professional services in the total labor hours worked. If a contract covers professional services and other work, Lee County subrecipients must report the labor hours under the contract that are not from professional services.

Lee County subrecipients will report on labor hours for the subrecipient and any contractors or subcontractors on the employer's good faith assessment of labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance-based payroll system, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

10.9.1 *Qualitative Efforts*

If Section 3 benchmarks are not met, Lee County subrecipients must report quarterly on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may include, but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guarantees, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

10.10 Recordkeeping

Lee County subrecipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

- For a worker to qualify as a Section 3 worker, one of the following must be maintained:
 - A worker's self-certification that their income is below the income limit from the prior calendar year;
 - A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
 - Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
 - An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
 - An employer's certification that the worker is employed by a Section 3 business concern.
- For a worker to qualify as a Targeted Section 3 worker the following must be maintained:
 - An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

- An employer's certification that the worker is employed by a Section 3 business concern; or
- A worker's self-certification that the worker is a YouthBuild participant.

Lee County subrecipients must maintain all Section 3 records related to CDBG-DR for a minimum of 5 years after grant closeout.

10.11 Subrecipient Procedure

Lee County subrecipients will implement the following steps to comply with HUD Section 3 requirements.

1. Develop a Section 3 Plan **(optional)**. While the final rule does not require recipients to have Section 3 plans, a Section 3 plan can serve as a guide for the community ensuring that the Section 3 requirements are properly implemented and communicated. The development of a Section 3 plan is optional.
2. Identify a Section 3 Coordinator.
3. Facilitate training of staff and stakeholders on Section 3 goals and requirements.
4. Incorporate Section 3 language in procurement activities.
5. For each project identify the service area or the neighborhood of the project as defined in 24 CFR 75.5. Service areas can be defined using the HUD developed mapping tool just to map the Section 3 service area:
<https://hud.maps.arcgis.com/apps/webappviewer/index.html?id=1d27b42dd64e4684ba74fe5bd00f9755>
6. Review contracts and agreements to ensure that Section 3 contract provisions have been included in all agreements and contracts for Section 3 projects.
7. At a preconstruction conference inform the contractor of the contractor's Section 3 responsibilities, Section 3 Benchmark goals, and Section 3 reporting requirements. Provide the contractor with Section 3 certification forms, tracking templates, and report forms.
8. On a quarterly basis, review contractor Section 3 reports to determine progress toward meeting Section 3 Benchmarks. Provide additional assistance as required to assist contractors in achieving Section 3 labor hour goals.
9. If contractor reporting indicates that the contractor is not meeting the Section 3 Benchmarks, require contractors to provide documentation of the qualitative efforts listed in 24 CFR 75.25(b) they have undertaken.

10. Lee County subrecipients should obtain any Section 3 worker or Section 3 Targeted worker labor hours from professional services during the reporting period.

NOTE: Professional services are not counted in the total project hours BUT any professional services performed by Section 3 firms may be counted in the Section 3 hours when calculating the percentages.

11. Complete and submit required Section 3 reports to Lee County on a timely basis.
12. Promptly report all Section 3 complaints or potential violations of Section 3 requirements to Lee County.
13. Maintain Section 3 reports, certification forms, and related documents in accordance with Lee County record retention requirements.

10.12 Forms

10.12.1 Section 3 Employer Certification

Section 3 Housing and Community Development Employer Certification Form	U.S. Department of Housing and Urban Development Office of Field Policy and Management	HUD FORM 4736A OMB Approval Number 2501-0041 (Exp. 04/30/2025)
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(In compliance with Section 3 of the HUD Act of 1968 and 24 CFR Part 75)

Public reporting for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), and 12 U.S.C. § 1701u ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. The regulations are found at 24 CFR Part 75. This collection of information is required in order to ensure that a worker can be certified as an eligible Section 3 worker as outlined in 24 C.F.R. § 75.31. The information will be used by the Department to ensure compliance with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients to ensure they are complying with their recordkeeping requirements found in the regulation, and as a self-monitoring tool.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. XXXX-XXXX. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. No assurances of confidentiality are provided for this information collection.

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31. To qualify as a Section 3 worker, the United States legal resident's annual income must not exceed the HUD income limits for the year before the worker was hired, or the individual's current income annualized on a full-time basis for the year must be below the HUD income limit. Additionally, an individual can qualify as a Section 3 worker and Targeted Section 3 worker, if an employee of a Section 3 Business Concern. To qualify as a Targeted Section 3 worker, an employer can confirm that the employee lives within the service area or neighborhood of the project.

Please provide the following information about the business/employer:

Name of Business: _____

Street Address _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

Please Provide the following information about the worker/employee:

Printed Name of Worker: _____

Street Address (Not a PO Box) _____ Apt# _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

Please indicate which of the following is true for the worker listed above: (Select all that apply)

<input type="checkbox"/> Worker's income from your employment is below the income limit based on a calculation of what the worker's wage rate would translate to if annualized on a full-time basis*	Income limit <u>\$XX,XXX</u>
<input type="checkbox"/> Worker is employed by a Section 3 Business Concern (Select if your business qualifies as a Section 3 Business Concern)	
<input type="checkbox"/> Worker's residence is within the service area or neighborhood of the project	

*Currently or at the time of hire if hired within the past 5 years.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and certifies that the worker identified above meets the definition of a Section 3 worker. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)

Signature _____

Date _____

10.12.2 Section 3 Worker Self-Certification

Section 3 Worker Self-Certification-Housing and Community Development	U.S. Department of Housing and Urban Development Office of Field Policy and Management	HUD FORM 4736C OMB Approval Number 2501-0041 (Exp. 04/30/2025)
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(In compliance with Section 3 of the HUD Act of 1968 and 24 CFR Part 75)

Public reporting for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), and 12 U.S.C. § 1701u ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. The regulations are found at 24 CFR Part 75. This collection of information is required in order to ensure that a worker can be certified as an eligible Section 3 worker as outlined in 24 C.F.R. § 75.31. The information will be used by the Department to ensure compliance with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients to ensure they are complying with their recordkeeping requirements found in the regulation, and as a self-monitoring tool.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. XXXX-XXXX. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. No assurances of confidentiality are provided for this information collection.

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31. To qualify as a Section 3 worker, any United States legal resident's annual income must not exceed the HUD income limits for the year before the worker was hired, or the individual's current income annualized on a full-time basis for the year must be below the HUD income limit. Additionally, an individual can qualify as a Section 3 worker if they are a YouthBuild participant or employee of a Section 3 Business concern.

Printed Name: _____

Street Address (Not a PO Box) _____ Apt# _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

To qualify as a Section 3 Worker, you must meet **one** of the following requirements **OR** have your employer certify that you are employed by a Section 3 Business concern:

<ul style="list-style-type: none">• Income for the previous calendar year is below the income limit*• A participant in a means-tested program such as public housing or Section 8-assisted housing• A YouthBuild Participant*	Income limit <u>\$XX,XXX</u>
---	-------------------------------------

*Currently or at the time of hire if hired within the past 5 years

☐ I meet at least one of the requirements in the box above and therefore qualify to be counted as a Section 3 Worker under 24 CFR § 75.

If applicable, please indicate which requirement you meet to be considered a Targeted Section 3 worker in the box below. If you select "Living within the service area or neighborhood of the project," that selection will have to be confirmed by your employer. If you do not meet any of these requirements or do not know if you meet any of the requirements listed below, you may leave this section blank.

<p><input type="checkbox"/> Living within the service area or neighborhood of the project (requires employer <u>confirmation</u>)*</p> <p><input type="checkbox"/> YouthBuild participant*</p>
--

*Currently or at the time of hire if hired within the past 5 years

☐ In addition to qualifying as a Section 3 Worker, I meet at least **one** of the requirements in the box above and therefore qualify to be counted as a Targeted Section 3 Worker under 75 CFR § 75.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and certifies that the worker identified above meets the definition of a Section 3 worker. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)

Signature

Date

10.12.3 Section 3 Business Concern Certification

CERTIFICATION FOR A BUSINESS SEEKING SECTION 3 PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

Name of Business _____

Address of Business _____

Type of Business: ____Corporation ____Partnership ____Sole Proprietorship
Joint Venture

Attach each of the following as applicable to your business:

- | | |
|--|--|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Certificate of Good Standing | <input type="checkbox"/> Latest Board minutes appointing officers |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Organization chart with names and titles |
| <input type="checkbox"/> Partnership Agreement | <input type="checkbox"/> Additional documentation and brief functional statement |
| <input type="checkbox"/> List of owners/stockholders and % ownership of each | |

For business claiming Section 3 status, the business must provide documentation for the last 6-month period to support the following:

- At least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

- | | |
|--|--|
| <input type="checkbox"/> Documentation in accordance with 24 CFR 75.31, indicating owners qualification as a Section 3 Worker or as a Targeted Section 3 worker; | and conditions of the proposed contract: |
| <input type="checkbox"/> List of all current full-time employees, list of employees claiming Section 3 status, and Section 3 workers' and Targeted Section 3 workers' labor hours; | <input type="checkbox"/> Current financial statement |
| <input type="checkbox"/> Documentation of owners residence in Section 8 assisted housing. | <input type="checkbox"/> Statement of ability to comply with public policy |
| <input type="checkbox"/> Evidence of ability to perform successfully under the terms | <input type="checkbox"/> List of owned equipment |
| | <input type="checkbox"/> List of all contracts for the past two years |

Authorizing Name and Signature: _____

Date: _____

(Corporate Seal)

Attested by: _____ Date: _____

10.13 Additional Forms

File Name	Section 3 Sample Plan-HUD template
File Location/Link	Section-3-Sample-Plan.docx (live.com)

10.14 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

11 Fair Housing and Equal Opportunity (FHEO), Civil Rights and Limited English Proficiency (LEP)

11.1 Overview

Lee County ensures that all programs and activities in the County's CDBG-DR Action Plan will be conducted without bias or discrimination on the basis of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. Projects and activities planned with CDBG-DR funds will not have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their community needs, particularly in racially and ethnically concentrated areas of poverty. Programs are designed to provide necessary ADA accommodations to support the recovery needs of impacted individuals with disabilities.

Lee County has completed an Analysis of Impediments to Fair Housing Choice (AI) to evaluate fair housing data and identify fair housing priorities and goals. The focus of the AI is on identifying impediments that may prevent equal housing access and developing solutions to mitigate or remove such impediments.

Subrecipients are required to administer their CDBG-DR funds in compliance with the following federal laws and Executive Orders regarding fair housing and discrimination.

- **Title VI of the Civil Rights Act of 1964:** This law states that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- **Fair Housing Act, Title VIII of the Civil Rights Act of 1968:** The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to protect families with children and persons with disabilities from discrimination in the sale or rental of housing. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to increase accessibility for persons with disabilities.
- **Executive Order 11063, as amended by Executive Order 12259:** This order and its implementing regulations require HUD to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, lease, rental, or other disposition of residential property assisted with federal funds.
- **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended:** This law mandates that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation in, denied

the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds.

- **Section 3 of the Housing and Community Development Act of 1968:** This section implemented in 24 CFR 75 requires that, to the greatest extent feasible, low- and very low-income persons who live in the metropolitan area of the CDBG project receive opportunities for training and employment and award contracts to businesses that hire low- and very low-income.
- **Section 504 of the Rehabilitation Act of 1973, as amended:** This section specifies that no qualified individual shall, solely because of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal assistance.
- **The Americans with Disabilities Act (ADA) of 1990:** This law prohibits state and local governments, public accommodations, and commercial facilities from employment discrimination. The ADA also requires that facilities that are newly constructed or altered, by or for use by a public entity, be designed and constructed so that the facility is readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.
- **The Age Discrimination Act of 1975, as amended:** This law provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.
- **Executive Order 11246 (as amended by Executive Orders 11375 and 12086) - Equal Opportunity Under HUD Contracts and HUD-Assisted Construction Contracts:** This order requires that you your contractors, and their subcontractors, not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- **The Architectural Barriers Act of 1968:** The Architectural Barriers Act (ABA) of 1968 requires that certain buildings financed with federal funds be designed, constructed, or altered to ensure accessibility for persons with physical disabilities. The ABA covers any building or facility receiving federal funds, except privately-owned residential structures. Any covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the [Uniform Federal Accessibility Standards](#).

Subrecipients must take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have timely, meaningful access and an equal opportunity to participate in services and benefits provided by CDBG-DR funded activities.

11.2 Affirmatively Further Fair Housing

Lee County provides the following that are available to subrecipients to support their efforts to affirmatively further fair housing.

- **Production of Resources:** Posters, training programs, an internet-based app, surveys and quizzes, pencils and activity books, and FAQs are available to support local analysis and outreach.
- **Information Outreach:** Landlords, managers, real estate agents, and local service agencies post or provide Fair Housing Notices in multiple languages.
- **Information for the General Public:** Providing the general public with an overview of Fair Housing laws and information regarding individual rights and responsibilities when buying and selling homes at <https://www.leegov.com/dhs/fairhousing>.
- **Training:** Four audiences have access to training specifically designed for them, including children, consumers, housing providers and professionals, and real estate agents.
- **One-on-One Technical Assistance:** When requested for specific areas of concern, consultations and technical assistance may be given to target audiences.

Subrecipients must maintain documentation that demonstrates efforts to comply with fair housing and nondiscrimination obligations. Documentation may include, but is not limited to, the following:

- Affirmative marketing and outreach efforts that reduce barriers to the provision of services, including materials reflective of the County's diverse population, documents translated into Spanish and Haitian-Creole, targeting outreach and marketing to Racially and Ethnically Concentrated Areas of Poverty (RECAPs) or other historically underserved areas;
- Case management and direct service staff that are representative of the population being served, include the use of local, trusted community members and partners, whenever possible;
- Access to holistic case management and housing counseling services to ensure long-term housing stability;
- Equitable policies and procedures for the rental or sale of any funded properties;
- Resolutions or ordinances supporting fair housing practices;
- Sponsoring fair housing related trainings for local real estate professionals, subrecipient staff, and community members;

- Undertake one or more activities to affirmatively further fair housing. Examples of activities include:
 - Counseling services
 - Market the fair housing resolution
 - Education programs
 - Use of the HUD affirmative marketing plans
 - Participate in Fair Housing month (April)
- Outreach and communication efforts that demonstrate meaningful engagement of members of protected classes and vulnerable populations in the planning and development process;
- Affirmative marketing and outreach efforts that reduce barriers to the provision of services, if the plan includes a plan for amending public service delivery;
- Affirmative marketing and outreach efforts that reduce barriers to the provision of services, if the plan includes a plan for amending public service delivery;
- Equitable policies and procedures for the rental or sale of any funded properties (subrecipients and developers will be required to provide tenant selection policies);
- Legally sufficient justification for any practice that may predictably result in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin; or
- Demonstration the activity is consistent – or does not have a direct or indirect correlation – with Lee County’s commitments in its Analysis of Impediments to Fair Housing Choice 2019-2023 report.

11.3 Nondiscrimination

The Subrecipient must assure that all CDBG-DR-funded activities undertaken as part of the project are conducted in a manner that will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Also, effective March 2012, the CDBG regulations (24 CFR Part 570) were revised such that the definition of a household includes unrelated individuals regardless of perceived sexual orientation, gender identify or marital status. Segregated facilities, services or benefits, or different treatment are prohibited. For facilities or buildings that have physical limitations or configurations that require and/or that are permitted to have shared sleeping quarters or bathing facilities, refer to 24 CFR Part 5, Federal Register Notice FR 5863-F-02 published September 21, 2016. This notice provides guidance on measures to ensure that recipients and subrecipients, owners, operators, and managers of shelters and other buildings and facilities and providers of services grant equal access to such facilities and services to individuals in accordance with an individual’s perceived gender identity. Subrecipients must demonstrate compliance with Title VI of the Civil Rights Act of 1964. All organizations

that receive pass-through federal funding from Lee County and must comply with the county's (refer to the link provided) or its own Title VI Implementation Plan. The subrecipient can adopt the plan created by Lee County or may create its own plan and submit to Lee County for approval.

11.4 Accessibility and Section 504

Subrecipients must follow the requirements outlined below to be in compliance with accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (Section 504). Collectively, the accessibility laws and implementing regulations prohibit discrimination based on disability and establish requirements for physical accessibility in connection with federally-funded housing and non-housing activities.

Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Specifically, Section 504 imposes requirements related to:

- Program accessibility;
- Communications;
- Accessible design and construction for certain housing and non-housing activities;
- Subrecipient self-evaluation of programs, services, and activities to ensure programmatic and physical accessibility to persons with disabilities; and
- Nondiscrimination in employment.

11.4.1 Program Accessibility

Existing housing and non-housing programs administered by the Subrecipient and its funded entities (e.g., subrecipients, developers) must be accessible to persons with disabilities. Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This means that persons with disabilities must: (1) have an equal opportunity to participate in and benefit from the program, and (2) be offered the same range of choices and amenities as those offered to persons that do not have disabilities. Subrecipients ensure that their programs and services are readily accessible to and usable by persons with disabilities to the maximum extent feasible. In other words, the Subrecipient must take steps to provide the necessary access to persons with disabilities, unless the actions would constitute an undue financial and administrative burden or require a fundamental alteration in the nature of the program.

Examples of steps to ensure program accessibility include:

- Conduct meetings and program-related marketing and other activities in accessible locations.
- House program in-take offices in accessible locations.

- Ensure program-related communications are accessible to persons with disabilities (see Communications section below for more detail).
- In housing activities, distribute accessible units throughout projects and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice. Make accessible units available to persons with disabilities first.
- Make reasonable accommodation to persons with disabilities. A reasonable accommodation is a change, adaptation or modification to a policy, program, service, or workplace that allows a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. What is reasonable can only be determined on a case-by-case basis; however, the following examples are often considered reasonable accommodations:
 1. A federally assisted housing provider has a policy of not providing assigned parking spaces. A tenant with a mobility impairment, who has difficulty walking, is provided reasonable accommodation by being given an assigned accessible parking space in front of the entrance to his unit.
 2. A federally assisted housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided reasonable accommodation by being allowed to mail her rent payment.
 3. A federally assisted housing provider has a no-pets policy. A tenant, who uses a wheelchair and has difficulty picking up items off the ground, is allowed to have an assistive animal that fetches things for her as reasonable accommodation to her disability.
 4. An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance, and she needs a ramp to enter the unit. Her federally assisted housing provider pays for the construction of a ramp as a reasonable accommodation to the tenant's disability.

11.4.2 *Communication and Accessibility*

Communication is an important component of program accessibility. Persons with impairments to hearing, vision, speech, or mobility may have special communication needs. To the maximum extent feasible, Subrecipients must provide program information in ways to ensure that persons with these types of disabilities are able to access and enjoy the benefits of any program or activity receiving CDBG-DR funds.

Subrecipients must furnish auxiliary aids and services, as necessary, to ensure effective communication with persons with disabilities. These may include:

- For persons with hearing impairments:
 1. Qualified sign language interpreters;
 2. Note takers;

3. Telecommunication devices for deaf persons (TDDs);
 4. Telephone handset amplifiers;
 5. Assertive listening devices (devices that increase the sound in large group settings);
 6. Flashing lights (where aural communication is used, such as warning bells);
 7. Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
 8. Transcription services; and
 9. Closed and open captioning.
- For persons with vision impairments:
 1. Websites that comply with Section 508;
 2. Qualified readers;
 3. Written materials translated into alternative formats (i.e., Braille, audio tape, large print);
 4. Aural communication (Bells or other sounds used where visual cues are necessary); and
 5. Audio description services (through a headset, a narrator describes what the visually impaired person cannot see).

The Subrecipient must ensure effective communication with persons with all types of disabilities in all activities, to the greatest extent feasible. Where the Subrecipient communicates with applicants and beneficiaries by phone, a TDD is required or an equally equivalent system must be available.

11.4.3 Accessibility in Housing and Non-Housing Activities

Certain housing and non-housing facilities that are constructed or rehabilitated with CDBG-DR funds must be designed and constructed to be accessible.

Housing Activities

CDBG-DR-funded housing is subject to the accessibility requirements of both Section 504 and the Fair Housing Act, as amended. For housing purposes, an accessible dwelling unit is on an accessible route and has accessible features inside.

It is stated under Section 504:

- For newly constructed multi-family rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with 15 or more units:
 - A minimum of five percent of total dwelling units (but not less than one unit) must be made accessible for individuals with mobility impairments;
 - An additional two percent of dwelling units (but not less than one) must be made accessible for persons with hearing or vision impairments.

- Units that are made accessible must be located on an accessible route (either on the ground floor, or on a floor that is served by an elevator).
- When alterations to a unit are not substantial, any alterations that are made to the multifamily dwelling unit must be made to be accessible to and usable by individuals with disabilities.
- A rehabilitation project is considered substantial when the rehabilitation costs are 75 percent or more of the replacement cost of the complete facility.
- Accessible features must meet the requirements of the Uniform Federal Accessibility Standard (UFAS).

Under the Fair Housing Act:

- The accessibility standard is outlined in the Fair Housing Act. This standard is often referred to as “adaptable,” and is generally a less stringent standard of accessibility than UFAS.
- All newly constructed units in buildings with four or more units that are on the ground level or can be reached by an elevator must be made accessible.

Non-Housing Activities

All of Section 504's nondiscrimination, program accessibility, and reasonable accommodation requirements that apply to housing facilities and programs apply equally to the operation of non-housing facilities or programs. “Facility” is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. “Accessible” for non-housing purposes means that a facility or portion of a facility can be approached, entered, and used by individuals with physical handicaps.

Non-housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities, in accordance with the UFAS standard. In order to make its facilities accessible, a Subrecipient may need to:

Relocate programs to accessible facilities or accessible portions of facilities;

Acquire or build new facilities that are accessible; or

Selectively alter facilities to make them accessible to persons with mobility or sensory impairments.

State and local governments are also subject to Title II of the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against persons with disabilities. Title II requires that facilities that are newly constructed or altered by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and useable by persons with disabilities. Title

It also requires accessibility of newly constructed or altered streets, roads, highways, and pedestrian walkways.

11.4.4 Section 504 Self-Evaluation

If a Subrecipient has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to people with disabilities, they must conduct such evaluation and document all needs. If a Subrecipient has already performed a self-evaluation, a new one is not required, unless facilities have been altered.

A self-evaluation guide is provided below.

While performing the self-evaluation, Subrecipients should conduct a careful inspection of the following to determine if they are free from discriminatory effects and practices:

- Employment and personnel policies and practices;
- Programs and activities;
- Benefits and service delivery; and
- Contractual agreements.

The self-evaluation must be submitted before an agreement can be executed.

In the course of the self-evaluation, if the Subrecipient identifies any policies and practices that are found to be discriminatory or contrary to Section 504 requirements, it must take steps to remedy the discrimination.

File Name	Section 504 Self Evaluation Template
File Location/Link	https://cdbgdr.leegov.com/pages/Resources

11.5 Limited English Proficiency (LEP) and Language Access Plan (LAP)

Subrecipients receiving CDBG-DR funds who are units of general local government must have an existing policy addressing LEP and LAP. Smaller capacity subrecipients, as a good faith effort, must conduct a four-factor analysis to determine the language access needs in their community and develop an appropriate LAP. For more information regarding the preparation of a four-factor analysis please refer to the Monitoring Report with Policy, Plan and Monitoring Report for Serving Persons with Limited English Proficiency (LEP) linked in Source Documents below.

11.6 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with Fair Housing/ADA/Civil Rights.

To connect with SRGA regarding these efforts, please contact: Joan LaGuardia

Email: jlaguardia@leegov.com

Phone: 239-533-2315

11.7 Source Documents

File Name	Lee County Analysis of Impediments to Fair Housing Choice
File Location/Link	https://www.leegov.com/dhs/fairhousing

File Name	Lee County Policy for Limited English Proficiency (LEP) and Language Access Plan (LAP)
File Location/Link	https://www.leegov.com/civilrights/

File Name	Lee County Civil Rights Act, Title VI Nondiscrimination Policy, Plan and Monitoring Report With Policy, Plan and Monitoring Report for Serving Persons with Limited English Proficiency (LEP)
File Location/Link	https://www.leegov.com/civilrights/

File Name	Uniform Federal Accessibility Standards
File Location/Link	UFAS (1984) (access-board.gov)

File Name	Accessibility Notice
File Location/Link	Notice CPD-00-09: Accessibility Notice - Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act and Their Applicability to Housing Programs Funded by HOME and CDBG - HUD Exchange

12 Other Administrative Requirements and Program Policies

12.1 Overview

In addition to areas specifically address by an SOP, Subrecipients must comply with a number of other requirements included in the subrecipient agreement or federal regulations. These requirements include but are not limited to:

- Lobbying activities
- Drug Free Workplace
- E-Verify Requirements
- Political Activity
- Conflict of Interest
- Lead Based Paint
- Elevation Standards
- Personally Identifiable Information
- Excessive force
- Section 508 compliance

12.2 Procedure

1. Subrecipients must certify that they are in compliance with the restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.
2. Subrecipients must certify that they are in compliance with federal Drug Free Workplace Requirements.
3. Subrecipients must certify that they will verify employment eligibility of all new employees hired during the Agreement term through the U.S. Department of Homeland Security's E-Verify system.

Section 448.095, F.S., requires the following:

- Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.
- A private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. There is no charge to the employer to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: <https://www.e-verify.gov/>.

If the subrecipient or its contractors, consultants, or subrecipients, does not use E-Verify, they shall enroll in the E-Verify system prior to hiring any new employee or retaining any contract employee after the Effective Date of the Subrecipient Agreement.

4. The regulations prohibit subrecipients from using CDBG funds to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities such as candidate forums, voter transportation, or voter registration.
5. Subrecipients must maintain policies and procedures to ensure compliance with conflict of interest prohibitions, in accordance with 24 CFR 570.489(h), 24 CFR 570.611, 2 CFR 200.317-318, and 2 CFR 200.112 and State of Florida's Code of Ethics for Public Officers and Employees, adopted by the Legislature as Part III of Chapter 112, Florida Statutes states in section 112.311(5).
6. There are two sets of conflict of interest provisions applicable to activities carried out with CDBG-DR funding. The first set, applicable to the procurement of goods and services, is the procurement regulation located in 2 CFR 200.318. The second set of provisions are the CDBG Conflict of Interest requirements at 24 CFR 570.611 that address situations regarding the administration and carrying out of the CDBG-DR assisted activities. Subrecipients must review their policies and procedures to ensure compliance with conflict of interest prohibitions.
7. Subrecipients must ensure their contractors comply with the requirements that apply to the use of CDBG funds for the rehabilitation of a residential property constructed before 1978. Subrecipients should consult the applicable portions of 24 CFR 35 and contact SRGA staff for greater detail if you are carrying out an activity subject to these requirements.
8. To ensure future flood resistance and the safety of local residents and visitors, subrecipients must ensure that activities comply with elevation standards established by FEMA and its National Flood Insurance Program (NFIP) defined at 44 CFR 59.1, Insurance and Hazard Mitigation, and 24 CFR 55.2(b)(10). All programs for new construction and repair of substantially damaged or substantially improved structures will meet these guidelines.
9. Records of federally funded grants may not be disseminated with Personally Identifiable Information (PII), which is defined to include a person's name in combination with information such as a social security number, passport number, credit card number, bank number, health records, and similar information. PII required

to be disclosed by law is excluded. Subrecipients who handle PII should review the Lee County Personally Identifiable Information (PII) Security and Client Confidentiality SOP and contact SRGA staff for additional guidance.

10. Subrecipients must certify that they have adopted and are enforcing: (1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and (2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.
11. Subrecipients must ensure that all information and communication technology (ICT) developed, procured, maintained, funded, and used by the subrecipient will be accessible to persons with disabilities.

12.3 Additional Forms

File Name	Subrecipient Certification
File Location/Link	https://cdbg-dr-leegis.hub.arcgis.com/

12.4 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

13 Record Keeping and Reporting

13.1 Overview

To support record keeping and reporting for Lee County's planning, infrastructure, public services, economic revitalization, and affordable housing programs, Lee County staff and its Management and Implementation vendor, HGA, will use VistaTRAX™, a system that manages NOFA processes; application submittals; eligibility reviews; budgeting; disbursement; and progress tracking from design to construction. These systems will be the system of record for Lee County's CDBG-DR program and will provide the platform for all CDBG-DR NOFA and application processes.

Required levels of system access will be provided to CDBG-DR subrecipients related to their grant activities. All subrecipient files will be maintained in the system in accordance with record keeping requirements.

In addition to records maintained in VistaTRAX, subrecipients are required to maintain on-site records and documentation of CDBG-DR activities. Subrecipients are required to keep and maintain adequate records and supporting documentation applicable to all CDBG-DR activities including eligibility information, beneficiary data, and cost data. Said records and documentation will be retained by the subrecipient for a minimum of five (5) years from the date of closeout of the subrecipient agreement. If there are documents subject to an audit or other investigation, then those documents must be retained until that investigation or audit is concluded no matter the minimum retainage period.

Subrecipient recordkeeping requirements are found in 24 CFR 570.506 and the subrecipient agreement. Subrecipients must maintain records sufficient to:

- Provide a full description of each activity assisted with CDBG-DR funds that includes:
 - The address or legal description (location) of where the activities occur.
 - The amount of CDBG-DR funds budgeted, obligated, and expended for the activity.
 - The regulatory provision under which the activity is eligible under 24 Part 570, e.g. 24 CFR 570.201-202 or otherwise eligible pursuant to a waiver or alternative requirement in 88 FR 32406.
- Demonstrate that each activity undertaken complies with one or more of the National Objectives in accordance with the criteria in 24 CFR 570.208 or meets a National Objective pursuant to a waiver or alternative requirement in 88 FR 32046.

The State of Florida also publishes a General Records Schedule (GS1-SL) for [State and Local Governments](#). Subrecipients must ensure that records are maintained in accordance with the most restrictive guidelines, if there is a conflict with Federal and State retention schedules.

Subrecipients are required to submit periodic performance and financial reports to SRGA as outlined in the subrecipient agreement. Copies of all reports must be maintained by the Subrecipient in electronic format, unless otherwise required by the County.

13.2 Recordkeeping: Technical Assistance

Lee County Staff is available to provide technical assistance throughout the life of the Subrecipient Agreement to ensure compliance and eligibility. Technical assistance may include:

- Email correspondence;
- Individual and conference phone calls; and/or
- On-site visits and meetings.

Documentation of any Technical Assistance provided must be included in the subrecipient's program record-keeping files.

13.3 Files to Maintain

Record Keeping and Reporting

Immediately upon award of CDBG-DR funds, the Subrecipient should establish a record keeping system. The system must meet recordkeeping standards specified by the County and found in 24 CFR 570.506(b)(1)-(12).

The following list outlines some, but not necessarily all, key topics and categories the subrecipient should include when developing a project file structure. These categories below are not prescriptive or all inclusive. Actual records to be maintained vary depending on the type of activity or program being carried out.

Category	Types of Files and Records Maintained
Subrecipient Information	<ul style="list-style-type: none"> • Organizational chart • Complete and signed Request for Federal Funding SF-424 • Final approved application for funding and all related records requesting CDBG-DR funds • Executed agreement, amendments, revisions, and or Technical letters
Administrative records	<ul style="list-style-type: none"> • Funding award records • Program policies and guidelines • Overall administration files and records of your CDBG-DR activities. • Compliance reports • Personnel files • Property management files • General organizational • All grantee correspondence
Civil Rights, Fair Housing, EEO, and Citizen Participation	<ul style="list-style-type: none"> • Citizen participation compliance documentation; • Complaint policies and procedures; • Fair Housing and Equal Opportunity records; • Documentation of compliance with crosscutting requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint); • Limited English Proficiency documentation; • Outreach performed to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible; and • Job Creation/Retention reports.
Financial records	<ul style="list-style-type: none"> • Chart of accounts • Accounting procedures manual • Accounting journals and ledgers • Source documentation (purchase orders, invoices, bank records, etc.) • Procurement files • Bank account records • Financial reports • Audit files

Environmental	<ul style="list-style-type: none"> • Complete Environmental review records to include: <ul style="list-style-type: none"> • Public notices/publisher's affidavit • Coordination letters for/from other agencies • Public comments; o Request for Release of Funds and Certification form • Authority to Use Grant Funds form • Documentation of compliance with other applicable laws/authorities • Flood plain maps as necessary • Historic Preservation notification and response letters as appropriate • If applicable; Environmental exemption form titled "Exemption Determination for Activities Listed at 24 CFR 58.34" along with required 58.6 Compliance Checklist.
Procurement and Draw Requests	<ul style="list-style-type: none"> • Procurement policies and procedures • Procurement of professional services files (advertisements, proposals/qualifications, contracts, etc.) • Procurement of construction files (advertisements, bids, scoring, notice of award, contracts, etc.) • Bid rejection documentation • Draw Requests • Original Invoices • Meeting Minutes for invoice payment approval • Copies of payments • Timesheets • Benefit Rates for employees • Payroll Records and reports
Project or case files	<ul style="list-style-type: none"> • Project activities • Construction records • Regulatory compliance (e.g., cross-cutting requirements, etc.) • Individual beneficiaries • Property owners and/or properties • Nation Objective documentation
Documenting Relationship with Disaster	<ul style="list-style-type: none"> • Damage or building estimates for physical losses • Insurance claims • FEMA data • Physical Inspection
Duplication of Benefits	<ul style="list-style-type: none"> • Verification of sources of assistance and use of funds <ul style="list-style-type: none"> ○ FEMA award letter ○ Insurance letter ○ SBA assistance/declined loans • Subrogation Agreement

13.4 Record Retention

Subrecipients must retain CDBG-DR records for five (5) years after closeout of the subrecipient agreement.

13.5 Access to Records

Subrecipients must provide access Lee County, HUD, the Comptroller General of the United States, or other authorized governmental agencies to any pertinent records for purposes of monitoring and to make audits, examinations, excerpts, and transcripts (2 CFR 200.337).

Consistent with applicable state and local laws regarding privacy and obligations of confidentiality, subrecipients must also provide citizens with reasonable access to records on the past use of CDBG-DR funds (24 CFR 570.508 and 2 CFR 200.338).

13.6 Protection of Personally Identifiable Information

Subrecipients are required maintain records in a manner that protects individuals personally identifiable information in accordance with Lee County's Data Privacy Policies. Basic components of this policy are to establish proper protocols to:

- Storing hard copy documentation and files in secure locations, within locked file cabinets or locking storage rooms.
- Securing hard copy PII in applicant files or documents that are being actively reviewed or worked.
- Establishing parameters related to the use of applicant data transmitted and maintained in electronic media.
- Notifying Lee County immediately should a breach of data occur during the administration of the CDBG-DR Programs

13.7 Reporting

Subrecipients must submit quarterly reports to Lee County. Quarterly Activity Reports, attached as an exhibit to this SOP, are due no later than the 15th of the month following the end of the quarter ***even if a request for reimbursement has not been submitted***. The Quarterly Activity report explains the progress that has made in relation to the goals and performance indicators outlined in the subrecipient agreement. Subrecipient administered projects or activities are subject to reallocation to other projects or subrecipients if performance metrics and/or expenditure rates do not meet quarterly projections.

13.8 Additional Forms

File Name	Sample Quarterly Report.pdf
File Location/Link	https://cdbgdr.leegov.com/

File Name	Lee County SOP Data Privacy
File Location/Link	https://cdbgdr.leegov.com/

13.9 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

13.10 Source Documents

File Name	HUD Playing by the Rules: A Handbook for CDBG Subrecipients on Administrative Systems
File Location/Link	Playing by the Rules: A Handbook for CDBG Subrecipients on Administrative Systems - HUD Exchange

14 Monitoring

14.1 Overview

HUD holds Lee County the grantee ultimately responsible for compliance with all applicable requirements for achieving objectives on schedule and within budget. Even though the County may provide subawards to subrecipients to help carry out the overall funding objectives, the County can not relinquish its ultimately responsibility for compliance and funding outcomes. Therefore, per uniform guidance, the County will provide oversight and monitoring of its subrecipients. (2 CFR 200.331, 24 CFR Part 570). Oversight will include ongoing generic reviews, and monitoring will include targeted area-focused reviews of administrative, financial, performance, reporting, and compliance with applicable federal crosscutting requirements. The objective of the oversight and monitoring activities is to facilitate the achievement of performance goals while ensuring that subaward funds are used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward.

Monitoring activities will consist of formal documented engagement, including: notification of monitoring event, entrance conference, assessment, exit conference, monitoring report, subrecipient response, and event clearance. Standardized monitoring checklists will be used to ensure consistency and to provide a detailed record. The monitoring checklists are tailored from the HUD monitoring checks found in the CPD Monitoring Handbook 6509.2.

Lee County will formally notify subrecipients of monitoring events. In response to subrecipient monitoring, the County will provide technical assistance to mitigate identified risks and to address concerns and findings. Monitoring will be conducted based on risk. Typically, subrecipients will be monitored at least one time annually and prior to the closeout of the subrecipient agreement.

Subrecipients are responsible for maintaining documentation that they are carrying out program activities in accordance with the terms of the subrecipient agreement and applicable federal and state laws and regulations.

14.2 Procedure

Lee County monitoring procedures are described in detail in the Lee County Compliance and Monitoring Manual. Subrecipients should refer to the Compliance and Monitoring Manual for detailed guidance. Subrecipients' primary responsibilities are to maintain adequate records and provide SRGA monitoring staff with access to records upon request.

The general monitoring process is described below:

Subrecipient monitoring occurs at least once annually, and prior to the closeout of any subrecipient agreement. Each monitoring will address project-specific issues and may be carried out through a combination of desk review, remote monitoring, and/or on-site monitoring. The primary goals of monitoring are to:

1. Review activity eligibility and achievement of national objectives;
2. Evaluate conformance to the subrecipient agreement;
3. Ensure compliance with CDBG-DR program and all other applicable federal, state, and County requirements, including, but not limited to appropriate insurance coverage, assessment management processes, procurement procedures, conflicts of interest disclosures, and fair housing and civil rights compliance;
4. Review and ensure accuracy and completeness of record keeping and financial managements systems;
5. Evaluate organizational, program and project performance, as well as on-going project viability (financial health, management capacity, etc.);
6. Design any corrective actions necessary to improve or reinforce performance; and
7. Identify the technical assistance needs of CDBG-DR subrecipients.

Upon completion of a monitoring, SRGA will provide a monitoring letter to each subrecipient outlining the results of the monitoring. If corrective actions are needed as a result of findings or concerns, a corrective action plan will be included with the letter. The subrecipient will be provided the opportunity to respond to the monitoring results, and SRGA staff will work collaboratively with the subrecipient to resolve any findings or concerns.

14.3 Additional Forms

File Name	Monitoring Checklists.docx
File Location/Link	https://cdbgdr.leegov.com/

14.4 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding. To connect with SRGA regarding these efforts, please contact: Benjamin Small
 Email: bsmall@leegov.com
 Phone: 239-533-2315

14.5 Source Documents

File Name	Lee County Compliance and Monitoring Manual
File Location/Link	https://cdbgdr.leegov.com/pages/policies-and-procedures

File Name	HUD CPD Monitoring Handbook (6509.2)
File Location/Link	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2

15 Closeout

15.1 Overview

Lee County must expend one hundred percent of its CDBG-DR allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at the time, as requested by Lee County, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the Lee County on appropriate programmatic purposes will be recaptured by HUD.

Subrecipients are responsible for completing their activities in accordance with the terms of the subrecipient agreement. In general, the closeout process for a subrecipient agreement begins when the following criteria have been met:

- All costs paid with CDBG-DR funds have been expended and drawn, with the exception of closeout costs (e.g., final staff closeout and reporting costs) or contingent liabilities;
- All activities financed with CDBG-DR funds have been completed, are eligible, and have met a national objective;
- Performance and expenditure reports have been submitted to Lee County;
- All program income, if any, has been accounted for, and returned to Lee County; and
- All other subrecipient responsibilities under the subrecipient agreement have been met.

Closeout procedures may also be initiated due to the expiration or termination of the subrecipient agreement.

15.2 Procedure

15.2.1 Closeout Documents

Lee County, in consultation with the subrecipient, will determine when the closeout criteria have been satisfied and if it is appropriate to begin the closeout process. Lee County will notify the subrecipient of the closeout requirements by letter. The letter will explain the requirements for closeout including, but not limited to, the following:

- Performance report including beneficiary data, performance metrics, efforts to further Fair Housing, etc.
- Financial status report including program income and unpaid costs, if any.
- Procedures for the return of excess CDBG-DR funds and any program income.
- A final inventory of property that was acquired or improved with CDBG-DR funds.
- Record retention requirements.

Subrecipients must submit to Lee County all financial, performance, and other reports within ninety calendar days from the date of the closeout letter. Lee County may approve extensions when requested and justified by the subrecipient.

15.2.2 *Continuing Subrecipient Responsibilities*

Subrecipients are subject to certain CDBG-DR requirements as well as other provisions included in the subrecipient agreement after closeout. Subrecipients responsibilities after closeout include:

- Compliance with all program requirements, certifications, and assurances in using any remaining CDBG-DR funds available for closeout costs and contingent liabilities.
- For any real property that was acquired or improved using more than \$25,000 in CDBG-DR funds, subrecipients must either:
 - Comply with restrictive covenant, mortgage terms, or other documents securing CDBG-DR investment; or
 - Use the property to meet one of the CDBG-DR national objectives for at least five years after the expiration of the subrecipient agreement; or,
 - Pay Lee County the current market value of the property for any portion of the value attributable to the CDBG-DR funds used for the acquisition or improvement of the property. (This payment is program income to Lee County.)
- For other property acquired with CDBG-DR funds compliance with applicable provisions of 2 CFR 200 and 24 CFR 570.502 regarding insurance (2 CFR 200.310), equipment (2 CFR 200.313 and 24 CFR 570.502(a)(6)) and supplies (2 CFR 200.314).
- Ensuring that flood insurance coverage for affected property is maintained for the mandatory period.
- Record retention requirements in accordance with the Federal and State requirements, and
- Other continuing responsibilities outlined in the subrecipient agreement.

Subrecipients remain subject to the audit requirements established by Lee County and those in 2 CFR 200, Subpart F.

As specified in 2 CFR 200.345, the closeout of a CDBG-DR award to a subrecipient does not affect:

- Lee County's right to disallow costs and/or recover funds on the basis of a later audit or other review.
- The subrecipient's obligation to return funds due to Lee County from subsequent refunds, corrections, or other transactions.

15.3 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

16 Green Building Requirements

16.1 Overview

CDBG-DR subrecipients are required to incorporate green building and energy efficiency measures into their new construction, reconstruction, and rehabilitation projects. HUD identifies a number of different industry-recognized standards that can be incorporated into each program's policy. These standards may differ from program to program. To meet these requirements, Lee County will document the use of the applicable green building standard in each project file.

16.2 New Construction, Reconstruction Substantial Rehabilitation

Lee County requires that the subrecipient select and adhere to the Green and Resilient Building Standard for new construction and reconstruction of housing as required by HUD. The subrecipient must meet this standard for all residential new construction, reconstruction, and rehabilitation of substantially damaged buildings. HUD defines substantial damage and substantial improvement, with limited exceptions, in 44 CFR 59.1 as:

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

16.2.1 Selection Options

Each project must meet an industry-recognized standard that has achieved certification under one of the following:

- Florida Green Building Coalition standards <https://floridagreenbuilding.org/>
- Enterprise Green Communities. Program and compliance information can be found here: <https://www.greencommunitiesonline.org/checklist>
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development). Program and compliance information can be found here: <https://www.usgbc.org/resources?LEED+Resources=%5B%22Checklists%22%5D>
- ICC-700 National Green Building Standard Green+Resilience. Program and compliance information can be found here: <https://www.iccsafe.org/building-safety-journal/bsj-hits/2020-national-green-building-standard-now-available-for-free-download/>

- Living Building Challenge. Program and compliance information can be found here: <https://living-future.org/lbc/resources/>
- Or any other equivalent comprehensive green building program. **Lee County would need to pre-approve the standard.**

In addition to the selection options above, the project must also meet one of the following minimum energy efficiency standards such as:

- ENERGY STAR (Certified Homes or Multifamily High-Rise). Program and compliance information can be found here: https://www.energystar.gov/sites/default/files/asset/document/ES%20Certified%20Homes%20QA%20Checklist_Rev%2012.pdf
- DOE Zero Energy Ready Home. Program and compliance information can be found here: <https://www.energy.gov/eere/buildings/doe-zero-energy-ready-home-zerh-program-requirements>
- EarthCraft House, EarthCraft Multifamily. Program and compliance information can be found here: <https://earthcraft.org/resources/>
- Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association. Program and compliance information can be found here: <https://www.phius.org/resources/tools-and-support/certification-support>
- Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label). Program and compliance information can be found here: <https://www.builditgreen.org/greenpoint-rated/documents-checklists>
- Earth Advantage New Homes, <https://www.earthadvantage.org/resources/new-homes.html>
- Or any other equivalent energy efficiency standard acceptable to HUD.

Many of the green building standards incorporate energy efficiency standards. The subrecipient should review the standards and choose which one it would like to implement for its project. The subrecipient must identify within each project file which of these standards will be used and must also include the appropriate scoring metrics which demonstrate the extent to which the project is in compliance with the selected metrics.

16.3 Rehabilitation of Non-Substantially Damaged Residential Buildings

For rehabilitation of residential projects other than those described as “substantial”, Lee County requires that the subrecipient adhere to the *HUD CPD Green Building Retrofit Checklist*. Subrecipients must apply these guidelines to the extent applicable for the rehabilitation work undertaken. Examples include:

- When replacing or repairing bathrooms, kitchens, and laundry rooms, use materials that have durable, cleanable surfaces.
- Products and appliances replaced as part of the rehabilitation work must be ENERGY STAR-labeled, Water Sense-labeled, or Federal Energy Management Program (FEMP) certified.

- When replacing windows, install geographically appropriate ENERGY STAR rated windows.
- Utilizing Low/No VOC Adhesives and Sealants.

The HUD CPD Green Building Retrofit Checklist promotes energy efficiency and green building practices for residential retrofit projects. Subrecipients must follow the checklist in its entirety and apply all measures within the Checklist to the extent applicable to the particular building type being retrofitted. The phrase “when replacing” in the Checklist refers to the mandatory replacement with specified green improvements, products, and fixtures only when replacing those systems during the normal course of the retrofit.

File Name	HUD CPD Green Building Retrofit Checklist
File Location/Link	https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf

16.4 Monitoring and Compliance

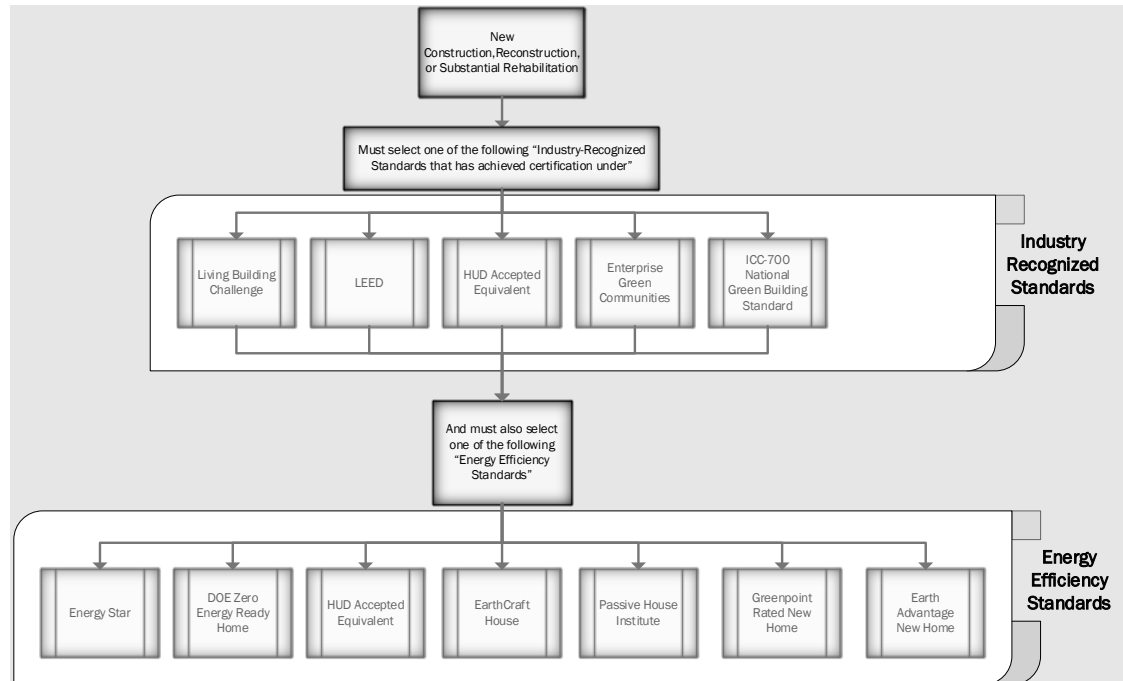
16.4.1 *Award*

The Green Building and Energy Efficiency requirements in the signed agreement. Lee County will provide technical assistance in understanding the requirements and any additional documentation needed.

16.4.2 *Project Close-out*

At the completion of the project, as part of the required forms for close-out a final verification that green building requirements have been achieved per the program policy will be submitted to Lee County. The project file needs to contain the final completed checklist for the applicable standard(s). Below is a flowchart which identifies the different allowable options within the Industry Recognized Standards as well as the Energy Efficiency Standards.

It should be noted that while HUD identifies the combination of these two different standards as the Green and Resilient Building Standard, there is a fair amount of overlap between the two groups and they should not be viewed as one being “Green” and the other being “Resilient”.



16.5 Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

16.6 Source Documents

File Name	Federal Register 88 FR 32046
File Location/Link	2023-10598.pdf (govinfo.gov)

17 Mitigation Requirements

17.1 Overview

HUD defines mitigation as activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship by lessening the impact of future disasters.

17.2 Mitigation Set-Aside

As noted in the May 18, 2023, Federal Register, grantees must use fifteen percent of their total allocation to fund mitigation activities. Of the \$1,107,881,000 CDBG-DR funds allocated to Lee County, \$144,506,000 was identified as a “CDBG-DR Mitigation set-aside” for mitigation activities.

Unlike recovery activities that must demonstrate “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, activities funded by the CDBG-DR mitigation set-aside do not require such a “tie-back” to the specific qualified disaster that has served as the basis for the allocation. The CDBG-DR mitigation set-aside will only fund activities that meet the following provisions:

1. Meet the definition of mitigation;
2. Address the current and future risks as identified in the mitigation needs assessment in the MID areas;
3. Be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and
4. Meet a national objective.

HUD encourages subrecipients to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG-DR funds as part of eligible activities and are required to establish resilience performance metrics for those activities. As such, subrecipients may also meet the requirement of the CDBG-DR mitigation set-aside by including eligible recovery activities that both address the impacts of the disaster (i.e., have “tie-back” to the specific qualified disaster) and incorporate mitigation measures into the recovery activities.

17.3 Mitigation Needs Assessment

Lee County was required by HUD to assess the mitigation needs that resulted from the covered disaster in the Action Plan. The mitigation needs identified in the assessment informed the activities funded by the CDBG-DR mitigation set-aside. The Action Plan can be found on Lee County’s website below.

The mitigation needs assessment discusses the characteristics and impacts of current and future hazards identified through previously declared disasters. The assessment also addresses risks to indispensable services that enable continuous operation of critical

business and government functions and are critical to human health and safety or economic security.

File Name	2023 CDBG-DR Action Plan
File Location/Link	https://www.leegov.com/recovery/cdbg-dr

17.4 Mitigation Framework

When pursuing mitigation activities, Lee County and its subrecipients can evaluate projects based on the following key resilience factors.

Mitigation Factor	Description
Risk	Evaluate the probability of an event occurring again and how the activity mitigates that risk.
Vulnerability	If funding a facility or project, understand the characteristics (location, size, operations, etc.) of the facility or project.
Criticality	Understand what services a facility or project provides and evaluate the importance of that service. Refer to FEMA Community Lifelines for examples.
Consequence	Understand how substantial or unmitigated damage to the facility or project impacts a community or services provided in the community.
Benefit	Understand what benefit the facility or project is providing to disadvantaged populations.

17.5 Mitigation Measures and Resilience Performance Metrics

Mitigation measures help ensure that communities are more resilient to the impacts of recurring natural disasters and climate change. Examples of mitigation measure include:

- Incorporating resilient construction standards
- Using resilient building materials and technology
- Elevating facilities above the Base Flood Elevation (BFE)
- Buyout/Acquisition of properties in high-risk areas
- Provide aid to relocate residents or businesses to lower-risk areas
- Restoration of trees in the urban landscapes
- Use of more renewable energy technologies
- Utilization of backup power for critical facilities

When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the service life of the project.

Before carrying out CDBG–DR funded activities to construct, reconstruct, or rehabilitate residential or non-residential structures that meet HUD’s mitigation set-aside requirement, subrecipients must establish resilience performance metrics for the activity. The process for developing resilience performance metrics includes:

1. An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (e.g., high winds destroying newly built homes),
2. Identification of the mitigation measures that will address the projected risks (e.g., using building materials that are able to withstand high winds), and
3. An assessment of the benefit of the mitigation measures through verifiable data (e.g., 10 newly built homes will withstand high winds up to 100 mph).

In DRGR, HUD has published specific measures for mitigation activities such as the number of non-residential buildings constructed, number of fewer outages of critical facilities and utilities, number of linear feet of public improvement, number of public facilities, number of residents protected from future flooding, and number of plans or planning products developed. Examples of other resilience performance metrics include:

- Number of acres no longer vulnerable to flood events
- Number of floodplain design standards updated
- Number of energy plans completed
- Number of resilience plans created
- Number of properties with access above 100 year or 500-year flood level
- Number of homes retrofitted with resiliency measures
- Number of legislative actions taken to improve resilience

17.6 Contact

Lee County’s Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact:

Email: Recovery@leegov.com

Phone: 239-533-2315

17.7 Source Documents

File Name	Community Development Block Grant Disaster Recovery (CDBG-DR) Mitigation Set-Aside Funds
File Location/Link	Community Development Block Grant Disaster Recovery (CDBG-DR) Mitigation Set-Aside Funds
File Name	DRGR Guidance on Grantee Program Projections
File Location/Link	DRGR Guidance on Grantee Program Projections Upload Templates Fact Sheet (hudexchange.info)