**AMERICAN SAMOA GOVERNMENT DEPARTMENT OF COMMERCE**

**CDBG-DR**

**INFRASTRUCTURE PROGRAM POLICIES**

**VERSION: 1.0**

**July 13, 2024]**

Prepared by:

Department of Commerce

The policies stated in this manual are current as of July 13, 2024. This Manual represents the current version of the policies which provide general guidance for the operation of the Infrastructure Programs. All manuals will be reviewed periodically and updated. Therefore, users are strongly encouraged to visit our website: to access the latest version.

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**1.2 Agencies and Acronyms**

**ASG** American Samoa Government

**BCA** Benefit Cost Analysis

**DOB** Duplication of Benefits

**DHS** Department of Homeland Security

**DHH** Department of Human and Social Services

**DOC** ASG Department of Commerce

**DPW** ASG Department of Public Works

**FEMA** Federal Emergency Management Agency

**GIS** Geographic Information System

**HCDA**  Housing and Community Development Act

**HMGP** Hazard Mitigation Grant Program

**HPO**  Historic Preservation Office

**HUD** U.S. Department of Housing and Urban Development

**NAI** No Adverse Impacts

**NTP** Notice to Proceed

**ODAPM** ASG Office of Disaster Assistance and Petroleum Management

**PW** Project Worksheet

**QPR** Quarterly Status Report

**USACE** United States Army Corps of Engineers

**USDOL** U.S. Department of Labor

**1.3 Definitions**

**Action Plan:** A plan to guide the spending of a HUD CDBG-DR grant award to address housing economic, and infrastructure needs after a disaster.

**Allocation:** 1) Amount of a grant award that has been determined for a particular grantee. 2) Amount of funding attributed to a program.

**Authority to Use Grant Funds**: An environmental review term for a process used by HUD

An official HUD form granting Authority to Use Grant Funds for state and responsible entities who have submitted HUD Form 7015.15: Request for Release of Funds and Certification.

**Community Development Block Grant-Disaster Recovery:** Flexible grant assistance from HUD to help the ASG recover from presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations.

**Cross-cutting regulations:** Regulations outside CDBG-DR regulations that apply to CDBG-DR programs. These include regulations pertaining to financial management, procurement, environmental, labor, acquisition, relocation, fair housing, and non-discrimination.

**Davis Bacon and Related Acts (DBRA):** Federal law requiring payment of prevailing wages as determined by the U.S. Department of Labor on certain federally funded projects or most HUD-assisted construction projects. It applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair of public buildings or public works.

**Duplication of Benefits (DOB):** A duplication of benefit is the receipt of funding from multiple sources for the same purpose. The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern or other entity from receiving financial assistance from CDBG Disaster Recovery funding with respect to any part of the loss resulting from a major disaster as to which he/she has already received financial under any other program or from insurance or any other sources. It is an amount determined by the program that may result in the reduction of an award value.

**Eligible Activity:** Activities eligible to be assisted under the CDBG program. All CDBG-DR grantees must: (1) use CDBG funds only for activities that fall under an authorized category of basic eligibility; (2) properly classify the activity; and (3) provide adequate documentation as required by the category it selects for each such activity.

**Emergency work:** FEMA’s Public Assistance program designation for disaster response tasks including debris removal (Category A) and emergency protective measures (Category B) that occur immediately after a disaster.

**Emergency Review Record (ERR):** The document resulting from required environmental review which includes a description of activities, evaluation of environmental impact, documentation of compliance with applicable environmental regulations, and an environmental determination.

**FEMA Individual Assistance Program (FEMA IA):** Provides financial help or direct services to those who have necessary expenses and serious needs if they are unable to meet these needs through other means. The forms of help available are housing assistance (temporary housing, repair, replacement) and other needs assistance (personal property, other items).

**FEMA Public Assistance Program (FEMA PA):** Provides grants to state, tribal, territorial, and local governments, and certain types of private non-profit organizations so that communities can quickly respond to and recover from major disasters or emergencies. Through the program, FEMA provides supplemental federal disaster grant assistance for debris removal, life-saving emergency protective measures, and the repair, replacement, or restoration of disaster-damaged publicly owned facilities, and the facilities of certain private non-profit organizations.

**Grantee:** HUD grantees receive funding from HUD to support HUD’s mission to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD grantees include state and local governments, non-profit and for-profit organizations, public housing authorities, and tribal entities.

**Implementing Partner:** ASG agencies that are provided CDBG-DR funds by the grantee for their use in carrying out agreed-upon, eligible activities through an Intergovernmental Agreement with DOC.

**Low- and Moderate-Income (LMI):** A household considered to be of low- and moderate-income if the household income (including income derived from assets) is at or below 80 percent of an area’s median income. All income is based on the Area Median Income limits set annually by HUD.

**National Objective:** The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. The three national objectives are: 1) Benefit to low- and moderate (LMI) persons; 2) Aid in the prevention or elimination of slums and blight; and 3) Meet a need having a particular urgency (referred to as urgent need). An activity that does not meet a national objective is subject to recapture.

**Permanent work:**  FEMA’s Public Assistance program designation for “recovery work” which restores or rebuilds a damaged asset and is comprised of five categories: roads and bridges (Category C); water control facilities (Category D); building and equipment (Category E); utilities (Category F); and parks, recreation facilities, and other facilities (Category G).

**Project Worksheet (PW):** FEMA form used to document the scope of work and cost estimate for a FEMA Public Assistance project. This form supplies FEMA with the information necessary to approve the scope of work and itemized cost estimate prior to funding.

**Request for Release of Funds (RROF):** An environmental review term for a process used by Responsible Entities (ASG) when requesting the release of funds and the authority to use such funds for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and states. The approval of the RROF is required before environmental clearance may be provided to a recipient of CDBG-DR funds.

**Section 3:**  A provision of the Housing and Urban Development (HUD) Act of 1968 that requires the recipients of HUD financial assistance, to the greatest extent feasible, provide training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

**Section 504:** A provision of the Rehabilitation Act of 1973 which provides that no qualified individual with a disability should, only by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance

**1.0 Version Policy**

The version history is tracked in the below table. This document is American Samoa’s CDBG-DR Infrastructure Policies and Procedures. This version of the Action Plan is effective as of [ ]. The dates of each publication are also tracked in this table. The first version of this document is 1.0.

Substantive changes within this document that reflect a policy change will result in the issuance of a new version 2.0, an increase in the primary version number. Future policy changes will result in additional revision and the issuance of a new primary version number.

Non-substantive changes such as minor wording and editing, or clarification of existing policy, that do not affect the interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase behind the primary version number. Such changes would result in a version number such as 2.1, 2.2, etc.

|  |  |
| --- | --- |
| Current Version Policies and Procedures | |
| As of | June 13, 2024 |
| Date Effective | July 13, 2024 |

**2.0 INTRODUCTION**

**2.1 Summary**

As a result of Tropical Cyclone Gita, the American Samoa Government (ASG) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which are being administered by the ASG Department of Commerce (DOC). The U.S. Department of Housing and Urban Development’s (HUD) allocations for the ASG CDBG-DR program total $23,039,000 to assist local entities with unmet needs and long-term recovery efforts due to widespread damages caused by Tropical Storm Gita. This document represents the policies of implementation of the Infrastructure Programs.

**2.2 Background**

American Samoa was devastated by Tropical Cyclone Gita, also known as DR-4357. In December 2019, the U.S. Department of Housing and Urban Development (HUD) announced an allocation of $23 million in CDBG-DR program funds to the Territory of American Samoa. This allocation was in accordance with Public Law 116-20, signed by President Trump on June 6, 2019.

Flooding from heavy rain, power outages, and damaged buildings (residential and commercial) from strong winds were widespread across American Samoa, where rainfall in excess of 150 mm (6 inches) was reported. The Tualauta District which is within the ASG has the most extensive plain area of Tutuila. It is the fastest-growing district on the island, with an area of approximately 9.91 square miles, about 21% of Tutuila Island. Tualauta District has a population of 22,827, about 46% of the territory’s total population, based on the U.S. Census 2020 Census of American Samoa. It has the most significant number of businesses, residential buildings, schools (both private and public), and government facilities, including the Tafuna Correctional Facility and Pago Pago International Airport. The district is the primary industrial zone of the island. The post- disaster evaluation modeled existing conditions of the American Samoa drainage system and included recommendations to improve drainage capacity in several areas, including Tualauta County.

**3.0 Infrastructure Programs Overview**

**3.1 Summary**

The Infrastructure Programs, designed to conform with DOC’s CDBG-DR Action Plan addresses unmet needs for proper functioning of its infrastructure systems. American Samoa’s long-term recovery from Tropical Storm Gita is focused on restoring its critical infrastructure, revitalizing the economy, and incorporating resiliency and sustainability in housing structures across the territory to mitigate damages from future disasters.

The DOC has identified specific infrastructure priorities that must be addressed, and which also supports housing needs. Ongoing weather pattern changes and nuance flooding in the American Soma government has prompted a focus on the protection of land and property by improving and building the drainage system. Since Tropical Cyclone Gita, impacted homes continue to be a risk flooding and overflow due to a poor drainage system.

CDBG-DR funds are intended to principally benefit Low and Moderate Income (LMI) persons.

Funds are allocated to programs in a manner that ensures that at least 70 percent of the grant

amount awarded is expended for activities that benefit such persons. Funds will be used to

address remaining unmet infrastructure needs and to support the long-term recovery and

restoration of infrastructure in the most impacted and distressed areas.

**3.2 Objectives**

All CDBG-DR programs must meet one of three HUD National Objectives: benefit low- to moderate-income persons (LMI), elimination of slum and blight, or address an urgent need. For the Infrastructure Programs, it is expected that most projects will seek to meet the Low- to Moderate-Income Area (LMA) Benefit as the National Objective. This objective is met when at least 51% of residents in the service area are classified as LMA. Projects seeking funding under these programs will need to assess the service area and beneficiaries of the project’s impact as a part of the overall benefit requirement.

ASDOC will ensure CDBG-DR funds are intended to benefit low -and-moderate- income households.

**4.0 INFRASTRUCTURE PROJECTS**

**4.1 Tualuata Drainage Project**

The proposed Tualauta Drainage infrastructure project will alleviate the flooding in Faleniu, Malae’imi, Nu’uuli, and Tafuna Villages, all located in the Tualauta District, American Samoa. The project is composed of constructing a new flow diversion structure at Leaveave Stream upstream of the Bridge at Route 001-Main Road and making improvements to the existing natural stream channels of Mapusagatuai, Taumata, and Vaitele Streams. Mapusagatuai Stream will be extended to connect to the current stream channel of Taumata Stream. These streams will eventually discharge under an existing bridge and through a double 24” diameter ppe culvert crossing at Route 016-Industrial Park Road. The proposed project has an approximate total length of 2.7 miles, and it would include a series of lined reinforced concrete open channels with box culvert crossings for access roads and driveways.

The Tualauta Drainage project contributes to the long-term recovery of the impacted communities within the Tualauta District by improving the stream channel to establish better hydraulic capacity, stop nuisance flooding and delineate stream bank lines to prevent more encroachments due to developments and minimize sediment transport. The benefits of the project are to mitigate the impacts of severe rainfall, inland flooding, and landslides upon the population of the identified villages in the Tualauta District. By doing so, the project contributes to the long-term recovery and restoration of housing by adding an additional layer of flood protection to primarily low- and moderate-income residents that would only otherwise be achieved through the very expensive elevation of multiple residential structures or through the destabilizing relocation or displacement of vulnerable residents, which is disruptive to maintaining community fabric and generally undesired.

**Responsible Entity:** ASDOC is partnering with DPW to advance the Tualauta Drainage project. DPW is currently advancing architectural and engineering services, which will inform the bid and award process for construction services based on the final design. As the CDBG-DR grant recipient, ASDOC will work with DPW as an implementing partner of CDBG-DR funds.

**Environmental Review:** The Tualauta Drainage project has undergone an Environmental Assessment review under the approval of FEMA, which ASDOC will rely upon in securing approval to use grant funds under the environmental procedures, whose requirements are outline in 24 CFR part 58.

**Program Allocation:** ASDOC is proposing allocating $21,887,050 in CDBG-DR funds towards this project.

**National Objective:** Based on the service area of the drainage protections, this project is anticipated to meet the Low- and Moderate-Income National Objective through a Low-and Moderate-Income Service Area (LMA) analysis. Factors taken into account include the geographic area and primarily residential benefit as well as the demographics of the villages benefitting from the flood protection the drainage enhancements provide.

**Eligible Activity:** This project meets the criteria of the Public Facilities and Improvements eligible activity as described at 24 CFR 570.201(c), which covers the acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvement

**Estimated Start and End Dates:**  Upon formal HUD approval, CDBG-DR intends to utilize grant funds within six years, subject to an extension request. This approval is anticipated by the fourth Quarter of 2022, and the expenditure of grant funds is currently anticipated through the fourth Quarter of 2028.

The CDBG-DR program requires that all funds be utilized within six years of grant agreement. Based on HUD’s partial action plan approval, the current grant agreement was approved on March 25, 2022, and funding will expire on March 25, 2028. The expenditure of funds is anticipated through the first Quarter of 2028.

1. **CDBG-DR PROGRAM REQUIREMENTS**

The DOC will ensure that all Infrastructure projects receiving CDBG-DR corresponds to a CDBG-DR eligible activity, meets a national objective, demonstrates a direct connection to the disaster, and have a direct benefit in support of housing.

**5.1 Overall Program Administration**

DOC has been identified as the administrating agency of the CDBG-DR Program. DOC will oversee all activities and expenditures in connection with the CDBG-DR funds. Other key stakeholders include the Governor’s Office (GO), the Department of Public Works (DPW), and the Office of Disaster and Petroleum Management (ODAPM). A working team that includes staff from these Offices has been established to prioritize implementing the Tualauta Drainage project by meeting regularly and sharing timely information and updates. Existing DOC employees will ensure that the Program meets all requirements, including but not limited to the disaster threshold, eligibility, national objective, compliance, fair housing, labor standards, nondiscrimination, environmental regulations, Section 3, and procurement regulations.

Infrastructure projects must comply with any applicable federal laws and regulations and effectively meet their stated goals. In accordance with HUD requirements, DOC will submit a Quarterly Progress Report (QPR) through DRGR no later than thirty days following the end of each calendar quarter. QPR’s will posted on a quarterly basis until all funds have been expended and all expenditures have been reported. QPRs will be informed by monthly reports submitted by DOC.

**5.2 Tie to the Disaster**

All activities funded with CDBG-DR in the Infrastructure Program must in some way respond to a direct to indirect impact of one of the following federally declared disaster:

* Tropical Storm Gita (DR-4357)

DOC understands that as the grantee that it must document how an activity is addressing a disaster-related impact and how it serves to restore housing, infrastructure, or the economy. All activities and projects must be related to recovery from the disaster(s) covered by the appropriation. For every funded applicant or project, the grantee must document a tie to the storm. Documentation to support will be maintained in the project file.

**5.3 Eligible Activities**

Table 5 below summarizes the total infrastructure CDBG-DR allocations in accordance with basic eligible activities per HCDA Section 105:

**Table 5. Summary of Infrastructure Program Eligible Activities**

|  |  |  |  |
| --- | --- | --- | --- |
| **Program** | **Sectors** | **HCDA Eligible Activities (Section 105(a))** | **Total Allocation** |
| **Infrastructure Repair and Resilience** | • Educational Facilities  • Energy  • Government Facilities  • Hospitals & Healthcare Facilities  • Telecommunications  • Transportation (including roads, ports, & airports)  • Waste: Solid Waste/ Landfill  • Debris  • Water & Wastewater | * Acquisition of Real Property * Public Facilities and Improvements * Clearance, Rehabilitation, Reconstruction, and Construction of Buildings * Public Services * Relocation * Assistance to Institutions of Higher Education (must be facility) | $23,039,000 |

For each activity, the DOC will determine the appropriate service area based on factors including: the nature of the activity; the location of the activity; accessibility issues; the availability of comparable activities; and boundaries for facilities and public services. The ASG will ensure that projects provide services to LMI persons and support unmet housing needs.

**5.3.1 Ineligible Activities**

The CDBG-DR program regulations identify certain activities as categorically ineligible. They also identify certain other activities that are ineligible unless they are carried out under the authority of §570.204.

The general rule in the CDBG-DR program is that any activity that is not authorized under the provisions of §570.201-570.206 (or, where applicable, the statute) is ineligible to be assisted with CDBG-DR funds. However, the eligible activities are so broad that it is easy to forget that some activities that are ineligible and to provide guidance in determining the eligibility of other activities frequently associated with housing and community development.

**Categorically Ineligible**

The following activities may not be assisted with CDBG-DR funds under any circumstance:

* General government expenses. Except as otherwise specifically authorized in Subpart C of Part 570 or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under their part. Reference: §570.207(a)(2)
* Political activities. CDBG funds may not be used 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. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any. Reference §570.207(a)(3)

**Generally Ineligible**

The following activities may not be assisted with CDBG-DR funds unless authorized as Special Economic Development Activities under §570.203 or §570.204.

* Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG-DR funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with PMB Circulars A-21, A-87, or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG-DR funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to §570.201(e)2. Also, these items are eligible when carried out by a for-profit business as part of CDBG-DR assistance under the authority of §570.203(b). Reference: §570.207(b)(1)
* Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services are ineligible.
  + However, specific exceptions to this general rule are operating and maintenance expenses associated with public service activities [see §570.201(e)], interim assistance [see §570.201(f)], and office space for program staff employed in carrying out the CDBG program (see §570.206).
  + For example, the use of CDBG-DR funds to party the allowable costs of operating and maintaining a facility used in providing a public service (e.g., salaries, rent) would be eligible under §570.201 (e), even if no other costs of providing the service there are assisted with such funds. Examples of operating and maintenance expenses that are generally ineligible include:
* Maintenance and repair of publicly-owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior center, centers for persons with disabilities, parking, and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG-DR funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of grass in city or county parks, and the replacements of street light bulbs.
* Payment of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities. Reference: §570.207(b)(2).

**5.4 National Objectives**

Per HUD CFR 570 Section 101(c), the primary objective of the Program is the development of viable communities by the provision of decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. The statute further states that this is to be achieved in the CDBG program by ensuring that each funded activity meets one of three named national objectives. Those three objectives are identified as: benefiting low- and moderate-income persons; preventing or eliminating slums or blight; and meeting urgent needs The Federal Register Notices FR–6182–N–01 and FR–6239–N–01 and applicable prior notices require states that each grantee must ensure that at least 70% of all CDBG-DR funds must be used for activities qualifying under the national objectives of Benefit to Low- and Moderate-Income Persons. The following national objective is applicable to the Infrastructure Program and will be required to meet the national objective below.

**National Objective:** Low- and Moderate-Income Area,

**5.4.1 Low- and Moderate-Income Area (LMA)**

To be eligible as LMA, the project service area must be at least 51%LMI households and be predominantly residential. In instances where the infrastructure investment activity does not serve the entire island but a particular location, an LMA analysis will be conducted to determine the low- and moderate-income benefit.

**5.4.4 Required Documentation**

|  |  |
| --- | --- |
| **National Objective** | **Required Documentation** |
| LMI Area Benefit | Boundaries of service area of activity;  Census data including total persons and percentage LMI;  Evidence area is primarily residential; and  Survey documentation (if applicable). |

**5.5 Duplication of Benefits**

The Infrastructure Programs will include a duplication of benefits as part of the scope and budget review. The requirements of the Robert T. Stafford Act (Stafford Act), as amended, prohibit any person, business concern, or other entity from receiving federal funds for any part of such loss for which they have already received financial assistance under any other program, private insurance, charitable assistance, or any other source. This duplicative funding is called Duplication of Benefit (DOB). Any government entity that provides disaster recovery assistance must both prevent and correct any DOB by the establishment and implementation of policies to identify and adjust for such duplicative assistance payments.

DOB may apply in the following circumstances: when assistance for the same purpose has been received; when assistance for the same purpose will be received; or when assistance for the same purpose is reasonably available from another source, such as insurance or legal settlements due to the property owner.

The DOC will be responsible for monitoring, tracking, and accurately reporting the availability or receipt of duplicative grants, loans, insurance payments, legal claims, gifts or other payments pertaining to the property being mitigated. Reporting should occur at any point that such information becomes available, including:

* During scoping process development, pre-award, and approval;
* During the grant period of performance;
* During closeout; and
* After grant closeout if duplicative funds are received at a later date.

The DOC is ultimately responsible for ensuring that the project complies with federal laws and regulations. Any agency receiving duplicate benefits is legally responsible for the repayment of those benefits.

**5.5.1 Preventing Duplication**

DOC in partnership with DPW will complete the DOB calculations as part of the Initial Scope of Work, as well as the Project Application Form, with assistance from Program staff. Both forms request information about all other sources of funding the agencies must be aware of that may impact the DOB. Agencies must provide documentation of these sources but DOC will also verify these funding sources with other federal partners. This process will be supported by TA from Program staff. Also included in these forms is the standard calculation method used by Program staff to determine if a duplication is present. Project DOB information must be maintained by the agency and reported to DOC throughout the life of the project. The agency reviews reported DOB and makes appropriate deductions. Additionally, CDBG-DR funds may not be used to supplant local resources use for infrastructure projects.

DOC maintains records in accordance with Federal grants requirements and assures that the agency has accurately completed DOB reviews and made deductions as appropriate. FEMA must also take steps to assure that it’s disaster-related assistance funds do not duplicate other assistance by providing information to DOC and agency, as needed, to clarify DOB requirements.

FEMA’s role may include coordination with other Federal agencies, insurance companies, or any other public or private entity to request and provide access to records to assure there is no DOB.

**5.5.2 Recapture**

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

* The program recipient is determined to have provided false or misleading information to the Program;
* The recipient withdraws from the Program prior to completion of the project;
* The recipient does not complete construction;
* The project fails to meet a national objective of the Program;
* The recipient is found to have used program funds for an ineligible activity; and/or
* The recipient does not report the receipt of additional insurance, SBA, FEMA, non-profit assistance and/or any other duplication of benefits received after award.

The Program will develop a detailed recapture policy for the overall CDBG-DR program. The policy, once developed, will be referenced in an update to this manual.

**5.6 Elevation Requirements**

The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA’s data source identified in 24 CFR 55.2(b)(1).

Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or flood proofed, in accordance with FEMA floodproofing standards at CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation. Implementing entities should review the UFAS accessibility checklist available at <https://www.hudexchange.info/resources/796/ufas-accessibility-checklist/> along with the HUD Deeming Notice, 79 FR 29671 (May 23, 2014) to ensure that these structures comply with accessibility requirements.

All Critical Actions, as defined as 24 CFR 55.2(b)(3) within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or flood proofed (in accordance with the FEMA standards) to the higher of the 500-year flood plain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated, or flood-proofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an “activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage property.” Critical actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

**5.7 Infrastructure Program/Specific Requirements**

HUD established infrastructure planning and design requirements for Grantees of this and the Prior Notice. Grantees are required to address long-tern recovery and hazard mitigation planning in their Action Plan or substantial amendment by describing how projects will:

1. Promote sound sustainable long-term recovery planning informed by post-disaster hazard risks;
2. Adhere to elevation requirements of Public Notice 116-2;
3. Coordinate with local and regional planning efforts, including how Grantee will promote community-level and/or regional post-disaster recovery and mitigation planning;
4. For infrastructure allocations, Grantee must describe how mitigation measures will be integrated into rebuilding activities, how infrastructure activities will be informed by cost-benefits analysis, how Grantee will ensure infrastructure does not have adverse impact on vulnerable populations, how Grantee will align investments with other planning capital improvements and infrastructure efforts and work to foster and leverage funding from other sources, and how Grantee will employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure. Subrecipients and other implementing program partners will also be held to the requirements.

**5.7.1 Integration of Mitigation for Resilience**

The ASG is concerned with the potential impacts of future storms and therefore will prioritize mitigation across all programs to build comprehensive resilience. Resilience is the state of a community in which the foundational systems are strong and capable of withstanding, or quickly bouncing back from, a disruption. Whether this is a natural or man-made hazard or an unanticipated economic downturn, the social cohesion, diverse economic opportunities, strong infrastructure, and emergency response capacities all contribute to such resilience.

Recipients of funds may be required to provide a narrative in Project Application of how mitigation principles and practices will be incorporated before the signing of contract agreements to ensure mitigation is a key factor from the onset of project design. The specific mitigation measures and technologies included in the project or program will again be evaluated during a Detailed Scope and Budget phase. This may be done in collaboration with HMPG work to ensure coordination the ASG’s other approaches to mitigation. Potential infrastructure or resilience projects may also be evaluated based on guidance outline in FEMA’s Hazard Mitigation Assistance Guidance including:

* Technical Feasibility
* Cost and cost-reasonableness
* Effects on the environment and cultural resources
* Community support
* Promotion of community resilience
* To what extent the project design reduces vulnerability
* To what extent the project includes measures to avoid or minimize adverse impacts to floodplains, wetlands, or other environmental and cultural resources
* Accessibility accommodations for individuals with disabilities and/or access and functional needs

**5.7.2 Green Infrastructure**

In addition to hardening infrastructure and following elevation requirements, the ASG will seek to incorporate the “no adverse impacts” approach (NAI) set forth by the Association of State Floodplain Managers. This strategy relies on calculated mix of mitigation approaches to ensure infrastructure development does not increase flooding risks. A key consideration in NAI is green conveyance of water through communities. All proposed projects under the Infrastructure Programs will be required to provide a narrative summary of the green infrastructure components applicable to the project during the Initial Scope and Budget Phase and are encouraged to use the ASFPM’s NAI How-to-Guide for Infrastructure to assist in effective project design.[[1]](#footnote-2)

Green infrastructure and sustainable design may be incorporated in multiple stages of DOC’s process for the selection and design of projects. implementing Partners must describe again in the Detailed Scope and Budget Phase, how after more in-depth design, the project will incorporate green infrastructure components.

**5.7.3 Costs and Benefits**

Infrastructure projects typically carry a high cost of labor and materials, relative to the continental U.S., due to the isolated geography and limited workforce in the ASG. Each project will be informed by a consideration of cost and benefits, considering these unique circumstances, but whenever possible, should utilize local/regional talent and materials to reduce costs.

The ASG’s approach to assessing costs and benefits may be based on two existing frameworks. The first, HMPG’s Guidance on cost effectiveness, relies on a Benefit Cost Analysis, where projects for which benefits exceed costs are generally considered cost effective. The project cost estimate includes a line-item breakdown of all anticipated costs, including, as applicable:

* Costs for anticipated environmental resource impact treatment or historic property treatment measures
* Costs for engineering designs/specifications, including hydrologic and hydraulic studies/analyses required as an integral part of designing the project
* Construction/demolition/relocation costs, such as survey, permitting, site preparation, and material/debris disposal costs
* All other costs required to implement the mitigation project, including any applicable project-type specific costs

Benefits in this methodology are often calculated using standard loss of function estimates provided by relevant federal agencies, which may also be utilized by the ASG.

Given the ASG’s approach to mitigation and resilience as giving full consideration systemic, inter-related processes that promote resilience, the method produced through the National Disaster Resilience Competition (NDRC) may help to supplement some of the factors.

Under this method, to the greatest extent possible, a narrative description may be produced to identify evidence-based practices as the basis for the project proposal. This method includes the following steps:

* A full proposed cost, including Federal, Territorial, and private funding, as well as expected operations and maintenance costs and functionally related to geographically related work;
* A description of the current situation and the problem to be solved (including anticipated changes over the analysis period);
* A description of the proposed project or program including functionally or geographically related elements and estimated useful life;
* A description of the risks to the community if the proposal and any land use, zoning or building code changes are not implemented, including costs that might be avoided if a disaster similar to the qualifying disaster struck again, including costs avoided if as a result of the project remaining effective in a future disaster;
* A list of the benefits and costs of the proposal and the rationale for including each effect using the table provided according to the following categories:
* Lifecycle Costs;
* Resiliency Value;
* Environmental Value;
* Social Value; and,
* Economic Revitalization.
* A description of risks to ongoing benefits from the proposed project or program; and
* An assessment of challenges faced with implementing the proposal.[[2]](#footnote-3)

DOC will determine applicability of these cost and benefit analyses at the time of the Detailed Scope and Budget development.

**5.7.4 Opportunities and Impacts**

A key target papulation for this program will be low-income residents and businesses that qualify under Section 3. The Section 3 program 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. Each agency receiving funds under the Infrastructure Programs will receive technical assistance from DOC and direct hiring and training assistance from DOL to ensure their projects are compliant with Section 3 to the greatest extent feasible.

It is a guiding principle of this allocation to combat the effects of disproportionate impacts for vulnerable populations. Each project will be assessed during design and implementation to determine who benefits from the resulting infrastructure repairs and improvements. For all Infrastructure Programs, geographic and demographic analysis will be used to determine how oft-neglected communities will be impacted by a project. In the DOC, low- and moderate-income residents will be the priority beneficiaries for all infrastructure work.

These guiding principles should be incorporated into the projects under the Infrastructure Programs and include:

* Design of processes and materials to facilitate access and full participation by at-risk groups.
* Facilitating access to financial resources, technical assistance, and logistics support to ensure adequate preparation and full participation.
* Ensuring that at-risk groups can articulate and represent their interests.
* Ensuring that assessment protocols for policies, programs, strategies, and projects include measures for assessing the impact on at-risk groups.

**5.7.5 Covered Projects**

Requirements under 83 FR 40314 state that projects surpassing a total investment of $200 million threshold or that are complex enough in the opinion of the Federal Permitting Improvement Steering Council will require enhanced oversight including additional environment reviews. While the ASG has not identified any infrastructure projects that currently reach this threshold, should any projects meet this criteria, the ASG may choose to complete these additional requirements under Fixing America’s Surface Transportation, Title 41 (FAST-41), which established federally accepted procedure to improve early consultation and coordination among government agencies; increase transparency through the publication of project-specific timetables with completion dates for all federal authorizations and environmental reviews; and increase accountability through consultation and reporting on projects.[[3]](#footnote-4) per the Federal Register Notice, CDBG-DR grantees may choose to participate in reporting on their environmental review and permitting of covered projects under FAST-41.

DOC may be administering projects which meet this threshold through any of the two Infrastructure Programs. DOC will be actively reporting environmental reviews and permitting for projects of all sizes to HUD and relevant Territorial agencies but does not currently plan to participate in FAST-41.

1. **Program Implementation Policies** 
   1. **Project Support and Technical Assistance**

DOC as the administrator of CDBD-DR funds will also work directly with partnering agency to implement the CDGB-DR program and ensure compliance with CDGB-DR regulations. DOC program stall will provide guidance and necessary TA throughout the life cycle of the project. DOC’s TA is intended to ensure compliance with CDBG-DR requirements for the life of the project. The TA may include but not limited to formal training (prepared materials, in-person presentations and webinars) and informal training (verbal or written advice, provided as needed, through in-person meetings, emails, or telephone calls). TA shall be continuously tailored to meet the agency’s unique needs.

* 1. **Contractual Agreements**

DOC will enter a Memorandum of Understanding (MOU) with a partner agency to set forth mutual promises, define responsibilities, and requirements of each agency. These agreements also define remedies to correct deficient or non-compliant projects; and contains CDBG-DR recapture provisions for non-performance or breach of Agency responsibility on any requirements, including adherence with CDBG-DR rules and regulations. The MOU contains, but not be limited to, the following:

* A description of each party’s program implementation responsibilities;
* The Scope of Service
* Administrative Requirements
* The amount allocated to the project for funding;
* Required Provisions governing the project work;
* Terms and conditions required by federal or state law;
* The approved schedule of the program;
* The approved program budget;
* Manner, timing and conditions for disbursement of project funds;
* Reporting and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist NMHC in meeting HUD’s recordkeeping and reporting requirements.
* Terms and conditions for the monitoring of the project in order to verify compliance with the requirements of the program;
* Provisions regarding the recapture of funds; and
* Other provisions necessary to ensure compliance with the requirements of CDBG-DR Program.

In addition to the MOU, the DOC will work closely with the agency partners to execute the appropriate contractual grant agreements with grantees to maintain compliance with all Federal, Territory and local laws as applicable. For projects that receive CDBG-DR funding for multiple project phases (i.e., planning, design, and construction), individual amendments to grant agreements may be utilized for each phase. Each amendment will include but not limited to the following: scope, budget, time, and performance metrics of the applicable phase. If the scope and budget change significantly during construction, change orders will be considered on a case-by-case basis. At a minimum, all change orders shall be fully compliant with Federal and local law.

Copies of all contracts awarded by can be found on DOC’s Disaster Recovery website.

**6.3 Reporting Requirements**

DOC and it’s partnering agency will establish program targets and benchmarks that grantees will be required to report on monthly to DOC. Grantees will be required to submit the information electronically as indicated in the grant agreement, in accordance with DOC and HUD reporting requirements, that address the following:

* A status of the project activity.
* Description of activities to be undertaken in the next reporting period/ project phase;
* Description of problems and/or delays encountered in project implementation and course of action taken to address each;
* Description of actions taken to meet project expenditure deadlines; and
* A summary of project fiscal status, including:
* Award amount;
* Amount requested to date;
* Remaining balance.

On a Quarterly basis, NMHC will collect and review information on program accomplishments and progress narratives. This information will be largely based on materials the grantee provides in the monthly progress reports. The compiled information will be provided to HUD in the Quarterly Performance Report (QPR), which shall be posted to the CDBG-MIT website and submitted to HUD no later than the 30th day of the month following the end of a given Quarter.

* 1. **Procurement**

To remain eligible for CDBG-DR funding DOC and partnering agencies will follow the procurement requirements mandated in 2 CFR Part 200, that establishes CDBG-DR standards and guidelines for the procurement of services, supplies, equipment, construction, and professional services for local governments and non-profit organizations.

**6.5 Construction Services**

DOC will work closely with agency partners and grantees to ensure that projects remain in compliance with requirements throughout the life of the project. DOC may issue a Notice to Proceed for agency partners to release solicitation and enter contracts into agreements include but not limited to the following:

* + - Environmental clearance of proposed construction activities
    - Preliminary and final plans and specifications for the project
    - Verification that all lands, rights-of-way and easements have been acquired
    - Verification that all required permits have been obtained
    - Verification that all other program requirements have been met
  1. **Environmental Review Process (24 CFR 58.30)**

1. The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.
2. The environmental review process should begin as soon as a DOC determines the projected use of HUD assistance and its approval of a subrecipient’s project application
3. Levels of Environmental Review

The NMHC will undertake the environmental review for the CDBG-DR activities in accordance with the appropriate levels of review as defined under 24 CFR Part 58

* 1. **Project Payments**

All payments are expended on a reimbursement-based payment process or a direct payment to the vendor. “Reimbursement- based” means that project costs must be incurred by the subrecipient and documented as required by the terms of the subrecipient agreement for payment of invoices. Subrecipients MUST submit reimbursement requests to DOC through the established by the grantee agreement. Payment requests will be processed in accordance with approved finance policies.

* 1. **Project Closeout**

Project close-out is the process by which DOC determines all requirements have been completed in accordance with the terms and conditions of the MOU and grantee agreement has been fulfilled. Closeout can commence once the following has been met:

* + 1. All project expenses to be paid with CDBG-DR funds (except for closeout costs) have been completed and payment requested;
    2. Approved work has been completed;
    3. Any other responsibilities detailed in the MOU have been fulfilled; and

The partnering agency may obtain a construction project schedule outlying proposed activities from the prime contractor at the start of construction. A sample schedule may indicate appropriately the % of work scheduled for completion by any given date during the period. An update may be required, at a minimum, when work falls more than 10% behind schedule.

All monitoring or audit findings have been cleared.

* 1. **Management and Monitoring Phase**

Throughout program implementation, CDBG-DR Program staff and project managers may periodically conduct reviews to identify weaknesses and appropriately scheduled, TA will be provided to ensure that grantees have the continuing capacity to conduct the approved project activities and to ensure the following:

1. An approved project is being constructed and implemented in a manner that is consistent with project information form and established procurement requirements;
2. Approved activities are carried out and completed in a timely manner;
3. Activities and certifications are conducted in accordance with the requirements and the primary objectives of the approved project information form, subrecipient agreement, program requirements, and other applicable local and Federal laws, rules, regulations, and policies; and
4. Administrative systems, policies, and procedures provide adequate protection for the prevention and mitigation of fraud, waste, and abuse.

DOC’s compliance team will conduct compliance monitoring in accordance with its approved policies

* + 1. **Complaints**

To resolve complaints of non-compliance through an internal process, the DOC encourages submittal of such complaints to the DOC as follows:

* Complaints of non-compliance should be filed in writing and must contain the name of the complainant and a brief description of the alleged violation of 24 CFR 135
* Complaints filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.
* If the complaint is valid. conduct an informal, thorough investigation affording all interested parties an opportunity to submit pertinent testimony or evidence
* DOC will provide written documentation detailing the findings of the investigation.
  1. **Closeout Phase**

In project closeout, subrecipients prepare closeout documents with TA from DOC, as needed. Subrecipients resolve all monitoring/audit findings with TA from the Infrastructure Program staff, and or SME or the Monitoring and Compliance Department staff. The DOC program staff will review closeout documents, request clarifications or revisions if needed, and issues notice of completion for the project.

**APPENDIX**

1. **Appendix A: Crosscutting Requirements and Process Overview**
2. **Appendix B: Project Application Form**
3. **Appendix C: HUD Rider**

1. https//www.floods.org/ace-images/ASFPMInfrastructureFinalJuly28.pdf [↑](#footnote-ref-2)
2. https://www.hudexchange.info/resources/documents/NDRC-Phase-2-NOFA-Appendix-H-Benefits-Cost-Analysis-Instrucctions.docx [↑](#footnote-ref-3)
3. <https://www.energy.gov/oe/mission/transmission-permitting-and-technical-assistance-division/fast-41> [↑](#footnote-ref-4)