



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Special Attention of:

All Regional Administrators
All CPD Division Directors
All CDBG-DR Grantees and subrecipients
that use CDBG-DR funds to meet
the non-federal cost share for FEMA's
PA program

Notice: CPD-20-10

Issued: October 14, 2020

Expires: This Notice remains
in effect until amended, superseded or
rescinded.

SUBJECT: Implementation Guidance for Use of Community Development Block Grant
Disaster Recovery Funds as Non-Federal Cost Share for FEMA's Public
Assistance Program

The Federal Emergency Management Agency (FEMA) and the Department of Housing and Urban Development (HUD) are jointly issuing guidance for the use of Community Development Block Grant disaster recovery (CDBG-DR) funds as the non-federal cost share (Local Match) for FEMA's Public Assistance (PA) program.

The guidance, *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for FEMA's Public Assistance Program*, describes baseline principles and other considerations associated with a "flexible match" framework that reduces administrative costs and promotes compliant use of CDBG-DR funds (including CDBG-MIT funds and CDBG-NDR funds) for Local Match.

This guidance also provides an overview of the respective FEMA and HUD requirements that apply when CDBG-DR funds are used to satisfy the Local Match requirements for FEMA PA grants.

When using CDBG-DR to satisfy local match, consistent with the requirements of section 105(a)(9) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(9)), grantees should consider the joint guidance, which is in the **Attachment** to this Notice.



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FEMA

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October 13, 2020

MEMORANDUM FOR: FEMA Regional Administrators
HUD Regional Administrators

ATTENTION: FEMA Regional Recovery Division Directors
HUD Community Planning and Development Division Directors

FROM: Keith Turi 
Assistant Administrator
Recovery Directorate

Janet Golrick 
Acting Deputy Assistant Secretary for Grant Programs

SUBJECT: Implementation Guidance for Use of Community Development
Block Grant Disaster Recovery Funds as Non-Federal Cost Share
for the Public Assistance Program

JANET GOLRICK Digitally signed by JANET GOLRICK
Date: 2020.10.13 08:39:00 -0400

The purpose of this memorandum is to announce the issuance of the Federal Emergency Management Agency (FEMA) and Department of Housing and Urban Development (HUD) *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program*.

This Implementation Guidance was produced through a joint effort by HUD and FEMA and is intended to assist FEMA's Public Assistance Program (PA) Recipients and PA Subrecipients and HUD Community Development Block Grant Disaster Recovery (CDBG-DR) Grantees and CDBG-DR Subrecipients that use CDBG-DR funds to fulfill all or a portion of the non-Federal cost share requirements of the PA Program (referenced in this document as "Local Match").

The Implementation Guidance introduces the concept of "Flexible Match" to satisfy the Local Match. Traditionally, CDBG-DR funds are applied as Local Match to the entire PA project. Flexible match is a streamlining concept that minimizes the administrative costs related to using CDBG-DR funds and allows CDBG-DR funding for distinct facilities or sites within a PA project.

Additionally, the Implementation Guidance identifies the major areas in which the requirements of FEMA and HUD's funding sources diverge, provides recommendations on how to apply CDBG-DR funds to PA projects, and includes a discussion of the roles and responsibilities of each federal agency and of those entities receiving and using funds under each grant program.

For FEMA staff, questions can be sent to Tod Wells, Deputy Division Director for Policy and Strategy, Public Assistance Division, FEMA at tod.wells@fema.dhs.gov. For HUD staff, questions can be sent to Tennille Smith Parker, Director, Disaster Recovery and Special Issues Division, HUD at Tennille.S.Parker@hud.gov.

Attachment

Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program



October 2020



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Executive Summary

Introduction

This guidance document, *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program* (Implementation Guidance), was produced by the U.S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA). The document is intended to assist FEMA’s Public Assistance Program (PA) Recipients and PA Subrecipients and HUD Community Development Block Grant Disaster Recovery (CDBG-DR) Grantees and CDBG-DR Subrecipients that use CDBG-DR funds to fulfill all or a portion the non-Federal cost share requirements of the PA Program (referenced in this document as “Local Match”).

Disaster recovery is a partnership between federal, state, tribe, and local governments. As such, the PA Program requires that the costs of any PA-funded project be shared by the federal government in partnership with states, tribes, and local governments or certain eligible private non-profit organizations. Typically, the federal portion of a PA-funded project (Federal cost share) is no less than 75 percent of the total project costs, leaving 25 percent of the total project costs to be paid by the PA Recipient and/or PA Subrecipient (Local Match). For simplicity, this document uses the term PA Applicant when referring to the entity responsible for carrying out a project. The document uses the terms PA Recipient and PA Subrecipient when necessary to differentiate between the two entities.

Enacted in 1974, HUD’s Community Development Block Grant (CDBG) program authorizes the use of CDBG funds to meet the non-federal match requirements of other federal programs. As a supplementary source of CDBG funding and in recognition of the changing scale, nature, and frequency of disasters that can place an increasingly heavy burden on PA Applicants, PA Applicants may use CDBG funds made available for disaster recovery purposes to pay the Local Match requirement for PA-funded projects.

Objective

The principal goal of this Implementation Guidance is to enable FEMA PA Applicants to use available HUD CDBG-DR funding in a streamlined and compliant manner to fulfill a portion, or all, of the Local Match requirements for FEMA’s PA Program.

This Implementation Guidance identifies the major areas in which the requirements of the two funding sources diverge, provides recommendations on how to apply CDBG-DR funds to PA projects, and includes a discussion of the roles and responsibilities of each federal agency and of those entities receiving and using funds under each grant program.

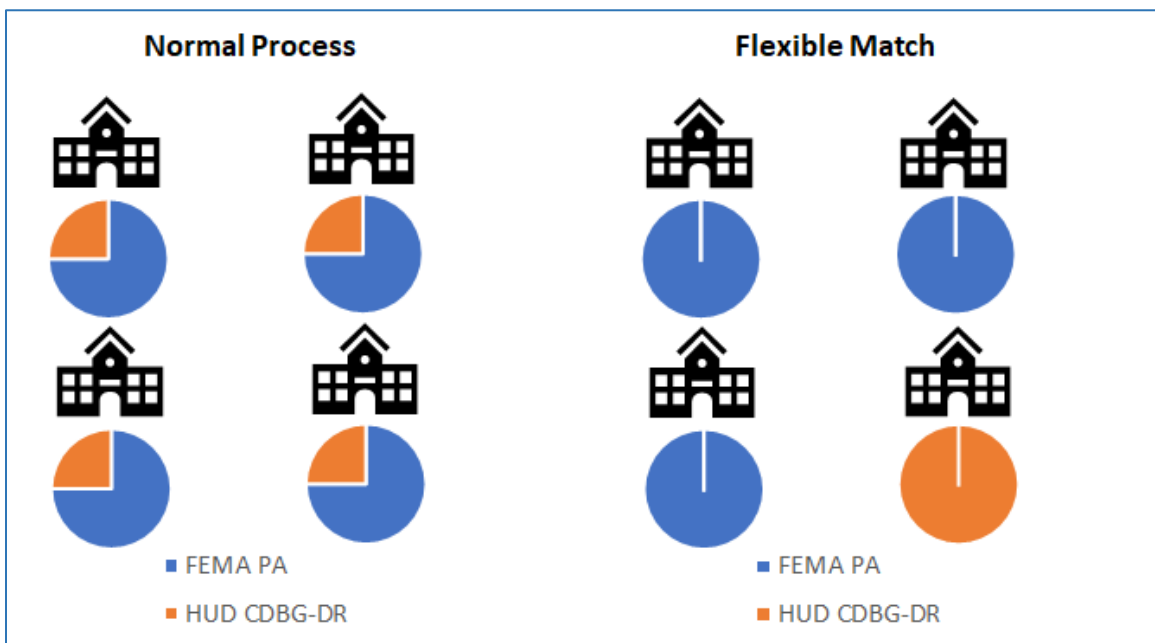
Since disasters differ in scope and complexity, this Implementation Guidance is not intended to solve for every implementation challenge, but to instead provide FEMA Recipients and

Applicants and HUD Grantees and Subrecipients with tools to plan for and navigate through the multiple compliance considerations of the two federal grant programs, in a streamlined manner.

Flexible Match Concept

Flexible Match is a streamlining concept that minimizes the administrative costs related to using CDBG-DR funds to satisfy the Local Match requirement of the PA Program. Typically, a PA-funded project (PA subaward) will consist of multiple facilities or sites (e.g., all of the elementary schools within a community or multiple road segments across a locality).

Under the traditional match concept, CDBG-DR funds are applied as Local Match to the entire PA project and all work within the project is subject to both PA and CDBG-DR eligibility and compliance requirements. By contrast, when using the Flexible Match concept, the Applicant can choose to apply its CDBG-DR funding to distinct facilities or sites within a PA project. All of the sites and facilities must comply with FEMA PA requirements. But only the CDBG-DR assisted portion of the project must comply with CDBG-DR requirements. In this way, applying the Flexible Match concept can reduce the number of facilities or sites within the subaward that must comply with both federal grant program requirements.



Example: Single Project with Four (4) Sites

Roles and Responsibilities of State and Local Governments

The PA Recipient and its PA Subrecipients and the CDBG-DR Grantee and its CDBG-DR Subrecipients are primarily responsible for ensuring compliance with their respective PA and CDBG-DR requirements. FEMA and HUD expect that the PA Recipient and CDBG-DR Grantee will ensure that the necessary level of engagement and coordination is occurring between the



state, local, and government agencies involved in the disaster recovery process. Even if the PA Recipient and CDBG-DR Grantee are the same entity (e.g., a State), PA funds and CDBG-DR funds are typically not administered by the same department or agency of the State. Therefore, early and continuous coordination is critical to the successful implementation of Flexible Match.

Conclusion

While this Implementation Guidance provides a detailed overview of both the PA and CDBG-DR requirements and implementation considerations for Flexible Match, it will not solve for every complexity that arises when using CDBG-DR funds to satisfy PA Local Match. This implementation guidance also does not impose new requirements, it merely clarifies options available under existing program and grant requirements.

FEMA Recipients and Subrecipient and HUD Grantees and Subrecipients are encouraged to develop a plan to guide the compliant use of potential funds from both federal funding sources.



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Acronym List

AMI	Area Median Income
CDBG-DR	Community Development Block Grant – Disaster Recovery
CFR	Code of Federal Regulations
DRGR	Disaster Recovery Grant Reporting System
EHP	Environmental Planning and Historic Preservation
FEMA	Federal Emergency Management Agency
HCDA	Housing and Community Development Act of 1974, as amended
HUD	U.S. Department of Housing and Urban Development
LMI	Low and Moderate Income
MID	Most Impacted and Distressed
NEPA	National Environmental Policy Act
PA	Public Assistance
PAPPG	Public Assistance Program and Policy Guide
PW	Project Worksheet
SOW	Scope of Work OR Statement of Work
QPR	Quarterly Performance Report or Quarterly Progress Report
URA	Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended



I. Overview and Background

A. Introduction

On January 3, 2020, Federal Emergency Management Agency’s (FEMA) and U.S. Department of Housing and Urban Development (HUD) signed a Memorandum of Understanding (MOU) that outlines a series of actions intended to streamline coordination between FEMA and HUD to support use of FEMA’s Public Assistance (PA) Program and HUD’s Community Development Block Grant Disaster Recovery (CDBG-DR) funds. The agencies agreed to develop joint implementation guidance for the use of CDBG-DR funding to meet the non-federal cost-share (referenced in this document as “Local Match”) requirements of PA-funded projects.

Since all CDBG-DR Grantees may designate a portion of their CDBG-DR funds for eligible activities that satisfy the Local Match requirements of FEMA’s PA program, this guidance document, *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for FEMA’s Public Assistance Program* (Implementation Guidance), is applicable to all disasters nationwide that are eligible to receive PA funding from FEMA.

B. Audience and Purpose

This Implementation Guidance is directed towards FEMA staff, Recipients, and Subrecipients and HUD staff, Grantees, and Subrecipients. To distinguish between funding sources, this Implementation Guidance uses different terminology to reference the entities that receive or use PA and CDBG-DR funds. Entities that receive direct awards from HUD are referenced as “CDBG-DR Grantees,” and entities that receive subawards from the CDBG-DR Grantee are “CDBG-DR Subrecipients.” Entities that apply for PA funding are called “PA Applicants”.

For simplicity, this document uses the term PA Applicant when referring to the entity responsible for carrying out a project and uses the terms PA Recipient and PA Subrecipient when necessary to differentiate between the two entities.

This Implementation Guidance is not intended to amend the authorities of FEMA or HUD, or the roles and responsibilities of any agency under the National Disaster Response Framework, applicable regulations, or policy guidance. The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The principal goal of this Implementation Guidance is to enable PA Applicants to use available CDBG-DR funding in a streamlined and compliant manner as a portion or all of the Local Match for FEMA PA Project Worksheets (PWs). To support this goal, the document identifies the major areas in which the requirements of FEMA PA and HUD CDBG-DR funding diverge to support compliance with the requirements of each funding source. This Implementation



Guidance does not introduce or impose new programmatic requirements but instead summarizes the major FEMA PA and HUD CDBG-DR grant requirements that CDBG-DR Grantees and Subrecipients and FEMA PA Applicants should be aware of when applying the Flexible Match Concept.

Additionally, the Implementation Guidance identifies ways that CDBG-DR Grantees and CDBG-DR Subrecipients can further the primary objective of CDBG-DR assistance by maximizing the overall benefit to persons of low- and moderate-income when CDBG-DR funds are used as Local Match.

II. Authorities

A. HUD CDBG-DR Authority

Section 105(a)(9) of title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) (HCDA) authorizes use of CDBG-DR funds for “payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted” under title I of the HCDA. This means that CDBG-DR Grantees can use grant funds to satisfy the FEMA PA Program’s Local Match if the use otherwise meets all CDBG-DR requirements.

B. FEMA Stafford Act Authority

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act)¹ is a federal law designed to provide an orderly and continuing means of federal disaster and emergency assistance for state and local governments in carrying out their responsibilities to aid citizens. The structure of assistance under the Stafford Act encourages states and localities to develop comprehensive disaster preparedness plans, prepare for better intergovernmental coordination in the face of a disaster, encourage the use of insurance coverage, and provide federal assistance programs for losses due to a disaster. The Stafford Act authorizes PA-funded projects under sections such as 403, 406, and 407. Sections 422 and 428 of the Stafford Act allow for separate procedures for PA project formulation.

III. Overview of Flexible Match

A. FEMA PA Cost-Share Requirements

The assistance FEMA provides through its PA Program is subject to the Local Match (non-federal cost-share)² established in the FEMA-State/Tribe Agreement and the Stafford Act. The Federal share cannot be less than 75 percent of the eligible costs.³ Pursuant to the regulation at

¹ 42 U.S.C. 5121 et seq., available at: <http://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288amended>.

² 44 CFR § 206.203(b).

³ Stafford Act §§ 403(b), 406(b), 407(d), and 503(a), 42 U.S.C. 5170b, 5172, 5173, 5193; and 44 CFR §§ 206.47(a) and 206.65.



44 CFR § 206.47(b), whenever actual Federal obligations under sections 403, 406, and 407 (including projects formulated under sections 422 and 428), excluding administrative costs, meet or exceed a qualifying threshold, FEMA recommends a Federal cost share increase of up to 90 percent.⁴

B. What is Flexible Match?

Flexible match is a streamlining concept to minimize administrative costs related to using CDBG-DR to satisfy the PA Program’s Local Match requirement by minimizing the number of PA facilities within one PA subaward that must comply with CDBG-DR requirements. Using Flexible Match allows programmatic cost share requirements to be considered collectively within a specific PA subaward.⁵

Either FEMA or the PA Applicant can formulate the project on a project-level basis. PWs often involve a single facility or site; however, PWs should be grouped in a logical manner to include multiple facilities/sites into one project.

C. What Types of PA Assistance Can Benefit from Flexible Match?

The Flexible Match concept can be applied to standard PA PWs under the Stafford Act in which the amount of the Federal cost share and the Local Match is based on the actual cost to complete the scope of work in the PW (the Federal cost share is reimbursed once work is completed):

- Section 403(a)(3) allows assistance essential to meeting immediate threats to life and property resulting from a major disaster.
- Section 406(a)(1)(A) allows FEMA to award grants “for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster.”
- Section 407 allows assistance for removing debris or wreckage resulting from a major disaster from publicly or privately-owned lands and waters.

A **Project Worksheet (PW)** is a tool used by the PA Applicant and FEMA to develop projects. The PW (FEMA Form 90-91) is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project. PA Applicants can submit projects through FEMA’s Grant Portal (<https://grantee.fema.gov/>).

⁵ 2 CFR § 200.92, a subaward is an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.



The Stafford Act also allows for other procedures for project formulation in which the amount of the Federal cost share and the Local Match is based on an estimated cost to complete the scope of work in the PW.

- Section 422 provides simplified procedures for projects under a certain dollar threshold, which are commonly referred to as “small projects.”
- Section 428 offers the maximum amount of flexibility with how the PA Applicant may use PA grant funds, including use of excess funds (funds received based on an estimate of the cost to complete the project that are not necessary to complete the scope of work because actual costs are less than the estimate). Section 428 projects are commonly referred to as Alternative Procedures Projects.

Regardless of the method of project formulation, CDBG-DR funds can be used to meet Local Match requirements for a PA PW provided that the CDBG-DR funds are used for costs that are otherwise permissible uses of CDBG-DR. PA Applicants may use PA grant funds for most of the facilities in a project and consolidate all costs paid with CDBG-DR to as few facilities (or structures within facilities) as possible. The work completed with CDBG-DR funds is applied to the Local Match for the PW. Under this approach, the CDBG-DR-assisted portion of the project must meet both PA and CDBG-DR requirements.⁶ The portions of the project that are not CDBG-DR assisted are subject to FEMA PA requirements.

D. How Can Coordination Support Successful Flexible Match?

Applying the Flexible Match concept requires the PA Applicant to coordinate with the CDBG-DR Grantee or CDBG-DR Subrecipient to carefully select the PWs that will include CDBG-DR assisted activities to satisfy the Local Match. They must also decide which costs within a PW will be charged to the CDBG-DR grant. Deliberate choices can reduce administrative costs and make it easier to comply with CDBG-DR requirements, especially the requirement that CDBG-DR funds primarily benefit persons of low-and moderate-income.

Successful application of Flexible Match requires coordination. This is because the work is not static – it changes during implementation. For example, the PW scope of work may change. Costs may increase or decrease. Project delays may cause the deadline for completion of PA work to expire before the deadline for completion of CDBG-DR-assisted activities, or vice versa.

Ongoing communication between clear points of contact assigned to oversee the use of each funding source can help mitigate risk of noncompliance caused by changes to activities and PWs during the period of performance. In many cases, the PA Recipient and the CDBG-DR Grantee are the same entity, and the PA Subrecipient and CDBG-DR Subrecipient are the same entity. It is also possible that the PA Subrecipient and the CDBG-DR Grantee are the same entity. Nevertheless, the primary agency, department, or staff person charged with overseeing PA funds generally is not the same as the agency, department, or staff person charged with overseeing

⁶ The “CDBG-DR assisted portion of the project” is discussed more fully below. Generally, this is the facility or site or structure within a facility that, when complete, meets a CDBG-DR national objective.

CDBG-DR funds. Therefore, early and ongoing communication is essential to the compliant use of CDBG-DR funds to satisfy Local Match.

To assist grantees in their coordination and consideration of which costs to pay with CDBG-DR funds, this document discusses CDBG-DR specific requirements in sections VII, VIII and IX. Roles and responsibilities related to the PA program and CDBG-DR grants are summarized in Appendix B.

IV. Overview of Public Assistance and CDBG-DR Grant Programs

This guidance does not provide a complete explanation of programmatic requirements for PA or CDBG-DR. Many state agencies, local governments, tribes, and other entities are familiar with the requirements for one grant program, but not the other. Therefore, this section describes general concepts, terminology, and key requirements that are necessary to explain the Flexible Match concept and cites to additional resources as references. There are no new programmatic requirements presented in this Implementation Guidance. The requirements described below are based on HUD CDBG-DR and FEMA PA statute, regulations, and policies.

A. FEMA Public Assistance Grants

The PA Program is FEMA’s largest grant program and provides funds to assist communities responding to and recovering from major disasters or emergencies declared by the President. The program provides funding for emergency assistance to save lives and protect property and permanently restore community infrastructure affected by a federally declared incident.

The PA Program determines the eligibility⁷ of the applicant, facility, work, and cost. FEMA refers to these components as the building blocks of an eligibility pyramid. FEMA evaluates each building block, starting at the foundation (Applicant) and working up to cost at the top of the pyramid (see Figure 1, Eligibility Pyramid).

Eligible PA Applicants include states, federally recognized tribal governments (including Alaska Native villages and organizations so long as they are not privately owned), U.S. territories, local governments, and certain private non-profit (PNP) organizations.⁸

Work performed on an eligible facility generally must be required as a result of the declared incident, be located



Figure 1: Public Assistance Eligibility Pyramid

⁷ A chart comparing activities that can be funded with PA and with CDBG-DR is included in section VII.A.

⁸ Stafford Act § 406(a)(3)(B), 42 U.S.C. 5172, and 44 CFR § 206.221(e).



within the designated area, and be the legal responsibility of an eligible applicant.⁹ Through the PA Program, FEMA provides funding for:

- Emergency Work: Emergency protective measures (section 403) and debris removal (section 407)
- Permanent Work: Permanent restoration of damaged facilities, including cost-effective hazard mitigation¹⁰ to protect the facilities from future damage (section 406)

The final component evaluated for eligibility is cost. Costs must be directly tied to the performance of eligible work; documented; reduced by all applicable credits (e.g., insurance, salvage values, etc.); authorized and not prohibited under other federal, state, territorial, tribal, or local laws or regulations, consistent with the PA Applicant’s internal policies, regulations, and procedures that apply uniformly to federal awards and other activities of the PA Applicant; and necessary and reasonable to accomplish the work properly.¹¹

1. Application Process

After a federal declaration, the PA Recipient (i.e., state, tribe, or territory) conducts PA Applicants’ Briefings to inform potential PA Applicants (i.e., state, local, tribal, territorial, and PNP officials) of the assistance available and how to apply. PA Applicants must then file a Request for Public Assistance within 30 days of the date their respective area is designated by the federal declaration.

2. Project Formulation

A project is a logical grouping of work required as a result of the declaration. The damage description, scope of work, and costs are documented on a Project Worksheet, which is the basis for PA funding. 44 CFR § 206.201(k).

Following approval of the request for Public Assistance, FEMA and the PA Applicant will conduct additional meetings to discuss disaster damage and project formulation. FEMA, the PA Recipient, or the PA Subrecipient will then prepare PWs for eligible work and eligible facilities based on actual or estimated project costs. A project is the logical grouping of work required as a result of the declared event. FEMA processes PA grant funding through a PA PW. The PW form is used to document the details of the PA Applicant’s project and costs claimed.

FEMA separates projects by size, specifically “small” and “large”. Project total costs (federal- and non-federal share) falling below the large project threshold are *small projects*. The minimum project threshold and large project threshold are adjusted annually for inflation. For disasters declared in FY2020, the small project minimum is \$3,300 and the small project maximum is \$131,100. For small projects, the final funding is

⁹ 44 CFR § 206.223(a).

¹⁰ Section 406 of the Stafford Act authorizes inclusion of hazard mitigation as part of eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility.

¹¹ 2 CFR § 200.403.



based on the estimate at the time of project approval. Certification of project completion is required when the project is done.

Large project funding is based on the actual costs documented. Due to the complexity and nature of most large projects, however, work typically is not completed at the time of FEMA-approval. Therefore, most large projects are initially approved based on estimated costs. Funds are generally made available to the PA Recipient on a progress-payment basis as work is completed. When all work associated with the project is complete, the PA Recipient performs a reconciliation of actual costs and transmits the information to FEMA for consideration for final funding adjustments.

Logical Groupings Overview

In general, Emergency Work is captured on one PW per category- Category A, Debris Removal PW, and Category B, Emergency Protective Measures PW. Permanent Work (Categories C-G) may be logically grouped on a single PW when:

- All work will be awarded under a single contract (e.g., an Applicant plans to address all culvert repairs through a single contract);
- All damage is within or along the same facility or system (e.g., multiple sites along the same roadway); or
- All damage is within a site-specific area or boundary (e.g., school campus).

FEMA PA allows applicants to combine multiple sites or facilities in a logical manner into one PW. Sites or facilities can be grouped together based on the type of work or type of facility. All of the sites grouped into the PW make-up the FEMA Project. When logically grouping items of damage to formulate them on a single PW, the resulting PW category is based on the primary work being performed. For example, a school campus PW that includes several buildings plus ancillary components, such as access roads and perimeter walls, would be a Category E PW. The local match is based on the total project amount.

In some cases, individual sites and facilities may be formulated into separate projects if there are specific circumstances that merit removal. For example, when a facility located in the flood hazard area, is complex and requires technical support, or when the work has already been completed.¹²

B. HUD CDBG-DR Grants

Congress may appropriate funding for CDBG-DR grants to address disaster recovery needs that are not met by other sources of Federal disaster assistance. When available, HUD provides CDBG-DR grants to States, local governments, or tribes, especially for the benefit of low-and moderate-income (LMI) persons.

¹² FEMA's Public Assistance Program and Policy Guide (PAPPG) addresses these processes in detail. <https://www.fema.gov/assistance/public/policy-guidance-fact-sheets>



CDBG-DR appropriations generally make funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization, in the most impacted and distressed areas affected by hurricanes, wildfires, floods, and other major disasters. Use of funds for CDBG-DR statutory purposes (e.g., relief, recovery – including resilient recovery, restoration, and revitalization) all require a “tie back” to the qualifying event in that they respond to a need that arises from the disaster.¹³

1. Eligible Activities and Prohibited Uses

The CDBG-DR appropriation acts make funds available for activities that are eligible under title I of the HCDA.¹⁴ Payment of Local Match is eligible if the costs are for an otherwise eligible activity that complies with CDBG-DR requirements. A chart comparing activities that can be funded with PA and with CDBG-DR is included in section VII.A.

Ineligible uses of CDBG-DR funds include, but are not be limited to:

- Operations and maintenance costs (including minor repairs);
- General costs of government and costs related to buildings for the general conduct of government;
- Purchase of equipment (except as an integral part of a public facility);
- Furnishings and personal property other than integral fixtures, except in rare cases; and
- Activities that require the use of eminent domain that is not for a public purpose (economic development is not a public purpose).

2. National Objective and Benefit to Persons of Low and Moderate Income

To qualify for CDBG-DR funding, activities must meet a CDBG-DR national objective to:

- Benefit LMI persons;
- Aid in the prevention or elimination of slums or blight; or
- Meet other community development needs having an urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs (known as “Urgent Need”).

Some activities are presumed to meet a national objective (e.g., general/non-project specific planning for local governments; program administrative costs). In most cases, however, CDBG-

¹³ This document discusses CDBG-DR grants. However, the Flexible Match concept can be applied interchangeably to “CDBG-MIT” funds, which are CDBG funds made available to mitigate current and future risks from disasters. CDBG-MIT grants funds do not require a “tie-back” to the specific qualified disaster that has served as the basis for the grantee’s allocation of CDBG-MIT funds. Grantees must instead demonstrate that CDBG-MIT activities meet the definition of mitigation activities in applicable Federal Register notices and address the current and future risks as identified in the grantee’s Mitigation Needs Assessment in the most impacted and distressed areas.

¹⁴ Eligible activities include those under section 105(a) of the HCDA and those authorized by a waiver or alternative requirement. Requirements for eligible activities are found in 24 CFR § 570 and in *Federal Register* notices. To respond to grantee-specific needs, HUD may approve requests for waivers to carry out activities that are otherwise ineligible, such as buildings used for the general conduct of government.



DR Grantees must demonstrate that CDBG-DR assisted activities comply with regulatory criteria to demonstrate that they meet a national objective.¹⁵

Requirement for Overall Benefit to LMI Persons

The primary objective of the HCDA is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, *principally for persons of low and moderate income.*” 42 U.S.C. 5301(c). To carry out this objective, not less than 70 percent of the aggregate of each CDBG-DR grant must be used for activities that benefit LMI persons.¹⁶

For purposes of calculating overall benefit compliance, grantees total all costs that satisfy LMI benefit national objective criteria. For that reason, CDBG-DR Grantees and CDBG-DR Subrecipients should prioritize use of LMI benefit national objective criteria and be diligent in documentation of compliance. National objective compliance determinations can be complicated. Technical assistance resources related to CDBG and CDBG-DR national objective determinations are available at <https://www.hudexchange.info/>.

The overall benefit to LMI persons is determined by calculating the total amount of CDBG-DR funds expended for eligible activities that meet the national objective criteria benefiting LMI persons. However, when CDBG-DR funds are expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under the LMI benefit national objective criteria for housing,¹⁷ expenditures are counted based on the percent of units in such housing to be occupied by low-and moderate-income persons (the housing national objective is rarely applicable to CDBG-DR assisted portions of PA projects, but may apply when PA is used to rehabilitate damaged public housing).

LMI Benefit Considerations When CDBG-DR Funds Satisfy Local Match

Given the high percentage of CDBG-DR funds that must benefit LMI persons, all CDBG-DR Grantees are advised to prioritize activities that meet the LMI benefit national objective criteria.

The number and scope of FEMA PA projects and facilities is determined by PA program requirements - without regard to LMI benefit. Therefore, CDBG-DR Grantees must pay close attention to the potential effect of the use of CDBG-DR to satisfy PA Local Match on the CDBG-DR Grantee’s ability to satisfy its overall LMI benefit requirement. Given that a

¹⁵ National objectives are found in section 104(b)(3) of the HCDA or in waivers and alternative requirements. Criteria for demonstrating a national objective are found at 24 CFR §§ 570.208 and 570.483 and in waivers or alternative requirements published in *Federal Register* notices.

¹⁶ Activities that satisfy LMI national objective criteria generally count towards overall LMI benefit. However, when calculating overall benefit, CDBG-DR funds expended for acquisition, new construction or rehabilitation of property for housing shall be limited to an amount equal to total activity cost times the percent of units to be occupied by LMI persons, even if national objective is met if fewer than 100% of units are occupied by LMI households.

¹⁷ LMI benefit national objective criteria for housing are found at 24 CFR §570.483(b)(3).



minimum amount of its grant must be expended to benefit LMI persons, Grantees should carefully decide how much of its CDBG-DR grant to use for PA Local Match, and which sites and facilities to assist. To aid in this determination, the CDBG-DR Grantee should identify which PA-assisted sites and facilities primarily benefit LMI persons.

To avoid unintentional or irreversible reductions to the amount of CDBG-DR grant funds that benefit LMI persons, CDBG-DR Grantees should consider several factors related to compliance with two requirements of CDBG-DR grants:

- Can the CDBG-DR Grantee demonstrate that it has satisfied or will satisfy the mandatory housing priority required for CDBG-DR funds (if applicable)? Some CDBG-DR grants (particularly those made in response to major disasters since 2016, see, e.g., 83 FR 40314) require CDBG-DR Grantees to prioritize the use of CDBG-DR funds to meet unmet housing needs, and some require Grantees to primarily consider and address unmet housing recovery needs, but permit the Grantee to propose an allocation of funds for unmet economic revitalization and infrastructure needs that support the housing need or that are unrelated to the grantee's unmet housing needs if the grantee demonstrates in its needs assessment that there is no remaining unmet housing need or that the remaining unmet housing need will be addressed by other sources of funds. If the grantee has not satisfied this requirement, the CDBG-DR Grantee should consider whether its use of funds for PA Local Match can be directed towards PWs that address housing needs (e.g., rehabilitation of facilities owned by public housing authorities).
- Does the CDBG-DR Grantee's proposed use of funds result in compliance with its overall benefit requirement? If not, or if the proposed use of funds that will benefit LMI persons is very close to the required percentage, has the grantee assessed (or required its CDBG-DR Subrecipients to assess) known FEMA PA projects to determine which will meet the LMI area benefit national objective criteria (i.e., located in a primarily residential area and with service area that provides an actual benefit to a population that is at least 51% LMI)? If the potential LMI benefits of the FEMA PA projects are unknown at the time that a CDBG-DR Grantee includes the use of CDBG-DR Funds for Local Match in its Action Plan, can the CDBG-DR Grantee meet its overall LMI benefit requirement through its other planned activities?

3. Action Plan

Before receiving a grant, CDBG-DR Grantees must develop and submit to HUD an Action Plan for disaster recovery that describes all uses of CDBG-DR funds, including any funds designated by the Grantee for activities that will satisfy PA Local Match requirements. If not included in



the initial Action Plan, adding Local Match as a new activity is a substantial amendment to the Plan. Substantial amendments require additional citizen participation and HUD approval.

4. HUD Waiver Authority

CDBG-DR appropriation statutes typically grant the Secretary the authority to impose alternative requirements and waive statutes or regulations administered by the Secretary.¹⁸ Statutory requirements and waivers granted by HUD may vary from one disaster to the next.

HUD typically provides certain waivers and alternative requirements for all Grantees receiving funds for a particular disaster. HUD also reviews and acts on CDBG-DR Grantees' requests for other waivers and alternative requirements on a case-by-case basis. Not all Grantee requests are approved. Waiver or alternative requirement requests to facilitate the use of CDBG-DR funds to satisfy Local Match should explain the good cause for the waiver, including why the waiver is necessary for recovery and how the Grantee will continue to meet its overall LMI benefit requirement.

5. Most Impacted and Distressed (MID) Areas

CDBG-DR appropriation acts typically require that all funds benefit most impacted and distressed (MID) areas resulting from a major disaster. MID areas can be designated by both HUD and the CDBG-DR Grantee. Eligible disasters and any geographic restrictions are identified in applicable HUD *Federal Register* notices. An activity may take place outside of a MID area if the activity is necessary to address a recovery need within a MID area (e.g., repairing a flood control structure upstream that prevents flooding within the MID area).

Typically, 80 percent of the CDBG-DR grant must address unmet disaster needs within the HUD-identified MIDs, which can be found in the Allocation Table in the applicable *Federal Register* notice. The CDBG-DR Grantee may determine where to use the remaining 20 percent of the allocation, but that portion of the allocation may only be used to address unmet disaster needs in areas that the CDBG-DR Grantee determine are MIDs resulting from the same major disaster that led to the HUD-designated MID areas.

If the location of FEMA's PW is outside of the HUD or CDBG-DR Grantee specified MID or cannot be documented to address a recovery need within a MID area, the project cannot use CDBG-DR as a source for the Local Match. The CDBG-DR Grantee is ultimately responsible for compliance with this requirement, even if the CDBG-DR Subrecipient carries out the activities that satisfy PA Local Match. The CDBG-DR Grantee should, therefore, clearly identify the areas within which the Subrecipient can expend CDBG-DR funds.

¹⁸ HUD cannot waive requirements related to fair housing, nondiscrimination, labor standards, and the environment, or requirements that are imposed by the appropriations acts that make CDBG-DR funds available, e.g., the requirement that funds be used for necessary expenses related to the disaster.



V. Roles and Responsibilities

FEMA and HUD will coordinate, as needed, to accurately and timely answer questions regarding compliance with grant requirements when using CDBG-DR to satisfy Local Match. Responsibilities for grant oversight and implementation are described below and in Appendix B.

A. FEMA

Multiple layers of government work in partnership to administer the PA Program once a disaster has been declared. Each entity works together to meet the overall objective of quick, efficient, and effective program delivery.

FEMA is the federal awarding agency authorized to manage the PA Program. The Recipient can be a State, local, Territorial, or Tribal (SLTT) government that receives funding under the disaster declaration and disburses funding to approved subrecipients. PA Subrecipients are entities who have received a subaward from the PA Recipient and then are bound by the conditions of the PA award and subaward.

FEMA works with the Recipient and Subrecipient throughout the recovery process. SLTTs play a critical role in supporting local recovery efforts. Post-disaster recovery is a locally driven process and the SLTTs support communities by coordinating and/or providing any needed technical or financial support to help communities address recovery needs. SLTTs also oversee regional coordination of recovery elements, set priorities, and direct assistance where it is needed.

B. HUD and CDBG-DR Grantees

HUD is authorized to allocate and award CDBG-DR grants when Congress makes funds available. HUD's responsibilities include monitoring CDBG-DR Grantees' use of CDBG-DR funds and providing technical assistance about use of grant funds for Local Match.

CDBG-DR funds are provided as a block grant. CDBG-DR Grantees have the primary responsibility to oversee and administer the use of funds for the disaster-related purposes that the funds were made available. Grantee responsibilities include:

- Overseeing the CDBG-DR grant to ensure that CDBG-DR funds are used in accordance with all program requirements, which includes CDBG-DR requirements, that apply to CDBG-DR funds that satisfy FEMA Local Match (this may necessitate that the CDBG-DR Grantee to establish protocols for coordination or oversight);
- Providing technical assistance to, and oversight of, CDBG-DR Subrecipients in the compliant use of CDBG-DR for Local Match;
- Tracking which CDBG-DR assisted activities will be used to satisfy Local Match and reporting this data in the Disaster Recovery Grant Reporting (DRGR) system; and
- Maintaining paper or electronic records of assisted activities sufficient for HUD to determine compliance in accordance with CDBG-DR recordkeeping requirements.



VI. Applying Flexible Match to FEMA PA Projects

This section summarizes key elements of Flexible Match. It provides a deeper explanation of how PA Applicants and CDBG-DR Grantees and CDBG-DR Subrecipients can identify the CDBG-DR assisted portions of the PW. And finally, it provides some examples to tie these concepts together.

A. Key Elements of Flexible Match

- Flexible Match is a streamlining concept that can be applied to PWs that include multiple sites, facilities, or structures. While other PA eligibility requirements are met at the facility or site level, the Flexible Match approach allows FEMA PA Applicants to meet Local Match requirements at a PW level.
- To apply Flexible Match, a PA Applicant must consolidate the use of CDBG-DR funds so that they are used for one or more CDBG-DR eligible activities within a portion of the PW (e.g., site, structure, facility) that will meet a CDBG-DR national objective.
- The entire PW must comply with all PA requirements. The sites, facilities, or structures that are part of the CDBG-DR assisted portions of the PW must comply with **both** CDBG-DR requirements and PA requirements for the CDBG-DR assisted activities to satisfy Local Match. The CDBG-DR requirements do not apply to the remainder of the PW that is not CDBG-DR assisted.
- CDBG-DR funds cannot be used to pay for costs that could be charged to the PA award (although it can be PA-eligible costs of the PW up to the amount of required Local Match). Statutory order of assistance provisions prohibits the use of CDBG-DR funds to “front” costs that will later be reimbursed with PA funds. CDBG-DR funds can be used for costs of compliance with CDBG-DR requirements that cannot be charged to the PA grant, but these will be tracked in DRGR and not in the PW.
- Section 428 Alternative Procedures PA projects are fixed-capped projects; the amount of the Local Match is a percentage of the estimated amount of project costs included in the PW. Section 406 PA projects are based on actual cost; the amount of the Local Match is a percentage of actual project costs included in the PW, so the exact amount may not be known until the project costs are finalized. As further described in section VIII.A, CDBG-DR Grantees and CDBG-DR Subrecipients carrying out activities that satisfy PA Local Match must take precautions to avoid paying for PA-eligible costs in excess of the final amount of Local Match. Obligating CDBG-DR funds in excess of the final, actual amount of required Local Match could result in a finding of noncompliance.
- For projects participating in the Section 428 Alternative Procedures Pilot Program for Permanent work, excess funding from one PA PW (meaning the amount of funding left over when actual costs are less than the estimate) can be used to supplement another PA



PW or to pay for other costs that are eligible uses of excess funds under the Section 428 Alternative Procedures. However, the amount of the required match for the original PW does not change since it was based on the estimate of the cost to complete the approved scope of work. The CDBG-DR funds are used to carry out the approved CDBG-DR assisted portion of the original PW and are not shifted to any other use.

- For PA projects carried out under the standard PA procedures for sections 403, 406, and 407 of the Stafford Act, the PA assistance (and the amount of the Local Match) is based on actual costs. If the original PW estimate is greater than actual costs, FEMA deobligates the difference between the amount of the original PW estimate and the final actual costs. Therefore, the standard procedures never result in “excess funding” created by cost underruns in the Section 428 Alternative Procedures Pilot Program.
- PA Applicants can apply Flexible Match concepts when CDBG-DR funding is used to fully or partially satisfy the local cost-share requirement. The PA Applicant must show the PW’s full local cost-share has been satisfied at project closeout.

B. Identifying the CDBG-DR assisted Portion of the FEMA PA Project

Generally, the CDBG-DR assisted portion of the FEMA PA project includes the work on structures, sites, or facilities that is separable from the PA funded portions of the project, and which will result in a completed activity that satisfies criteria to demonstrate compliance with a CDBG-DR national objective and all other applicable CDBG-DR requirements. The CDBG-DR Grantee must make a case-by-case determination about which portions of the PA PW are CDBG-DR assisted and therefore subject to HUD requirements. All sites within the PA PW are subject to PA’s programmatic requirements.

Example:

The City of Little Big Town, a FEMA PA Applicant, is also a CDBG-DR Subrecipient. The PA Applicant just received FEMA approval for a \$1 million FEMA PA scope of work. The FEMA PW includes 5 local Road Segments with 40 sites where washouts have been caused by flood damage. Before each Road Segment can be opened to serve traffic, all washouts along each Road Segment must be reconstructed.

FEMA requires the PA Applicant to provide a 25% Local Match for the PW, or \$250,000. The FEMA PA Federal cost share is \$750,000.

The approved PW is a standard PW under section 406, and the CDBG-DR Subrecipient (in this case, also the PA Applicant) will be reimbursed for actual costs.

The CDBG-DR Subrecipient consults with the CDBG-DR grantee and determines that Road Segments #1 and #2 would meet the CDBG-DR national objective criteria for area benefit to low- and moderate-income persons because those two Road Segments are in primarily



residential areas where at least 51 percent of residents are persons of low-and moderate income.

The CDBG-DR Subrecipient determines that it will set aside \$250,000 of CDBG-DR funds to meet the match requirement for the FEMA PA project and will apply those funds only to Road Segment #1 and Road Segment #2 in order to meet the low- and moderate-income national objective.

Cost Breakdown for Road Segment #1 and Road Segment #2

Combined cost of planning, design, and permitting	\$100,000
Road Segment #1	
Cost of washout reconstruction	\$100,000
Road segment #2	
Cost of washout reconstruction	\$100,000
<hr/>	
Total cost for Road Segments #1 and #2	\$300,000

In this example, what portions of the FEMA PA project are CDBG-DR assisted and subject to HUD requirements?

The CDBG-DR assisted portions of this FEMA PA project are: 1) the planning and design costs for Road Segments #1 and #2; and 2) reconstruction of all washouts along both Road Segments #1 and #2. Although CDBG-DR funds are not used to pay the entire cost of washout reconstruction for Road Segment #2, the entirety of Road Segment #2 is part of the CDBG-DR assisted portion of the project. Reconstructing a single road washout on Road Segment #2 would be an eligible CDBG activity. That activity, however, would not meet the low- and moderate-income area benefit national objective since fixing a road washout along Road Segment #2 without opening the road (which cannot happen until all washouts in the segment are reconstructed) will not benefit the residents of the service area. The reconstruction of the CDBG-DR funded washouts is an integral part of the overall reconstruction of Road Segment #2, so all of Road Segment #2 is part of the CDBG-assisted project. The CDBG-DR Subrecipient must determine how all CDBG-DR requirements (e.g., Davis-Bacon wage rates, section 3 economic opportunity goals, etc.) would apply to the entirety of the project (both Road Segment #1 and Road Segment #2).

Once the CDBG-DR Grantee determines which portions of a PW are CDBG-DR assisted, the CDBG-DR Grantee must determine how the CDBG-DR requirements apply to those portions of the project. The CDBG-DR Grantee must consider a number of issues, including, at a minimum:

- Which contracts for goods and services cover work that will be done on the CDBG-DR assisted portions of the PW? Do those contracts include mandatory terms, and were they procured in accordance with CDBG-DR procurement requirements?



In the example, the contracts may have been procured without regard to CDBG-DR requirements if the CDBG-DR Subrecipient/PA Applicant entered the contract before it identified CDBG-DR as the source of the Local Match. If the contract does not require the contractor to comply with CDBG-DR requirements, the contract must be amended, or a new procurement completed to avoid noncompliance.

- Based on the grantees review of surrounding circumstances, how will other cross-cutting requirements apply to the CDBG-DR assisted portions of the PW?

This example does not provide enough facts to determine how all cross-cutting requirements will apply. However, the grantee must make a determination about all cross cutting requirements (e.g., the Uniform Relocation Assistance and Real Property Acquisition Act (URA), Section 3, and environmental review requirements). For example, a CDBG grantee will need to consider whether it can adopt the FEMA environmental review because the PW is funded under section 406 of the Stafford Act and the scope of the CDBG-DR assisted portion of the project is within the project scope reviewed by FEMA.

- If the CDBG-DR assisted portion of the project includes construction work financed in whole or in part with CDBG-DR funds, what “construction work” would be subject to Davis-Bacon wage rates?

In this example, Davis-Bacon wage rates would apply to any construction performed by laborers and mechanics employed by contractors to complete all of Segments #1 and 2, even though CDBG-DR funds will not be used to pay for all of the work in Segment #2. Davis-Bacon does not apply to any force account workers employed by the CDBG-DR Subrecipient.

- What practices can the CDBG-DR Subrecipient adopt to help ensure compliance with the requirement that CDBG-DR funds can only pay for costs that cannot be reimbursed by FEMA?

In this example, the CDBG-DR Subrecipient should take measures to avoiding spending more than 25 percent of actual costs (which is prohibited by CDBG-DR order of assistance requirements). In this case, the order of assistance provisions would be violated if the CDBG-DR Subrecipient expended \$250,000 in CDBG-DR funds and the actual costs of the PW are less than the estimated \$1 million scope of work approved by FEMA.

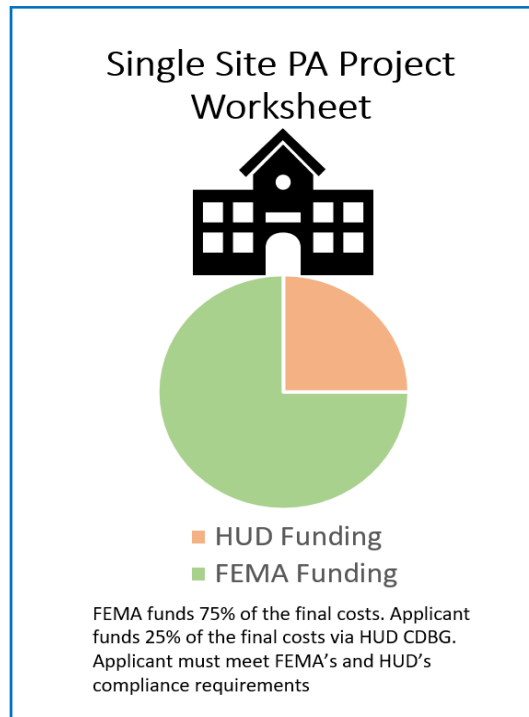
Some options that might help the CDBG-DR Subrecipient avoid a violation include completing the CDBG-DR work last; or paying for all or a portion of the Local Match with non-Federal funds and then seeking reimbursement from the CDBG-DR Grantee once actual costs are known. For example, in this case, the CDBG-DR Subrecipient could initially use \$200,000 in CDBG-DR funds towards the match and pay the remaining \$50,000 with non-Federal funds. Once the project is completed and actual costs are determined, the CDBG-DR Subrecipient may seek additional reimbursement from the CDBG-DR Grantee for up to 25% of the actual project costs with CDBG-DR funds. This practice is useful when actual costs are not known at the outset of the project (e.g., the contract includes a performance bonus for early completion or penalty for late completion).

C. Examples: Applying Flexible Match to a FEMA PA Project Worksheet

As discussed in section IV.A, FEMA PA applicants have the option to logically group multiple facilities or sites into a single FEMA PA PW based on the type of work or facility. In these situations, a PA Applicant may organize the sites or facilities within the FEMA PA PW into two subgroups: one to be assisted with FEMA PA (or sources other than CDBG-DR) and the other to be assisted with CDBG-DR funds. This division of costs will satisfy PA Local Match requirements if the actual costs charged to the CDBG-DR grant equal the Local Match for the entire FEMA PA PW. It also helps clearly delineate the CDBG-DR assisted portion of the project.

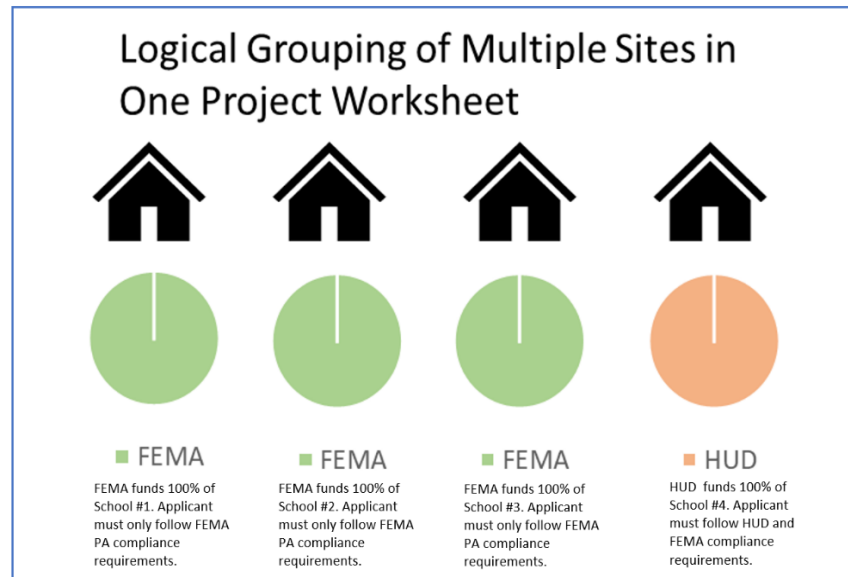
Example Scenario 1:

The City of Bayside experienced flooding after a period of severe rainfall. During the event, the City's elementary school was flooded. The estimated cost for the school repair is \$500,000. To meet the local cost-share requirements the PA Applicant has been authorized to use CDBG-DR funding. FEMA PA PW will fund 75% (\$375,000) and HUD CDBG-DR will fund 25% (\$125,000). In conducting the repairs, the PA Applicant must meet all of FEMA's and HUD's compliance requirements.



Example Scenario 2:

The City of Bayside experienced flooding after a period of severe rainfall. During the event, four elementary schools were flooded. The PA Applicant has determined grouping the four elementary schools into a single FEMA PA PW to be logical because the facilities were similar. Each school is expected to cost \$250,000 to repair for a total cost of \$1,000,000. The PA cost share is at 75% Federal and 25% Local.



Process for Flexible Match:

- The FEMA PA PW is drafted to include four schools, three of which will be completely funded by FEMA and one completely funded by HUD CDBG-DR (\$750,000 FEMA funds and \$250,000 of CDBG-DR funds).
- All four schools in the FEMA PA PW must meet FEMA's eligibility and compliance requirements.
- The school funded with CDBG-DR funding must meet **both** CDBG-DR and FEMA PA compliance requirements.

When the PA Applicant accepts the PW as a 406 Standard Project, final FEMA PA funding is based on actual costs. To satisfy CDBG-DR requirements for use as Local Match, the total costs paid with CDBG-DR funds must equal or be less than the local cost-share requirement. If, during final cost reconciliation, the actual costs paid with CDBG-DR funds does not equal or is less than the local cost-share requirement, then the Applicant must find additional matching funding. CDBG-DR funds cannot be used for any cost that can be charged to the PA grant (i.e., CDBG-DR cannot pay for amounts in excess of Local Match requirements).

When the PA Applicant accepts the PW as a 428 Alternative Procedure Project, the Project funding is a fixed-cost estimate and capped at the obligated amount. The PA Applicant summarizes its total actual cost at closeout and submits its closeout certification. If the actual costs for this project exceeds the fixed-cost estimate, the PA Applicant may have excess funds available from its other 428 Alternative Procedure Projects to offset the overrun; however, this does not change the local match requirements. If the PA Applicant completes this PW under the fixed-cost estimate, the excess funds may be used for cost-effective activities that reduce the risk



of future damage, hardship, or suffering from a major disaster, and activities that improve future PA operations or planning.

Additional considerations:

- Timing of the two grant programs may differ depending upon funding availability. There is a possibility that CDBG-DR funding may become available after FEMA PA funding. To preserve the possibility that future CDBG-DR funding can reimburse any costs paid for Local Match from non-Federal funds, the CDBG-DR Grantee or CDBG-DR Subrecipient (sometimes the same entity as the PA Applicant) must make sure that any work that will potentially be reimbursed by CDBG-DR funds complies with all HUD’s requirements.
- Another timing consideration may arise if CDBG-DR funds become available, but the scope of work for the PWs is still being developed. In these cases, if the CDBG-DR Grantee or CDBG-DR Subrecipient sets aside CDBG-DR funds to pay Local Match once the PW is obligated and actual costs are determined, this could delay the use of CDBG-DR funds. Waiting to expend CDBG-DR funds proposed for PA Local Match has the potential to risk losing funds that are not expended within the period of performance and jeopardizing the ability to provide needed long-term disaster recovery assistance in a timely way. Therefore, HUD recommends frequent coordination with those administering the PA program and diligence to ensure compliance with any housing priority imposed by applicable CDBG-DR Federal Register notices.
- In the example above, the PA Applicant is likely to procure only one vendor to assist with the different aspects of the repair work to all four schools (e.g., engineering firm, roofing experts, etc.). Even though only one of the four schools is subject to both FEMA and HUD requirements, if contracts are bid for all work across all the schools in the FEMA PW, the FEMA PA Applicant is required to comply with CDBG-DR requirements in procuring the contract as well, which are described in section VII.D of this document.

VII. Satisfying FEMA PA and HUD CDBG-DR Requirements

A. Funding Alignment

PA grants support two general types of work: Emergency Work (emergency protective measures and debris removal), and Permanent Work (permanent restoration of damaged facilities, including hazard mitigation to protect the facilities from future damage). FEMA separates Emergency Work into two categories and Permanent Work into five categories based on general types of facilities.

CDBG-DR funds can be used for 26 statutorily authorized eligible activities, and HUD may authorize additional activities through waivers and alternative requirements.

Section 105(a)(9) of the HCDA authorizes the use of CDBG-DR funds for Local Match when the grantee carries out an activity that would otherwise be an eligible use of CDBG-DR funds.



Grantees must document which CDBG-DR eligible activity it is carrying out with the funds that satisfy the PA Local Match.

To illustrate this alignment of CDBG-DR and PA requirements, the chart below provides examples of CDBG-DR eligible activities that align with FEMA PA categories for permanent work. The list of CDBG-DR eligible activities below is not exhaustive and other eligible activities may also align with the FEMA categories.

FEMA Category	Category Description	Examples of CDBG DR Activities that can be used in conjunction with FEMA Permanent Work Categories for PA Local Match
C	Roads & Bridges (Stafford Act's section 406)	Sections 105(a)(1) (acquisition of real property); 105(a)(2) (acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements); and 105(a)(4) (reconstruction and rehabilitation of privately-owned property).
D	Water Control Facilities (Stafford Act's section 406)	
E	Buildings & Equipment (Stafford Act's section 406)	
F	Utilities (Stafford Act's section 406)	
G	Parks, Recreation, & Other (Stafford Act's section 406)	

If a PA Applicant's total Local Match amount for all FEMA PA PWs exceeds the CDBG-DR funds available for match, CDBG-DR Grantees can prioritize PA projects (or portions of projects) for match based on several factors. A CDBG-DR Grantee's priorities depend on the amount of CDBG-DR funds available to pay for Local Match, but the CDBG-DR Grantee may also consider:

- maximizing match for PA PWs or portions of PWs that benefit persons of low and moderate income;
- using CDBG-DR for highest cost projects or portions of projects, to minimize the number of PA PWs that must comply with CDBG-DR requirements;
- using CDBG-DR to match PWs that are fully obligated by FEMA and actual costs are known, which also may reduce the possibility that the scope of work will be amended, to minimize the number of times that CDBG-DR Grantees must review for CDBG-DR compliance; and



- when CDBG-DR will be used to reimburse the costs of the CDBG-DR Grantee or Subrecipient using CDBG-DR for Local Match for PWs that have the records necessary to document CDBG-DR compliance.

B. Duplication of Benefits and Order of Assistance

Under duplication of benefits and order of assistance requirements, CDBG-DR funds must be used to supplement, not supplant, FEMA PA assistance.

1. Duplication of Benefits

Section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving duplicative financial assistance under any other program or from insurance or any other source. This requirement applies to all Federal agencies administering financial assistance for disaster recovery. To the extent that duplication of benefits applies to FEMA PA assistance, FEMA completes the duplication of benefits analysis.

CDBG-DR Grantees may use information from FEMA's duplication of benefits check (if available) to inform its review, but must document in its records that it completed a duplication of benefits check to show that CDBG-DR funds are only used for costs for which no other sources are available. HUD guidance on duplication of benefits for CDBG-DR Grantees is provided in a *Federal Register* notice at 84 FR 28836.

2. Order of Assistance - Using FEMA Funds First

CDBG-DR appropriation acts generally include a statutory order of assistance that prohibits use of CDBG-DR funds for costs that FEMA will pay if they are included in the PW.

Although the language may vary among appropriations, the most common statutory order of assistance requirements prohibit use of CDBG-DR funds for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE).

For a project that is approved for FEMA PA assistance (and that is not eligible for USACE assistance), CDBG-DR funds can pay for the cost of Local Match, costs of related activities that cannot be included in the FEMA PW, or costs of compliance with HUD requirements that cannot be charged to the FEMA PW. If FEMA or USACE assistance is awarded after CDBG-DR to pay the same costs, it is the CDBG-DR Grantee's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the USACE. Section VIII.A. of this Implementation Guidance discusses some tips for complying with this requirement.



C. Flood Insurance, Flood Hazard Minimization Provisions and Consensus-Based Codes, Specifications, and Standards

1. Flood Insurance

Federal funding provided for a property in a Special Flood Hazard Area (SFHA) triggers a federal statutory requirement to maintain flood insurance on the property in perpetuity. Compliance with this requirement must be monitored by CDBG-DR Grantees in accordance with 24 CFR § 58.6. If a person receives federal disaster assistance conditioned on obtaining and maintaining flood insurance and fails to do so, the National Flood Insurance Reform Act of 1994 prohibits that person from receiving further federal disaster assistance for repair, replacement, or restoration for damage to that property. In addition, the 1994 Act requires that, should the property be sold or transferred, the seller or transferor is required to notify the buyer or transferee in writing that flood insurance must be obtained and maintained.

For an NFIP-insurable facility located in an SFHA, FEMA must reduce PA funding when the facility is: located in an area that FEMA has identified as an SFHA for more than 1 year; damaged by flooding; and uninsured for flood loss.¹⁹ For an insurable facility in an SFHA that does not have flood insurance or has inadequate flood insurance, FEMA will reduce PA funding for eligible project costs by the lesser of: the maximum amount of insurance proceeds that could have been received if the facility had been covered by an NFIP standard flood insurance policy for the building and its contents; or the value of the building and its contents at the time of the incident. There is an exception for private nonprofit applicants in communities that do not participate in the NFIP. In this instance, FEMA will not reduce assistance as described above, if the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased by the private nonprofit applicants²⁰ or the private nonprofit must obtain and maintain flood insurance from another source.²¹

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain adequate insurance to protect the facility against future loss.²² The PA Applicant must insure facilities with the types and extent of insurance that are reasonably available, adequate, and necessary to protect against future loss to the property, including excess flood insurance coverage available on the private market. The type of insurance refers to the hazard(s) that cause the damage (i.e., flood) and the extent refers to the amount of insurance required based on the eligible, applicable project costs.

¹⁹ Stafford Act section 406(d)(1), 42 USC 5172(d)(1)

²⁰ 44 CFR § 206.252(b)

²¹ FEMA Recovery Policy FP 206-086-1: Public Assistance Policy on Insurance, June 29, 2015, (https://www.fema.gov/media-library-data/1558538632295-d4165531878c8c8795551d3a7665d03e/Public_Assistance_Insurance_Policy_FP_206-086-1_6-29-2015.pdf)

²² Stafford Act § 311, 42 USC 5154



Additionally, FEMA PA is also provided on the condition that a PA Applicant has complied with the requirement to obtain and maintain adequate insurance if a PA Applicant has previously received PA funding for the same facility.

2. Flood Hazard Minimization and Other Code and Standard Provisions

Generally, CDBG-DR and FEMA PA funds are subject to the provisions summarized below. FEMA requirements are described more specifically in the Code of Federal Regulations. CDBG-DR grants are subject to requirements as described in the Federal Register notices that govern the use of CDBG-DR funds. These sources include definitions, citations to standards, and information on accessibility.



Summary of FEMA and CDBG DR Code and Standard Provisions

Topic	FEMA	CDBG-DR
<u>State and Local Codes and Standards</u> ²³	<p>Costs of compliance with state and local codes and standards are eligible so long as the code or standard meets PA’s five eligibility criteria.²⁴</p> <ol style="list-style-type: none"> 1) Applies to the type of restoration required; 2) Is appropriate for the pre-disaster use of the facility; 3) Is reasonable, in writing, and formally adopted by the State, Territorial, Tribal, or local government on or before the declaration date, OR is a legal federal requirement; 4) Applies uniformly; and 5) Was enforced during the time it was in effect. 	<p>Costs of compliance with state and local codes and standards is generally eligible as part of carrying out an eligible activity. <i>Federal Register</i> notices generally state that use of CDBG-DR funds must comply with applicable State, local, and tribal codes, and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees should contact HUD with questions if they believe a state or local code and standard conflicts with requirements on the use of CDBG-DR funds.</p>
<u>Lead-Based Paint</u>	<p>All FEMA funded actions where lead-based paint may be present must be carried out in manner that complies with all applicable state, local, and federal solid waste and hazardous materials law regulating the exposure to and disposal of lead-based paint.</p>	<p>HUD’s Lead disclosure and Lead Safe Housing Rules (24 CFR part 35) implementing the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.), apply to all pre-1978 housing units assisted with CDBG funds, including single- and multifamily units, whether publicly- or privately-owned.</p>
<u>Green building Standards</u>	<p>Not applicable</p>	<p>Apply to: (i) all new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. CDBG-DR Grantees must follow the HUD CPD Green Building Retrofit Checklist to the extent it applies to a CDBG-DR assisted rehabilitation activity.²⁵ These standards do not apply to projects that are completed, underway, or under contract prior to the date that CDBG-DR assistance is approved for the project.</p>

²³ PA has adopted certain consensus-based codes and standards that apply when there are is eligible locally adopted codes or the eligible locally adopted code is less stringent. [https://www.fema.gov/media-library-data/1579188158300-159a38c75b6204517ad6c8641819c143/DRRA_1235\(b\)_V2.1_12-20-2019_508_FINAL.pdf](https://www.fema.gov/media-library-data/1579188158300-159a38c75b6204517ad6c8641819c143/DRRA_1235(b)_V2.1_12-20-2019_508_FINAL.pdf)

²⁴ Stafford Act § 406(e), 42 U.S.C. 5172(e), and 44 CFR § 206.226(d).

²⁵ Available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>



Summary of FEMA and Elevation and Flood Control Provisions

Topic	FEMA	CDBG-DR
<p><u>Elevation and Floodproofing Standards for Structures</u></p> <p><i>In this table, the base flood elevation, meaning the elevation associated with a 100-year (or 1 percent annual chance) flood, is referenced as the “BFE”.</i></p>	<p>FEMA regulations require that new construction and substantially improved buildings in the Special Flood Hazard Area (SFHA) must be elevated or floodproofed to the BFE as defined in 44 CFR § 60.3 and 44 CFR § 9.11(d). Those structures housing “critical actions” as defined in 44 CFR § 9.4 must be elevated or floodproofed to the 500-year flood elevation.</p> <p>Additionally, FEMA PA Policy requires that structures being repaired with PA funding use, as a minimum design and construction standard, the International Code Council’s International Building Code, International Existing Building Code, and International Residential code and referenced standards, including American Society of Civil Engineers Standards 24-14 (ASCE 24-14). ASCE 24-14 requires additional freeboard criteria beyond that which is required in FEMA regulations for certain classifications of buildings.</p>	<p>Applies to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent.</p> <ul style="list-style-type: none"> - Non-Critical Structures principally for residential use in the 100-year (1 percent annual chance) floodplain: elevate lowest floor (including the basement) to at least two feet above the BFE (BFE + 2 ft). - Non-Critical, primarily residential Mixed-use structures with no dwelling units and no residents below BFE + 2 ft: elevate or floodproof up to at least BFE + 2 Ft. - Non-Critical, Nonresidential structures: must be elevated to standards described in applicable Federal Register notices or floodproofed, in accordance with FEMA standards, up to at least BFE + 2 ft. - All Critical Actions within the 500-year (0.2 percent annual chance) floodplain: elevate or floodproof to the higher of the 500-year floodplain elevation or three feet above the BFE. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the BFE.
<p><u>Flood Control Structures (i.e., Dams and Levees)</u></p>	<p>Not applicable</p>	<p>Typically, cannot be used to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event and may be subject to additional reporting requirements.</p>



3. Considerations for Reconciling FEMA and HUD Flood Hazard Requirements when Using Flexible Match

PA funded projects generally commence soon after a disaster and in advance of the availability of CDBG-DR funds. CDBG-DR Grantees therefore frequently encounter challenges in certain circumstances in reconciling CDBG-DR elevation or code-based requirements with those established by FEMA for the PA program. When CDBG-DR funds are used as match for a PA PW that is already underway, the alignment of HUD’s elevation standards with any alternative standard allowed by FEMA may not be feasible and may not be cost reasonable.

To satisfy both FEMA and HUD requirements, CDBG-DR Grantees may use the following “rules of thumb:”

- For any costs related to meeting flood hazard requirements imposed by HUD or FEMA that can be charged to the FEMA PA grant, CDBG-DR funds can be used for costs up to the amount of the Local Match required by FEMA.
- For costs that cannot be charged to the FEMA PA grant (other than Local Match within the PW scope of work), CDBG-DR funds can be used to pay for costs that are required for compliance with CDBG-DR grant requirements or are otherwise necessary and reasonable costs, including complying with Federal Cost principle requirements, for related work outside of the PW that is CDBG-DR eligible and meets a national objective. However, these costs would not be eligible as meeting the PA cost match requirement.

In some limited circumstances, PA’s elevation and freeboard requirements for buildings in the special flood hazard area under ASCE-24 may exceed HUD’s two-foot freeboard requirement. In such cases, CDBG-DR funds can be used for the match portion of the costs to satisfy the applicable FEMA requirements.

When FEMA’s requirements do not meet the CDBG-DR requirements for two-foot freeboard, PA Applicants may be eligible to meet the elevation or floodproofing difference through PA section 406 hazard mitigation. FEMA evaluates proposed mitigation measures for cost-effectiveness, technical feasibility, and compliance with Environmental Planning and Historic Preservation (EHP) laws, regulations, and Executive Orders and in compliance with all other relevant eligibility criteria outlined in the Public Assistance Program and Policy Guide (PAPPG). In addition to providing funding for hazard mitigation under the PA Program, FEMA also provides hazard mitigation funding under its Hazard Mitigation Assistance programs through section 404 of the Stafford Act. A PA Applicant may use both sections 406 and 404 mitigation funds to implement mitigation measures on the same facility, but not for the same work.

HUD has also established an alternative requirement (a modification of an existing requirement authorized by CDBG-DR appropriations acts) for CDBG-DR grantees that have received funds for disasters occurring in 2015, 2016, 2017, 2018 and 2019. Under this HUD alternative requirement, a grantee may adopt the FEMA-approved elevation, floodproof (or equivalent) standard for a non-residential structure when the CDBG-DR funds:



- (i) are used as the non-federal match for FEMA assistance;
- (ii) the FEMA-assisted activity commenced prior to HUD's obligation of CDBG-DR funds to the grantee; and
- (iii) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation is not reasonable as that term is defined in the applicable cost principles at 2 CFR § 200.404.

Under this exception and criterion (ii) above, HUD considers the FEMA-assisted activity to have “commenced” on the date on which the HUD grantee has incurred a project cost that has or will be charged to an approved FEMA PW. This may include pre-award costs if FEMA determines that the costs are eligible.

HUD advises CDBG-DR Grantees and Subrecipients to engage in early coordination with FEMA on projects where CDBG-DR funds are used as Local Match. This advanced coordination allows for supplemental CDBG-DR funding to be used to implement the HUD flood elevation standard, in addition to the use of CDBG-DR funds as a match.

D. Procurement Requirements

1. FEMA PA Procurement Overview

PA Applicants must comply with Federal procurement requirements as a condition of receiving FEMA PA funding for contract costs for eligible work. When the PA Applicant is a state government, it must comply with Federal procurement procedures at 2 CFR § 200.317, which includes:

- Following the same policies and procedures they would use for procurements with non-federal funds, and
- Complying with the Environmental Protection Agency (EPA) guidelines in 2 CFR § 200.322, Procurement of Recovered materials.

Tribal, local governments, and eligible PNPs must comply with federal procurement rules and regulations found in 2 CFR §§ 200.318 through 200.326. FEMA procurement requirements that include, but are not limited to:

- Providing full and open competition,
- Following required steps to ensure the use of small and minority businesses, women's business enterprises, and labor surplus area firms when possible,
- Performing a cost or price analysis,
- Evaluating and documenting contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources,
- Ensuring that the contractor has not been suspended or debarred,



- Prohibiting the use of statutorily or administratively imposed state, local, or tribal geographic preferences in evaluating bids or proposal,
- Excluding contractors that may have an unfair competitive advantage, and
- Maintaining records to detail the history of procurement considerations.

2. HUD CDBG-DR Procurement Overview

Nearly all recent CDBG-DR appropriations acts require the Secretary to certify, in advance of making a grant, that the CDBG-DR Grantee has in place proficient procurement processes. CDBG-DR Grantees must submit documentation to support the Secretary's certification and must comply with the procedures in the submissions (unless HUD approves modifications).

Generally, to be "proficient", Grantees' procedures must uphold the principles of full and open competition, evaluate the cost or price of the product or service, and maintain websites with information about procurements.

Federal Register notices impose additional basic requirements related to procurement.

Local governments must follow the procurement requirements at 2 CFR §§ 200.318 through 200.326.

State CDBG-DR Grantees have flexibility. In addition to evaluating (and requiring Subrecipients to evaluate) the cost or price of a product or service, generally, a state must: (a) adopt 2 CFR § 200.317, but impose 2 CFR §§ 200.318 through 200.326 on its CDBG-DR Subrecipients; (b) adopt 2 CFR §§ 200.318 through 200.326; or (c) follow its own procurement policies and procedures and establish procurement policies and procedures pursuant to 24 CFR § 570.489(g) for CDBG-DR Subrecipients based on full and open competition.

Federal Register notices generally require CDBG-DR funded contracts to include certain provisions, such as a period of performance, performance requirements, or liquidated damages. Grantees are generally prohibited from delegating or contracting the performance of inherently governmental responsibilities related to management of the grant (e.g., monitor).

3. Considerations for Procurement when Using Flexible Match

HUD CDBG-DR grants to local governments are subject to the same procurement requirements that apply to procurements by local governments using FEMA PA funds.

To streamline the use of CDBG-DR funds for Local Match, State CDBG-DR Grantees (and other CDBG-DR Grantees subject to State CDBG rules under a waiver and alternative requirement) should consider including a provision in their procurement requirements that adopts FEMA procurement requirements for activities that will be used to satisfy FEMA Local Match. This will eliminate confusion about which procurement rules apply. CDBG-DR Grantees should consider including this provision when submitting documentation to support the Secretary's certification of proficient procurement processes. If the CDBG-DR Grantee did not include this provision in its original submission and wishes to modify its certifications, it should do so immediately by formally resubmitting its certifications to HUD to reflect the material changes.



State CDBG-DR Grantees that adopt FEMA PA procurement requirements for activities that satisfy PA Local Match must obtain and maintain records to document how the procurement complied with PA procurement requirements. Additionally, if not completed by FEMA, the CDBG-DR Grantee may need to take additional steps to evaluate the cost or price of the product or service.

PA Applicants that procure goods or services before they know whether CDBG-DR grants are available for Local Match may wish to include in the procurement solicitation documents that the contract may be amended from time to time to expand the scope to include work funded by other Federal sources, subject to applicable requirements. This will allow the contract to be modified in the future to include terms mandated for CDBG-DR assisted contracts (e.g., ability to hire section 3 residents, ability to subcontract with section 3 businesses, comply with Davis Bacon, or add a liquidated damages provision).

VIII. Grants Management

A. Payment of Costs

In most cases, payment of FEMA PA Program costs is made on a reimbursement basis. After obligation of the PW, the PA Recipient can reimburse PA funding to the PA Subrecipient, in accordance with its FEMA-State/Tribe Agreement. For PWs under section 422 (Small Projects), the PA Recipient pays the estimated costs of the PW as soon as practicable after federal obligation of funds for the project. For Large Projects, with the exception of PWs under section 428 Alternative Procedures Projects, the final eligible amount is the documented cost incurred to complete the eligible scope of work. For 428 Alternative Procedures Projects, the PA Subrecipient completes the work, but the amount of the payment is based on the approved estimated costs, subject to proper accounting and use of excess funds.

Generally, CDBG-DR payments are made on an advance basis. For States, payments are governed by Treasury-State CMIA agreements and procedures codified at 31 CFR § 205. For local governments subject to 2 CFR § 200.305, a CDBG-DR Grantee typically advance funds from its line of credit (and minimizes the time between advance and disbursement by the non-Federal entity).

As discussed in section VII.B. of this Implementation Guidance, CDBG-DR appropriation acts generally include a statutory order of assistance that prohibits use of CDBG-DR funds for costs that FEMA will pay if they are included in the PW. Therefore, use of CDBG-DR funds to satisfy Local Match necessitates some planning by CDBG-DR Grantees and CDBG-DR Subrecipients to avoid violating the order of assistance provisions that apply to CDBG-DR funds.

CDBG-DR Grantees should plan and develop policies and procedures to ensure compliance with order of assistance requirements that consider, for example:

- **The effect of amendments to PW Scope of Work:** FEMA may approve amendments to the PW scope of work after it is approved. If CDBG-DR expenditures are completed



before the scope of work changes, CDBG-DR funds could inadvertently be expended for costs that could be charged to FEMA.

- **The effect of a change in Federal cost share percentage applicable to the grant:** Disaster may have an increase in Federal cost share up to 90 percent if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold. If CDBG-DR funds are expended for Local Match before the amount of the Local Match is reduced, this could result in a violation of the order of assistance provision.
- **The Stafford Act authority under which the PA Applicant will carry out the PW:** FEMA's total obligation for a PW (and associated match requirements) may be adjusted up or down based on several considerations specific to the Stafford Act authorities. If the total obligation (and thus the amount of required Local Match funds) for the PW increases, the adjustment will not violate the order of assistance provisions. If the total obligation (and amount of Local Match) decreases, this could violate the order of assistance provisions if the CDBG-DR funds expended exceed the amount of the Local Match.
 - **Small Projects under Section 422 of the Stafford Act:** Generally, the amount of the required Local Match is based on the estimated scope of work (even if actual costs differ from the estimate). Once FEMA obligates a Small Project, FEMA does not adjust the approved amount of an individual Small Project unless the PA Applicant does not complete the approved scope of work, the PA Applicant requests a change in the scope of work, or the PW contains errors or omissions. In narrow cases, the PA Applicant may appeal the total amount obligated for all Small Projects.
 - **Alternative Procedures under Section 428 of the Stafford Act:** Generally, the amount of the required Local Match is based on the estimated scope of work (even if actual costs differ from the estimate). The project must be a large project, and the PA Applicant must accept a fixed cost offer within the timeframe established by FEMA (18 months, unless extended). PA Applicants can share funds across all section 428 Alternative Procedures PWs. Generally speaking, once the PA Applicant accepts a fixed cost offer, it may not revert back to a project funded based on actual costs. FEMA does not adjust the fixed amount even if the PA Applicant discovers hidden damage while conducting approved work. However, in some cases, the PA Applicant may use funds across all Alternative Procedure Permanent Work Projects. This may result in a modified Local Match for the revised PWs.
 - **Large Projects under Sections 403, 406, or 407 of the Stafford Act (other than Alternative Procedures Projects):** The amount of the required Local Match is based on the actual costs to complete the scope of work. The estimate may be a good guide for the required Local Match, but in most cases the required Local Match will be adjusted up or down from the estimate.

Given these considerations, the CDBG-DR Grantee or Subrecipient carrying out the CDBG-DR assisted portions of the PA project may wish to consider the following options when determining how to prevent the potential use of CDBG-DR for costs that can be charged to the FEMA PW:



- Wait until the scope of work is unlikely to change before charging costs to the CDBG-DR grant or subaward.
- Pay for costs with non-Federal funds initially and request reimbursement with CDBG-DR funds once actual costs are known (consistent with allowable use of reimbursement under applicable requirements at 2 CFR § 200.305 (for local government CDBG-DR Grantees) or the Treasury State Agreement and 31 CFR §205 (for State CDBG-DR Grantees).
- Hold back a portion of CDBG-DR funds planned for activities to satisfy Local Match for a FEMA PW until the actual costs and scope of work are finalized.
- Coordinate regularly with the point of contact for the PA Applicant that is carrying out the PA project to anticipate problems and develop a strategy that considers the requirements of both programs.

B. Reporting

FEMA and HUD both review grantee performance on a quarterly basis through a quarterly performance or progress report (QPR); both FEMA and HUD also require quarterly submission of the Federal Financial Report (FFR), or SF-425.²⁶

For CDBG-DR grants, HUD requires that Grantees enter information in the DRGR system in sufficient detail to permit HUD's review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD guidance for DRGR reporting requirements can be found on the HUD exchange at:
<https://www.hudexchange.info/programs/drgr/>.

CDBG-DR Grantees must also submit the FFR (SF-425) to HUD each quarter. DRGR allows grantees to complete all mandatory fields and 'submit' the SF-425 Report to HUD along with each QPR that is submitted in the DRGR system.

For the PA program, the Quarterly Progress Report is a tool for FEMA and the PA Recipient to track the progress of Large Projects. FEMA requires the PA Recipient to report on the status of all open Large Projects on a quarterly basis.²⁷ PA Recipients must submit Quarterly Progress Reports to FEMA no later than 30 days after the end of each quarter. PA Recipients submit FFRs quarterly to the respective FEMA Regional Office. The FFR provides the status of funds for the prime award, the Recipient's expenditure drawdowns, and whether the Recipient is meeting its cost-share requirements.

²⁶ 2 CFR § 200.327.

²⁷ 44 CFR § 206.204(f).



C. Summary of Closeout Requirements

1. FEMA Requirements

FEMA PA begins to closeout Projects as work is completed. To begin closeout, the FEMA PA Subrecipient notifies the PA Recipient that work is completed and the date the work was completed.

Small Projects

FEMA PA does not typically adjust the approved amount for a Small Project once it is obligated. However, under some circumstances the approved amount will be adjusted at closeout if the applicant: does not complete the approved scope of work, requests additional funds related to eligible change in the scope of work, the FEMA PA PW contains errors or omissions, or insurance proceeds differ from the amount deducted in the FEMA PA PW. Additionally, if the total cost of all of a PA Applicants small projects exceeds the combined total amount obligated, the PA Applicant may request additional funding.

To close a Small Project, the PA Recipient must certify in writing that the PA Applicant completed the approved scopes of work for all its Small Projects in accordance with the FEMA-State/Tribe Agreement and made all payments in accordance with the FEMA-State/Tribe agreement.

Once FEMA receives the PA Recipient's certification, FEMA officially closes the small projects.

Large Projects, Standard Procedures

FEMA PA closes each Large Project as work is completed. Except for Capped Projects, the final amount for a Large Project is based on the actual documented costs incurred to complete the eligible scope of work.

The PA Subrecipient must provide documentation to support the actual costs within 90 days of work completion. The PA Recipient must verify to FEMA that:

- All incurred costs are associated with the approved SOW;
- The PA Applicant completed all work in compliance with the FEMA-State/Tribe Agreement; and
- It made all payments in accordance with 2 CFR § 200.305.

Large Projects, Section 428 Alternative Procedures

Work must be completed by the end of the latest section 428 Alternative Procedures Project period of performance and the PA Recipient must certify that all incurred costs are associated with the approved SOW and that the PA Applicant completed all work in accordance with FEMA regulations and policies. The PA Recipient must submit its certification to FEMA within



180 days of the PA Subrecipient completing its last section 428 Alternative Procedures Project or the latest Alternative Procedure Project deadline, whichever occurs first.

PA Subrecipients do not need to track costs to specific work items. PA Subrecipients only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the Alternative Procedure Projects.

Applicant Closeout

To close the PA grant award to the PA Recipient, FEMA and the PA Recipient conduct a financial reconciliation. For FEMA to close the PA award, the following conditions should be met:

- FEMA has issued final determinations on all appeals;
- FEMA has obligated all eligible PA funding;
- The PA Recipient and PA Applicant have completed all PA Program projects and have met the statutory and regulatory requirements governing the program, including compliance with EHP requirements and insurance purchase requirements;
- The PA Recipient has passed through all obligated funds appropriately and submitted its final expenditure report to FEMA;
- FEMA has adjusted the funding level for the program, as appropriate; and
- Both FEMA and the PA Recipient have completed all administrative actions related to the PA Program.



2. Summary of Key Closeout Requirements

Summary of FEMA and CDBG DR Closeout Procedures		
Topic	FEMA	CDBG-DR
<p><u>Period of Performance and Timeline for Completion of Work</u></p>	<p>The deadline for Emergency Work (sections 403 and 407) is 6 months from the declaration date.</p> <p>The deadline for Permanent Work (section 406) is 18 months from the declaration date.</p> <p>The PA Recipient may extend Emergency Work up to an additional 6 months and Permanent Work up to an additional 30 months. The PA Recipient must notify FEMA when it approves a time extension either via FEMA’s systems and reporting mechanisms or written notification.</p> <p>FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time.</p> <p>All work must be completed with the Standard Form (SF) 424, Application for Federal Assistance. The SF-424 includes the period of performance (POP) for the PA prime award. The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date. FEMA has the authority to extend the POP based on extenuating circumstances.</p>	<p>All CDBG-DR funds must be expended before the end of the period of performance in the grantee’s grant agreement (often 6 years from the date HUD signed the grant agreement). All CDBG-DR funds must be expended before the end of the period of performance in the grantee’s grant agreement (for recent grants, this is 6 years). HUD’s CDBG-DR Grantee determines the timeline for completion of all work under its agreements with contractors and Subrecipients. Simply meeting expenditure deadlines does not automatically prepare a CDBG-DR Grantee for closeout; additional preparation is required to satisfy the closeout criteria including compliance with national objective requirements.</p>



Summary of FEMA and CDBG DR Closeout Procedures

Topic	FEMA	CDBG-DR
<p><u>Required for Closeout</u></p>	<p>FEMA Applicants must submit documentation to FEMA to initiate closeout.</p> <p>Small Projects: The PA Recipient must submit the certification to FEMA within 180 days from the latest Small Project work completion date or the latest approved deadline of the Subrecipient’s Small Projects, whichever is sooner. The PA Recipient must submit certification of completion of all of its own Small Projects within 90 days of the latest Small Project work completion date or the approved deadline of its last Small Projects, whichever is sooner.</p> <p>Large Projects: The PA Recipient must submit its certification of the Applicant’s completion of each Large Project with the final claim for PA funding for the project and supporting documentation to FEMA within 180 days of the work completion date or the project deadline, whichever occurs first. The PA Recipient must submit its certification for each of its own Large Projects within 90 days of the work completion date or the Project deadline, whichever occurs first. If work on a Large Project is complete prior to obligation, the Applicant must still submit actual cost documentation within the 90 days of work completion. However, the Recipient’s certification and final payment of claim is due within 180-days from the date of obligation.</p> <p>Large Project 406 Standard Procedures closeout package must include:</p> <ul style="list-style-type: none"> - Cost breakdown identifying the individual elements that comprise the total actual costs claimed; 	<p>Grant closeout is subject to regulations at 2 CFR Part 200.343 (States) Subpart D and 24 CFR § 570.509. (Local Governments) More information on CDBG-DR grant closeout is available in the Notice CPD-14-02: Closeout Instructions for CDBG Programs Grants.</p> <p>CPD Notice 14-02 is supplemented by Procedures specific to CDBG-DR grants. In general, the closeout steps include:</p> <ul style="list-style-type: none"> - Pre-closeout: HUD and the CDBG-DR Grantee initiate closeout consideration; HUD verifies data reported in DRGR; CDBG-DR Grantee submits final Quarterly Performance Report (QPR); HUD determines that the grant is “Ready to Close.” - Closeout: (Grantee submits closeout checklist; HUD reviews and resolves any concerns; HUD and Grantee enter a closeout agreement; HUD closes the grant’s line of credit in the LOCCS system). <p>After closeout, the grantee must:</p> <ul style="list-style-type: none"> - Oversee compliance with continuing obligations (e.g., use of buildings acquired or improved with CDBG-DR funds); - Ensure grant program income will be used for eligible expenses; and - Retain records for required post-closeout period.



Summary of FEMA and CDBG DR Closeout Procedures

- An expenditure report from the PA Subrecipient's accounting system documenting the expenditure dates;
- All applicable documentation to support the actual costs;
- Documentation sufficient for FEMA to validate the work performed was consistent with the approved SOW;
- Documentation to substantiate compliance with all terms and conditions of the award; and
- A summary explaining the documentation submitted.

Section 428 Alternative Procedures
Projects must submit:

- Summary of actual work completed;
- Mitigation measures achieved, if applicable;
- Compliance with EHP requirements;
- Compliance with the obtain and maintain insurance requirement;
- Summary of total actual costs to complete the Alternative Procedure Projects;
- Compliance with Federal procurement procedures; and
- Actual insurance proceeds received.

PA Subrecipient and Applicants do not need to track costs to specific work items. PA Applicants only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the Alternative Procedure Projects.



IX. Other Programmatic Requirements

This Implementation Guidance does not discuss all programmatic requirements. Instead, it highlights those requirements that are most likely to raise questions when CDBG-DR funds are used to satisfy local match for FEMA PA assistance.

For more information about FEMA PA requirements, refer to sections 406 and 428 of the Stafford Act, FEMA PA regulations at 44 CFR § 206, and the FEMA Public Assistance Program and Policy Guide at <https://www.fema.gov/media-library/assets/documents/111781>.

For more information about CDBG-DR requirements, such as the requirement to affirmatively further fair housing (See section 104(b)(2) of the HCDA or the prohibitions on discrimination in section 109 of the HCDA, refer to title I of the HCDA and 24 CFR § 570, as supplemented or modified by CDBG-DR Appropriations Acts and applicable *Federal Register* notices.

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) and the HUD section 3 regulations at 24 CFR § 135 apply to CDBG-DR Grantees.

Section 3 provides that economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons and contracting opportunities should be directed to Section 3 businesses that employ those individuals. When undertaking procurements for CDBG-DR-assisted activities that will satisfy Local Match, applicants should make every effort to provide economic opportunities to low- and very low-income persons and subcontracting opportunities to businesses that employ them. HUD encourages CDBG-DR Grantees to search the national [Section 3 Business Registry](#)²⁸ to find local businesses that prioritize hiring section 3 residents. Grantees may also use the [Section 3 Opportunity Portal](#)²⁹ as a tool to identify section 3 residents. For more information, visit HUD's [Section 3](#)³⁰ website.

A. Section 504 of the Rehabilitation Act of 1973 and Physical Accessibility Requirements

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability in federally assisted programs or activities, including any program or activity that receives financial assistance from FEMA or HUD. PA Recipients and CDBG-DR Grantees are required to comply with Section 504. FEMA uses 44 CFR § 7 to process disability complaints for federally assisted programs. HUD's regulations for Section 504 that apply to federally assisted programs or activities may be found at 24 CFR § 8. When CDBG-DR funds are used with FEMA PA funds to satisfy the Local Match requirements for assistance under the Stafford Act, Grantees must comply with these FEMA and HUD requirements. This section focuses on

²⁸ <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>

²⁹ <https://hudapps.hud.gov/OpportunityPortal/>

³⁰ <https://www.hud.gov/section3>



the physical accessibility requirements that are triggered when HUD’s Section 504 regulation applies.

No qualified individual with disabilities shall be denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving HUD funding because the facilities are inaccessible to or unusable by individuals with disabilities. 24 CFR § 8.20. HUD’s Section 504 regulations set forth minimum physical accessibility requirements that must be met for new construction, alterations, and existing housing and non-housing facilities. 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.29. For new construction or substantial alterations of a multifamily housing project, a minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for individuals with mobility impairments, and an additional 2 percent of the units, or at least one unit (whichever is greater), must be made accessible for individuals with hearing or vision impairments. Compliance with the Uniform Federal Accessibility Standards (UFAS) or HUD’s Notice on “Instructions for use of alternative accessibility standard” (“Deeming Notice”), <https://www.govinfo.gov/content/pkg/FR-2014-05-23/pdf/2014-11844.pdf>, are deemed to comply with the technical accessibility requirements of HUD’s Section 504 regulation. 24 CFR § 8.32. Projects must also comply with requirements regarding the dispersal and tenanting of accessible housing units. 24 CFR §§ 8.26, 8.27. For more information on federal accessibility laws, see https://www.hud.gov/program_offices/fair_housing_equal_opp/physical_accessibility.

B. Americans with Disabilities Act

The Americans with Disabilities Act (ADA), like Section 504, prohibits discrimination on the basis of disability, however, its applicability is not dependent on the receipt of federal financial assistance. Title II of the ADA covers the programs, activities, and services provided by public entities, including any housing, developed or operated by states or units of local government.

Title III of the ADA prohibits private entities that own, lease, and operate places of public accommodation from discriminating on the basis of disability and requires places of public accommodation and commercial facilities to be designed, constructed, and altered to be accessible. Public accommodations at housing developments include any public areas that are open to the general public, such as a rental office, or a community room made available to the general public, as well as shelters and social service establishments.

For more information, please visit the [Department of Justice \(DOJ\) ADA page](#), <https://www.ada.gov/>, and DOJ’s implementing regulations at 28 CFR Part 35 (Title II) and part 36 (Title III).

FEMA PA Funds: When state and local government entities engage in disaster relief, Titles II or III of the ADA will apply, including accessibility requirements for new, altered, and existing facilities. New construction and alterations of facilities must be designed and constructed in accordance with the 2010 ADA Standards for Accessible Design. Title II of the ADA also includes a program access requirement, while Title III of the ADA requires readily achievable barrier removal. For more information, please visit the [Department of Justice \(DOJ\) ADA page](#),



<https://www.ada.gov/>, and DOJ's implementing regulations at 28 CFR § 35 (Title II) and part 36 (Title III).

1. Application of Multiple Federal Accessibility Laws

Most entities are subject to more than one federal accessibility law and architectural standard in the operation of their housing services, programs, and activities. State and local laws may also apply and provide for greater protections. Additionally, the Fair Housing Act often applies to residential housing where Section 504 and/or the ADA also apply. For purposes of physical accessibility where both Section 504 and the ADA apply, the element that would provide the greatest accessibility of the accessibility standards for Section 504 (either UFAS or HUD's Deeming Notice for Section 504) or the ADA (the 2010 ADA Standards for Accessible Design for ADA) must be met.

For more information on federal accessibility laws, see https://www.hud.gov/program_offices/fair_housing_equal_opp/physical_accessibility.

2. Eligible Use of FEMA PA Funds

When a facility is eligible for replacement, FEMA provides PA funding for compliance with accessibility requirements triggered by ADA in newly constructed facilities.

For facilities eligible for repairs, FEMA provides PA funding for required ADA upgrades that have a reasonable and technically supportable relationship to the damaged elements of the facility. In addition, when disaster-related and ADA-relevant repairs are made to a primary function area of a facility, FEMA may provide PA funding to make the path of travel to the primary function area accessible to the maximum extent feasible. Refer to the PA Policy and Program Guide for additional information on eligibility and compliance requirements.

CDBG-DR Funds: When conducting property acquisition, construction or rehabilitation, including the construction or rehabilitation of housing and non-housing facilities, CDBG-DR funds may be used to pay for accessibility features that are either required by federal accessibility standards, including Section 504 and the ADA, or may be necessary to provide reasonable accommodations for individuals with disabilities.

C. Davis Bacon

Under Section 110(a) of the Housing and Community Development Act of 1974, laborers and mechanics employed by contractors and subcontractors on construction work "financed in whole or in part" with CDBG assistance must be paid not less than wages determined to be prevailing on similar construction work in the locality by the Secretary of Labor in accordance with the Davis Bacon Act (40 U.S.C. 3141 et seq.). Davis-Bacon prevailing wage requirements do not apply to the rehabilitation, reconstruction, and demolition of residential property containing fewer than eight units, to prime contracts of \$2,000 or less, to bona fide volunteers where procedures and requirements of 24 CFR § 70 are met, or to demolition that is not followed by construction.



Davis-Bacon requirements do not apply to non-construction activities, such as storm debris removal. CDBG-DR Grantees may wish to identify non-construction activities assisted with FEMA Public Assistance for which CDBG-DR funds can be used to satisfy Local Match without triggering Davis Bacon requirements.

If construction work is ongoing when an application for reimbursement or financing of construction costs is submitted, then Davis-Bacon prevailing wage rates are applicable. Under regulations of the Department of Labor (DOL) at 29 CFR §1.6 (g), where Federal assistance is not approved prior to contract award (or the beginning of construction if there is no contract award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications. However, if there is no evidence that the owner intended to apply for the CDBG-DR assistance prior to the contract award or the start of the construction HUD may request that DOL allow prospective, rather than retroactive, application of the Davis-Bacon wage rates.

DOL may allow prospective application of Davis-Bacon requirements where it finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and it finds no intent to apply for the federal assistance before contract award or the start of construction. The CDBG-DR Grantee should contact a HUD Labor Relations Specialist for assistance if such a situation arises. Contact information is available at:

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

For activities that are subject to Davis-Bacon requirements, the CDBG-DR Grantee must carry out implementation, monitoring, enforcement, and reporting activities that are specified in HUD Handbook 1344.1 Rev 2, Chapter 1, Section 1-5. B.

D. Uniform Relocation Assistance and Real Property Acquisition Act of 1970

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (the URA) and its implementing regulations at 49 CFR § 42, establish minimum standards for federally funded programs and projects requiring the acquisition of real property or displaced persons from their homes or businesses. The URA applies broadly to all planned or intended federally funded projects, funded in part or in whole where acquisition, rehabilitation or demolition occurs in any phase.

The CDBG-DR Grantee must consider potential impacts to tenants. If an identified project results in tenants leaving their homes involuntarily (being displaced), the tenants may be eligible for Tenant Relocation Assistance under the URA. These requirements apply to the relocation of any displaced person as defined at 49 CFR § 24.2(a)(9). Displaced persons under this definition must be fully informed of their rights and entitlements to relocation assistance and payments provided by the URA and its implementing regulations. For more information, refer to 49 CFR § 24, Subpart C.



E. Environmental and Historic Preservation

1. General Requirements

All CDBG-DR Grantees must complete an environmental and historic preservation compliance review before committing funds or beginning recovery activities. CDBG-DR appropriation acts prohibit HUD from waiving these requirements. Similarly, all FEMA-funded actions must undergo an environmental and historic preservation review prior to the obligation of funds.

Under the HCDA statute and HUD's environmental regulations in 24 CFR § 58, CDBG-DR Grantees (Responsible Entities or REs) assume the responsibility for completing environmental reviews under Federal laws and authorities. Responsible Entities are states, tribes, or units of general local government, such as a town, city, or county.

For CDBG-DR grants, a Responsible Entity (RE) is the unit of general local government, Tribe, or State that assumes federal responsibilities for environmental review requirements under HUD regulations at 24 CFR part 58. The Responsible Entity Certifying Officer evaluates the environmental review; is responsible for scope and content; makes environmental findings; and assumes liability for the environmental review in the case of litigation.

The Responsible Entity is responsible for the scope and content of the environmental review and making the finding. The certifying officer of the responsible entity, usually the mayor, signs the review and takes legal responsibility for the review.

Under DHS Directive 023-01-01: Implementation of the National Environmental Policy Act and FEMA Directive 108: Environmental Planning and Historic Preservation Responsibilities and Program Requirements, FEMA is responsible for ensuring that the National Environmental Policy Act (NEPA) analysis and appropriate documentation along with determination and documentation for compliance with all applicable EHP laws, regulations, and executive orders is completed prior to a decision being made (in this case the obligation of funds represents the Agency's decision). NOTE: Unlike HUD, FEMA does NOT

have authority to delegate its EHP responsibility.

All work included on a FEMA Project Worksheet (PW) must comply with FEMA eligibility and compliance requirements, including EHP compliance requirements. Therefore, FEMA will be responsible for completing the EHP compliance review of all sites appearing on a FEMA PW, including those that are to be 100% funded by HUD. The HUD RE is encouraged to adopt the FEMA EHP review of all projects receiving HUD funding to fulfill HUD environmental review requirements. If the HUD RE chooses to adopt the FEMA EHP review, the RE must confirm that the scope of the environmental review covers the proposed HUD project activities. If the HUD RE does not adopt the FEMA EHP review, the RE is responsible for completion of an environmental review under 24 CFR § 58.



2. Considerations Arising When CDBG-DR is Used for FEMA Match

Since 2013, CDBG-DR appropriation acts have included special provisions that allow CDBG-DR Grantees to adopt environmental reviews performed by other Federal agencies when the CDBG-DR Grantees are providing supplemental assistance to actions performed under certain Sections of the Stafford Act for CDBG-DR funded activities. Upon receipt of a request for a release of funds and certification, the Secretary of HUD may immediately approve funds that are subject to these adoption provisions or that are Categorically Excluded under NEPA for HUD actions. The adoption provisions apply to CDBG-DR funded activities within the scope of this guidance.

X. Questions About Flexible Match

FEMA Applicants with questions about PA requirements should contact the assigned PA Program Delivery Manager; appropriate FEMA Regional representative; or their PA Recipient.

CDBG-DR Grantees with questions about HUD requirements for activities funded by CDBG-DR and FEMA PA should contact the CPD Specialist that acts as their grant manager for HUD. CDBG-DR Subrecipients should contact the CDBG-DR Grantee with any questions about the use of CDBG-DR funds.



Appendix A: “Area Benefit” Activities Benefiting LMI Persons

Section 102(a)(20) of the HCDA defines the terms “persons of low and moderate income” and “low- and moderate-income persons” to mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families.

The criteria for how an activity may be considered to benefit LMI persons are divided into four subcategories:

1. Those based on an *area benefit*;
2. Those serving a *limited clientele*;
3. Those involving *housing*; and
4. Those involving employment (*jobs*).

Because PA projects most commonly meet an LMI national objective by satisfying the area benefit (LMA) national objective criteria, this document includes an appendix that explains the criteria and provides a sample calculation.

LMI Area Benefit

An area benefit activity is an activity *that is available to benefit all the residents of an area* that is primarily residential. In order to qualify as addressing the national objective of benefit to LMI persons on an area basis, the CDBG-DR assisted portion of the FEMA PA project must meet the identified needs of LMI persons residing in an area where at least 51 percent of the residents (or less if the “upper quartile” applies) are LMI persons. The benefits of the CDBG-DR assisted portion of the FEMA PA project must be available to all residents in the area regardless of income.

An area benefit activity must qualify on the basis of the income levels of the persons who reside in the area served by the activity. For example, if the CDBG-DR assisted portion of the FEMA PA project is a community center that *serves* an area having an LMI concentration at 51 percent or above, the activity will qualify as an area benefit activity. If the community center *serves* an area having a LMI concentration below 51 percent, the activity does not qualify even if there is reason to believe that the community center will be *used* primarily by LMI persons.

Typical activities that can satisfy the area benefit national objective criteria when they are carried out in a primarily residential area where more than 51 percent of residents are LMI persons include:

- Installation of street and sidewalk improvements,
- Reconstruction of damaged water and sewer lines, and
- Rehabilitation or reconstruction of a community center or health clinic.



Determining the service area

The determination of the area served by the CDBG-DR assisted portion of the FEMA PA project is critical. The inclusion or exclusion of a particular portion of a jurisdiction can make the difference between whether the percentage of LMI residents in the service area is high enough to qualify under the LMI benefit national objective. The principal responsibility for determining the area served by an activity rests with the grantee. HUD will generally accept a grantee's determination unless the nature of the activity, or its location raises serious doubts about the area claimed by the grantee.

The area that will be served by the CDBG-DR assisted portion of the FEMA PA project need not be coterminous with census tracts, block groups, or other officially recognized boundaries. It is critical, however, that *the service area determined by the grantee be the **entire** area served by the CDBG-DR assisted portion of the FEMA PA project.* For example, even though a predominantly LMI neighborhood may be one of several neighborhoods served by an activity (for example, a grocery store) the percentage of LMI persons in the *total area served by the activity* is considered for this purpose.

When monitoring the service area determination, HUD may review whether the boundary was drawn to include LMI persons that would not benefit, or to exclude non-LMI persons that would benefit.

Based on the type of activity, the grantee will choose a reasonable service area, and then refer to the Low- and Moderate-Income Summary Data (LMISD) or local income survey data that is methodologically sound for an equivalent geography.

For more information on how to determine the CDBG-DR assisted portion of the FEMA PA project, see section VI.B. of this guidance.

Using LMISD

Periodically, HUD publishes CPD notices that discuss how to use the LMISD geographies to match the service area and the LMI percentages that are determined for various geographies. The latest LMISD provided by HUD is available on HUD's website at: <https://www.hudexchange.info/manage-a-program/acs-low-mod-summary-data-block-groups-places>.

Grantees may choose to take additional steps to delineate service areas, such as market studies. The service area of the CDBG-DR assisted portion of the FEMA PA project should be reasonably delineated based on the intended beneficiaries of the LMA activity. Once the service area has been reasonably delineated, the most-corresponding LMISD geographies are chosen.



Using Local Income Survey

Alternatively, a grantee may allow the use of methodologically sound local surveys to determine the percentage of LMI residents in activity service areas (*Reference: 24 CFR § 570.208(a)(1)(vi) or 24 CFR § 570.483(b)(1)(i)*). If so, the grantee must decide which survey methodology is appropriate for determining the LMI beneficiary area to be served. For additional guidance on appropriate survey methodologies, see [CPD Notice 14-013: Guidelines for Conducting Income Surveys to Determine the Percentage of LMI Persons in the Service Area of a CDBG-Funded Activity](#).

Other Considerations

The service area boundary of the CDBG-DR assisted portion of the FEMA PA project does not always coincide with census or other official geographic boundaries (especially in smaller communities and rural areas). One census tract may cover an entire city, or there may be only two or three census tracts in an entire county.

1. The service area comprises only a small portion of the unit of general local government, or of a block group. A survey of the service area residents may be the most appropriate way to determine whether the service area qualifies under the LMI area benefit criterion. Examples of such activities could include extending water lines to serve a small, unincorporated rural settlement in a county; construction of a neighborhood-scale playground for young children serving one subdivision in a city of 4,000, where the entire city is one census tract.
2. The service area includes all or part of several units of general local government; the service area might contain both incorporated and unincorporated areas. The HUD-provided data may be usable for a portion of the service area but may need to be supplemented by survey data for other portions of the service area. It may be necessary to survey a large area to determine the percentage of service area residents who are LMI. An example of such activities could include: Construction of a rural water system which serves nine small incorporated towns plus portions of the surrounding unincorporated area of the two counties where the towns are located.
3. For the most part, activities qualifying under the basic eligibility category of Public Facilities and Improvements provide a benefit to all the residents of an area and thus would be subject to meeting the criteria described here in order to meet the LMI benefit national objective.
4. Certain activities that serve an area are designed to meet the needs of only some persons in that area. An example of this would be a facility that is used exclusively as a senior center for a particular neighborhood. Such Area Benefit activities serving special needs usually must qualify under the Limited Clientele subcategory of the LMI benefit national objective.

5. Although public schools may not be used by all the residents of the area they serve, in the CDBG-DR program they nevertheless are considered to benefit all the residents, not only because any household with children can avail themselves of the services of the school, but also because of the contribution schools make to determining the value of the residential property in that area.

Example: Using CDBG-DR "Match" for Low- and Moderate-Income (LMI) Area Benefit³¹

Following a recent flooding event, the City of Riverview will construct a new drainage system to reduce flooding across the City. The PW cost for the entire scope of work is \$2 million and Public Assistance (PA) funds will cover 75 percent (\$1,500,000). The City's non-federal cost share is 25 percent (\$500,000).

The City proposes to use a portion of its State CDBG-DR allocation for the required match. Although the PW includes drainage systems in 4 neighborhoods, the CDBG-DR funds will only be used in the City's Shoreline neighborhood. In this case, the CDBG-DR assisted portion of the FEMA PA project includes only the work done in the City's Shoreline neighborhood.

After consulting with the State, the City determines that the improvement is a CDBG-eligible activity. The State, however, has advised the City that before expending funds, it must determine whether the CDBG-DR assisted portion of the project will meet the low- and moderate-income (LMI) area benefit national objective (LMA) by providing benefits that are available to all residents in a primarily residential area, where at least 51 percent of the residents are LMI persons.

Step One: Determine Service Area



The City begins its analysis by determining the service area for the drainage project in the Shoreline neighborhood. Activity service areas should be reasonably delineated based on the intended beneficiaries of the LMA activity.

The service area for a CDBG-DR assisted portion of the project is generally determined by the location, project type, description, and activities to be funded. Generally speaking, the eligible activities will take place inside the service area boundary and the activity is reasonably expected to benefit residents in this area.

In this case, the City uses engineering data developed during the design and engineering phase of the project to identify and document the area within the Shoreline neighborhood (the CDBG-DR assisted portion of the project) from which the planned drainage system will collect water to prevent flooding. This is the area that will benefit from the activity.

³¹ Adapted from policies and procedures of the Governor's Office of Storm Recovery, New York State



Step Two: Document the Percentage of LMI Persons in the Service Area

In some cases the service area boundary exactly aligns with the block group boundaries, but not always. Block groups that are wholly or partially within the service area boundary are captured and used for demographic and LMI calculations. When the service area is community-wide, the Census Designated Place should be used in place of the block group.

In this case, the City overlays the service area with Census Block Groups that have been linked to the most recent HUD LMI summary data. The City uses the data to calculate that 58 percent of residents in the service area are LMI persons.



Step Three: Determine if the Service Area is Primarily Residential

Once the City has determined that the residents in the service area for the Shoreline neighborhood drainage project are primarily LMI persons, it must also document that the area is primarily residential.

The City does so by overlaying the service area on tax parcel data and determining the percentage inside the service area that is classified as residential, public/vacant, or other.

City of Riverview CDBG-DR National Objective Determination

Based on the above analysis, the City consults with the State CDBG-DR grantee and determines that the proposed use of funds for the CDBG-DR assisted portion of the project will meet the CDBG-DR LMA national objective criteria. The City saves required documentation of its determination in its files.

National Objective Under Various FEMA Authorities

It is worth noting that the LMA national objective determination would not change if the PW was carried out under the Standard Project authorities in Sections 403, 406, and 407 of the Stafford Act, the Alternative Project authority in Section 428 of the Stafford Act, or the Small Project authority in Section 422 of the Stafford Act.

The LMA national objective determination is made based on the service area of the CDBG-DR assisted portion of the FEMA PA project, regardless of whether FEMA pays the PA Applicant based on estimated or actual costs. This is true even if the scope of work of the PW changes (assuming the service area of the CDBG-DR assisted portion of the project remains the same).



If the CDBG-DR assisted portion of the project is known, the CDBG-DR Grantee can make a national objective determination. The CDBG-DR assisted portion of the project may be completed with one or more sources of funding in addition to CDBG-DR. The national objective determination is based on the CDBG-DR assisted portion, that when completed, will provide benefit within the most impacted and distressed area of the CDBG-DR Grantee’s jurisdiction.



Appendix B: Summary of Procedures, Roles, and Responsibilities

The chart on the following pages briefly summarizes the procedures, roles, and responsibilities related to the PA Program and CDBG-DR grants.



FEMA PA and HUD CDBG-DR Grants Procedures, Roles, and Responsibilities*



	FEMA/PA Recipient/Applicant	HUD/CDBG-DR Grantee/ Subrecipient
Grant and Activity Development	<ul style="list-style-type: none"> • PA— Completes preliminary damage assessment and declaration request; completes an application for assistance before FEMA can provide PA funding; develops FEMA-approved Administrative Plan; conducts briefings for potential applicants • PA Applicant— Submits Request for Public Assistance (RPA) • FEMA— Approves RPAs; review and approves Administrative Plan; assist, as needed with briefings; provides technical assistance • PA Recipient, PA Applicant, and FEMA— participates in Exploratory Calls; conducts Recovery Scoping Meeting to review needs of the specific PA Applicant 	<ul style="list-style-type: none"> • CDBG-DR Grantee— Completes needs assessment and consultation; seeks input in accordance with citizen participation plan; determines amount of CDBG-DR funds to use for PA Local Match**; drafts action plan describing use of all funds • CDBG-DR Subrecipients— Seeks funding from CDBG-DR grantee for projects, activities, or programs; plan activities carried out with subawards • HUD— Publishes Federal Register notice governing use of CDBG-DR funds; reviews grantees' Action Plans; approves action plans when they are substantially complete; issues grant agreements and makes awards

*Timelines for both sources of funds run concurrently

** Typically, PA match is 75% Federal/25% Local



FEMA PA and HUD CDBG-DR Grants Procedures, Roles, and Responsibilities*



	FEMA/PA Recipient/Applicant	HUD/CDBG-DR Grantee/ Subrecipient
Project Selection and Approval	<ul style="list-style-type: none"> • PA Recipient, PA Applicant, or FEMA— Develops projects using logical grouping, completes site inspections, documents project • PA Recipient— Forwards all requests; accepts the project’s scope/cost estimate; forwards to PA Applicant for acceptance • PA Applicant— Submits request for FEMA approval through PA Recipient; submits responses to Requests for Information (RFI); accepts large projects as 428 Alt Procedure or 406 Standard; small projects follow 422 Simplified Procedures; coordinates with point of contact administering the CDBG-DR assistance • FEMA— Provides technical assistance to PA Recipient and PA Applicant; evaluates eligibility and if necessary, sends RFI to PA Applicant to seek additional information; sends a determination memorandum if ineligible; pre-obligation compliance monitoring for PA funds (including compliance reviews by CRC); approves activities or categories of work; awards/obligates PW after PA Applicant accepts, if eligible 	<ul style="list-style-type: none"> • CDBG-DR Grantee— Determines where to work directly or through subrecipient; selects directly funded activities and selects subrecipients for subawards (the CDBG-DR Grantee may select a subrecipient to carry out one or more specific activities, or may award a subgrant that gives the subrecipient discretion to select activities); establishes requirements for subrecipients, including whether it must approve funds for Local Match • CDBG-DR Subrecipients— Applies to CDBG-DR Grantee for funding or is otherwise selected by CDBG-DR Grantee; if required by CDBG-DR Grantee, seeks CDBG-DR Grantee approval for use of subgrant for PA Local Match • CDBG-DR Grantee OR CDBG-DR Subrecipient Carrying Out Activity— Identifies point of contact at agency overseeing PA Project Worksheet (PW) and PA Recipient to select PA activities that are CDBG-eligible and meet a national objective (and wherever possible, benefit LMI persons); limits use of CDBG-DR appropriately so that CDBG-DR is not used for costs that can be charged to the FEMA PW, even if the PW scope of work is amended • HUD— Provides technical assistance; monitors grantees for compliance

*Timelines for both sources of funds run concurrently

** Typically, PA match is 75% Federal/25% Local



FEMA PA and HUD CDBG-DR Grants Procedures, Roles, and Responsibilities*



FEMA/PA Recipient/Applicant

HUD/CDBG-DR Grantee/ Subrecipient

Project Implementation and Oversight

- **PA Applicant**— Complies with environmental and historic preservation requirements and other programmatic requirements; completes PW within scope and deadlines; submits request for approval if not within scope (standard project, approval is required for any change to scope of work; section 428 PWs, approval is not required as long as when it substantially conforms to the approved scope, however, approval is required for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water); provides quarterly status updates; request disbursements
- **PA Recipient**— Ongoing management of PA funds, including award(s) disbursement, monitoring, completes quarterly reporting requirements, reviews and submits for approve use of excess funds for 428 Alternative Procedures projects

- **CDBG-DR Grantee**— Responsible for compliant use of all grant funds; monitors/determines adequacy of performance under its subrecipient agreements and procurement contracts and takes actions to correct performance problems (see, e.g., requirements at 24 CFR 570.501(b) and 570.480(c)); maintains adequate records to demonstrate compliance
- **CDBG-DR Subrecipients**— Ensures that use of all CDBG-DR funds complies with requirements included in the subrecipient agreement (see 24 FR 570.503 and 570.489(m) for the subrecipient agreement requirements)
- **CDBG-DR Grantee OR CDBG-DR Subrecipient Carrying Out Activity**— Coordinates with PA Applicant to monitor changes to PW and takes steps to ensure CDBG-DR funds are not expended for costs that will be reimbursed by FEMA; monitors all contracts it procures and takes actions to address contractor nonperformance; ensures that use of funds for the activity complies with CDBG-DR requirements (CDBG-eligible, national objective, environmental review and other cross-cutting requirements); documents compliance in activity records

*Timelines for both sources of funds run concurrently

** Typically, PA match is 75% Federal/25% Local



FEMA PA and HUD CDBG-DR Grants Procedures, Roles, and Responsibilities*



	FEMA/PA Recipient/Applicant	HUD/CDBG-DR Grantee/ Subrecipient
Project Implementation and Oversight (continued)	<ul style="list-style-type: none"> • FEMA— Approves appropriate deadline for work completion, not to exceed the overall disaster period of performance; approves any changes to the scope of work, as needed; approves use of excess funds for 428 Alternative Procedures projects; completes post-award monitoring; reviews quarterly reports; provides technical assistance 	<ul style="list-style-type: none"> • HUD— Reviews quarterly reports; provides technical assistance; monitors grantees; makes Findings and recommends corrective actions after detecting noncompliance; conditions grant as necessary to mitigate risk or address noncompliance; HUD OIG audits and evaluates use of funds by grantees
Reconciliation/ Closeout	<ul style="list-style-type: none"> • PA Applicant— Submits its reconciliation/closeout package including use of excess 428 funds, if applicable • PA Recipient— Validates request with its procedures and submits its recommendations for projects or applicant’s closeout • FEMA— Reviews and resolves any concerns; approves closeout of projects and applicants 	<ul style="list-style-type: none"> • CDBG-DR Grantee— Prepares for closeout of grant in accordance with applicable CDBG-DR closeout regulations and procedures in CPD Notices • CDBG-DR Subrecipients— Closes out subgrant in accordance with instructions, policies, and procedures established by CDBG-DR grantee • HUD— Reviews and resolves any concerns; drafts closeout agreement; closes grant after agreement is signed

*Timelines for both sources of funds run concurrently

** Typically, PA match is 75% Federal/25% Local

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