

# Arkansas Development Finance Authority



Community Development Block Grant (CDBG)

Disaster Program

(for Affordable Rental Housing)

**POLICIES AND PROCEDURES MANUAL**

Effective March 8, 2010



**Arkansas Community Development Block Grant (CDBG) Disaster Program**  
**(For use in development or redevelopment of affordable rental housing)**

**Policies and Procedures Manual**

I.	Introduction.....	1
II.	Purpose of the CDBG Disaster Program.....	2
III.	General Requirements of CDBG Disaster Program.....	2
A.	Allocation of Funds.....	3
B.	Amount of Per Development Cap on Assistance.....	4
C.	Eligible Applicants.....	4
D.	Application Selection Criteria.....	4
E.	Application Time Frames.....	6
F.	Application Technical Assistance.....	6
G.	Amendments to Applications.....	6
H.	ADFA/Recipient Agreement Requirements.....	7
I.	Form of CDBG Disaster Program Assistance.....	7
J.	Eligible Activities.....	7
K.	Fund Disbursement.....	8
L.	Reimbursement of Pre-Award Costs.....	9
M.	Combining CDBG Disaster Program with Other Assistance.....	10
N.	Applicable Rent Limits.....	10
O.	Applicable Project Affordability Requirements.....	10
P.	Performance Standards and Recapture of Funds.....	11
Q.	Compliance Monitoring.....	11
R.	CDBG and ADFA Reporting Requirements.....	12
S.	Energy Efficiency.....	12
T.	Universal Design Requirements.....	12
U.	Other Federal Requirements.....	13
	1) Equal Opportunity and Fair Housing.....	13
	2) Affirmative Marketing.....	14
	3) Environmental Review.....	14
	4) Flood Plains / Wetlands.....	15
	5) Lead-Based Paint Requirements.....	15
	6) Labor Standards.....	15
	7) Debarment and Suspension.....	16
	8) Relocation.....	16
	9) Audit.....	16
V.	Procurement.....	16
W.	Contractor Requirements.....	17
X.	Inspections.....	17
Y.	Change Orders.....	18
Z.	Construction Contingency.....	18
AA.	Closing of Transactions.....	18
BB.	Program Income.....	19
	Appendix A – ADFA Application Process Path	
	Appendix B – HOME Program Affordable Rents	
	Appendix C – HOME Program Eligible Incomes	
	Appendix D – LIHTC Program Affordable Rents	
	Appendix E – LIHTC Program Eligible Incomes	

# **CDBG DISASTER PROGRAM**

(For use in development or redevelopment of affordable rental housing)

## **POLICIES AND PROCEDURES MANUAL**

### **I. Introduction**

Pursuant to the 2008 Supplemental Appropriations Act (**Public Law 110-252**) approved by Congress June 30, 2008 and the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (**Public Law 110-329**) approved by Congress September 30, 2008, the State of Arkansas will receive **\$25,042,358** in supplemental Community Development Block Grant (“CDBG”) funds for use in addressing the effects of five (5) Presidentially-Declared Disasters in Arkansas as follows:

FEMA #1744, declared on February 7, 2008

FEMA #1751, declared on March 26, 2008

FEMA #1758, declared on May 20, 2008

FEMA #1793, declared on September 18, 2008

FEMA #1804, declared on October 22, 2008

Of the \$25,042,358 in Arkansas CDBG Supplemental Disaster Funding, the amount of **\$10,134,098** is to be distributed for use in the **development or redevelopment of affordable rental housing related to the five (5) Presidentially-Declared Disaster areas. The CDBG Program is administered by the U.S. Department of Housing and Urban Development (“HUD”).**

Arkansas Economic Development Commission (“AEDC”), as administrator of the State of Arkansas CDBG Program, and Arkansas Development Finance Authority (“ADFA”) have executed a Memorandum of Understanding (“MOU”), effective 3/13/09, designating ADFA as the State agency responsible for implementing policies related to and administration of CDBG Disaster Funds reserved for affordable rental housing.

ADFA will administer the CDBG Supplemental Disaster Funding for the development or redevelopment of affordable rental housing effectively and efficiently for existing housing conditions in the State of Arkansas and with all practical safeguards against waste, fraud, and mismanagement. ADFA will use and encourage innovation, flexibility, and expansion of program design to address unmet rental housing needs in Arkansas. To further that goal, ADFA has developed this policy and procedures manual to provide an overview of ADFA policies and procedures as they relate to the CDBG Supplemental Disaster Funds for affordable rental housing.

This policies and procedures manual is intended as a technical assistance aid to access CDBG Disaster Funds for affordable rental housing, and is not meant to be a substitute for federal CDBG Disaster Fund regulations, but rather a supplement to the federal regulations. Every

effort has been made to ensure the accuracy of information contained in this manual, but questions concerning CDBG Disaster Funds for affordable rental housing should be directed to ADFA Housing staff to ascertain correct interpretations of the applicable policies, procedures, and regulations. ADFA reserves the right to implement additional policies as needed to promote effective usage of the program and its resources.

## **II. Purpose of the CDBG - Disaster Funds**

The primary purpose of the CDBG – Disaster funds is to assist in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of natural disasters that occurred in 2008. The \$10,134,098 set aside for affordable rental housing is intended to support repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need.

All CDBG Disaster Funds must be used in the **71 Presidentially-Declared disaster counties** of Arkansas. **The four (4) excluded counties are Columbia, Ouachita, Polk, and Sevier.**

**Each CDBG Disaster Program application MUST submit documentation from the Federal Emergency Management Agency (“FEMA”) and/or the Arkansas Department of Emergency Management (“ADEM”) documenting damage to residential buildings resulting from one of the specified disasters.**

CDBG-Disaster funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Army Corps of Engineers, insurance proceeds, or other funding received as a result of the Presidentially-declared disaster specified in the CDBG Disaster fund application. CDBG-Disaster funds may not be used as the required match, share, or contribution for another federal program.

## **III. General Requirements of the CDBG – Disaster Program**

The following General Requirements are provided to inform applicants of both federal and ADFA CDBG Disaster Program requirements. Each requirement is intended to facilitate access to CDBG Disaster Program funding, improve program implementation, prevent program duplication, ensure program goals are satisfactorily met, and prevent fraud, waste, mismanagement, and abuse of funds made available under the CDBG Disaster Program. The ADFA Board of Directors may, at its discretion, implement changes to ADFA program requirements at any time, grant waivers or exceptions to ADFA program requirements to facilitate program usage, satisfactory program implementation, and attainment of program goals, and to provide necessary flexibility to meet the intent and emergency nature of the CDBG Disaster Program.

## **A. Allocation of Funds:**

ADFA anticipates allocating up to \$9,627,394 (or 95% of all CDBG Disaster Funds for rental housing) to eligible applicants. The remaining five percent (5%) will be reserved for administrative and planning expenses.

ADFA will review, score, and rank applications based on the Proposal Scoring Criteria, outlined herein, which includes the scoring categories of need, capacity, financing, overall quality of plan, and time of performance.

All CDBG Disaster Funds must meet one of the three national objectives of the CDBG Program, as follows:

- Benefit for low to moderate income persons (LMI)
- Elimination of conditions of slum or blight
- To address an “imminent threat to the health and welfare of the community”

All CDBG Disaster Funds must be used on **affordable rental housing** developments.

All CDBG Disaster Funds must be fully expended with all activities satisfactorily completed within time frames to be specified in the agreement executed between ADFA and the recipient. Additional details on agreement requirements are addressed in Section H of this document.

Any requests for CDBG Disaster Funds must be made in conjunction with an application for other available ADFA housing funds (**LIHTC, HOME, FAF, BMIR, Tax-exempt or taxable bonds, and others.**). In order to access CDBG Disaster Funds, the applicant must be approved for all ADFA resources requested in the application.

All requests for CDBG Disaster Funds must **clearly connect the planned activities to the community need** as a result of the five (5) Presidentially-Declared disaster events. Federal Register Notice FR-5256-N-01 requires that any activities funded under this Notice must also be necessary expenses related to disaster relief, long-term recovery, and restoration of housing in areas affected by hurricanes, flooding, and other natural disasters that occurred in 2008 as a result of the specific disaster or disasters for which the state received funding.

All affordable rental units utilizing CDBG Disaster Funds must be made available to **tenants whose income does not exceed sixty percent (60%) of area median income**, adjusted for family size, at affordable rents. At a minimum, the applicable rents for the CDBG Disaster Program will be those applicable for the Low-Income Housing Tax Credit Program (LIHTC), but the most stringent rents of any program used in the development financing will apply.

All **cross-cutting federal requirements** will be applicable to the use of CDBG Disaster Funds (procurement, FH/EO, Section 3, Davis-Bacon, Environmental Review, etc.) unless specifically waived by HUD.

## **B. Amount of Per Development Cap on Assistance:**

Each eligible applicant for CDBG Disaster funds must apply for a minimum of one hundred thousand dollars (\$100,000). The maximum amount of CDBG Disaster funds available to any development shall be nine hundred thousand dollars (\$900,000), regardless of number of units or other leveraged funds or such other maximum amounts as may be approved by the ADFA Board of Directors. The maximum amount that may be requested for a developer's fee is ten percent (10%) of the final allocation amount. Any CDBG Disaster fund allocation is generally intended to be used as gap financing and is not intended to fund an entire development. The CDBG Disaster Fund application must provide satisfactory justification and clearly establish significant need for the amount of CDBG Disaster funds requested.

## **C. Eligible Applicants:**

CDBG Disaster Funds are available to **cities (including entitlement cities), counties, for-profit and non-profit developers, ADFA-designated Community Housing Development Organizations ("CHDOs"), Planning and Development Districts, Public Housing Authorities, cap agencies, and other entities having the necessary capacity to successfully develop affordable rental housing in Arkansas. Each applying entity must be in good standing with ADFA, the State of Arkansas, and the applicants' respective regulating agencies.**

The eligible applicant shall be the entity responsible for the respective CDBG Disaster Fund application to ADFA, project development, project implementation, and accountability for all uses of all CDBG Disaster Funds allocated. The eligible applicant must abide by all required compliance and monitoring of all CDBG Disaster Fund activities for the full applicable affordability period. Each eligible applicant allocated CDBG Disaster Funds will be required to execute a CDBG Disaster Program funding agreement, which will specify all required actions and compliance requirements.

**Each applicant must provide with its application, at the time of application submission, a letter of support from the chief elected official (CEO) of the applicable local jurisdiction where housing is to be developed or assisted.**

## **D. Application Selection Criteria:**

ADFA will allocate all CDBG Disaster Program funds based on established need, capacity of the applying entity, quality and content of complete application received by ADFA by the application deadline. ADFA reserves the right in its sole and absolute discretion to determine if submitted applications are complete at the time of submission. Late applications or partial submissions submitted after application deadline will not be considered for CDBG Disaster Program funding.

ADFA will review, score, and rank applications based on the Proposal Scoring Criteria, outlined herein, which includes the scoring categories of need, capacity, financing, quality of plan, specific activities to be completed, and time of performance.

The Proposal Scoring Criteria includes but is not limited to:

**Need – (30 points)** The application must clearly demonstrate the specific areas and structures to be assisted and the rationale for why the damaged housing is to be rehabilitated, demolished, and/or reconstructed. **Each applicant must identify by ownership and address any single-family or multi-family housing for low to moderate-income households directly impacted by one or more of the federally-declared natural disasters.**

ADFA will give priority to those applications proposing to assist the greatest number of impacted low to moderate-income rental units. For this purpose, low-income rental units will be defined to include those properties whose rents at the time of the disaster would be considered affordable under either the Low-Income Housing Tax Credit (LIHTC) or HOME Investment Partnerships Program (HOME).

**Capacity – (25 points)** The application must provide substantial information on the identity, location, and capacity of ALL persons who will be participating in CDBG-funded activities. The application must also demonstrate the ability of the applicant(s) to satisfactorily complete all planned activities associated with the CDBG Disaster Fund application. The applicant must provide specific examples of successful completion of similar activities using CDBG, HOME, or other federal housing resources and programs.

**Financing – (20 points)** The application must clearly delineate the TOTAL resources expected to be used to complete the CDBG-funded activities proposed, including the EXACT amount of CDBG Disaster Funds requested. All funding sources must be documented by firm financial commitments of the proposed amounts and uses of the funds. The extent to which CDBG Disaster Funds will be leveraged by additional financial resources will be favorably considered under the Financing scoring criteria.

**Overall Quality of Plan – (15 points)** The application must clearly demonstrate the reasonableness of the proposed activities and funding in accomplishing the stated mission for use of the CDBG Disaster funds. Each **CDBG Disaster Program application MUST submit documentation from the Federal Emergency Management Agency (FEMA) and/or the Arkansas Department of Emergency Management (ADEM) documenting damage to residential buildings resulting from one of the specified disasters. It is the responsibility of the applicant to provide justifications for the use of CDBG Disaster funds to alleviate negative affordable housing conditions caused by one of the Presidentially-declared disasters.**

**Time of Performance – (10 points)** The application must include a reasonable and realistic time line for implementation of all eligible activities, progress on those activities, and successful completion of ALL activities included in the application, including rental of affordable housing assisted by CDBG Disaster funds. Priority will be given to projects that can award contracts based on bids within 120 days from the date the CDBG Disaster Funds

are made available to the recipient(s). Specific time lines for performance will be outlined in the agreement between ADFA and the recipient. Generally, recipients will be expected to satisfactorily complete all activities funded with CDBG Disaster Program funds within two (2) years from the Notice to Proceed.

**E. Application Time Frames:**

ADFA will receive CDBG Disaster Program applications at any time subsequent to the effective date of the CDBG Disaster Program anticipated to be approximately mid-March. Applicants are urged to be aware of and consider application deadlines for other ADFA housing programs for which the applicant may also be applying. In cases where the applicant is applying for multiple ADFA housing programs, including the CDBG Disaster Program, the application submission should include all application requirements and requests for funding for all programs. ADFA staff will review, evaluate, score, and make recommendations for approval to ADFA's Board of Directors for consideration. ANY AND ALL APPLICATIONS OR PARTIAL SUBMISSIONS SUBMITTED AFTER AN ESTABLISHED PROGRAM DEADLINE FOR APPLICATIONS WILL NOT BE REVIEWED, SCORED, OR CONSIDERED FOR FUNDING.

In the event staff has questions or needs additional clarification concerning application submissions or related documentation, staff may contact the applicant designated as the contact person for that application. No other information or documentation may be submitted by the applicant, but clarifications of previously submitted information are allowed, contingent upon staff's assessment that the information is crucial to effective review and scoring of the application.

After an application for CDBG Disaster Program funds has been submitted to ADFA, the applicant may have no further contact with ADFA staff, ADFA's President or ADFA Board members concerning the application unless contacted by ADFA staff for clarification purposes. Dependent upon the demand and initial award of CDBG Disaster Funds, ADFA reserves the right to extend referenced time lines or establish additional funding rounds as necessary to fully utilize available CDBG Disaster funds.

**F. Application Technical Assistance:**

Applicants may request technical assistance on the CDBG Disaster Program and associated application processes by contacting ADFA staff and arranging a mutually convenient date, time, and venue. ADFA staff is prepared to provide technical assistance on CDBG Disaster Program requirements as well as ADFA guidelines and requirements for application submission.

**G. Amendments to Applications:**

Any material changes to any aspect of an approved CDBG Disaster Program application must be presented in writing as an amendment to the initial application for CDBG Disaster

Program funds. The request for amendment will go through the normal review and approval processes outlined in ADFA's "Application Process Path" included in this manual.

#### **H. ADFA/Recipient Agreement:**

ADFA staff will be responsible for drafting the CDBG Disaster Program Recipient Agreement. The agreement, when executed by all parties, will serve as the commitment of CDBG Disaster Program funds by ADFA and provide all applicable requirements to be accomplished by the recipient.

#### **I. Form of CDBG Disaster Program Assistance:**

The form of assistance will be a **forgivable loan**, forgiven over the developments affordability period (based on the most restrictive affordability period required by any financing component of the development budget). The affordability periods applicable to the CDBG Disaster Program are addressed herein under Section O.

#### **J. Eligible Activities:**

CDBG Disaster Funds may be **used for all eligible CDBG activities that are usual and customary affordable rental housing development activities** normally contained in ADFA program rental application development budgets. CDBG Disaster Funds may NOT be used for activities or items eligible for reimbursement by insurance or other funding sources, such as FEMA, SBA, the Army Corps of Engineers, or the Arkansas Department of Emergency Management (ADEM).

**In order to apply for CDBG Disaster Program funding, an applicant must plan on assisting or producing a minimum of five (5) affordable rental housing units.**

ADFA will allocate and distribute CDBG Disaster Program funds for the following eligible activities:

1. Acquisition of properties negatively impacted by one of the five (5) Presidentially-declared disasters. **NO ACQUISITION OF SINGLE-FAMILY DWELLINGS WILL BE ALLOWED FOR PROPERTY IN EXCESS OF FEDERAL HOUSING ADMINISTRATION (FHA) LIMITS, CURRENTLY SET AT \$271,050.** For purposes of acquiring disaster-affected properties in a flood way or flood plain intended for assistance with CDBG Disaster Program funds, the allowable acquisition amounts will be based on post-flood appraisal or other post-flood method of establishing value. Any property proposed to be acquired must be identified by ownership and address. The application must provide for the rehabilitation of existing eligible properties or replacement of the units at an alternate site(s) within the same jurisdiction.
2. Relocation of tenants residing in properties acquired for assistance with CDBG Disaster funds. Because properties to be acquired to receive CDBG Disaster program

assistance will have been negatively impacted by one of the five (5) Presidentially-declared disasters, it is expected there will be no existing tenants eligible for relocation benefits. Should there be residents in any of the acquired properties, potential awardees must follow the residential anti-displacement and relocation plans in effect and outlined in the State's approved Consolidated Plan and all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Act (URA) of 1970. These regulations may be found at 49 CFR Part 24.

3. Rehabilitation of properties acquired for assistance under the CDBG Disaster Program.
4. Demolition of properties acquired for assistance under the CDBG Disaster Program for the purpose of rehabilitation, reconstruction, or new construction of affordable rental housing.
5. Reasonable developer's fees related to CDBG Disaster Program-assisted housing rehabilitation or construction activities. For purposes of the CDBG Disaster Program, "reasonable" shall be defined as not exceeding ten percent (10%) of total CDBG Disaster funds allocated.
6. New construction of affordable housing for rental to eligible tenants.
7. Rental of residential properties acquired or acquired/rehabilitated using CDBG Disaster funds.
8. General administration and planning activities, provided the costs do not exceed five percent (5%) of total CDBG Disaster funds allocated.

#### **K. Fund Disbursement:**

CDBG Disaster Funds will be provided to approved recipients in a **manner consistent with fund distribution of other ADFA resources** approved for the affordable rental housing activity, with the following exceptions:

- Approved developer's fees may not exceed ten percent (10%) of the recipient's total CDBG Disaster Funds allocation, and
- Priority will be given to projects that can award contracts based on bids within 120 days from the date the CDBG Disaster Funds are made available to the recipient(s).

Following ADFA Board approval of CDBG Disaster Program funds, the following disbursement processes will apply:

- Disbursement of CDBG Disaster funds will occur only when ALL of the following conditions have been satisfactorily met:
  - Required environmental review process must be satisfactorily completed.
  - Project closing documents shall reflect a project completion date acceptable to ADFA and the recipient of the CDBG Disaster funds. The CDBG Disaster Agreement will outline the payment of the CDBG Disaster funds (e.g., how the funds will be disbursed, i.e., pro rata share, etc.). The CDBG Disaster fund agreement must contain provisions for the timing of CDBG Disaster fund disbursements.
  - ADFA staff must complete all Disaster Recovery and Grant Reporting (“DRGR”) system set-up and draw down procedures.
  - A pre-construction conference is conducted. The pre-construction conference must be conducted with the development team and an ADFA representative.
  - ADFA must issue a Notice to Proceed. To ensure that all CDBG Disaster Program requirements have been met, no work shall begin until all documentation has been executed and distributed, and ADFA issues a Notice to Proceed to the applicant contact entity. **ADFA will issue ONE Notice to Proceed upon satisfaction of all program requirements for all ADFA housing programs included in the combined application. NO APPLICATIONS WILL BE ACCEPTED ON A PROJECT WHERE CONSTRUCTION IS ALREADY UNDERWAY.**

All amounts of retainage will be released thirty (30) days after: 1) the final inspection is conducted and all work is found to be satisfactory and 2) upon ADFA’s receipt of all completion documentation. For purposes of the CDBG Disaster Program, completion documentation shall include:

- A properly executed certification of release of all liens
- Proof hazard insurance is in force on the assisted property, with ADFA named as Additional Insured
- Certificate of Occupancy issued by the local jurisdiction, if applicable
- Certification of final inspection, plumbing certification, and electrical certification.

**L. Reimbursement of Pre-Award Costs:**

ADFA will allow CDBG Disaster Program funds to be used to reimburse eligible pre-award costs to entities approved for an award of CDBG Disaster Program funds, contingent upon the pre-award costs being included and documented in the applicant’s application and adherence to all applicable requirements, such as environmental review and Uniform Relocation Act (URA). If the applicant is NOT approved for an award of CDBG Disaster Program funds, no reimbursement for pre-award costs will be allowed. Examples of allowable pre-award costs include, but are not limited to, appraisal fees, costs of a market study, costs of feasibility studies, and preparation of rehabilitation cost estimates. The most stringent requirements of any source of funds used in the development budget will apply to the project.

**M. Combining CDBG Disaster Program funding with Other Forms of Funding Assistance:**

CDBG Disaster Program funds are expected to be used efficiently, effectively, and encourage partnerships with other entities. ADFA anticipates that the CDBG Disaster Program funds will be used in conjunction with other affordable housing resources. To that end, ADFA requires that the CDBG Disaster Program funds be leveraged to the greatest extent possible with additional, firmly committed and available funding sources appropriate for use in the development or redevelopment of affordable housing. Following is contact information for three (3) possible sources of funding, which could be used with CDBG Disaster Program funds:

USDA Rural Development – Attention: Multi-Family Department, 700 West Capitol Avenue, Little Rock, AR 72201

ADFA Low-Income Housing Tax Credit Program – ADFA, Attention: Multi-Family Department, 423 Main Street, Suite 500, Little Rock, AR 72201

ADFA HOME Investment Partnerships Program – ADFA, Attention: HOME Program Manager, 423 Main Street, Suite 500, Little Rock, AR 72201.

**N. Applicable Rent Limits:**

All housing assisted with CDBG Disaster Program funds must have affordable rents. CDBG Disaster Program fund recipients must use the allowable LIHTC rents, at a minimum, but will be required to use the allowable rents of the most stringent rents required of any program used in the development financing. Applicable 2009 LIHTC and HOME Program rents are included herein, but will become obsolete as soon as HUD issues the 2010 LIHTC and HOME Program rents.

**O. Applicable Project Affordability Requirements:**

All CDBG Disaster Program-assisted rental units must remain affordable to and occupied by eligible tenants for a period of time that varies in accordance with the per unit level of CDBG Disaster Program assistance. The following amounts and minimum time periods will be used as the applicable affordability requirements for the CDBG Disaster Program:

<u>CDBG Disaster Asst. Per Unit</u>	<u>Minimum Affordability Period</u>
Under \$15,000	5 Years
\$15,000 - \$40,000	10 Years
Over \$40,000	15 Years
New Construction or Acquisition of Newly Constructed Rental Housing	20 Years

Affordability periods may be extended at the option of the recipient of CDBG Disaster Program funds, with ADFA approval. Rent, occupancy, and affordability requirements will be enforced through ADFA-approved covenants, mortgages, or deed restrictions running with the property. Rental property owners/managers will be required to document that the required percentage of units are occupied by eligible households for the entire, applicable affordability period. The required percentage of units will be calculated on a pro rata basis by the percentage of CDBG Disaster Program funding in relation to the total development budget. Income to establish tenant eligibility must be determined and documented when a CDBG Disaster Program-funded unit is initially occupied and at unit turnover by a new tenant household.

When CDBG Disaster Program funds are used in conjunction with other funds or financing programs, the more stringent rent and occupancy regulations will apply.

**P. Performance Standards and Recapture of Funds:**

ADFA requires successful applicants to commence and complete funded activities within certain agreed-upon time frames. Using the time line information provided in the CDBG Disaster Program application as a starting point, the successful applicant and ADFA will reach agreement on what activities or percentage of activities must be completed by certain deadlines, which will affect disbursement of CDBG Disaster program funds. The established time frames and required actions to be completed will be outlined in the CDBG Disaster Program agreement, which shall be executed by both ADFA and the successful applicant.

Substantial progress must be made according to the established time frames. Failure to adhere to the established performance standards will be grounds for ADFA to take corrective and remedial actions designed to prevent a continuation of the noncompliance, mitigate, to the extent practicable, any adverse consequences of the noncompliance, and to prevent recurrence of the noncompliance. Such corrective or remedial actions may include adoption of plans with specific required actions and time frames to correct the noncompliance, canceling or revising noncompliant activities to ensure compliance, suspending disbursement of CDBG Disaster funds for activities affected by the noncompliance, rescinding part or all of the CDBG Disaster allocation, changing terms under which the CDBG Disaster funds were provided, and recapture of CDBG Disaster funds. ADFA reserves the right to take other remedies legally available to correct noncompliance and prevent its recurrence. Any recaptured CDBG Disaster funds will be available for reallocation to fund other eligible affordable housing activities. Recapture of CDBG Disaster funds from an approved applicant will be considered on any future requests for ADFA funding from the affected applicant.

**Q. Compliance Monitoring:**

All activities funded with CDBG Disaster Program funds will be periodically monitored for compliance requirements. During construction, ADFA inspectors will inspect any work completed using CDBG Disaster funds. The timing of such inspections will be addressed in

the pre-construction conference, but ADFA reserves the right to inspect any work completed with CDBG Disaster funds at any time. This right extends to HUD and any other authorized entity with oversight responsibilities of the CDBG Disaster Program. After the development is placed-in-service, ADFA Compliance Monitoring staff will periodically perform on-site property inspections, review of documentation, and monitor adherence to all applicable ADFA and CDBG Disaster Program requirements.

ADFA will perform on-site compliance and monitoring inspections of all CDBG Disaster Fund Program-financed developments during the applicable period of affordability. The purpose of the monitoring inspections is to determine and ultimately ensure compliance with all applicable regulations and requirements contained in this manual and CDBG Disaster Program regulations. In the event non-compliance occurs, ADFA staff will work with the property owner to re-establish compliance. Should the non-compliance continue or be incapable of being brought into compliance, ADFA will use any and all means at its disposal to recapture the CDBG Disaster funds and re-allocate them to projects in need of such assistance.

Failure to adhere to ALL applicable requirements as contained in CDBG Disaster Program regulations and the CDBG Disaster program agreement will be considered a default of the agreement and will be addressed by ADFA using any and all available remedies. The intent of any remedies required is to establish or re-establish program and agreement compliance. If full compliance by the successful applicant is not possible, ADFA will take any and all actions necessary to ensure compliance with all applicable requirements up to and including recapture of any unspent CDBG Disaster funds.

#### **R. CDBG and ADFA Reporting Requirements:**

CDBG Disaster Fund recipients will be required to and are responsible for reporting information related to the uses of CDBG Disaster Funds to ADFA in a timely manner to facilitate ADFA's reporting requirements. Specific reporting requirements will be delineated in the agreement executed between ADFA and the recipient.

#### **S. Energy Efficiency:**

To the extent feasible, ADFA strongly encourages applicants to incorporate modern, green building, and energy-efficient improvements in all CDBG Disaster-funded activities to facilitate long-term affordability, increased sustainability, and marketability of the assisted rental housing.

#### **T. Universal Design Standards Requirements:**

The following building design criteria must be included in all construction for all CDBG Disaster Program-funded projects, in accordance with the Arkansas Department of Human Services' *Arkansas Usability Standards in Housing: Guidance Manual for constructing Inclusive Functional Dwellings (AUSH)*.

1. Seven percent (7%) of all residential rental units within the development must comply with the Level 5, “All-Inclusive” usability criteria as set forth in the AUSH. The AUSH is available on the internet at the following website address: [www.studioaid.org](http://www.studioaid.org). Under the “Design” link, click on “standards.”
2. Each unit that is required to meet the Level 5, “All-Inclusive” usability criteria established in the AUSH must have at least one bathroom with an “accessible roll-in” shower facility with minimum dimensions of 60”x34,” or 42”x42” if a corner shower facility.
3. All ground level residential rental units in any building and all residential units with elevator access in any building in the development must comply with the Level I, “Visitable” usability criteria as set forth in the AUSH.
4. All exterior and interior doors intended for passage must provide for a minimum clear opening of 34.”
5. All residential units in the development will have “closed-fist” operability throughout the unit (e.g. single handle door levers vs door knobs, push stick lighting and environmental controls, cabinet doors can be opened with a closed fist, single handle faucets in bathrooms and kitchens).
6. All environmental controls must provide visual and tactile cues. For lighting, a “rocker” type switch is sufficient. For thermostats, a programmable and digital device with raised buttons is required.
7. All primary entries, not in a breezeway, must have a minimum roof covering of 5’ x 5’.
8. All primary entries must have an entry pad measuring at least 5’ x5’.
9. All sidewalks must be at least 5’ wide.

#### **U. Other Federal Requirements:**

CDBG Disaster Program awardees and funded activities must adhere to all applicable Federal requirements, unless specifically waived by HUD. Key requirements are listed below, but awardees are encouraged to familiarize themselves with the specific requirements of each Federal statute so as to ensure full compliance at all times.

##### **1) Equal Opportunity and Fair Housing:**

The state shall not exclude any organization or individual from participation under any program funded in whole or in part by CDBG Disaster Program funds on the grounds of age, disability, race, creed, color, national origin, familial status, religion, or sex. In addition, all CDBG Disaster Program participants must ensure their Equal Opportunity and Fair Housing policies related to activities funded by CDBG Disaster funds are

consistent with the current Consolidated Plan adopted by their respective jurisdiction or the current, approved State Consolidated Plan.

## **2) Affirmative Marketing:**

Any entity applying for CDBG Disaster Funds must adopt affirmative marketing procedures and requirements for all CDBG Disaster-assisted housing and submit such affirmative marketing plan with the CDBG Disaster Program application. The affirmative market plan and requirements for CDBG Disaster Program-assisted housing must be approved by ADFA prior to any CDBG Disaster Program funds being committed to a development. Affirmative marketing requirement and procedures must include ALL of the following:

- Methods for informing the public, owners, and potential tenants about fair housing laws and the policies of the local program
- A description of what CDBG Program-assisted housing owners will do to affirmatively market housing assisted with CDBG Disaster funds.
- A description of what owners will do to inform persons not likely to apply for housing without special outreach.
- Maintenance of records to document actions taken to affirmatively market CDBG Disaster Program-assisted units and to assess marketing effectiveness.
- A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

## **3) Environmental Review:**

For CDBG Disaster Program implementation purposes, the environmental effects of each activity must be assessed in accordance with the provisions of the National Environment Policy Act of 1969 and HUD's regulations at 24 CFR Part 58.

ADFA, as administrator of the CDBG Disaster Program, and the units of local government funded by ADFA will be responsible for carrying out environmental reviews for approved projects/programs. ADFA will approve the release of funds (ROF) for local governments and must request the release of funds (RROF) from HUD for any developments carried out by other types of entities. CDBG Disaster funds are approved as a conditional commitment until the environmental review process has been satisfactorily completed, with the option to proceed, modify, or cancel the project based upon the results of the review. ADFA reserves the right to require a Phase I Environmental Study as part of the environmental review process.

Awardees of CDBG Disaster funds may NOT execute contracts for purchase of properties that may be funded with CDBG Disaster funds until receiving written authorization from ADFA to do so.

#### **4) Flood Plains / Wetlands:**

CDBG Disaster funds may generally not be invested in housing located in an area identified by the Federal Management Agency (FEMA) as having special flood hazards. ADFA discourages development located in special flood hazard areas, but in some instances and with written permission from ADFA, houses located in a designated flood plain may be assisted. It is the responsibility of the applicant to evaluate any remedies to remove any properties from the flood plain and ensure the feasibility of the proposed plan. ADFA is willing to consider the proposed remedy and must approve the proposal in writing prior to approval of any CDBG Disaster allocation. The community must be currently participating in the National Flood Insurance Program, and flood insurance must be obtained and maintained on the CDBG Disaster-assisted property for the full period of affordability.

#### **5) Lead-Based Paint Requirements:**

The Lead-Based Paint Regulations described in 24 CFR Part 35 require that lead hazard evaluation and reduction activities be carried out for all development constructed before 1978 and receiving CDBG Disaster assistance. Application for rehabilitation funds for existing buildings constructed prior to 1978 must include a lead hazard evaluation, by appropriate lead-certified personnel. The application must also include a detailed lead hazard reduction plan, in accordance with the applicable regulations, and separately identify within the rehabilitation budget, the costs associated with reduction of lead hazards in accordance with the regulations and guidelines. All CDBG Disaster fund allocation will be contingent upon the applicant agreeing to complete lead hazard reduction, evidenced by a clearance report performed by appropriate lead-certified personnel. In a development where CDBG Disaster funds will be used on only a portion of the units, the lead-based paint requirement will apply to ALL units and common areas in the development.

#### **6) Labor Standards:**

Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financed in whole or in part with CDBG Disaster funds for residential property consisting of eight (8) or more CDBG Disaster-assisted units.

Davis-Bacon and related laws include the following:

- Davis-Bacon and Related Acts (40 USC 276a-276a-7)
- Contract Work Hours and Safety Standards Act (40 USC 327-333)
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c)
- Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.)

The construction bids and contract for any CDBG Disaster-assisted activity must contain the applicable wage provision and labor standards. Davis-Bacon does not apply to

projects using solely volunteer labor or to sweat equity projects. ADFA will monitor all developments subject to Davis-Bacon requirements to ensure compliance with all applicable regulations.

**7) Debarment and Suspension:**

ADFA requires all development team members and contracted entities participating in lower-tier transactions covered by 24 CFR 24 to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any entity from a federally funded transaction. Any participant that remains in a debarred or suspended condition shall be prohibited from participation in the ADFA CDBG Disaster Project as long as they are classified in this manner.

Note: ADFA reserves the right to require criminal background checks for all program participants as part of the application process. Please refer to ADFA's agency policy requirements for information regarding this item (See ADFA's Qualified Allocation Plan (QAP) for the LIHTC Program and/or ADFA's HOME Policy and Procedures Manual).

**8) Relocation:**

CDBG Disaster Program funds may be used to acquire properties intended for assistance with CDBG Disaster Program funding. Because properties to be acquired to receive CDBG Disaster Program assistance will have been negatively impacted by one of the five (5) Presidentially-declared disasters, it is expected there will be no existing tenants eligible for relocation benefits. Should there be residents in any of the properties acquired with CDBG Disaster funds, potential awardees must follow the residential anti-displacement and relocation plans in effect and outlined in the State's approved consolidated Plan and all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Act (URA) of 1970. These regulations may be found at 49 CFR Part 24.

**9) Audit:**

ADFA requires that local government and non-profit CDBG Disaster program recipients expending more than \$500,000 in Federal awards in a given fiscal year have an audit conducted in accordance with Generally Accepted Accounting Principals (GAAP) and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." An audit of CDBG Disaster funds must be submitted to ADFA annually on or before June 30 of each year.

**V. Procurement:**

Local governments, public agencies, and nonprofit organizations are required to adhere to all applicable procurement requirements in the selection and award of contracts for goods and

services. Therefore, all solicitation of bids for goods and services to be paid with CDBG Disaster funds must be conducted openly and competitively in accordance with Arkansas State Procurement guidelines, as applicable.

Developers are not subject to procurement requirements, but costs must be considered reasonable to be eligible under the program.

**W. Contractor Requirements:**

All general contractors working on all CDBG Disaster Program-funded developments must have an active license issued by the Arkansas Contractor’s Licensing Board (the “State Licensing Board”) as applicable and meet all requirements of contractors in the state of Arkansas, including securing Builder’s Risk insurance according to ADFA policies on contractor requirements. Contractors may not “share” a license. That is, ADFA will not allow one contractor to work from another contractor’s license.

All ADFA CDBG Disaster Program-funded projects must have a general contractor that is properly licensed by the Arkansas State Contractor’s Licensing Board. Any questions regarding licensing requirements, licensing issues, and a list of licensed contractors may be directed to the State Licensing Board at the following address:

Arkansas Contractor’s Licensing Board  
4100 Richards Road  
North Little Rock, AR 72117  
(501) 372-4661

In addition, any subcontractor, plumber, electrician, or HVAC contractor must be licensed. The recipient must use only reputable workmen, material suppliers and agents acceptable to ADFA in the completion of any activities funded by CDBG Disaster Program funds.

Any contractor or subcontractor who has been debarred or suspended by any entity or had a contractor license suspended by any entity within the previous twelve (12) months will be prohibited from participating in the CDBG Disaster Program. All general contractors working on all CDBG Disaster-funded developments must obtain one of the following: 1) a payment and performance bond; or 2) an Irrevocable Letter of Credit in the amount of the construction contract.

**X. Inspections:**

Inspections are required with all activities that are funded through the CDBG Disaster Program. ADFA currently has inspectors under contract that will be available as needed. Applicants must notify ADFA a minimum of 48 hours in advance to schedule inspections. ADFA staff will coordinate with recipients of CDBG Disaster funds and inspectors to schedule all inspections.

There are currently four (4) required inspections identified as follows:

Stage 1	Stage 2	Stage 3	Stage 4
Excavation	Plumbing top-out	Flooring systems	Final inspection
Metals	Electrical rough-in	Painting	
Termite treatment	Framing	Doors	
Rough-in plumbing	Roof	Cabinets	
Earth work	Interior wall systems	HVAC	
Water proofing (vapor barrier)	Exterior wall systems	Electrical top-out	
Footing	Ventilation	Special construction (elevators, etc.)	
Slab	Insulation	Appliances	

Additional inspections may be scheduled, as warranted. The ADFA inspector must attend any pre-construction meetings for CDBG Disaster Fund Program developments. When draws of CDBG Disaster funds are planned, the property must be inspected and approved to verify that all work performed to date has been completed satisfactorily. ADFA will make payments only on work that has been satisfactorily completed, inspected, and approved by an ADFA inspector.

CDBG Disaster fund Program awardees may fax or mail their payment request, with all of the required documentation, to ADFA at the following address:

Arkansas Development Finance Authority  
 Attn: CDBG Disaster Fund Program  
 P. O. Box 8023  
 Little Rock, AR 72203-8023  
 Fax : (501) 682-5859

**Y Change Orders:**

ADFA realizes that unplanned situations occur in development occasionally. In the event it becomes absolutely necessary to modify an existing contract, CDBG Disaster Program participants must submit a REQUEST for approval of any proposed change order to ADFA staff on the proper ADFA form. ALL CHANGE ORDERS MUST BE APPROVED BY ADFA PRIOR TO INITIATING THE PROPOSED WORK. No payment of CDBG Disaster Program funds will be made for work performed by a change order that has NOT been previously approved by ADFA.

**Z. Construction Contingency:**

ADFA allows up to ten percent (10%) of allocated CDBG Disaster funds to be set aside for construction contingencies. The total amount for all work on a CDBG Disaster Fund development (including any contingency amount) may not exceed the ADFA-established per unit limit in effect at that time.

**AA. Closing of Transactions:**

ADFA will select or approve a closing entity to provide closing services for all CDBG Disaster Program transactions using ADFA-approved documents. The services will be available and

required in the county where the development is located. CDBG Disaster Program staff will provide closing instructions to the closing entity for all CDBG Disaster Program transactions. ADFA will be responsible for payment of costs associated with closing the CDBG Disaster Program portion of the transaction.

**BB. Program Income:**

Any approved development receiving CDBG Disaster Program funds, which generates program income as a direct result of CDBG Disaster Program-funded activities must immediately remit any and all program income received from CDBG Disaster Program-funded activities directly to ADFA. ADFA will reallocate any program income received to eligible CDBG Disaster Program applicant(s) for eligible CDBG Disaster Program activities. In addition, any cash received as CDBG Disaster Program program income will be disbursed first, prior to making any further U.S. Treasury drawdown requests for additional CDBG Disaster Program funds.