



## CDBG-DR Economic Development Policies and Procedures

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Application Open: March 3<sup>rd</sup>, 2021

Application Deadline: June 4<sup>th</sup>, 2021

This document provides the policies and procedures for the West Virginia CDBG-DR Economic Development Program administered by the West Virginia Development Office (WVDO). This Program is funded by the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) allocation as described in Pub. L. 114-223, Pub. L. 114-254, and Pub. L. 115-31.

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## I. Definitions and Acronyms

**100-year flood plain**—The geographical area defined by FEMA as having a 1% chance of being inundated by a flooding event in any given year.

**500-year flood plain**—The geographical area defined by FEMA as having a .2% chance of being inundated by a flooding event in any given year.

**CDBG-DR**—Community Development Block Grant - Disaster Recovery

**DOB**—Duplication of Benefits. Any assistance provided to subrecipients for the same purpose (i.e., for repair, replacement or reconstruction) as any previous financial or in-kind assistance already provided for the same. This prohibition comes from the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) and therefore, these other sources of funds must be deducted from any potential award.

**FEMA**—Federal Emergency Management Agency

**FRN**—Federal Register Notice. The Federal Register Notice for CDBG-DR funds was published August 30, 2019 (84 FR 45838)

**HCDA**—Housing and Community Development Act of 1974

**HUD**—U.S. Department of Housing & Urban Development

**HUD MID**—Most Impacted and Distressed areas of Kanawha, Clay, Greenbrier, and Nicholas

**Subrecipient**—A city or a county or other eligible applicant that has applied for and been awarded a grant by the West Virginia Development Office

**WVCAD**—West Virginia Office of Community Advancement and Development

**WVDO**—West Virginia Development Office

**UGLG**—Units of General Local Government. Cities, counties, towns, villages, and other general-purpose political subdivisions of a state

**IA:** IA stands for FEMA Individual Assistance. In West Virginia, 12 counties are eligible for Individual Assistance.

**LMI – Low Income:** The Low-Income category describes applicants with household income levels between 51% and 80% of the Area Median Income level. PA: PA stands for FEMA Public Assistance. In West Virginia, 17 counties are eligible for Public Assistance.

**Recipients:** As defined in 24 CFR 8.3(c) “Any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments

from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or sub-recipient merely by virtue of receipt of such payments.” (24 CFR 8.3(c) under Qualified individual with handicaps)

**WVDO:** WVDO represents the “West Virginia Development Office” and is the State office in charge of the Disaster Recovery Program.

**U.S. Citizenship or Lawful Permanent residence:** Refers to CBDG-DR Fund eligible individuals. In determining eligibility for benefits, WV will comply with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”); Attorney General Order No. 2353-2001, F.R. Doc. No.: 01-1158; and the guidance provided in the August 5, 2016 joint letter from US Attorney Rise West Virginia Disaster Recovery Policies and Procedures 2018 111 3/5/2018 General Lynch, HHS Secretary Burwell, and HUD Secretary Castro. PRWORA provides that with certain exceptions, only US citizens and eligible noncitizens are eligible for federal, state, and local benefits. Those eligible for benefits is similar to those in Section 214, with some slight exceptions: They include US Citizens or Nationals, Lawful Permanent Residents (“Green Card” holders), Refugees and Asylees, an alien paroled into US for a period of more than one year, all aliens with deferred deportation, Cuban/ Haitian Entrants, and Battered immigrants where battery causes the need for the benefit.

## II. Program Overview

### A. Program Purpose

In June 2016, the state of West Virginia suffered record breaking amounts of rainfall, causing severe storms and flooding across 17 counties. Then- Governor, Earl Ray Tomblin, declared a state of emergency in 44 of the 55 West Virginia counties. The flooding caused widespread damage to housing, business and infrastructure, left thousands of West Virginians homeless and caused the loss of 23 lives. Verified losses reported by FEMA totaled over \$45 million statewide.

### B. Federal Register Notice Description

West Virginia received long-term flood recovery funds through the Continuing Appropriations Act of 2017 (Pub. L. 114-223, Pub. L. 114-254, and Pub. L. 115-31) that was enacted to provide federal funds for disaster relief to various states with Presidentially Declared Disasters in 2016. A total of \$2.3 billion in Community Development Block Grant - Disaster Recovery (CDBG-DR) funds were appropriated through three separate allocations, the requirements of which are set forth under Federal Register Notices, 81 FR 83254, 82 FR 5591, and 82 FR 36812. From this funding, West Virginia received three allocations totaling \$149,875,000 to be spent in 12 disaster declared counties, specifically Clay, Greenbrier, Fayette, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster. Of the total funding available, 80% must be spent in the following areas determined to be *most impacted*: Clay, Greenbrier, Kanawha, and Nicholas counties (2016 Flood Award).

### C. Responsible Entity and Action Plan Approval

The West Virginia Development Office is the responsible entity for the CDBG-DR allocation and HUD approved the West Virginia CDBG-DR Action Plan in April 2017 as amendment by substantial amendment 7 in Spring 2021.

## D. Economic Impact Data and Analysis

The West Virginia Development Office conducted an economic analysis of the four most impacted counties, Clay, Greenbrier, Kanawha, and Nicholas, to determine 2016 severe storms and flooding economic impact (see Table 1 below). In the year before the floods, 2015, to the year after the floods, 2017, all four HUD-declared MID counties decreased in population, according to the American Community Survey 5- Year Estimates. Three counties declined in school enrollment, and each county lost small businesses. (WV Department of Education, WV Secretary of State).

The Small Area Income and Poverty Estimates record two MID counties increasing in persons living in poverty. In 2015, 16.5% of Kanawha County residents lived in poverty and 18.6% of Nicholas county residents lived in poverty. In 2017, 18.1% of Kanawha residents and 20.1% of Nicholas county residents lived in poverty. Prior to the flood, Kanawha County had below state average poverty rates (in 2015, the state average was 18%). In 2017, after the floods, the state average slightly increased to 18.5%. Kanawha went from well below the average, 16.5%, to nearly at it with an 18.1% poverty rate. In Kanawha, the number of persons living in poverty continued to increase at a higher rate than the population decline. Nicholas county hovered just above the state average in 2015. After the floods, its 2017 rate was well above it at 20.1%.

In 2015, 27.7% of Clay County residents lived in poverty. That number hardly changed in 2017 when 27.3% of residents lived in poverty, despite the US average of persons living in poverty decreasing from 14.7% to 13.4%. (US Census Bureau, Small Area Income and Poverty Estimates). From 2015 to 2017, three of the four MID counties experienced a decrease in Per Capita Market Income, and all four counties decreased in Per Capita Market Income, as a percent of the US average. Two counties decreased in Per Capita Income from 2015 to 2017, and all four counties decreased in Per Capita Income as a percentage of the US average. This indicates that in the year following the floods, all four MID counties fell further behind average US growth in Per Capita Income and Per Capita Market Income. (Appalachian Regional Commission).

**Table 1: Economic Impact Data Pre-flood (2015) to Post-flood (2017)**

MID County	Population 2015	Population 2017	Population Change 2015-2017	School Enrollment Percent Change 2015	School Enrollment Percent Change 2017
Clay	9,141	8,901	-3%	1%	-1%
Greenbrier	35,666	35,523	0%	-1%	-1%
Nicholas	25,930	25,496	-2%	-2%	-2%
Kanawha	190,781	187,827	-2%	-2%	-1%
MID County	Per Capita Market Income 2015	Per Capita Market Income 2017	Per Capita Market Income 2015-2017 Percent Change	Per Capita Market Income, Percent of US Average 2015-2017 Percent Change	Per Capita Income 2015-2017 Percent Change
Clay	\$18,675.00	\$17,536.00	-6%	-12.79%	-2%
Greenbrier	\$24,183.00	\$23,685.00	-2%	-9%	-6%
Nicholas	\$20,512.00	\$19,097.00	-7%	-13.57%	-2%
Kanawha	\$32,205.00	\$32,945.00	2%	-5.06%	4%
MID County	Persons Living in Poverty (SAIPE) 2015	Persons Living in Poverty (SAIPE) 2017	Unemployment Rate % of US Average 2015	Unemployment % of US Average 2017	Unemployment Percent of US Average 2015-2017 Percent Change
Clay	27.70%	27.30%	211.80%	196.70%	-7.13%
Greenbrier	19%	18.50%	124.30%	111.00%	-10.70%
Nicholas	18.60%	20.10%	171.60%	162.30%	-5.42%
Kanawha	16.50%	18.10%	113.70%	114.90%	1.06%
MID County	School Enrollment % Change 2015-2017	Per Capita Income, Percent of US Average 2015-2017 Percent Change	Small Business Decline 2015-2017		
Clay	-4%	-8.00%	-2.01%		
Greenbrier	-4%	55.30%	-1.62%		
Nicholas	-3%	-9%	-2.63%		
Kanawha	-4%	-3.28%	-2.60%		

## E. Program Objectives

The Rise West Virginia Economic Development Program will respond to the long-term economic needs in communities impacted by the 2016 severe storms and will award grants to be used for economic improvements in the four most impacted and distressed counties (Clay, Greenbrier, Kanawha, and Nicholas). The State has allocated \$8,000,000 to the program and has set the maximum individual applicant award amount at \$5,000,000. The West Virginia Development Office (WVDO) can grant funds less than the maximum amount and less than the requested amount. The West Virginia Development Office is accepting applications from qualifying Cities and Counties to address economic development needs in the following categories:

- Infrastructure

- Parks and Recreation and Public Facilities
- Downtown Core Strengthening
- Industrial and Commercial Improvements

Projects must benefit businesses and serve a residential area that is at least 51% low to moderate income.

## F. Economic Development Programs

### 1. Infrastructure

The RISE West Virginia Economic Development Program will fund improvements to basic infrastructure (e.g. water, sewer, storm water) needed to attract and grow commercial businesses.

Provision of reliable water and wastewater system is essential for furthering economic development and growth. These systems include:

- Encourage the decisions of businesses to launch, locate, or expand in the 4 Most Impacted and Declared counties
- Promote economic diversification by providing infrastructure improvements to supporting a mix of businesses to develop or locate in the area
- Mitigate environmental pollution in streams, increasing opportunities of recreational and outdoor activities and tourism
- Promote better public health and quality of life through the provision of clean water

West Virginia will prioritize infrastructure projects that serve commercial and industrial customers or sites, target existing population centers and downtown areas (“infill strategy”), protect environmental resources that can be utilized for recreation-based economic development, or serve critical community facilities such as medical establishments, schools, and community centers.

Infrastructure projects must both address economic development needs and meet the National Objective of benefiting persons of low to moderate income (LMI). To do this, infrastructure projects provide services to a low to moderate income area (LMA) while benefiting businesses. An example of infrastructure projects that meet LMA requirements would be a water treatment plant that serves LMI households AND area businesses.

### 2. Downtown Core Strengthening

Eligible projects include assistance in street improvements, sidewalks, and street landscaping. While general repairs and maintenance are not eligible activities, Cities and Counties may apply for CDBG-DR funds that will significantly contribute to revitalization or redevelopment of downtown cores. These improvements include, but are not limited to, streetscape, sidewalks, curb cuts, street paving, parking, lighting, storm water management and street landscaping that will benefit and attract area businesses.

### 3. Parks and Recreation

Eligible projects include the development and enhancement of parks and recreational facilities through acquisition, construction or rehabilitation that will improve the quality of life and eliminate factors that affect environmental quality or public health.

#### 4. Industrial and Commercial Improvements

Invest in commercial/industrial improvements through acquisition, rehabilitation, or construction of commercial and industrial buildings and parks.

### G. Implementation Process

CDBG-DR Economic Development program process includes a Request for Proposals (RFP) and submission of applications by eligible local entities. The West Virginia Development Office will oversee the application evaluation and scoring process that will result in an award of funding and the execution of a subrecipient agreement. The selected subrecipients will be responsible for delivery of services.

Program Applications and Scoring Criteria are available on the WVDO website: [wvfloodrecovery.com/program-details/](http://wvfloodrecovery.com/program-details/).

During the implementation process, as subrecipients meet specified deliverables, program funding will be provided to subrecipient awardees on a reimbursement basis. Subrecipients must develop and implement policies, procedures, and processes to deliver projects/services. Projects may be provided by the subrecipient directly or in collaboration with non-profit partners. At the conclusion of the term specified in the subrecipient agreement, the grant will be closed. WVDO will monitor subrecipients throughout the lifespan of the project.

WVDO will apply a two-phase process to review applications:

1. Phase One: Applications will first be evaluated for Minimum Criteria, Table 2. This phase is unscored. WVDO will further review only the applications that pass Phase One.
2. Phase Two: If the Minimum Criteria is in compliance, the second phase of the review process will be initiated. Applications will be reviewed and scored based on Scoring Criteria Evaluation Rubric, Table 2.

Eligible applicants will be invited to submit applications proposing projects for funding to the CDBG-DR Program. Responses will be evaluated to ensure the proposed projects meet the minimum criteria as outlined below. Responses that meet minimum threshold requirements will then be evaluated according to the scoring criteria outlined below.

Table 2: Mandatory Threshold Compliance Criteria

Minimum Criteria
Application is signed and complete.
Application was submitted on time.
Applicant is an eligible county or city unit of local government.
Applicant's project demonstrates a tieback to the 2016 disaster and benefits HUD and/or state-identified MID areas through economic development programs.

Applications must, at a high level, describe their economic development project and address how it will serve low to moderate income persons. Plans must also include a proposed budget with a detailed description of anticipated costs by category, including support services and program management and administration.

The State will release the full allocation for Economic Development in an initial Request for Proposals (RFP) release. All potential eligible applicants are encouraged to submit an application at this time. Funds will be awarded based on the scoring criteria outlined below.

## H. Program and Applicant Criteria Requirements

All applications are initially reviewed to determine if they meet the thresholds for funding consideration. The initial review determines the following:

### 1. Disaster Related Impact and Economic Development Eligibility

The proposed activity must address the disaster related impact either directly or indirectly and must define the economic development benefit.

### 2. Units of General and Local Government (UGLG)

Program activities and service area must be Cities or Counties located within the following 4 counties: Kanawha, Nicholas, Greenbrier, or Clay. Cities and Counties are eligible to apply.

Funds may not be used to supplant existing funding sources or programming. Entities applying for funding through the ED DR program must submit an application that meets the criteria outlined in this manual. All CDBG-DR ED projects must comply with all applicable federal, state, and local requirements.

### 3. Scoring Criteria and Award Determination

#### a) Applications sent to Cities and Counties in the MID

The applications for the Economic Development program will open on March 3<sup>rd</sup>, 2021 and will close on June 4<sup>th</sup>, 2021, 5pm EST. The fillable PDF application for the program will be available on the WVDO website: [Program Details – WV Flood Recovery Office](#).

Only completed Economic Development subrecipient applications, including all requested supporting documentation, will be considered. Applications will only be accepted during the published time period.

Applications will be prepared at the applicant's expense and costs are not reimbursable using CDBG-DR grant funds.

#### b) Application webinar

The application submission cycle for the Program will open on March 3<sup>rd</sup>, 2021 and close on June 4<sup>th</sup>, 2021. WVDO will host a webinar on March 10<sup>th</sup> at 2:00pm to provide an overview of the Guidelines, specific to the application process.

#### c) Scoring Criteria

Eligible applicants will be invited to submit applications proposing Economic Development projects for funding through the CDBG-DR program. Responses will be evaluated to ensure the proposed projects meet the minimum criteria as in the policies and Procedures and in the Program Application. Responses that meet minimum threshold requirements will then be evaluated according to the scoring criteria listed in these guidelines.

#### Application Submission

Applicants can download the application and submit via email to [DisasterRecovery@wv.gov](mailto:DisasterRecovery@wv.gov). or mailed to:

Attention: Alexandria Phares  
West Virginia Development Office  
1900 Kanawha Boulevard, East  
Building 3, Suite 700  
Charleston, WV 25305

If a paper application is submitted in lieu of an electronic application, two identical hard copies must be submitted including any attachments or supporting documents. Paper applications must be postmarked by June 4<sup>th</sup>, 2021. Late applications will not be accepted, under any circumstance, including delivery problems.

WVDO will email application receipt confirmations within 7 days.

Applicants may check on the status of their submissions by sending an email to [DisasterRecovery@wv.gov](mailto:DisasterRecovery@wv.gov) or calling 304-558-2234.

#### d) Application Process

Eligible applicants will be invited to submit applications proposing Economic Development projects for funding through the CDBG-DR Economic Development program. Responses will be evaluated to ensure the proposed projects meet the minimum criteria as outlined in the application materials. Responses that meet minimum threshold requirements will then be evaluated according to the scoring criteria listed in these guidelines. Applicant Review Process Responsiveness

During the application review process, applicants are required to respond in a timely manner to WVDO requests for information/materials to complete the evaluation process. Any request for additional information will include a definitive due date for return of requested information. If the applicant needs an extension, a clarification or assistance, the applicant may make its request within the allotted response timeframe. If an applicant fails to provide the requested information/materials or fails to ask for an extension or assistance, the applicant's response will be closed and disqualified.

#### e) Joint Applications

Joint applications are generally required when the beneficiaries are in multi-jurisdictional census tracts. Additionally, non-governmental entities (non-profits, universities, school districts) must file joint applications with their local UGLG or RPDC.

Applicants submitting a joint application must attach a copy of an executed Cooperating Agreement, such as a Memorandum of Understanding. This agreement should designate the unit of government that will serve as lead applicant.

Please consult with WVDO for guidance concerning the need for joint applications. Requests for exceptions should be made to WVDO as early as possible.

#### f) Regional Applications

Regional applications are intended to allow an applicant to address problems and apply for a project benefiting a multi-county region where multi-county cooperation and agreements are required (e.g., purchase and sale agreements, management agreements, memorandums of understand, etc.). Regional applications must meet the requirements for joint applications outlined in the preceding section.

#### I. Project Timelines- Contract Terms

Obligation of Funds - Subrecipient agreements will have a term of 2.5 years, and projects funded under Economic Development must be completed within this timeframe.

Expenditure of Funds – Per CDBG-DR Contracts, an amount of West Virginia DR funds equal to the amount of funds granted to the State by HUD must be expended by March 15<sup>th</sup>, 2024.

Performance Requirements - The grantee will closely monitor each sub-recipient through monthly project update meetings and monitoring by CAD compliance unit performance and progress towards meeting the obligation and expenditure deadlines. While reviewing applications and making award decisions, the grantee reserves the right to adjust award amounts based on the capacity of the sub-recipient and program design of their proposed project. The grantee reserves the right to withdraw and de-obligate funds of sub-recipients that are substantially behind the benchmarks outlined in their submitted application and re-obligate them to other projects.

No extensions will be allowed for this program.

#### J. Management Capacity

WVDO is the agency responsible for the administration of funds allocated to activities in West Virginia. The CDBG-DR program is funded by HUD under Public Law INSERT NUMBER. WVDO will execute subrecipient agreements with selected applicants, who will complete projects and/or deliver services. Subrecipients must certify that they have the capacity to carry out disaster recovery activities in a timely manner and that they have reviewed the requirements of INSERT DR FR #.

Applicants must provide organizational charts, identify staff members who will be responsible for administering the CDBG-DR Economic Development program, and a description of work completed on comparable projects with federal funding in the past 5 years.

Applicants must also provide a copy of a recent independent auditor’s report. For applicants submitting water/sewer projects, a copy of the IJDC technical review must be submitted within 30 days of the submission deadline.

The program contact for subrecipients only is:

Attention: Alexandria Phares  
1900 Kanawha Boulevard, East  
Building 3, Suite 700  
304-558-2234  
disasterrecovery@wv.gov

## K. National Objective Eligibility

To be considered for the Rise West Virginia Economic Development Program, a program or project must meet the national objective of benefiting Low- to Moderate-Income Persons.

To qualify for funding under the LMI category, the persons or households served must have income levels at or below 80% of the *area median income* (AMI). HUD requires stratified income data on beneficiaries. 2020 HUD Low to Moderate Income Guidelines for each City and County in the State of West Virginia can be found at the following location:

<https://www.huduser.gov/portal/datasets/il.html#2020>

**For this program, there are two approaches for meeting the Low to Moderate Income qualifications:**

**Low to Moderate Income (LMI):** an activity which provides benefits to a specific group of persons of which at least 51% of the beneficiaries of the activity qualify as LMI persons earning less than 80% of the area median income as defined located at HUD exchange for each county. To qualify, all individuals must establish, by means of financial information on *household size and income*, that *at least 51%* of the clientele are persons whose household income does not exceed the LMI limit.

**Low to Moderate Income Area Benefit (LMA):** an activity *which is available to benefit all the residents of an area*, in which at least 51% of the households are low- to moderate-income, qualifying under HUD guidelines. HUD has identified neighborhoods eligible to receive funding based on income data provided by the census and American Community Survey.

Benefit to Low- to Moderate- Area-Wide (LMA) Benefit: Refer to 24 CFR 570.483(b)(1)(i) and HUD CPD Notice 14-10 and Notice 19-02.

[https://files.hudexchange.info/resources/documents/Notice-CPD-14-10-Transition-Policy-for-](https://files.hudexchange.info/resources/documents/Notice-CPD-14-10-Transition-Policy-for-LMISD-Updates-during-FY-2014-CDBG-State.pdf)

[LMISD-Updates-during-FY-2014-CDBG-State.pdf](https://files.hudexchange.info/resources/documents/Notice-CPD-14-10-Transition-Policy-for-LMISD-Updates-during-FY-2014-CDBG-State.pdf)

[www.hudexchange.info/manage-a-program/acs-low-mod-summary-data-block-groups-places](https://www.hudexchange.info/manage-a-program/acs-low-mod-summary-data-block-groups-places)

## L. Eligible Activities

The primary objective of the CDBG-DR program is benefit low-/moderate-income persons. The State recognizes that West Virginian communities suffered significant economic impacts as a result of the 2016 severe storms and flooding. The CDBG-DR Economic Development Program will prioritize activities that will have demonstrable impact on the economy and benefit low to moderate income areas through infrastructure, parks and recreational development, downtown core strengthening, and commercial and industrial improvements.

In accordance with the HCDA, eligible activities for economic development projects include the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.

### M. Ineligible Activities

In general, activities not stated in HCDA as eligible should be considered ineligible. The following activities are ineligible for CDBG-DR funding:

- a. Income payments.
- b. Supplanting or substituting expenses currently paid for by other sources.
- c. Improvements to buildings for the general conduct of government.
- d. General government expenses.
- e. Political activities and lobbying.
- f. Purchase of mobile equipment, specifically for construction but also including fire protection equipment, furnishings, and personal properties.
- g. Operating and maintenance expenses.
- h. New housing construction.
- i. Purchase of personal property
- j. For infrastructure activities, maintenance and repair of public facilities is generally ineligible (filling potholes, repairing sidewalks, mowing grass, replacing lightbulbs).

Additionally, purchasing equipment is typically considered ineligible.

### N. Eligible Areas

To be eligible for the program, activities must be in the four HUD-identified MID counties: Clay, Greenbrier, Kanawha, Nicholas.

### O. Selection/Awarding Methods

The Economic Development DR program will initially review applicants for minimum threshold eligibility, as outlined in Section 3, Table 2. If an applicant meets the minimum threshold requirements, the Economic Development DR Program will select projects based on rankings from scores with additional consideration to ensure that funding is applied in an equitable manner on a geographic basis to comply with HUD MID spending and LMI benefits. The application process will be competitive.

Each scored element of the applications is included in a Criteria Evaluation Rubric in Table 3 and has a value associated with it. If eligible applications exceed available funding, applicants will be funded in rank order based on evaluation scores, with consideration for overall MID spending and LMI grant requirements. WVDO reserves the option to fund all, a portion of, or none of each application submitted by an applicant. Scored criteria is listed below in its order of importance. A total of 125 points are available.

Only the application itself (including requested attachments) will be scored. Any documents submitted with the application that were not requested will not be scored. The evaluation team will consist of CDBG-DR staff who will independently and objectively score applications consistent with the Scoring Criteria Evaluation Rubric. The reviewers' scores will be averaged to determine a final score for each application.

Each element of the Scoring Criteria Evaluation Rubric has a value associated with it. WVDO reserves the option to fund all, a portion of or none of each application submitted by an applicant.

Applicants will be notified that their application was submitted successfully via email.

Projects will be competitively reviewed and scored based on the following strategic criteria. The State may contact applicants to discuss the project and work with applicants to better fit strategic criteria. Projects that receive higher scores are more likely to be awarded funding.

Criteria	Description	Points
Economic Development Impact	Project demonstrates quantifiable benefits that increase economic development in the area (number of businesses served, workers trained, acres improved, critical facilities served) and describes in detail how the project will increase economic development opportunities in the area for low to moderate income persons.	25
Underwriting	Project budget is reasonable, all sources of financing are committed, CDBG-DR funds are not replacing non-federal financial support, the project is financially feasible, and, to the extent practicable, the return on applicant's equity investment will not be unreasonably high.	25
Project Description	Project demonstrates detailed scope of work, firm and up-to-date cost estimates, clearly defined milestones, and quantifiable outcome measurements.	20
Readiness to Proceed	Project has completed pre-construction requirements such as design, permitting, and environmental review and can quickly proceed to construction phase (see important note below scoring chart)	15
Capacity and Implementation	Subrecipient demonstrates extensive project management experience	10
Leverage	Project demonstrates committed matching dollars from federal and other sources of funding	10
Green Infrastructure/Energy Efficiency	Project incorporates energy-efficiency and/or green infrastructure elements into the project design, including: bioretention areas such as rain gardens and bioswales, permeable pavements, street trees, and open spaces that incorporate drainage and infiltration functions. Higher scoring applications will include multiple forms of green infrastructure and include extensive planning.	10

Investment Linkage	Project complements other community development activities and projects in the area and demonstrates consistency with local, regional, or state plans.	10
Total		125

Table 3

**Note:** Applicants must not acquire a proposed site to achieve more points in the Readiness to Proceed Scoring Criteria. The WVDO is unable to release funds for acquisition, construction, or rehabilitation activities until the proper level of Environmental Review is determined and approved. The Subrecipient is responsible for the completion of the Environmental Review Record, as specified and required in regulations pursuant to 24 CFR Part 58. The Subrecipient must certify to the State that it has compiled with all requirements and obligations set forth by 24 CFR Part 58 prior to the obligation of any funds. These requirements prohibit the Subrecipient from taking and “choice limiting actions” prior to the completion of the environmental review. Choice-limiting actions include any activity that will result in a physical change, including property acquisition, demolition, movement, rehabilitation, conversion, repair, construction, and leasing or disposition.

#### P. Economic Development Impact

Project demonstrates quantifiable benefits that increase economic development opportunities in the area (number of businesses served, workers trained, acres improved, critical facilities served) and describes in detail how the project will increase economic development opportunities to low to moderate income persons in the area.

#### Q. Underwriting Criteria or Project Costs and Financial Requirements

Project budget is reasonable, and the project is financially feasible. All project financing sources are committed and, to the extent practicable, Program funds are not substituted for non-federal financial support.

#### R. Project Description

Project demonstrates detailed scope of work, firm and up-to-date cost estimates, clearly defined milestones, and quantifiable outcome measurements also to include resiliency measures.

#### S. Readiness to Proceed

Project has completed pre-construction requirements such as design, permitting, and environmental review and can quickly proceed to construction phase.

#### T. Capacity and Implementation

Project sponsor/partner demonstrates extensive project and financial management experience and internal controls to adequately manage the project.

#### U. Leverage

Project demonstrates committed matching dollars from federal and other sources of funding.

## V. Green Infrastructure and Energy Efficiency

Project incorporates energy-efficiency and/or green infrastructure elements into the project design, including: bioretention areas such as rain gardens and bioswales, permeable pavements, street trees, and open spaces that incorporate drainage and infiltration functions. Higher scoring applications will include multiple forms of green infrastructure and include extensive planning.

## W. Investment Linkage

Project complements other community development activities and projects in the area and demonstrates consistency with local, regional, or state plans.

## XVII. Documenting the National Objective

### A. Benefit to LMI Persons

All activities in the WVDO CDBG-DR Economic Development Program will meet the HUD identified national objective of benefiting Low to Moderate Income Persons (LMI). The terms "persons of low and moderate income" and "low- and moderate-income persons" 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 (Section 102(a)(20) of the HCDA). As stated in HUD CPD Notice 14-013, "One of the crucial aspects of qualifying an activity as principally benefiting LMI persons on an area basis is the proper identification of the service area. The service area must be defined first before deciding which data to use to determine the percentage of LMI persons and not vice versa." To meet this objective, subrecipients in this program must demonstrate area-wide benefit to LMI persons.

The Area-Wide Benefit to Low- and Moderate-Income Persons category is the most commonly used National Objective for activities that benefit a residential area. An LMI Persons activity benefits all residents in a particular area, where at least 51 percent of the residents are LMI persons.

For this purpose, LMI determination is based upon the income of a family, household, or individual living in the CDBG-DR project area whose household income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families (HUD generated LMI data).

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 570.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status. A household should be represented on a single income survey sheet. Households do not always correspond with the defined number of customers in a project, as there may be one utility service to a duplex of two households, or a single tap to a trailer park, which may contain multiple households.

Each application must provide information for the census tract(s) most closely approximating the project area. This also applies to those projects qualifying the LMI benefit through an income survey.

When using multiple Census geographies in the determination of LMI compliance of a service area, applicants are reminded that percentages shall not be averaged across multiple geographies. The proper calculation is as follows:

$$\text{LMI \%} = \frac{(\text{LMI Persons Geography A} + \text{LMI Persons Geography B} + \text{LMI Persons Geography C})}{(\text{LMI Universe Geography A} + \text{LMI Universe Geography B} + \text{LMI Universe Geography C})}$$

Multiply the result by 100 to get the correct percentage. Additional information can be found in HUD CPD Notice 14-10. <http://tinyurl.com/hudcpd1410>.

## B. Project/Service Area

Each application must provide information for the Census Tract(s) and Block Group(s) most closely approximating the project area.

If ACS/Census data is being used to qualify a project, this data must coincide with project area and include a map showing clear verification of such.

As of this publishing, HUD has not issued an update for either method of qualification explained below. If such notice is received, the WVDO will notify all applicants of any new requirements.

Income Eligibility must be verified by one of the following methods:

1. Census: HUD Income Summary Data/LMISD in compliance with HUD CPD Notice 14-10

To qualify by Census, the census tracts/block group areas must closely associate with the project area and have a 51 percent or greater LMI population according to HUD generated census data (Low- and Moderate-Income Summary Data-LMISD).

The 2020 HUD Income Summary Data/LMISD data, based upon the American Community Survey (ACS), is available at [2020 HUD Income Summary Data/LMISD Data](#) . If the project area is a census tract(s), select ALL BLOCK GROUPS. If the project area is a whole town or county, select LOCAL GOVERNMENT SUMMARIES. Income Survey: In compliance with HUD CPD Notice 14- 013 and Notice 19-02:

2. Income Survey: In compliance with HUD CPD Notice 14-013 and CPD Notice 19-02

To qualify by Income Survey, review HUD CPD Notice 14-013 and CPD Notice 190-02 available at [Notice 14-013 and 190-02](#). See CPD Notice 19-02 to for the formula to calculate Total Service Area at [190-02 and Total Service Area](#) and the WVDO Income Survey Guide available at [WVDO Income Survey Guide](#).

Review the WVDO Income Survey Guide and contact the WVDO prior to conducting an Income Survey. The Income Survey should include detailed descriptions of the project area, sample, methodology, tabulations, and results. Verify that income surveys are conducted using true random sample. Previously completed income surveys should be no more than three years old. Applicants with surveys exceeding three years may request a waiver to the CDBG Program Manager.

Use the most recent HUD Income Limits available. HUD Income Limits are available at [HUD Income Limits](#). Choose West Virginia at this link, the appropriate year, and identify the proper County or Metropolitan Statistical Area. Income Limits are typically updated annually in March.

If an income survey was conducted in accordance with 24 CFR 570.483(b)(1)(I) and the State's guidelines for conducting income surveys, check your determination that 1.) The census boundaries do not coincide sufficiently well with the service area of the activity to use census data, or 2.) The applicant believes the census data does not reflect current relative income levels in an area.

Additional WVDO Website Resources for Income Surveys are available at [www.wvcad.org/resources](http://www.wvcad.org/resources) under Community Development Block Grant tab.

## XVIII. Appeals

Appeals may be filed only upon the deliverance of an adverse program decision regarding eligibility, benefits, or closure of an application. Appeals must be filed within the parameters set by this appeals procedure. Participants may not appeal program policy. If an applicant is denied program services or benefits and desires to appeal, an appeal may be filed with WVDO as follows:

1. All appeal letters must be submitted in writing within 30 days of the date of the denial letter via:
  - a. U.S. mail to:  
Attention: Alexandria Phares  
1900 Kanawha Boulevard, East  
Building 3, Suite 700
  - b. Email to: [DisasterRecovery@wv.gov](mailto:DisasterRecovery@wv.gov)
2. All appeal letters must include:
  - a) The reason for the appeal;
  - b) A clear explanation that describes the evidence that the denial was contrary to applicable laws or regulations or in some other way inequitable;
  - c) The reason that the applicant is eligible for the service or benefit that was denied, delayed, reduced, modified or terminated;
  - d) The proposed remedy sought by the applicant;
  - e) Name, contact address and contact telephone number of entity filing appeal; and
  - f) Signature and date.

An appeal initiated by an applicant with WVDO must follow written appeal procedures, which may include, but not be limited to, informal hearings, third-party review or administrative review. A determination letter will be sent, post-appeal, to the entity that initiated the appeal. Applicants may contact WVDO for more information on the appeal procedure.

## XIX. Subrecipient Information

WVDO will use a subrecipient model to deliver the Economic Development Program. Subrecipients will be selected through a competitive RFP process. This program is not a direct grant program. No funds will be paid directly to individuals.

## A. Awarded Subrecipient Responsibilities

Subrecipients have the following responsibilities and must:

- Demonstrate how the proposed project meets the identified national objective;
- Submit an accurate account of how the absence of the project being requested has affected the community's critical services during disasters;
- Submit a detailed scope of work;
- Provide evidence that selected site has appropriate approvals;
- Enter into a subrecipient agreement with WVDO specific to the Economic Development Program;
- Comply with all terms and conditions of the subrecipient agreement, Economic Development Program Policies and Procedures, Disaster Recovery Action Plan and applicable federal, state and local laws;
- Develop policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of information and report instances of suspected fraud, waste or abuse;
- Follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486;
- Develop policies and procedures for complaints and grievances and for appeals. These policies and procedures must be made available to participants and participant applicants;
- Update application or program policies and procedures upon WVDO request;
- Document all complaints, grievances and appeals received. To comply with HUD requirements, a response to each complaint, grievance or appeal must be made within 15 working days of receipt;
- Maintain organized files and make them accessible to WVDO or its representatives upon request;
- Maintain books, records and documents relating to the GIP in accordance with generally-accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by WVDO under this program. All records must be maintained for three years beyond the closeout of the grant;
- Retain sufficient records to document program activities, participants and services and to demonstrate compliance with the Economic Development Program Policies and Procedures, subrecipient agreement and applicable federal, state and local laws and regulations.
- All records must be maintained for three years beyond the closeout of the grant;
- Ensure that any partners, subcontractors, vendors or other entities to whom the subrecipient intends to disburse DR funds are not listed as excluded, debarred, or suspended on the System for Award Management (<https://sam.gov/SAM/>), including affiliated businesses with the same EIN;
- Comply with the requirement that subrecipients will not carry out any of the activities under their agreement with WVDO in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974;
- Provide a detailed timeline for implementation consistent with the milestones outlined in these guidelines and report actual progress against the projected progress on a monthly basis;

- Provide a quarterly report to WVDO that outlines the activities completed in the previous quarter.
  - The report must include financial metrics that demonstrate the implementation costs to date with projected spending.
  - Reporting must include documentation of the number of complaints received, the nature of the complaint, and that complaint was responded to within 15 days of receipt.
  - Additional quarterly reporting requirements may be required, depending on the specific program design implemented by a subrecipient.
- Provide a monthly report to WVDO that details the grant funding approved versus funding disbursed;
- Monitor compliance with the terms and conditions of the subrecipient agreement; and
- Maintain organized files and make them accessible to WVDO or its representatives upon request.

#### **B. Subrecipient Information**

1. Upon award of the grant, WVDO will send out a grant agreement packet
2. The subrecipient will return the packet to the WVDO by the specified date (30 days after the packet is mailed)
3. WVDO will issue a Notice to Proceed Letter
4. Subrecipient begins full environmental review
5. Subrecipient publishes Finding of No Significant Impact (FONSI) or (NOI) Notice of Impact along with (RROF)
6. Subrecipient submits (RROF) to WVDO
7. WVDO Issues Authority to Use Grant Funds (AUGF)
8. Preconstruction and construction of the project begins
9. Project Closeout

WVDO will use a subrecipient model to deliver the CDBG-DR Economic Development program. Subrecipients will be selected through a competitive RFP process. This program is not a direct grant program. No funds will be paid directly to individuals.

## **XX. Duplication of Benefits**

CDBG-DR funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. To avoid duplicative assistance and potential de-obligation of funding, the State must account for all possible funding sources before applying CDBG dollars to a project. CDBG-DR programs are typically implemented after temporary disaster assistance programs, such as FEMA Individual Assistance and are not intended to make someone whole.

The Robert T. Stafford Act established the requirements for Duplication of Benefits (DOB) analysis to prevent duplication of benefits. The Act required that major disasters occurring in 2015, 2016 and 2017 comply with the notice “Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery (DR) Grantees” (Federal Register November 16, 2011, 76 FR 71060) 3 . The 2019 DOB Notice updates the 2011 DOB Notice in part to reflect the requirements of recent CDBG-DR supplemental appropriations acts and 3

[https://www.federalregister.gov/documents/2011/11/16/2011-29634/clarification-of-duplication-of-benefits-requirements-under-the-stafford-act-for-community Rise West Virginia Disaster Recovery Policies and Procedures 2020 42 01.2020 amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act \(42 U.S.C. 5121-5207\) \(the Stafford Act\)4](https://www.federalregister.gov/documents/2011/11/16/2011-29634/clarification-of-duplication-of-benefits-requirements-under-the-stafford-act-for-community-Rise-West-Virginia-Disaster-Recovery-Policies-and-Procedures-2020-42-01-2020-amendments-to-the-Robert-T.-Stafford-Disaster-Relief-and-Emergency-Assistance-Act-(42-U.S.C.-5121-5207)-(the-Stafford-Act)4) . This notice amends notice requirements for disasters occurring in the above mentioned years and added the requirements of the 2019 DOB notice in lieu of the 2011 DOB notice for: (a) new programs and activities added to the action plan after the date of the updated notice; and (b) existing programs and activities, to the extent that the grantee amends its action plan to change its treatment of loans in accordance to the up-date. This policies and procedures will continue to be up-dated to reflect changes to the duplication of benefits provision as outlined in Section 312 of the Stafford Act, as amended by Section 1210 of the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Public Law 115- 254), and the related provisions of the 2019 DOB Notice. These updates will be published in subsequent versions of the WV Rise Housing manuals and other documents as required by the guidance. The Stafford Act prohibits entities, including households, from receiving disaster recovery

Federal disaster law prohibits the provision of federal assistance in excess of need. Before paying a cost with federal disaster assistance, WVDO must check to see that the assistance will not cause a duplication of benefits, meaning that the cost has not or will not be paid by another source. HUD grantees are required to prevent the duplication of benefits when carrying out HUD-funded programs to provide disaster assistance.

Please refer to the following link for WVDO's Duplication of Benefits Policy:

[https://wvcad.org/assets/files/resources/cdbg/MIT/Duplication\\_of\\_Benefits\\_Policies\\_and\\_Procedures\\_FINAL.pdf](https://wvcad.org/assets/files/resources/cdbg/MIT/Duplication_of_Benefits_Policies_and_Procedures_FINAL.pdf)

## XXI. Subrogation

All applicants are required to sign a Subrogation Agreement as a part of participating in the Program. Applicants must subrogate any additional funds received for structural damage caused by the disaster back to the State. CDBG-DR funding must be funding of last resort, and if additional funds are paid to an applicant for the same purpose as the housing assistance they receive through State CDBG-DR funding after the State has completed repair/ rehabilitation of their home or replacement of their MHU, those funds must be returned to the State of West Virginia.

If it can be established that an applicant has additional need, the subsequent funds would not be considered a DOB (76 FR 221, 71062). However, if additional need is not demonstrated, disaster recovery funds must be recaptured to the extent they are more than the need and duplicate other assistance received by the applicant for the same purpose. If CDBG-DR funds were provided last and unknowingly create duplication, the method of recapturing those CDBG-DR funds will be consistent with HUD 2 CFR 200

## XXII. Procurement

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the

federal procurement standards, which can be found at the following link: [Federal Procurement Standards](#).

West Virginia's procurement policies of the state do align with the requirements set forth under 2 CFR 200.318-200.326 ensuring fair and open competition. The WVDO Procurement Policies can be found at [WVDO Procurement Policies](#) and the crosswalk between federal and state policies can be found on page 5 of the WVDO Procurement Policies link.

## XXIII. Flood Plain Management

All applications with projects outside the 100 year floodplain will be prioritized before scoring. As applicable, future property damage will be minimized by requiring that any rebuilding or development be done according to the best available science for that area with respect to base flood elevations, such as the WV Flood tool available at <https://www.mapwv.gov/flood/> and FEMA's Flood Map Service Center available at <https://msc.fema.gov/portal/home>. Infrastructure hardening projects within a floodplain will be built with compliance to elevation standards. The State's subrecipients will document any mitigation and resiliency measures of a floodplain project. This documentation will address how projects will be evaluated and how elevation costs will be reasonably determined relative to other alternatives or strategies, such as the demolition of substantially-damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to reduce the risk of loss of life and property.

## XXIV. Acquisition

CDBG-DR funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42

U.S.C. § 4601 et seq. ("URA"), and the federal regulations found in 49 C.F.R. Part 24 (See also Section 104(d) of the Housing and Community Development Act of 1974 and implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD funded programs). The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses or farms as a result of acquisition, rehabilitation, or demolition of real property for any phase of a Federal or federally funded project. The URA also establishes equitable land acquisition policies.

Acquisition is typically associated with another eligible activity where the end use of the acquired property meets a CDBG National Objective. The acquisition activity allows for properties acquired using post fair market value to be redevelopment in a resilient manner. A Buyout program allows the use of two HUD national objectives.

### General Requirements

HUD Handbook 1378 provides thorough guidance on real property acquisition under URA. If there are questions whether any of the following apply to a specific situation, the State will consult its Grant Manager.

- provides a nonprofit or for-profit entity with funds to purchase the property;
- hires an agent or consultant to act on its behalf in acquisition;
- undertakes acquisition on or after a CDBG-DR application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity;

- undertakes an acquisition before the application submission date and the acquisition were intended to support a subsequent CDBG-DR activity

Each property owner must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their land, even if they are a direct beneficiary of the project.

Before surrendering possession of the real property, the acquiring entity must pay the agreed purchase price to the owner.

If the acquisition is only a portion of a property but would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project. 49 CFR §24.102(k)

#### Environmental and Acquisition

Executing a contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a commitment of funds and a choice limiting action (24 CFR §58.22(a)) and must be avoided until after the environmental review process is completed and the State has received the authority to use grant funds. Any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. There is one action that may be taken before the environmental release of funds that might conclude the acquisition once the environmental review process is completed: an optional purchase agreement. This type of contract is a useful tool to obtain site control while allowing time to complete the environmental review.

HUD's regulations at 24 CFR §58.22(d) allows for an optional contract agreement for any project prior to the completion of the environmental review when the following requirements are met (please note this option will be reviewed in an implementation meeting to be held in Fall 2021):

- Optional agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option will not exceed value determined in an appraisal

#### Terms and Definitions

**Acquiring Entity/Acquiring Agency:** The term "acquiring entity" and "acquiring agency" are used interchangeably and refer to the entity (in most cases, the State) performing the acquisition or under whose authority the acquisition is performed. Ultimately, the State is responsible for ensuring compliance with all URA requirements. This does not prevent another entity such as a water supply corporation from acquiring real property for the grant-funded project. All URA rules are applicable to projects with any amount of CDBG participation regardless of the type of entity completing the acquisition activity or the source of funds being used in the transaction.

**Eminent Domain:** Eminent domain refers to the power of the government to take private property and convert it to public use. The Fifth Amendment to the US Constitution provides that units of government may only exercise this power. Just compensation for any private property converted to public use will be paid to the property owner. Projects that require Eminent Domain will not be accepted.

**Condemnation:** Condemnation refers to the legal process used for taking property under the

authority of eminent domain. The use of the term should not be confused with its use in declaring a property to be uninhabitable or unsafe.

#### Methods of Acquisition

The State may acquire real property after determining whether the acquisition is voluntary or involuntary (see below description of determining whether an acquisition is voluntary or involuntary) through one of the following methods:

- **Donation:** A transaction may be considered a donation only if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions;
- **Just Compensation Purchase:** The acquisition price is determined through a valuation process by a licensed appraiser. A real estate appraiser provides an objective and unbiased estimate or appraisal of the value of a property. The State notifies the owner in writing of the property's fair market value;
- **Negotiated Purchase:** Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement;
- **Condemnation/Eminent Domain:** The State should use condemnation only as a last resort. The acquiring with eminent domain authority must determine which approach applies to the project before starting any acquisition activity. Once the State starts down the "voluntary" acquisition path- the use of eminent domain is not available. If the State conducts its acquisition using the "involuntary" approach it is NOT committed to using eminent domain but may retain that option as last resort.

#### Determining Voluntary Acquisition

With CDBG-DR acquisition, only voluntary projects will be considered. The terms relate to whether the acquiring entity possesses the authority of eminent domain (condemnation), and if the transaction occurs as a result of the use or the intent to use that authority. URA provides different protections to property owners depending on whether the acquisition is voluntary or involuntary. (See 49 CFR 24, Subpart B Real Property Acquisition).

#### VOLUNTARY

##### Acquiring Entities with Eminent Domain Authority - Voluntary Acquisition

Voluntary acquisitions are negotiated between the property owner and the State without the threat of eminent domain or condemnation. The States authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary (See 49 CFR 24.101(b)(1)(i)-(iv)):

- No specific site is needed and any one of several properties could be acquired for project purposes;
- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits;
- The acquiring entity must inform the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement;
- The acquiring entity must inform the owner in writing of the property's fair market value using an

- appraiser (Housing Buyout or Acquisition Programs); and
- Economic Development projects benefiting from a private entity acquisition may only be conducted using voluntary procedures

## INVOLUNTARY

If an acquisition by an entity with eminent domain authority does not comply with the voluntary acquisition requirements described above (see 49 CFR 24.101(b)(1)(i) – (iv)), the acquisition is considered involuntary. Projects that require involuntary acquisition will not be accepted in this program.

### Voluntary Acquisition Process

#### Step 1: Determine Property to be Acquired

Prior to beginning an acquisition process, the State must have a clear understanding of the grant-funded project and the property to be acquired. The State will not fund acquisition of property in the floodplain.

#### Step 2: Determine Fair Market Value of the Property

The State may use a fair market value determined by real estate appraisal. For a housing Acquisition program, an appraisal is required.

#### Step 3: Notify Owner of Property Rights

Voluntary acquisitions can occur only when the State lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain by giving specific written notice to the property owner.

Step 4: The State must notify the owner in writing, prior to making a purchase offer, of the following (49 CFR § 24.101(b)(1)(i)-(iv)):

- the property's fair market value; and
- the State or acquiring entity will not acquire the property if an amicable settlement cannot be reached

Optional - In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land. For Acquisitions, the State may consider incentives as part of the negotiations.

#### Step 5: Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR §58.22, the State may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by HUD. If a significant environmental impact will occur, look at alternative sites.

#### Step 6: Determine Price or Donation

The owner may choose to donate the property or accept the fair market value of the property and has been notified in Steps 3 and 4. If the donation and the fair market value are rejected by the owner, the State may then negotiate with the property owner to reach an agreement. A best practice is to create a calculation that is applied to all properties to ensure that all are treated uniformly by

the State. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for the State to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.

#### Step 7: Execute Agreement

The State and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations.

## XXV. Construction Regulation

When construction work is funded in whole or in part with CDBG-DR funds, adherence to certain Federal labor standard requirements applies. The General Contractor will be responsible for full compliance and adherence to these applicable requirements. The Program will be responsible for administration and enforcement of applicable requirements to ensure compliance. Labor Laws and Requirements Rise West Virginia Disaster Recovery Policies and Procedures 2020 68 01.2020 The following labor laws will apply to CDBG-DR-funded construction work:

**Davis-Bacon Act** – applicable when construction work exceeding \$2000 is funded in whole or in part using CDBG-DR funds. It requires that workers do not receive wages less than those being paid for similar work in the same area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units. See 40 USC, Chapter 3, Section 276A-276a-5 and CFR Parts 1, 3, 5, 6 and 7 for more information

**Copeland Anti-Kickback Act** – requires that workers be paid weekly, that deductions from workers' pay be permissible and that contractors maintain and submit weekly payrolls. See 40 USC, Chapter 3, Section 276c; 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3 for more information

**Contract Work Hours and Safety Standards Act** – applicable to construction contracts over \$100,000 and requires that workers receive overtime compensation for hours worked over 40 hours in one week. See 40 USC, Chapter 5, Sections 326-332; 29 CFR Part 4, 5, 6, and 8; and 29 CFR Part 70-240 for more information

**Section 3 of the Housing and Urban Development Act of 1968** – requires that HUD financed projects provide opportunities for training and employment to lower-income residents of the project area as well as the awarding of contracts to businesses that provide economic opportunities for low and very low-income persons residing in the project area. Subrecipients are required to comply with Section 3 requirements for projects funded through the WV Economic Development Program.

The Program must include all applicable labor standards language and the appropriate wage decision in the construction bid and contract documents. During construction, the Program is responsible for enforcing any applicable requirements outlined above. Once construction is underway, the General Contractor should complete weekly payroll for its employees and sign the Statement of Compliance. The contractor is responsible for housing the records. Compliance is monitored and ensured by the Program continuously throughout the construction process, prior to any progress or final payments being made. The state and UGLG may access Federal wage rate decisions through the internet at [www.wdol.gov](http://www.wdol.gov).

## Women and Minority Owned Business Entities

Subrecipients and their contractors and subcontractors must fully comply with the requirements of the Executive Order 11625. As required by Executive Order 11625, the WVDO must annually compile data on Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE). HUD compiles this information into an overall agency report for submission to the Minority Business Development Agency of the U.S. Department of Commerce.

The reporting form is the Contract and Subcontract Activity Form - HUD-2516. This form must be submitted to the WVDO on or before June 30th each year. The instructions and form HUD2516 are located at the end of this chapter as Attachments 9-6 and 9-6A.

Additional resources concerning M/WBE administration are provided in insert link to HUD exchange on this topic. Subrecipients are expected to document their outreach to MBE-WBE business sources. Methods of outreach include, but are not limited to:

- Placing qualified MBE-WBE businesses on solicitation lists.

- Ensuring that MBE-WBE businesses are advised of opportunities to respond to bids or requests for proposals by letter.

In addition, the West Virginia Department of Transportation (DOT) maintains a Disadvantaged Business Enterprise Program. These small businesses are certified by the Unified Certification Program as being at least 51 percent owned and controlled by socially and economically disadvantaged individual(s). Females and certain minority groups are deemed to be socially disadvantaged.

The website at [www.transportation.wv.gov/eo/DBE/Pages/default.aspx](http://www.transportation.wv.gov/eo/DBE/Pages/default.aspx) should be utilized in good faith efforts to provide business opportunities to minority and women-owned businesses.

## XXVI. Environmental Review Process

Every project undertaken with federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 CFR Part 58. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any federal funds can be accessed for program-eligible activities. Rise West Virginia Disaster Recovery Policies and Procedures 2020 1.2020 In addition, no work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds. In other words, environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. A violation of this requirement may jeopardize federal funding to this project and disallow all costs that were incurred before the completion of the Environmental Review.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work. Laws and regulations which contain environmental provisions with which must be complied with include:

1. Historic Preservation (36 CFR 800)
2. Floodplain Management (24 CFR 55, Executive Order 11988)
3. Wetlands Protection (Executive Order 11990)
4. Coastal Zone Management Act (Sections 307 (c), (d))
5. Sole Source Aquifers (40 CFR 149)
6. Endangered Species Act (50 CFR 402)
7. Wild and Scenic Rivers Act (Sections 7 (b) (c))
8. Air Quality (Clean Air Act, Sections 176 (c) and (d) and 40 CFR 6, 51, 93)
9. Farmland Protection Policy Act (7 CFR 658)
10. Environmental Justice (Executive Order 12898)
11. Noise Abatement and Control (24 CFR 51 b)
12. Toxic/Hazardous Materials (24 CFR 58.5(i)(2))
13. HUD Environmental Standards (24 CFR 51 c)
14. Airport Clear Zones and Accident Potential Zones (24 CFR 51 d)

All federally funded projects and activities must have documentation that they are in compliance with NEPA and all other environmental requirements. The purpose of this Section is to provide guidance necessary to prepare the Environmental Review Record (ERR) as required by NEPA and related laws. The ERR serves as a tool to measure the environmental consequences of all federally funded CDBG-DR eligible-program activities for the WVDO.

Rise West Virginia Disaster Recovery Policies and Procedures 2020 79 01.2020 Statutory & Governing Regulations:

- 40 CFR 1500-1508, Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA)
- 24 CFR Part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities)
- Points to (NEPA) and other applicable regulations and sections of Federal laws and authorities (Section 58.5)
- 24 CFR Part 51 (Environmental Criteria and Standards)

CDBG-DR Assisted Projects: Part 58 applies:

- On the date, the responsible entity (RE) receives a proposal or application for federal assistance
- As soon as the recipient determines the projected use of CDBG assistance

The value of the environmental review is to inform the proponent of a Federally assisted action: (1) of the existence of negative impacts on a site, (2) of means to mitigate negative impacts, (3) alternatives to the project if needed, and (4) when all other options fall, that rejection of the proposed action may be the most prudent action to take. The environmental review is a means of providing decision makers with sufficient information on which to base wise choices.

Please refer to Chapter 8 in the following link for Rise West Virginia’s Environmental Policies and Procedures: [Rise WV Environmental Policies and Procedures](#)

Environmental review activities must be included in the Implementation Plan in the application. Environmental review forms, including the Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 pursuant to 24 CFR Part 58.34(a) and 58.35(b) can be found at <https://www.hudexchange.info/programs/environmental-review/>.

## XXVII. Equal Opportunity

Federal policies ensure that no person be excluded, denied benefits or subjected to discrimination on the basis of race, color, national origin, sex, disability or age under any program funded in whole or in part by CDBG-DR funds. WVDO and subrecipients may not discriminate in any of the following areas: deciding who will be admitted, or have access, to any CDBG-DR funded program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity. WVDO requires any entity receiving assistance through CDBG-DR grant to comply with the Part 3 requirements herein. In addition, WVDO and subrecipients must administer and fund programs that are in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations, and will affirmatively further fair housing.

WVDO requires subrecipients to certify that they have adopted and are enforcing policies that:

- 1) Prohibit the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations and
- 2) Prohibit physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

Any person who believes he or she, or any specific class of individuals, has been subjected to unlawful discrimination may file a complaint regarding the alleged discrimination with:

State Contact	HUD Contact
West Virginia Human Rights Commission 1321 Plaza East 108 A Charleston, WV 25301  Toll Free: 1-888-676-5546 Phone: 304-558-2616 Fax: 304-558-0085	Philadelphia Regional Office of FHEO U.S. Department of Housing and Urban Development The Wanamaker Building 100 Penn Square East, 12th Floor Philadelphia, Pennsylvania 19107-3380  (215) 861-7646 (888) 799-2085

	TTY (215) 656-3450 Civil Rights Complaints: <a href="mailto:ComplaintsOffice03@hud.gov">ComplaintsOffice03@hud.gov</a>
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Further information about eligibility for filing an equal opportunity complaint, time limits, instructions, and procedures may be found at: [WVCAD Equal Opportunity](#).

## XXVIII. Conflict of Interest

State officials and employees, WVDO employees, subrecipients, contractors and consultants who exercise functions with respect to CDBG-DR activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, are prohibited from receiving any benefit from the activity either for themselves or for those with whom they have family or business ties, during their tenure.

The WVDO makes subawards of federal funds to other organizations. All subawards shall be subject to the conflict of interest policies and provisions described in the WV Ethics Act applicable procedures delineated in 24 CFR 570.489(h)(4).

For purposes of this section, “family” is defined to include parents (including mother-in-law and father-in-law), grandparents, siblings (including sister-in-law and brother-in-law) and children of an official covered under the conflict of interest regulations at 24 CFR 570.489(h). Per 24 CFR 570.489(h)(2) - Conflicts prohibited: Except for eligible administrative or personnel costs, the general rule is that no one who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities assisted under this subpart or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Per 24 CFR 570.489(h)(4) - An exception to the conflict of interest provision may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may also be granted should it be determined that all of the concerns generated by the potential conflict of interest have been adequately and publicly addressed and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974 and the effective and efficient administration of the program. No party will enter into a conflict of interest until a request for an exception has been granted by WVDO.

## XXIX. Anti-Fraud and Compliance Policies

### A. Anti-Fraud

HUD requires policies to prevent fraud, waste and abuse. WVDO is committed to aggressively detecting and eradicating fraud, waste and abuse to ensure that WVDO administered programs provide services to customers effectively and efficiently and that taxpayer funds are protected. Each employee, customer and partner has a role and responsibility to ensure that program and service delivery is in compliance with local, state and federal laws and policies and that any incidents are reported immediately for investigation and resolution.

WVDO has established procedures for verifying the accuracy of information provided by subrecipients and participants. The program will investigate all allegations regarding eligibility, disbursement of funds or any other allegations of fraud or noncompliance. As appropriate, the WVDO will assist federal, state and local agencies in investigations.

Instances of suspected fraud, waste and abuse should be reported by sending an e-mail to: DisasterRecovery@WV.gov. The West Virginia Disaster Recovery Office maintains a hotline to report your concerns. If you suspect fraud, waste or abuse, call (304) 553-0927.

All substantiated cases of fraud, waste or abuse of government funds will be forwarded to the United States Department of Housing and Urban Development (HUD), Office of Inspector General (OIG) Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov and WV's HUD Community Planning and Development (CPD) Representative.

## B. Compliance

Requirements for CDBG-DR generally follow the same requirements as CDBG. However, each allocation of CDBG-DR funds contains alternate requirements and applicable waivers which should be consulted for each separate allocation of CDBG-DR funds. The following guidance is applicable to West Virginia's CDBG-DR Program for 2016 Flooding:

- West Virginia CDBG-DR Action Plan for the response to 2016 Floods
- 24 CFR 570
- 24 CFR 91
- 2 CFR Part 200
- Public Law 114-223; 81 FR 83254
- Public Law 114-254; 82 FR 5591
- Public Law 115-31
- Cross-cutting HUD requirements including Section 3 of the Housing Act, conformance with the Civil Rights Act, compliance with the Uniform Relocation Act, and National Environmental Protection Agency requirements.
- David Bacon Act

CDBG-DR HUD Action Plans are the approved implementation plan for operating the CDBG-DR program under a HUD appropriated disaster allocation. HUD approved the West Virginia CDBG-DR Action Plan in April 2017, the action plan can be found at [wvfloodrecovery.com/action-plan/](http://wvfloodrecovery.com/action-plan/). The approved HUD

Action Plan for 2016 Floods (Action Plan) the foundational program design is utilized when instructing and managing the program aspects. Additional amendments may occur as the program progresses, therefore, any amendments or changes to the Action Plan is published on the West Virginia disaster recovery website.

## C. Monitoring

### 1. Files, Records, and Reports

#### File and Record Retention

WVDO and subrecipients will maintain accurate files and records on its projects. WVDO will retain all pertinent documentation for the grant between HUD and the WVDO. Files will be kept in a central location. Following final closeout, the Subrecipient must retain all project records for three years after the date of the final audit, according to 24 CFR 570.506, and must be available for review at any time. Strict adherence to record keeping procedures should begin immediately following the grant award. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period.

#### Quarterly Reporting

All awards are subject to the State's receipt of its CDBG-DR appropriation from the U.S. Department of Housing and Urban Development (HUD). All awards are subject to pre-contract negotiations with the recipient. Additionally, all recipients must follow procurement policies identified in these policies and procedures, identified in section VIII.

The West Virginia Development Office (WVDO) is committed to monitoring the performance of subrecipients to ensure that all Federal funds are used appropriately and, in a manner, to maximize low- and moderate-income public benefit. Subrecipients are limited to Counties and Cities. Monitoring ensures that each subrecipient meets the goals and objectives identified within the State's CDBG-DR Action Plan.

Subrecipients that do not comply with the Post-Award and Subrecipient Criteria listed below will forfeit their award of CDBG-DR funds. The forfeited funds will then be returned to the CDBG-DR program for reallocation.

- CDBG-DR subrecipient shall not incur any costs or obligate any funds until the environmental review is complete and the authority to use grant funds is provided from the U.S. Department of Housing and Urban Development by the State of West Virginia WVDO Office, a contract between The West Virginia Development Office and the recipient is executed.
- CDBG-DR economic development projects must be completed by March 15<sup>th</sup>, 2024.
- CDBG-DR recipients will be required to maintain accurate records and shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR Part 570, as modified by the Federal Register notices that govern the use of Grant Funds available under this Agreement. This includes without limitation applicable Federal Registers; 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200); 24 CFR Part 570 Community Development Block Grant dollars; applicable waivers; Fair Housing Act, 24 CFR Part 35, 24 CFR Part 58, 24 CFR Part

135; National Historic Preservation Act, 36 CFR Part 800, Executive Order 11593; and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards and the environment; and Action Plan amendments and HUD's guidance on funds.

- Sub-recipients will be asked to provide a quarterly summary reporting all accomplishments, outcomes, and expenditures to be provided to the State and HUD. This includes a narrative description of the program and progress percentage to completion compared to expenditures. Quarterly performance requirements will be reviewed during the implementation meeting.
  - Subrecipients are required to:
    - Collect and track data elements associated with the program/project requesting funding. These elements may include how the person, household, or area has benefited from the project, number of persons/households served, family size, race/ethnicity, income documentation, and residency documentation. Additional elements may be required, collected, and tracked depending upon the nature of the program.
    - Submit performance reports to WVDO on a quarterly basis. The reports are reviewed for accuracy, performance measures and compliance. In addition, on-site monitoring/auditing of agencies for ongoing compliance and eligibility is done by West Virginia Development Office to ensure income guidelines are being met and goals are being reached. A monitoring will be conducted by WVDO at least once during the project duration.
- Payments: Requests for Payment must be submitted monthly, including all required invoices and documentation to substantiate costs, to the West Virginia Development Office for approval and remittance. CDBG-DR funds are not paid to Subrecipients before costs are accrued. Subrecipients must be financially suited to cover initial costs in anticipation of reimbursement.

#### D. Program Income

The WVDO does not anticipate that the CDBG-DR Economic Development Program will generate program income. Any program income generated by subrecipients is required to be returned to the State of West Virginia.

### XXX. Closeout Procedures

The closeout of a grant is the process established by the WVDO to determine that all applicable administrative actions and all required programmatic work on the grant have been completed by the sub-subrecipient (Unit of Local Government). To reach program closeout, the following must be met:

- Documentation demonstrating all eligible activities are completed and the project meets a national objective
- Project file is fully documented
- Budget amendment or reconciliation completed, as applicable
- All reporting requirements in DRGR completed
- Special conditions met
- Monitoring findings closed
- Audit findings closed