



DEPARTMENT OF  
**HOUSING**



# CDBG-DR

**CROSS-CUTTING GUIDELINES**  
**APPLICABLE TO ALL CDBG-DR PROGRAMS**

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PUERTO RICO DEPARTMENT OF HOUSING  
CDBG-DR PROGRAM GUIDELINES  
**CROSS-CUTTING GUIDELINES**  
VERSION CONTROL

<b>VERSION NUMBER</b>	<b>DATE REVISED</b>	<b>DESCRIPTION OF REVISIONS</b>
<b>1</b>	<b>February 14, 2019</b>	<b>Original Guidelines</b>
<b>2</b>	<b>October 27, 2020</b>	<b>This version supersedes version 1 in its entirety.</b>
<b>3</b>	<b>June 1, 2021</b>	<b>Section 6, Section 12.1, Section 17, and other minor changes throughout the document. Additions are marked in gray highlight for your convenience.</b>

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## 1 Overview

Pursuant to the Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115-56) approved on September 8, 2017, as amended, and announced through Federal Register Vol. 83, No. 28, 83 FR 5844, on February 9, 2018, an allocation of Community Development Block Grant-Disaster Recovery (**CDBG-DR**) funds was approved by the United States Department of Housing and Urban Development (**HUD**) to aid the Government of Puerto Rico in addressing unmet needs in the wake of Hurricanes Irma and María. An additional allocation of \$8.22 billion for recovery was allocated to Puerto Rico pursuant to the Bipartisan Budget Act of 2018, as amended (Pub. L. 115-123), approved on February 9, 2018, and announced on August 14, 2018 through the Federal Register Vol. 83, No. 157, 83 FR 40314.

Through Federal Register Vol. 85, No. 17, 85 FR 4681, dated January 27, 2020, HUD allocated an additional amount of \$3.83 billion in CDBG-DR funds for the purpose of assisting in long-term recovery from major disasters that occurred in 2017, 2018, and 2019. Said allocation was made pursuant to the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. 116-20), which required HUD to allocate \$431 million to address unmet infrastructure needs for grantees that received an allocation for a disaster that occurred in 2017, of which \$277.85 million were allocated to Puerto Rico.

With these allocations of funding, the Puerto Rico Department of Housing (**PRDOH**) aims to lead a transparent, comprehensive recovery to benefit the residents of Puerto Rico. PRDOH holds accountability and is committed to the responsible, efficient, and transparent administration of CDBG-DR grant funding.

The requirements stated in these Cross-Cutting Guidelines apply to all programs described in PRDOH's Action Plan and all subsequent amendments. The Action Plan may continue to be updated as programs evolve, and additional allocations are released.

**You may access all CDBG-DR Program Guidelines in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/program-policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/politicas-de-programas/>.**

**You may access all CDBG-DR General Policies in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## 2 Financial Management

Financial management is the process of using funds effectively, efficiently, and transparently. It is accomplished through a combination of procedures, methods, rules of conduct, and standards. Effective and efficient financial management systems have key characteristics in common, which include:

- Transparency and clear accountability at all levels of operation;

- All parties are held accountable for making good financial decisions and following all rules and regulations;
- Expenditures are planned, then checked against the plan (e.g., an approved budget);
- Costs are reasonable, necessary, allowable, and appropriately allocated to the correct funding source;
- Funds do not sit idle and are protected from misuse;
- Records are clearly understood by any certified public accountant (CPA); and
- Reports generated are useful to program managers and agency leadership.

Federal Financial Management requirements and guidelines are established in 2 C.F.R. Part 200, Treasury Circulars, and HUD regulations. PRDOH and its subrecipients must adhere to the requirements at 2 C.F.R. § 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." The Uniform Administrative Requirements require PRDOH and its subrecipients to maintain adequate control and accountability over all funds, property, and other assets and ensure that CDBG-DR funds are used solely for authorized purposes.

Pursuant to the Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub.115-56 and Pub. L. 115-72) and the financial regulations applicable, the PRDOH maintains and has in place proficient financial controls. As the grantee, the Government of Puerto Rico ensures that PRDOH, as well as those administering CDBG-DR resources, continuously demonstrate conformity to HUD's financial management requirements encompassed in 83 FR 5844. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; and Lump Sum Drawdowns. As provided in 83 FR 5844, policies addressing these areas are subject to change and may be updated throughout the life of the program. These policies may exist in stand-alone or complimentary documents and procedures. PRDOH's financial management system and certifications, as reviewed by HUD and approved as part of the initial Grant Agreement<sup>1</sup>, ensures that funds are managed with high levels of accountability and transparency.

PRDOH's Financial Management practices adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current, and reviewed periodically; and
4. Audits are conducted in a timely manner and in accordance with applicable

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<sup>1</sup> Dated September 20, 2018



standards as outlined in 2 C.F.R. § 200, Subpart F, on audit requirement.

**You may access the CDBG-DR Financial Policy and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## **2.1 Cash Management**

Subrecipients are required to have procedures in place to minimize the time elapsed between receipt of funds from the grantee and the actual disbursement of those funds. CDBG grant funds have two (2) general methods to transfer these funds to subrecipients: reimbursement and cash advance.

The reimbursement method shall be the preferred method for disbursement to subrecipients. The reimbursement method entails a transfer of grant funds to the subrecipient based on actual expenditures by the subrecipient before the request for funds. The subrecipient shall submit to PRDOH on a monthly basis, or as otherwise required by the Subrecipient Agreement (SRA) executed with PRDOH, Requests for Reimbursements of activities under the terms of their executed SRA and consistent with the approved Budget and Scope of Work. The subrecipient shall include all supporting documents required by PRDOH, **which** include, but is not limited to, the following: invoices/accounts, timesheets, monthly reports, and any other document necessary for payment.

The cash advance method involves the transfer of CDBG-DR funds from PRDOH based upon the subrecipient's request (and information on obligations) before the actual cash disbursements have been made by the subrecipient. Both methods must be implemented in compliance with the cash management requirements in accordance with 2 C.F.R. Part 200 as applicable, and 31 C.F.R. Part 205.

In addition to federal and state requirements applicable to the administration of CDBG-DR funds, as specified through published PRDOH policy, the Subrecipient shall comply with the requirements, policies, regulations, and criteria contained in the SRA and in the PRDOH Subrecipient Management Policy.

The Subrecipient Management Policy sets forth direction for the administration of programs funded by the PRDOH CDBG-DR Program under a Subrecipient Agreement (SRA) with a non-federal entity. It is intended to establish the policy pertaining to PRDOH management and oversight of Subrecipient activities as well as provide the Subrecipient with the general expectations for Program compliance. Although some portions of the policy involve complex Federal regulations, it summarizes the essential elements for proper Program operation applicable to the key management areas. The Policy is neither intended to be all-inclusive nor so restrictive that it cannot be amended. The Policy does not apply to entities who were determined to be Contractors by the PRDOH, according with 2 C.F.R. § 200.331. Furthermore, the Subrecipient shall also comply with applicable

federal, state, and local codes, regulations, statutes, ordinances, and laws applicable to the administration of CDBG-DR funds. Failure to comply with any of the above may result in forfeiture of the CDBG-DR funding provided to the Subrecipient under an SRA, and consequently in the termination of the SRA.

**You may access the Subrecipient Management Policy and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

### 3 Cost Principles

#### 3.1 Reasonable Cost

As found in 2 C.F.R. Part 200, Subpart E, cost reasonableness and cost principles guidelines have been established for recipients of Federal awards. PRDOH follows these principles as the entity responsible for the administration of a Federal award and it assumes responsibility for administering Federal funds. As such, it is especially important that adherence to these principles be followed when a non-Federal entity is predominately federally funded.

A cost is considered reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. When assessing cost reasonableness, PRDOH shall consider:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of PRDOH or the proper and efficient performance of the Federal award.
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to PRDOH, its employees, where applicable, its students or membership, the public at large, and the Federal Government.
- Whether PRDOH significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

#### 3.2 Allowable Cost

Basic guidelines set forth by the United States Office of Management and Budget (OMB)<sup>2</sup> establish a cost is allowable under the CDBG Program if:

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<sup>2</sup> OMB Circulars A-87 and A-122. See: <https://obamawhitehouse.archives.gov/omb/circulars/a087/2004> and <https://georgewbush-whitehouse.archives.gov/omb/circulars/a122/a122.html>.

- The expenditure
  - Is necessary, reasonable, and directly related to the grant.
  - Has been authorized by the grantee.
  - Is not prohibited under Federal, state, or local laws or regulations.
  - Is consistently treated.
- The cost
  - Must be allocable to the CDBG Program.
  - Is net of all applicable credits.

PRDOH shall consider cost allowability following the general criteria as described at 2 C.F.R. § 200.402 through § 200.411:

- Be necessary and reasonable for proper and efficient performance and administration of CDBG-DR grant as noted under the provisions of 2 C.F.R. § 200.404;
- Conform to any limitations or exclusions set forth under the provisions of 2 C.F.R. § 200.408, federal laws, terms and conditions of the federal award, or other governing regulations as to types or amounts of cost items;
- Be consistent with policies, regulations, and procedures that apply uniformly to both the CDBG-DR grant and other activities of PRDOH;
- Be accorded consistent treatment; a cost may not be assigned to the CDBG-DR Program as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Program as an indirect cost.
- Be determined in accordance with GAAP;
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by federal law or regulation (e.g., FEMA match is permitted);
- Be adequately documented;
- Be allocable to the CDBG-DR grant under the provisions of 2 C.F.R. § 200.405;
- Be net of applicable credits (that is, any credits such as discounts or price adjustments must be deducted from the total costs charged);
- Be authorized or not prohibited under state or local laws or regulation.

### **3.3 Cost Classification and Allocation**

Costs charged to the CDBG-DR Program must be allocable and classified to the CDBG-DR Program (2 C.F.R. § 200.405 and 2 C.F.R. § 200.412). There is no universal rule for classifying certain costs as either direct or indirect. A cost may be direct with respect to some specific service or function, but indirect with respect to the CDBG-DR Program; therefore, it is essential that each cost:

- It's treated consistently with other costs incurred for the same purpose in like circumstances either as a direct or an indirect cost to avoid possible double-

charging of Federal awards (i.e., the PRDOH and its subrecipients must treat costs consistently for all grant programs); and

- Meet one (1) of the following three (3) conditions:
  - Is incurred specifically for the CDBG-DR Program.
  - Benefits the CDBG-DR Program and other work and can be distributed in proportions that may be approximated using reasonable methods.
  - It is necessary to the overall operation of the organization, even if a direct relationship to any particular cost objective cannot be identified (e.g., indirect cost).

Any costs allocable to a particular federal award or cost objective (such as CDBG-DR) may not be charged to other federal awards to overcome funding deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the federal award, or for other reasons.

Indirect costs are defined as those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved<sup>3</sup>. For a cost to be chargeable to the Program, it must be necessary, reasonable, allowable, and allocable pursuant to §200.403, 200.404 and 200.405, respectively.

**You may access the CDBG-DR Financial Policy and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

**Also, you can also find more information and a detailed explanation about costs in the Costs Guidelines CDBG-DR Video Reference at: <https://www.youtube.com/watch?v=ENYJ6TOKdBg>.**

## 4 Program Income

The PRDOH acknowledges the program income definition at 24 C.F.R § 570.489(e) and Federal Register Notice 83 FR 5844 for CDBG-DR funds allocated under Public Law 115-56. In accordance with those definitions, program income for the PRDOH CDBG-DR program is defined as the following:

Program income is defined as gross income generated from the use of CDBG-DR funds and received by a State or a subrecipient of a State, except as provided in 83 FR 5844 pertaining to the net income from the use or rental of real property owned by a State,

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<sup>3</sup> 2 C.F.R. § 200.56 – Indirect (facilities & administrative (F&A)) costs

local government, or subrecipient thereof that was constructed or improved with CDBG-DR funds, and received by a State or a subrecipient of a State.

The PRDOH does not anticipate receiving Program Income, directly or through its subrecipients, until September 2021. Policies and procedures will be developed and implemented if, and when, Program Income is received.

Program income includes, but is not limited to, the following:

- Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds.
- Proceeds from the disposition of equipment purchased with CDBG-DR funds.
- Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG-DR funds, less the costs incidental to the generation of the income (i.e., net income).
- Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG-DR funds.
- Payments of principal and interest on loans made using CDBG-DR funds.
- Proceeds from the sale of loans made with CDBG-DR funds.
- Proceeds from the sale of obligations secured by loans made with CDBG-DR funds.
- Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.
- Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement.
- Gross income paid to a State, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance.

If Program Income is generated by a project that is only partially assisted with the CDBG-DR funding, the amount of Program Income attributable to CDBG-DR will be prorated to account for the percentage of the project funded by CDBG-DR.

Program income does not include the following:

- Income earned from the investment of initial proceeds of a grant advance from the U.S. Treasury; interest earned on loans or other forms of assistance with CDBG-DR funds that are used for activities that are determined by HUD to be ineligible; interest earned on reimbursements to the program account prior to the use of the reimbursed funds for eligible activities;

- Any income received in a single program year by the PRDOH and its subrecipients, which does not exceed \$35,000. Note: it is the policy of PRDOH to report 100% of Program Income generated by the CDBG-DR program in the Disaster Recovery Grant Reporting (**DRGR**) system;
- Funds collected through special assessments to recover non-CDBG-DR outlays of capital improvements;
- Proceeds from the disposition of real property by a subrecipient that was acquired or improved with CDBG-DR funds five (5) years after the termination of the subrecipient agreement (certain conditions apply - refer to 24 C.F.R. § 570.503(b)(7));
- The following classes of interest<sup>4</sup> will be remitted to HUD for transmittal to the U.S. Treasury, and will not be returned to PRDOH's CDBG-DR line of credit 24 C.F.R. § 570.489(e)(2)(iv)(B):
  - Interest income from loans or other forms of assistance provided with CDBG-DR funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Housing and Community Development Act of 1974 (**HCD**), 42 U.S.C. § 5301 et seq., to fail to meet a national objective in accordance with the requirements of 24 C.F.R. § 570.483, or fail to substantially to meet any other requirement of Subpart I of the HCD Act;
  - Interest income from deposits of amounts reimbursed to PRDOH's program account prior to PRDOH's disbursement of the reimbursed funds for eligible purposes; and
  - Interest income received by a municipality on deposits of grant funds before disbursement of the funds for activities, except that the municipality may keep interest payments of up to \$100 per year for administrative expenses otherwise permitted to be paid with CDBG- DR funds.

The PRDOH may require subrecipients to remit Program Income as it is generated or retain the Program Income for other eligible uses.

HUD 83 FR 5844 allows PRDOH to transfer Program Income generated by the CDBG-DR grant to its annual CDBG program before close-out of the CDBG-DR grant, or to any annual CDBG-funded activities carried out by a municipality. Program Income received after close-out may also be transferred to the annual CDBG Program. In all cases, any Program Income that is transferred to the annual CDBG Program will not be subject to

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<sup>4</sup> 2 C.F.R. § 200.305(b)(9) Allows interest earned up to \$500 per year may be retained by PRDOH for administrative expenses as opposed to being transmitted to U.S. Treasury.

the waivers and alternative requirements of the Federal Register Notice but will instead be subject to regular CDBG program rules. PRDOH does not plan to transfer CDBG-DR.

Program Income, but if such a transfer is planned, PRDOH will develop a policy for transferring Program Income prior to transfer and program closeout.

HUD allows PRDOH and its subrecipients to establish revolving funds to carry out specific, identified CDBG-DR funded activities, such as housing rehabilitation or economic development loan programs. However, PRDOH does not anticipate establishing revolving funds or allowing subrecipients to establish revolving funds. A revolving fund is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not allowed to be disbursed for non-revolving fund activities.

The PRDOH may also establish a revolving fund to distribute funds to local governments to carry out specific, identified activities. The same requirements apply to this type of revolving fund. No revolving fund shall be directly funded or capitalized with CDBG-DR grant funds, pursuant to 24 C.F.R. § 570.489(f)(3).

The requirements of CDBG-funded revolving funds include:

- Revolving funds must be held in interest-bearing accounts.

Interest earned on revolving fund balances must be remitted to the U.S. Treasury, not less than annually. (Note: Interest paid by borrowers of CDBG-DR-funded loans made from the revolving fund is considered Program Income and subject to the CDBG-DR Program Income requirements).

As provided in 83 FR 5844, PRDOH is required to use the DRGR system to draw grant funds for each activity. PRDOH is also required to use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations. Allowability of retention of program income and requirements for tracking and reporting program income will be prescribed in subrecipient agreements as applicable to each program.

## **5 Federal Funding Accountability and Transparency Act (FFATA)**

The Federal Funding Accountability and Transparency Act of 2006 (**FFATA**), as amended (Pub. L. 109-282), was signed with the intent of reducing wasteful government spending

and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. Part 170 outlines the requirements of recipients in reporting information on subawards and executive total compensation under FFATA legislation. PRDOH, as grantee of CDBG-DR funds, is subject to these requirements.

Prime awardees -prime contractors and prime grant recipients- are required to capture and report subawards and subcontracts in the FFATA Subaward Reporting System (FSRS), the reporting tool for Federal prime awardees. This information reported will then be displayed on a public and searchable website: [www.USASpending.gov](http://www.USASpending.gov). A subaward is granted whenever a prime award recipient awards an eligible subrecipient a portion of the award to provide support for the performance of any portion of the project or program for which the award was received. Subawards are granted via a legal instrument or agreement considered to be a contract between the two entities. A subrecipient is any entity receiving a subaward from the prime recipient and is accountable to the recipient for the use of Federal funds provided by the subaward.

## 6 Procurement

### 6.1 Procurement Manual for CDBG-DR Program, Regulation No. 9205

The Uniform Guidance procurement requirements (2 C.F.R. part 200, Subpart D) are applicable to CDBG-DR funded projects. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price. These requirements are to be adhered to by all parties participating in the procurement.

On August 4, 2020, PRDOH approved "Procurement Manual for the CDBG-DR Program", Regulation No. 9205, effective on September 3, 2020 (**Regulation No. 9205**), which repeals the "Procurement Manual and Contractual Requirements for CDBG-DR", Regulation No. 9075 of February 26, 2019 (**Regulation No. 9075**); and any other previously regulation, manual, administrative order, or circular letter regarding this matter. The Procurement Manual Frequently Asked Questions was also approved on August 25, 2020.

**As of the date of approval of these Cross-Cutting Guidelines, Regulation No. 9205 are under revision and pending approval. However, all published procurements before April 28, 2021 must abide the Procurement Manual, Regulation No. 9205.**

Unless specified otherwise, the Subrecipient shall procure all materials, property, equipment, or services in accordance with the requirements set forth in 2 C.F.R. §200.318 through §200.327. PRDOH monitors the procurement actions of their Subrecipients as part of their oversight.

You may access the Procurement Manual for the CDBG-DR Program and Procurement Manual Frequently Asked Question in English and Spanish at <https://cdbg-dr.pr.gov/en/cdbg-dr-procurement/> or <https://cdbg-dr.pr.gov/adquisiciones-cdbg-dr/>.



Information on the procurement processes under the CDBG-DR funds is also available in English and Spanish at <https://www.cdbg-dr.pr.gov/en/procurement-and-nofa/> or <https://www.cdbg-dr.pr.gov/subastas-y-nofas/>.

## 6.2 Procurement Requirements Non-Federal Match Program- AO 21-19

On April 14, 2021, PRDOH issued the Administrative Order 21-19,<sup>5</sup> to grant the Non-Federal Match Program (NFMP) an exemption from complying with the Procurement Manual for the CDBG-DR Program and to order the implementation of the recommendations set forth by FEMA in the *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program*, Art. VII, section D(3). The Art. VII, section D(3) establishes:

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

*State CDBG-DR Grantees that adopt FEMA PA procurement requirements for activities that satisfy PA Local Match must obtain and maintain records to document how the procurement complied with PA procurement requirements. Additionally, if not completed by FEMA, the CDBG-DR Grantee may need to take additional steps to evaluate the cost or price of the product or service. PA Applicants that procure goods or services before they know whether CDBG-DR grants are available for Local Match may wish to include in the procurement solicitation documents that the contract may be amended from time to time to expand the scope to include work funded by other Federal sources, subject to applicable requirements. This will allow the contract to be modified in the future to include terms mandated for CDBG-DR assisted*

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<sup>5</sup> Through Administrative Order 21-28, it was clarified that the exception related to the NFMP is applicable to all subrecipients.

*contracts (e.g., ability to hire section 3 residents, ability to subcontract with section 3 businesses, comply with Davis Bacon, or add a liquidated damages provision).*

The Administrative Order 21-19 has immediate and retroactive effectiveness.

### **6.3 Procurement Requirements for Municipalities – AO 21-20**

On April 14, 2021, PRDOH also issued the Administrative Order 21-20, which excludes Municipalities from compliance with the Regulation No. 9205 and allows them to conduct their procurement procedures related to the CDBG-DR Program using the dispositions of 2 C.F.R. § 200.318 through 2 C.F.R. § 200.327.

PRDOH implemented the disposition of 2 C.F.R. § 200.317 that establish that all other non-Federal entities, including subrecipients, must follow the procurement standards provided in 2 C.F.R. § 200.318 through 2 C.F.R. § 200.327. Therefore, all Municipalities are exempt of complying with the Regulation No. 9205, and the acquisition procedures must comply with the dispositions of 2 C.F.R. § 200.318 through 200.327. The Administrative Order 21-20 has immediate and retroactive effectiveness.

### **6.4 Procurement Requirements for Subrecipients – AO 21-27**

On April 28, 2021, PRDOH issued the Administrative Order 21-27, which excludes all Subrecipients from compliance with the Regulation No. 9205. Consequently, their procurement processes are subject to the standards set forth in 2 C.F.R. § 200.318 through 2 C.F.R. § 200.327. Lastly, the Administrative Order 21-27 provide that **the procurement processes that were published before April 28, 2021 will continue to comply with Regulation No. 9205**. Nonetheless, all Subrecipients are required to keep comprehensive records and documentation of their procurement processes to allow PRDOH to effectively carry out monitoring processes when required.

## **7 Debarment and Suspension**

The regulations implementing Executive Orders No. 12549 and 12689, in 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

A contract award must not be made to parties listed on the government wide exclusions in the System for Award Management (**SAM**). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No.12549.

**You may access the CDBG-DR Subrecipient Management Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

You can also find more information and a detailed explanation about Subrecipients management in the Management and Handling Video Reference at: <https://www.youtube.com/watch?v=i7j9DXr1cvw>.

## 8 Anti-lobbying Restrictions

As per 31 U.S.C. § 1352 (Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions) and 24 C.F.R. Part 87 (New Restrictions on Lobbying), no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Compliance is ensured by requiring each tier to certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

## 9 Monitoring

The following regulations and Grant Agreement conditions require the PRDOH to monitor each program, function or activity funded by its CDBG-DR award(s) to ensure compliance with applicable Federal requirements and to determine if performance expectations are being achieved. This includes monitoring of CDBG-DR funded activities carried out by subrecipients, contractors, and PRDOH.

- **2 C.F.R. 200.328 – Monitoring and Reporting Program Performance.** Requires PRDOH to monitor each program, function or activity funded by its CDBG-DR award to ensure compliance with applicable Federal requirements and determine if performance expectations are being achieved.
- **2 C.F.R. 200.331 – Requirements to Pass-through Entities.** Requires PRDOH to evaluate each subrecipient's risk of non-compliance with rules and regulations; and monitor subrecipient to ensure funds are used for authorized purposes, in compliance with regulations; and that performance goals are achieved.
- **24 C.F.R. 570.492 – State's Review's and Audits.** Requires PRDOH to make reviews

of units of general local government to meet the requirements of section 104(e)(2) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

- **Federal Register – 83 FR 5844 of February 9, 2018.** Requires PRDOH to prepare and submit procedures to detect and prevent fraud, waste, and abuse that: Indicate how PRDOH will verify the accuracy of information provided by applicants; and provide a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring and which items are monitored.
- **Second Grant Agreement (February 2020).** Requires PRDOH to develop a monitoring plan for overseeing the performance of subrecipients, including: an evaluation on the subrecipient's risk of non-compliance with rules and regulations; and a plan to monitor the subrecipient activities to ensure subawards are used in compliance with rules and regulations, and performance goals are achieved.

Monitoring is the principal means by which PRDOH, as grantee of the CDBG-DR funds, ensures that programs and technical areas are carried out efficiently, effectively, and in compliance with applicable laws and regulations. Monitoring aims to assist CDBG-DR funded programs with improving performance, increasing capacity, and avoiding or remedying instances of non-compliance. Monitoring also provides a means to offer technical assistance for existing, or upcoming changes to, requirements and regulations.

Monitoring is not limited to a one-time event but is rather an ongoing process that assesses the quality of CDBG-DR funded program performance over the life of the contract or subrecipient agreement and involves continuous communication and evaluation.

Monitoring aims to:

- Gauge the effectiveness and progress of monitored entities in meeting the program objectives, goals, and requirements set forth in written agreements;
- Act as a tool to assist management in identifying issues that may compromise program integrity, funding, and service delivery for remediation;
- Act as a tool to identify opportunities to strengthen program capacity and quality of service delivery; and
- Ensure that programs are operating efficiently and effectively and that CDBG-DR funds are being used appropriately.

PRDOH Monitoring Team will develop an annual monitoring plan based on the results of a risk analysis conducted following a predetermined risk assessment criterion consistent with HUD requirements in the Community Planning and Development Monitoring handbook (6509.2 Rev-7) and CPD Notice 14-04, of March 1, 2014. The risk analysis provides a means by which the PRDOH CDBG-DR Monitoring Division can identify the risk of fraud, waste, abuse, and non-compliance for each entity implementing CDBG-DR funded activity, and the Monitoring Plan will identify each monitoring event that will be

conducted, type of monitoring event, technical assistance to be provided, projected timeline and staffing resources needed.

All entities in receipt of CDBG-DR funds will receive a financial capacity monitoring event once PRDOH completes a drawdown the DRGR system for the first time to reimburse the entity for funds incurred and invoiced, or if **six (6) months** pass after the written agreement is executed, whichever comes first. This financial capacity monitoring event also automatically places the entity in the risk assessment pool. Once in the risk assessment pool, future monitoring events will be determined by the entity's risk assessment score determined on a bi-annual basis.

There are four (4) types of monitoring events that can be performed:

- On-Site Review;
- Desk Review;
- Financial Capacity Review; and
- Closeout Review

To ensure compliance at all levels (PRDOH CDBG-DR Program areas, PRDOH CDBG-DR Finance Division, subrecipients and contractors), all monitoring events will focus not only on the monitored entity, but also on relevant PRDOH CDBG-DR Program areas and PRDOH CDBG-DR Finance Division.

Areas or topics reviewed during a monitoring event may result in the identification of observation, concerns, and/or findings for the Monitored Entity and/or PRDOH programmatic area or Finance Division responsible for the monitored area or topic. When deficiencies are observed during a monitoring event, technical assistance, including formal trainings, verbal or written advice and documentation and guidance, may be provided to assist in the resolution of the deficiency, as needed. All trainings will be a coordinated effort between the Monitoring Division and the programmatic area.

The PRDOH CDBG-DR Monitoring Manual may be updated, as needed, based on program design and changes to federal and local policies and requirements over the life of the grant.

**You may access the Monitoring Manual, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## **9.1 Single Audit**

Upon expending more than \$750,000 in federal funds in any given fiscal year, the PRDOH Finance Division shall schedule a single audit with an independent auditor. In preparation for the annual audit, the CDBG-DR Finance Director shall perform a self-assessment of internal controls using the Standards for Internal Control in the Federal Government

guidance document issued by the Comptroller General of the United States, which will ensure compliance with 2 C.F.R. § 200.303(a). All PRDOH CDBG-DR subrecipients that expend more than \$750,000 of federal funds in a fiscal year must also perform a single audit and submit to PRDOH upon request.

A subrecipient that expends less than \$750,000 in Federal awards during the entity's fiscal year is exempt from audit requirements for that year, except as noted in 2 C.F.R. § 200.503, as amended.

All audit findings shall be recorded in detail by the PRDOH and shall detail both compliance of application and use of funds. Issues of non-compliance shall be categorized as either material or administrative. Grant recipients, subrecipients, program partners, or any party found to be in material non-compliance, or which received funds in error, may be required to repay grant or loan funds to PRDOH, as per the Terms and Conditions of their agreement. Grant recipients, subrecipients, program partners or any party found to be willfully fraudulent will be prosecuted.

## **10 Minority and Women Owned Business Enterprises (M/WBE)**

2 C.F.R. § 200.321 requires PRDOH, as a non-Federal entity defined in 2 C.F.R. § 200.321, to take necessary steps to ensure that all recipients, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance ensure that, when possible, contracts and other economic opportunities are directed to small and minority business enterprises (**MBE**), women-owned business enterprises (**WBE**), and labor surplus area firms.

Compliance is ensured by requiring, as applicable, subrecipients, program partners and contractors to make best efforts to achieve an overall minority business enterprises and women-owned business enterprises (together **M/WBE**) participation goal of twenty percent (20%) of the entire contract value consisting of ten percent (10%) percent for MBE and ten percent (10%) for WBE.

If, after making good faith efforts, a subrecipient is unable to meet M/WBE goals, subrecipients may submit a request for a M/WBE Waiver for their overall goal. The request must set forth the reasons for the inability to meet any or all of the participation requirements together with an explanation of the affirmative steps undertaken.

The following are considered affirmative steps<sup>6</sup>:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are

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<sup>6</sup> These affirmative steps are established in 2 C.F.R. § 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

solicited whenever they are potential sources;

- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed previous of this section.

**You may access the CDBG-DR Minority and Women Owned Business Enterprise Policy and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

**For more information of M/WBE, you may also access [www.cdbg-dr.pr.gov/en/section-3/enterprise-woman-minority-mwbe](http://www.cdbg-dr.pr.gov/en/section-3/enterprise-woman-minority-mwbe), in English; and [www.cdbg-dr.pr.gov/seccion-3/empresa-de-mujeres-minorias-mwbe/](http://www.cdbg-dr.pr.gov/seccion-3/empresa-de-mujeres-minorias-mwbe) in Spanish.**

## **11 Labor Standards**

### **11.1 Davis-Bacon Act (40 U.S.C. §3141-3148)**

The Davis-Bacon Act of 1931 and Related Acts (**DBRA**), as amended, 40 U.S.C. §3141-3148, applies to contractors and subcontractors carrying out construction work under a contract in excess of \$2,000.00 that is funded in whole or in part by applicable federal assistance. DBRA provides for the determination of prevailing wage rates and fringe benefits to corresponding PRDOH CDBG-DR programs, projects and activities. The higher prevailing wage rate between Federal Government and State must be adhered to and made applicable. Davis-Bacon also applies to residential construction which consists of projects involving the construction, alteration, or repair of eight (8) or more separate, contiguous single-family houses operated by a single entity as a single project or eight (8) or more units in a single structure. DBRA determines applicability of Davis-Bacon to Federally assisted construction contracts. The Housing and Community Development Act of 1974 (**HCD**), 42 U.S.C. § 5301 et seq., Section 110 of the Act, determines the DBRA applicability to CDBG-DR.

Davis-Bacon wages are “based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work” in a local area. 40 U.S.C. § 3142. These wage determinations are set by the U.S. Department of Labor and are published online at <https://beta.sam.gov/help/wage-determinations>. Additionally, the reporting requirements per HUD and the U.S. Department of Labor regulations must be followed.

This requirement also extends to subrecipients and contractors. Applicable programs and services must comply with DBRA through the submission of certified payroll records and interviews of prime and subcontractor laborers.

**You may access the CDBG-DR Davis Bacon and Related Acts Policy, and all CDBG-DR General Policies in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

### **11.2 Fair Labor Standards Act of 1938 (29 U.S.C. § 201)**

The Fair Labor Standards Act of 1938 (**FLSA**), as amended, 29 U.S.C. § 201 *et seq.*, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of time and one-half the basic hourly rate of pay for work in excess of forty (40) hours per week. These labor standards are applicable to the entire construction contract, regardless if CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under CDBG-DR Program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. See 41 C.F.R. Part 60 on Obligations of Contractors and Subcontractors.

Exceptions to FLSA include:

- Construction contracts of \$2,000.00 or less;
- Real property acquisition;
- Architectural and engineering fees;
- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property or project consisting of fewer than eight (8) dwellings; and
- Debris removal, demolition, and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Executive Order No. 11246, issued September 28, 1965, as amended, established requirements for non-discriminatory practices in hiring and employment on the part of government contractors. It prohibits Federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000.00 in government business in one year from discriminating in employment decisions based on race, color, religion, sex, sexual orientation, gender identity, or national origin. This Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This regulation is adhered to within all programs.



### **11.3 Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701)**

- 40 U.S.C., Chapter 5, Sections 326-332
- 29 C.F.R. Part 4, 5, 6 and 8
- 29 C.F.R. Part 70 to 240

The Contract Work Hours and Safety Standards Act (**CWHSSA**) applies to both direct Federal contracts and federally assisted contracts in excess of \$100,000.00 where those contracts require or involve the employment of laborers and mechanics and Federal wage standards are applicable. Under the provisions of the CWHSSA, as amended, 40 U.S.C. §§ 3701-3708, contractors and subcontractors must pay laborers and mechanics, including guards and watchmen, premium pay or time and one-half their regular pay, plus any fringe benefits, for work in excess of forty (40) hours per week. CWHSSA requires premium overtime pay only when all hours considered under CWHSSA overtime requirements – 40 hours plus additional (overtime) hours – are performed on CWHSSA-covered sites of work. Additionally, CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects.

### **11.4 Copeland Anti-Kickback Act (40 U.S.C. § 3145)**

- 40 U.S.C., Chapter 3, Section 276c
- 18 U.S.C. Part 1, Chapter 41, section 874
- 29 C.F.R. Part 3

The Copeland Anti-kickback Act supplemented the Davis-Bacon Act and prohibits a federal building contractor or subcontractor from inducing employees into giving up any part of the compensation that they are entitled to under the terms of their employment contract and establishes reporting requirements for wages paid to workers on construction sites.

Specifically, the Copeland Anti-kickback Act and implementing regulations require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period.

The reporting requirements per HUD and the U.S. Department of Labor regulations must be followed. This requirement also extends to subrecipients and contractors.

### **11.5 Section 3 of the Housing and Urban Development Act of 1968**

Section 3 of the Housing and Urban Development Act of 1968 (**Section 3**), as amended, 12 U.S.C. §1701u, requires that recipients, subrecipients, contractors, and subcontractors performing covered construction activities funded in whole or in part by CDBG-DR funding to extend hiring opportunities and contracts to Section 3 eligible residents and

businesses to the greatest extent feasible. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government assisted housing or who meet the income limits identified by HUD.<sup>7</sup> For each project, there is a goal for thirty percent (30%) of new hires to be individuals who qualify as a Section 3 individual.

Businesses can qualify as Section 3 in any one of three (3) ways: (a) If your business is owned in equal to or in excess of fifty-one percent (51%) by someone who is a Section 3 Individual; or (b) if thirty percent (30%) of your staff meets the definition of a Section 3 individual; or (c) if your business has a firm commitment to provide twenty-five percent (25%) of the total dollar amount of subcontracts to a Section 3 business.

For recipients that receive more than \$200,000.00 in CDBG-DR assistance, and contractors that are awarded covered contracts that exceed \$100,000.00, it is required that an approved Section 3 plan be in place before the project is awarded and approved. For professional services contracts, there is a three percent (3%) goal while for construction contracts there is a ten percent (10%) goal. The plan for compliance with Section 3 must be submitted for approval prior to the start of construction or professional services on any contract activity. Section 3 clause is found verbatim at 24 C.F.R. § 135.32.

HUD has developed a business registry for businesses who have identified themselves as a Section 3 business in order to facilitate the process of engaging in best efforts.<sup>8</sup>

As well, the PRDOH has developed the Section 3 Policy and various tools to fulfill Section 3 participation for new hires, training, contracting and other economic opportunities for participation in federal contracting opportunities with CDBG-DR funding.

All documentation for Section 3 efforts should be provided to PRDOH and should include metrics to indicate efforts for new hiring or subcontracting.

Pursuant to 24 C.F.R. § 135.90, PRDOH will submit reports to HUD for determining the effectiveness of Section 3 utilizing the Performance Evaluation and Registry System (SPEARS).

**You may access the CDBG-DR Section 3 Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

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<sup>7</sup> <https://www.huduser.gov/portal/datasets/il.html#null>

<sup>8</sup> <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>

Additional information can be found in CDBG-DR's Section 3 page, published in English and Spanish at [www.cdbg-dr.pr.gov/en/section-3/](http://www.cdbg-dr.pr.gov/en/section-3/) and [www.cdbg-dr.pr.gov/seccion-3/](http://www.cdbg-dr.pr.gov/seccion-3/).

## 12 Local Laws

### 12.1 Puerto Rico Uniform Administrative Procedure Act (LPAU)

The Puerto Rico Uniform Administrative Procedure Act, Act No. 38 of June 30, 2017, as amended (**LPAU**, for its Spanish Acronym), 3 L.P.R.A. § 9601 *et seq.*, governs the informal resolution of administrative disputes to ensure that administrative procedures are carried out quickly, fairly and economically and at the same time guarantee an equitable solution in the cases under the agency's consideration.<sup>9</sup>

The LPAU mandates agencies to establish the rules and procedures that allow the informal solution of the matters submitted to their consideration without undermining the rights guaranteed by this Act. It applies to all administrative procedures conducted before all agencies that are not expressly excepted by it.

To the extent necessary to prevent denial of funds or service from the Federal Government of the United States of America, which would otherwise be available, discretion is given to agencies to conform their administrative procedures to those required by applicable federal laws, including the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* If the procedures of the Administrative Procedure Act are followed, the agency will not be required to duplicate procedures in the actions it takes. Even in such cases, the publication and disclosure requirements set forth in the LPAU will always apply.<sup>10</sup>

To comply with LPAU's provisions, PRDOH enacted Regulation 4953, which serves the purpose of creating a uniform body of minimum rules in PRDOH to govern the determinations to be followed in the adjudicative processes. Applicants who submit an Administrative Review Request must follow the procedure established in Regulation 4953. If the Applicant disagrees with any final written determination on an Administrative Review Request notified by PRDOH after completing the Administrative Adjudicative Procedure, said party may file a Judicial Review petition before the Court of Appeals of Puerto Rico within **thirty (30) calendar days** after a copy of the notice has been filed. See Act No. 201-2003, as amended, 4 LPRA § 24 *et seq.*, known as the "Judiciary Act of the Commonwealth of Puerto Rico of 2003", and Section 4.2 of LPAU, 3 L.P.R.A. § 9672.

**For more details, you can access Regulation 4953 in Spanish at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adjudicacion-formal..pdf>.**

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<sup>9</sup> 3 L.P.R.A. § 9602

<sup>10</sup> 3 L.P.R.A. § 9604

Any person, party or entity that considers itself having been adversely affected by a decision of the Bid Board, may file a Request for Reconsideration with PRDOH within **twenty (20) calendar days** from the deposit in the federal mail or email notifying the award or resolution, in accordance with Section 3.19 of LPAU, 3 L.P.R.A. §9659.<sup>11</sup>

The mere presentation of a Request for Reconsideration will not have the effect of halting the contested award. PRDOH may or may not consider the Request for Reconsideration. The terms in relation to this action or lack of action, as well as its Judicial review, if any, shall be those established in LPAU (3 LPRA §9601, et seq.).

**For more details, you may access the Procurement Manual for the CDBG-DR Program English and Spanish at <https://cdbg-dr.pr.gov/en/cdbg-dr-procurement/> or <https://cdbg-dr.pr.gov/adquisiciones-cdbg-dr/>.**

**As of the date of approval of these Cross-Cutting Guidelines, the Procurement Manual for the CDBG-DR Program (Regulation No. 9205) are under revision and pending approval.**

## **12.2 Anti-Corruption Code for the New Puerto Rico, Act 2-2018**

The Anti-Corruption Code for the New Puerto Rico (hereinafter, the Code), Act 2-2018, as amended, consolidated separate public policy and anti-corruption legislation into a single code.

As stated in its Explanatory Statement, the most frequent act of corruption is the improper use of public power to obtain an illegitimate advantage, generally secretly and privately, as well as the illegitimate use of privileged information and sponsorship, among other acts of corruption.

The Anti-Corruption Code focuses on the conduct and ethics of contractors and suppliers. While the conduct of public servants is regulated by Puerto Rico Government Ethics Office Organic Act, Act 1-2012, which is discussed below.

Therefore the Code implements initiatives that address the problem of corruption in contracting services; auction process and granting; purchases; granting of permits; resolution and adjudication of controversies.

Pursuant to Section 3.4 of the Anticorruption Code, any natural or juridical person who has been convicted of: violating Sections 4.2, 4.3, or 5.7 of Act No. 1-2012, known as the "Government Ethics Office Organic Act"; committing any of the offenses against public service or public funds deemed felonies under Sections 250 through 266 of Act No. 146-2012, as amended, known as the Penal Code of Puerto Rico, any of the offenses classified

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<sup>11</sup> See Administrative Determination No. 2021-01, Applicability of Act 73-2019 to State CDBG, CDBG-DR and CDBG-MIT Programs Administered by the Puerto Rico Department of Housing, issued on May 21, 2021, excluding from the application of Act 73-2019 the State CDBG, CDBG-DR and CDBG-MIT Programs.

under the Code of Ethics of Act. 2-2018, as amended, or any other felony involving misappropriation of public funds or property, including, but not limited to, the offenses listed in Section 6.8 of Act No. 8-2017, shall be ineligible to contract or bid with the PRDOH for the period established in Section 6.8 of Act No. 8-2017. If no such period is established, the person shall be ineligible for ten (10) years from the date he/she finishes serving the sentence.

The Code also provides whistleblower protections prohibiting private entities and government officials from “harassing, discriminating, firing, threatening, or suspending any benefit, right or protection” to anyone who has provided information, cooperated or has acted as a witness in any investigation leading to any complaint, accusation, conviction, civil or administrative action, related to the illegal use or misappropriation of public funds or other acts of corruption. The Code also allows for whistleblowers to claim civil damages for violations to the retaliation prohibitions set forth.

PRDOH has a commitment to fight corruption and the PRDOH CDBG-DR Programs are not excepted from this commitment. Accordingly, PRDOH has published in the CDBG-DR website the Anti-Fraud, Waste, Abuse, or Mismanagement Policy and the Conflict of Interest and Standards of Conduct Policy. More details about these policies are provided further in this document.

**You may access the CDBG-DR Anti-Fraud, Waste, Abuse, or Mismanagement Policy, the CDBG-DR Conflict of Interest and Standards of Conduct Policy, and all CDBG-DR General Policies in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

**The direct link to report fraud directly with PRDOH is <https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud>.**

### **12.3 The Puerto Rico Government Ethics Office Organic Act**

The main objective of the Puerto Rico Government Ethics Office Organic Act, Act 1-2012 (hereinafter, the Act), is to reaffirm the Government Ethics Office's preventive and supervisory function.

This Act creates the Government Ethics Office of Puerto Rico, which main objective is to educate the public servants so that, in the performance their functions, they exhibit the values of kindness, reliability, justice, responsibility, respect and civility that govern the public administration.<sup>12</sup> According to the Act, no public servant shall intervene, either directly or indirectly, in any matter in which he/she has a conflict of interests that may result in his/her benefit. No public servant shall intervene, directly or indirectly, in any

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<sup>12</sup> 3 L.P.R.A. § 1855

matter in which any member of his/her family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships has ended during the two (2) years preceding the appointment of the public servant, he/she shall not intervene, either directly or indirectly, in any matter related to them until two (2) years have elapsed after his/her appointment. This prohibition shall remain in effect insofar the beneficial ties with the public servant exist. Once the beneficial ties end, the public servant shall not intervene, either directly or indirectly, in such matter until two (2) years have elapsed.

PRDOH has incorporated these principles in the CDBG-DR Anti-Fraud, Waste, Abuse, or Mismanagement Policy and the CDBG-DR Conflict of Interest and Standards of Conduct Policy.

Both policies promote the rectitude in procedures and actions of public servants that involve the use of public funds. Sections 23 and 24 of this document provide more details about these policies.

**You may access the CDBG-DR Anti-Fraud, Waste, Abuse, or Mismanagement Policy, the CDBG-DR Conflict of Interest and Standards of Conduct Policy, and all CDBG-DR General Policies in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

**The direct link to report fraud directly with PRDOH is <https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud>.**

## **12.4 Contracts Registry Act**

Act No. 18 of October 30, 1975, known as Contracts Registry Act (**Act No. 18**), as amended (2 L.P.R.A. secs. 97-98), on Article No. 1 (a), mandates the following:

“Government entities and municipal entities of the Commonwealth of Puerto Rico, without exception, shall keep a record of all their executed contracts, including amendments thereto, and shall send a copy of these to the Office of the Comptroller within **fifteen (15) days** following the date of contract execution or amendment (...).”

The aforementioned act states that non-compliance with the provisions of Article 1 mentioned above, shall not be cause for a competent Court to declare the nullity of any legally valid contract or legal transaction. However, no benefit or compensation may be required until the provisions of Article 1 of this Law have been complied with.

In accordance with Act No. 18, Regulation No. 33 of the Office of the Comptroller of Puerto Rico (OCPR) was adopted with the purpose of setting standards and procedures to be followed by all entities in the preparation and administration of a Contracts Registry and the remittance of the copies of the contracts to the OCPR. In addition, this

Regulation sets the norms and procedures to be followed by the OCPR in the administration of its registry, the examination of public contracts and the issuance of copies of in conformity with the requirements of law.

Additionally, Article 6 of Regulation No. 33 mentions that entities must keep, by accessing the Contracts Registry Program of the OCPR, a record of all executed contracts, as well as any amendment, agreement, determination, or action that terminates them. Said registry will also include contracts that do not have to be remitted to the Office of the Comptroller.

Furthermore, Article 7 dictates that entities will send the Contracts Registry and digitalized copies to the OCPR, in which they must stamp the signatures of both parties to any executed contract. Any amendment, agreement, determination, or action that terminates it, that is not exempt from remitting by provision of Article 11, section a, must be sent to the OCPR.

PRDOH's CDBG-DR Program is in compliance with the above-mentioned regulations. Once a contract is signed by the parties, the CDBG-DR Deputy Director of Contract Administration or area personnel shall comply with the Office of the Comptroller's regulations and will maintain a Contract Register with all the appropriate information. All contracts will be registered digitally at the Office of the Comptroller, except for those circumstances established in Act No. 18, 2 L.P.R.A. § 97 (c), along with all its documents and/or appendixes, within **fifteen (15) days** of its execution.

## **12.5 Occupational Safety and Health**

Act No. 16 of August 15, 1975, as amended, 29 L.P.R.A. 361 *et seq.*, known as the "Puerto Rico Occupational Safety and Health Act", (**Act No. 16**), was adopted with the purpose of guaranteeing overall safety and health conditions in the workplace. Act No. 16 authorizes the Secretary of the Puerto Rico Department of Labor and Human Resources (**Secretary of Labor**) to adopt rules and regulations pertaining to health and safety conditions for employees in the workplace. As a result of the mandates of such act, the Secretary of Labor established the Puerto Rico Occupational Safety and Health Administration (**PROSHA**) as a mechanism to ensure the objectives specified within Act No. 16 are achieved. PROSHA has exclusive jurisdiction, extending not only to the public sector but also has authority over private sector workplaces. Given the above, Program Subrecipients/Program Contractors are subject to the provisions of Act No. 16 and as such are responsible for complying with the requirements found in the Occupational Safety and Health Policy (**OSH Policy**) developed by PRDOH.

PRDOH established requirements and protocols with the objective of preventing accidents in the construction work areas of CDBG-DR funded project sites. The OSH Policy describes the processes for investigations, reporting, and correction of unsafe working conditions observed during inspections, as well as for responding to accidents and

emergencies when they occur. In order to achieve the objectives established in the OSH Policy, all Program Subrecipients/Program Contractors will need to work as a team to maintain safe and healthy work environments. For this reason, the Policy assigns specific roles and responsibilities to all Program Subrecipients/Program Contractors.

All Program Subrecipients/Program Contractors shall comply with the standards of safety and health as contained in Act No.16 and provisions under Part 1926 of the Code of Federal Regulations, regarding Safety and Health Regulations for Construction (29 C.F.R. Part 1926), they must also comply with the requirements set forth in OSH Policy, as well, with others several federal and state laws, statutes and regulations that can govern CDBG-DR assisted activities.

**You may access the CDBG-DR OSH Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

### **13 Affirmatively Furthering Fair Housing**

Affirmatively Furthering Fair Housing (**AFFH**) is a legal requirement that federal agencies and federal grantees further the purposes of the Fair Housing Act 1968, as amended, 42 U.S.C. § 3601 et seq. The Fair Housing Act dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of said Act.

The Fair Housing Act is enforced by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements, provide an affirmative fair housing marketing plan for applicable housing developments, and report on compliance activities as required by PRDOH and HUD.

PRDOH affirmatively furthers fair housing for the CDBG-DR Program through outreach community efforts and bilingual program marketing materials (including brochures, press, website, and mobile program app, among others) in order to facilitate housing information and services outreach. Program outreach includes multiple communication channels that allow homeowners be informed about assistance being offered, eligibility requirements and how to apply to the program. The Program will take no action that is inconsistent with its obligation to affirmatively further fair housing.

All PRDOH CDBG-DR programs will be designed and administered to take meaningful action to affirmatively further fair housing throughout Puerto Rico. All programs and activities will comply with local and federal laws, statutes, and regulations. Further, PRDOH will ensure that its subrecipients and contractors implement programs in a manner that affirmatively furthers fair housing.



PRDOH will maintain training materials, resources and program area documents that review key fair housing requirements and processes. PRDOH will make these materials readily available to PRDOH staff, subrecipients, contractors, and program partners.

As part of its obligation to AFFH, PRDOH maintains a current Analysis of Impediments (**AI**) to Fair Housing Choice that clearly identifies impediments which prevent individuals and families across the island from choosing where to live without unlawful discrimination and other barriers faced by members of protected classes including race, color, religion, sex, familial status, national origin, or disability.

To overcome these impediments, the AI establishes appropriate meaningful actions and measurable outcomes to address impediments and further access to fair housing. PRDOH will ensure CDBG-DR programs and activities align with the actions and desired outcomes identified in the AI.

**You may access the CDBG-DR Fair Housing and Equal Opportunity Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## 14 Civil Rights and Non-Discrimination

Title VII of the Civil Rights Act of 1964 was enacted as part of the landmark Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* It prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

Pursuant to Section 109 of the Housing and Community Development Act of 1974, as amended, *supra*, no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any CDBG-DR program or activity. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act<sup>13</sup> and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*) shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 C.F.R. part 6. See 24 C.F.R. § 570.602.

### 14.1 Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination based on disability in federally assisted Programs. This section provides that qualified individuals should not be excluded from participation solely by reason of their disability (including employment), denied program benefits, or subjected to discrimination under any

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<sup>13</sup> The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, prohibits discrimination on the basis of age in federally assisted and funded programs or activities, except in limited circumstances

program or activity receiving federal funding assistance. PRDOH is responsible for ensuring programs comply with the requirements set for in Section 504 and that subrecipients/contractors comply with Section 504 requirements. These requirements include, among others, the provision of reasonable accommodations and modifications to meet disability-related needs that afford individuals equal opportunity to access and enjoy the benefits of the CDBG-DR Program.

### **14.2 The Americans with Disabilities Act of 1990 (ADA)**

The Americans with Disabilities Act of 1990 (**ADA**), as amended (42 U.S.C. 12101 et seq.), prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of a telecommunications device for the deaf (TDD)/telephone relay services. PRDOH takes affirmative steps to ensure that people with disabilities have equal access to the programs offered, and that any aid, benefit or services are delivered in the most integrated manner possible.

### **14.3 The Architectural Barriers Act of 1968 (ABA)**

The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG-DR funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (**UFAS**).

### **14.4 Equal Access Regardless of Sexual Orientation or Gender Identity**

As the Nation's housing agency, HUD's policy is to ensure that its programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or insured housing and that its policies and programs serve as models for equal housing opportunity. Toward this goal, HUD revised its program regulations on February 3, 2012 (Federal Register Vol. 77, No. 23, 77 FR 5661) to ensure that its core programs are open to all eligible individuals and families regardless of actual or perceived sexual orientation, gender identity or marital status in housing assisted with HUD funds or subject to FHA insurance, and to prohibit inquiries on actual or perceived sexual orientation or gender identity for the purpose of determining eligibility for the housing or otherwise making such housing available.

PRDOH, as grantee, and its subrecipients, contractors, and other program participants will ensure that CDBG-DR activities are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disability, familial status, gender identity, sexual orientation, marital status, or age.

**You may access the CDBG-DR Fair Housing and Equal Opportunity Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

It is the public policy of the PRDOH to comply with all of the legal rules and jurisprudence that protects its employees, visitors or third parties not employed by or otherwise associated with the PRDOH, and therefore hereby states that: Discrimination on the basis of Sexual Orientation or Gender Identity and Sexual Harassment in all of its manifestations is absolutely forbidden among employees, supervisors, contractors, visitors or third parties not employed by or otherwise associated with the PRDOH.

**In accordance with these important principles, PRDOH has enacted the Regulation for the Prevention and Filing of Sexual or Gender Discrimination and Sexual Harassment Complaints which can be accessed in English or Spanish at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/Reglamento-Hostigamiento-Sexual -InglÇs.pdf> or <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/Reglamento-Hostigamiento-Sexual.pdf>.**

## 15 Environmental Review

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**) (42 U.S.C. 4321 *et seq.*), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58 (for HUD-funded projects) on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. The primary purpose of this Act is to protect and enhance the quality of our natural environment. 24 C.F.R. § 58.22 prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds.

The primary objectives of the 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 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:

- Protection of Historic Properties (36 C.F.R. §800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. § 55, Executive Order No. 11988 and Executive Order No. 11990;
- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**), as

- amended, (16 U.S.C. §1456);
- Sole Source Aquifers (40 C.F.R. Part 149);
- Endangered Species Act of 1973, as amended (16 U.S.C. §1534 *et seq.* and 50 C.F.R. Part 402);
- Section 7 (b)(c) of the Wild and Scenic Rivers Act of 1968 (**WSRA**), as amended, (16 U.S.C. § 1278 - Restrictions On Water Resources Projects);
- Air quality provisions as found in Sections 176 (c) and (d) of the Clean Air Act, as amended, (42 U.S.C. § 7506) and in Title 40 of the Code of Federal Regulations (40 C.F.R. Parts 6, 51, and 93); Farmland Protection Policy Act (**FPPA**) (7 U.S.C. §4201 *et seq.*, implementing regulations 7 C.F.R. Part 658, of the Agriculture and Food **Act** of 1981, as amended);
- Environmental Criteria and Standards (24 C.F.R. Part 51 §§ 51.1 - 51.305)
  - 24 C.F.R. § 51, subpart B- Noise Abatement and Control (24 C.F.R. § Part 51 §§ 51.100 - 51.106);
  - 24 C.F.R. § 51, subpart C- Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 C.F.R. § Part 51 §§ 51.200 - 51.208);
  - 24 C.F.R. § 51, subpart D - Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields (24 C.F.R. part 51 §§ 51.300 - 51.305);
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(h)(2)(i)); and
- Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order No. 12898, issued February 11, 1994).

In addition to these regulations, all federally funded projects and activities must have documentation that they also comply with NEPA and all other environmental requirements 24 CFR 58.40 and 40 CFR 1508.8 & 1508.27. 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. See 24 C.F.R. § 58.38 on Environmental Review Record.

The value of the environmental review is to identify:

- The existence of negative impacts on a site;
- Means to mitigate negative impacts; and
- Alternatives to the project, if needed.

The environmental review informs the proponent of a federally assisted action of the existence of negative impacts on a site, of means to mitigate negative impacts and alternatives to the project if needed. When all other options fail, it informs that the rejection of the proposed action may be the most prudent one. The environmental

review is a means of providing decision makers with sufficient information on which to base wise choices.

These procedures are intended to ensure a suitable living environment, or more specifically, to determine if any significant environmental impact may occur because of a proposed recovery project; to release funds to support eligible projects that neither harm nor are harmed by the environment; to safeguard, enhance, and restore the environment; and to foster public participation in the development decision-making process. There are four (4) objectives of the ERR process:

- To comply with all legal requirements;
- To assist in project planning;
- To determine if the proposed activity will have an impact on the environment; and
- To determine whether the environment will have an impact on the proposed Program activity.

The ERR process identifies areas where project design and planning can be improved to mitigate such things as high noise levels, inadequate public safety, flooding problems, or the time constraints of archaeological findings.

To conduct the appropriate level of environmental review, each program will determine the environmental classification of the project. There are four (4) major classifications of environmental review for projects:

- **Exempt Activities:** Those activities which are highly unlikely to have any direct impact on the environment.
- **Categorically Excluded Activities:** Those activities that may have an impact to the environment, but not to extent that an Environmental Assessment under NEPA or Environmental Impact Statement is required. There are two (2) types of Categorically Excluded Activities, as follows:
  - **Categorically Excluded Not Subject to 24 C.F.R. § 58.5:** Includes those activities included under 24 C.F.R. § 58.35 (b) and require environmental checks for the items listed at 24 C.F.R. § 58.6. For activities under this classification, no public notice or request for release of funds is required to use grant funds.
  - **Categorically Excluded Subject to 24 C.F.R. § 58.5:** Refers to those activities included under 24 C.F.R. § 58.35 (a) and require environmental checks for the items listed at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6. If any environmental items are identified as potentially impacting (such as floodplains), a Request for Release of Funds (including publication of Notice of Intent) is required.
- **Environmental Assessment:** Includes those activities that could potentially have a

significant impact on the environment. In addition to compliance with the laws and authorities at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6, environmental assessments must consider an array of additional potential impacts of the project, including a National Environmental Policy Act analysis. This environmental assessment requires publishing a Notice of Intent to Request Release of Funds as well as a Finding of No Significant Impact (assuming such is found).

- **Environmental Impact Statement:** Those activities that require a detailed written statement required by Section 102(2)(C) of NEPA for a proposed major Federal Action significantly affecting the quality of the human environment. These statements are normally used for major housing (2,500 units or more) or infrastructure projects.

The following activities under the CDBG-DR Program have been approved by PRDOH's Certifying Officer as exempt activity per 24 C.F.R. § 58.34(a), as accredited in the Certificate of Exemption for HUD Funded Projects signed on April 25, 2019 and revised on July 22, 2020.

- Environmental & other studies, resource identification & the development of plans & strategies;
- Information and financial services;
- Administrative and management activities;
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Purchase of tools;
- Engineering or design costs;
- Technical assistance and training; and
- Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances that require compliance with any other Federal laws and authorities cited in Sec. 58.5.

In addition, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a CDBG-DR Program before the environmental review process is completed. Environmental clearance must be obtained for each project prior to the firm commitment of Federal or non-Federal funds. See 24 C.F.R. § 58.22 on Limitations on Activities Pending Clearance. 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.

## 15.1 Lead Based Paint

All housing units assisted using CDBG-DR funds must comply with the Lead-Based Poisoning Prevention Act (42 U.S.C. § 4821-4846) and regulations regarding lead-based paint found at 24 C.F.R. Part 35 on Lead-Based Paint Poisoning Prevention in Certain Residential Structures, as well as, all regulations and procedures stipulated by the Government of Puerto Rico and any amendments thereof, including Regulation 9098 issued July 16, 2019, Regulations For The Control Of Lead-Based Paint Abatement And Renovation Activities.<sup>14</sup>

Some of the pertinent requirements established by 24 C.F.R. Part 35 are as follows:

- Notification
  - Lead Hazard Information Pamphlet - All program applicants must receive a Lead Hazard Information Pamphlet at the time of application as well as sign an acknowledgement form, a copy of which will be placed into the Applicant's file.
  - Notice of Lead Hazard Evaluation - Owners and tenants of program assisted properties must receive results of any lead hazard evaluation work within **fifteen (15) days** of the evaluation. A copy of this notice will be kept within the Applicant's file.
  - Notice of Lead Hazard Reduction Activity - Owners and tenants of program assisted properties must be notified of the results of any lead hazard reduction activity within **fifteen (15) days** of clearance. A copy of this notice will be kept within the Applicant's file.
- Lead Hazard Assessment/Evaluation – Including visual assessments, paint testing, and risk assessments. Each method has specific requirements defined in Subpart R of the regulation and must be done by qualified professionals,
- Lead Hazard Reduction – Including paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements defined in Subpart R on Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities and must be done by qualified professionals. (24 C.F.R. Part 35 §§ 35.1300 - 35.1355).

Homebuilders will retain demolition contractors to properly mitigate, demolish and properly dispose of construction debris for houses built before 1978 - when EPA banned lead-based paint - that are to be demolished to clear a lot for new house construction.

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<sup>14</sup> For more information, visit: [https://www.hudexchange.info/programs/lead-based-paint/?utm\\_source=HUD+Exchange+Mailing+List&utm\\_campaign=af719a8611-New-LBP-Page-On-HUDExchange-10%2F26%2F2020&utm\\_medium=email&utm\\_term=0\\_f32b935a5f-af719a8611-19502181](https://www.hudexchange.info/programs/lead-based-paint/?utm_source=HUD+Exchange+Mailing+List&utm_campaign=af719a8611-New-LBP-Page-On-HUDExchange-10%2F26%2F2020&utm_medium=email&utm_term=0_f32b935a5f-af719a8611-19502181).

A lead-based paint assessment will be conducted by a licensed lead-based paint inspector or risk assessor on those structures that were built before 1978 but are eligible for rehabilitation.

## 15.2 Environmental Review Record

The PRDOH Certifying Officer is responsible for ensuring compliance with National Environmental Policy Act of 1969 (**NEPA**), *supra*, and the Federal laws and authorities cited at 24 C.F.R. § 58.5. The Environmental Review Record (**ERR**) for all projects contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. § 58 on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities as evidence of review, decision making and actions pertaining to a project of a recipient.

As appropriate, the ERR:

- Describes the project and activities that PRDOH has determined to be part of a project;
- Evaluates the effects of the project or the activities on the human environment;
- Documents compliance with applicable statutes and authorities, in particular those cited in section 58.5 and 58.6 of 24 C.F.R. § 58 (also, 40 CFR 1508.8 & 1508.27, if needed); and
- Records the written determinations and other review findings required by this part (e.g., Exempt and Categorically Excluded projects determinations, and findings of no significant impact).

The ERR contains, as appropriate, verifiable source of documents and relevant base data used or cited in environmental assessments, or other project review documents. Upon request, these support documents may be available for review by interested parties.

**PRDOH provides participants and the general public access to the environmental assessments on the CDBG-DR website in English and Spanish at: <https://www.cdbg-dr.pr.gov/en/resources/environmental/> or <https://www.cdbg-dr.pr.gov/recursos/ambiental/>.**

## 16 Flood Insurance Requirements

Grantees and subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in Flood Disaster Protection Act of 1973 (42 U.S.C 4106 § 202), 24 C.F.R. § 570.605 on National Flood Insurance Program and on 24 C.F.R. § 570.202 on Eligible Rehabilitation and Preservation Activities.

These regulations, along with alternative requirements provided in 83 FR 5844, are as follows:



- HUD assisted property owners located in a Special Flood Hazard Area must purchase and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.
- Property owners who have previously received Federal flood disaster assistance and were subsequently required to purchase and maintain flood insurance but failed to do so, will not be eligible to receive any additional Federal disaster relief funding.
- All structures funded by the CDBG-DR Program, if in, or partially in, the 100-year floodplain as shown on the Flood Insurance Rate Maps (**FIRM**) that are official (not Preliminary or Advisory) at the time of the issuance of the grant to the Applicant, will be required to have flood insurance.
- The statutory period for flood insurance coverage may extend beyond project completion.
- All grantees receiving CDBG-DR funding have a responsibility to inform future purchasers of the property of the requirement to obtain and maintain flood insurance in writing. In accordance with 83 FR 5844, PRDOH is prohibited from providing CDBG-DR assistance for rehabilitation/reconstruction of a house if the combined household income is greater than one hundred and twenty percent (120%), the property was located in a floodplain at the time of the disaster, and the property owner did not maintain flood insurance, even if not required to do so. This is to ensure that higher income homeowners are not assisted at the expense of lower income households.
- PRDOH may only provide assistance for rehabilitation/reconstruction of a damaged property -that is located within a floodplain- if the household income is less than the greatest of one hundred and twenty percent (120%) Area Median Income (**AMI**) or the national median or if the homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs, regardless of AMI calculation.
- If said damaged property -located within a floodplain- is located in the 100-year floodplain, PRDOH may only repair "non-substantially damaged structures". Non-substantially damaged structures are those that suffered damages less than the fifty percent (50%) of the cost of repair as compared to the current market value of the structure.

Applicants found to be non-compliant with the requirements of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001) are not eligible for Program assistance. An applicant is FEMA noncompliant if they failed to obtain and maintain flood insurance after receiving federal funding for a previous disaster. Eligibility is verified by reviewing FEMA (IA) eligibility codes in the federal dataset for the event. Any records with ineligible code "NCOMP - noncompliant with Flood Insurance Requirement" or "NPND - NFIRA - NonCompliance", are FEMA non-compliant applicants and therefore ineligible for

Program assistance. The entire FEMA IA dataset for hurricanes Irma and María will be reviewed for the applicable eligibility code to identify non-compliant households to ensure that no ineligible applicants are served.

## 17 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, PRDOH must utilize all possible funding sources before applying CDBG-DR dollars to a project. CDBG-DR programs are typically implemented *after* temporary disaster assistance programs, such as FEMA Individual Assistance, which are not intended to meet all of the Applicants needs in the long term.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. §5121 *et seq.*, established the requirements for Duplication of Benefits (**DOB**) analysis. Also, see 42 C.F.R. § 312. The duplication of benefits guidance included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, supersedes the duplication of benefits guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060 for CDBG-DR grants received in response to disasters declared between January 1, 2015 and December 31, 2021. As such, the duplication of benefits policy outlined in these guidelines follows the guidance issued in 84 FR 28836.

The Stafford Act prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which they have received financial assistance under any other program, from private insurance, charitable assistance, or any other source. DOB verification and analysis ensure that program funds compensate applicants for damages and needs that have not been addressed by an alternate source, either through funding or assistance. As such, PRDOH must consider disaster recovery aid received by, or available to, Program applicants from any other federal, state, local or other source and determine if any assistance is duplicative. Any assistance determined to be duplicative must be deducted from the Program's calculation of the applicant's total need prior to awarding assistance.

The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Non-duplicative means amounts that are either: 1) provided for a different purpose that PRDOH's CDBG-DR Program does not assist; or 2) assistance provided for the same purpose but different allowable use. Therefore, to calculate the total maximum amount of the CDBG-DR award, PRDOH must: 1) Identify total need; 2) identify total assistance; 3) subtract exclusions from total assistance to determine the amount of the DOB; and 4) subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

To be eligible to receive CDBG-DR funds, all applicants must confirm and provide assurance that efforts will be made to avoid a "duplication of benefits". PRDOH understands and expects that for some projects funded through this Program, other Federal forms of funding may be possible and that for each project, PRDOH will need to work with funded entities to determine and address issues surrounding DOB. This includes private insurance for the purpose of recovery from the declared disaster. PRDOH has formal data-sharing agreements with the Federal Emergency Management Agency (**FEMA**), Small Business Administration (**SBA**); and the FEMA National Flood Insurance Program (**NFIP**) for rapid DOB verification. These data sets are exchanged on a scheduled basis and accessed by programmatic staff to electronically perform DOB review as part of applicant eligibility verification.

Procedure for DOB verification is included in the Program Guidelines of each program to address the specific types of DOB and related analysis that is performed for each project (e.g., verifying FEMA Individual Assistance for housing projects, or FEMA Public Assistance for public infrastructure projects) to consider all possible disaster recovery funding sources when processing applications for assistance. Common disaster assistance sources include, but are not limited to:

- FEMA;
- SBA;
- Central Office for Recovery, Reconstruction and Resiliency (COR<sup>3</sup>);
- NFIP;
- Increased Cost of Compliance (ICC);
- United States Army Corps of Engineers (USACE);
- Private Insurance;
- Private and nonprofit disaster assistance.

Applicants will be required to provide support documentation, including award letters, decline letters and other documentation supporting the amount, sources and uses of funding received/declined to assist in the completion of the project that was provided in the recovery from the covered disaster.

If an Applicant receives and accepts a subsidized loan made in response to Hurricanes Irma or Maria, the undisbursed loan amounts are not considered a DOB and will not be considered in the unmet need calculation when determining the maximum award. Subsidized loan accepted by the Applicant and used for a disaster-related loss are not a duplication of benefits.

PRDOH shall not treat declined subsidized loans, including declined SBA loans, as DOB. Declined loans are loan amounts that were approved or offered by a lender in response to an application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds. PRDOH is only required to

document declined loans if information available to PRDOH (e.g., the data PRDOH receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and PRDOH is unable to determine from that available information that the applicant declined the loan. If PRDOH is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the loan may still be excluded from DOB calculation if the PRDOH obtains a written certification from the applicant stating that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

For cancelled SBA loans, PRDOH must notify SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts. Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or portion of the loan amount was not disbursed and is no longer available to the applicant. Cancelled SBA loans may be excluded from the calculation of DOB, if it can be documented that the undisbursed portion of an accepted loan is cancelled and no longer available to the applicant. To document that an SBA loan is cancelled, the applicant must provide either: written communication from the lender confirming the loan is cancelled and no longer available to the applicant; or a legally binding agreement between PRDOH and the applicant that indicates the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.<sup>15</sup>

Once sources are identified following HUD's latest guidance on DOB calculation at 84 FR 28836, as appropriate, the applicable program will determine an applicant's unmet need. Specifically, the program will compare the total assistance previously received to the total estimated need for each applicant. Per the Stafford Act, the program will confirm that the applicant spent all previously received funds for their intended purpose.

Funds of similar intent are considered duplicative unless the applicant still has an unmet need. The program will verify eligible use of funds by collecting pertinent source documentation from third parties such as invoices from a contractor, receipts from a building supply store, or utilizing an inspection to determine repair expenses incurred by an applicant.

Collection of duplicate funds received by the applicant after the CDBG-DR award has been made shall follow PRDOH recapture methods leveraging the subrogation terms of the executed grant agreement. An applicant who receives duplicative assistance will still be liable to the United States government even if PRDOH does not initiate a recapture process.

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<sup>15</sup> The highlighted language, pertaining to subsidized loans, will be applicable to all Programs and effective sixty (60) calendar days from the approval of this Guidelines.

For additional information on how specific programs will address Duplication of Benefits, you may access published Program Guidelines in English and Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/program-policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/politicas-de-programas/>.

You can also find more information and a detailed explanation about this subject in the Duplication of Benefits Video Reference at: <https://cdbg-dr.pr.gov/en/frequently-asked-questions/>; <https://www.youtube.com/watch?v=gEGwSbJ5URM&feature=youtu.be>.

## 18 Uniform Relocation Act

CDBG-DR funds, administered by PRDOH and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to:

- Real Estate Acquisition and Relocation Policy and Guidance Handbook (**HUD Handbook 1378**)
- Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (**URA or Uniform Act**), as amended, 49 C.F.R. Part 24.
  - The URA applies to all CDBG-DR-assisted activities that involve the acquisition of real property, easements, or the displacement of persons, including displacement caused by rehabilitation and demolition activities. If CDBG-DR assistance is used in any part of a project, the URA governs the acquisition of real property and any resulting displacement, even if local funds were used to pay the acquisition costs. Private persons, corporations or businesses that acquire property or displace persons for a CDBG-DR-assisted project are subject to the URA.
  - Under the URA, all persons displaced as a direct result of acquisition, rehabilitation, or demolition, for a CDBG-DR-assisted project, are entitled to relocation payments and other assistance. Acquisition that takes place on or after submission for assistance to the CDBG-DR program to fund an activity on that property is subject to URA, unless the Applicant shows that the acquisition is unrelated to the proposed CDBG-DR activity. Acquisition that takes place before the date of submission for assistance will be subjected to the URA if the PRDOH determines that the intent of the acquisition was to support a subsequent CDBG-DR activity.
- The PRDOH Residential Anti-Displacement and Relocation Assistance Plan (**PRARAP or Plan**) was prepared in accordance with the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. §5301 et seq., and HUD regulations at 24 C.F.R. § 42.325, as amended by applicable waivers.

Applicable Waivers and Alternative Requirements HUD has waived select requirements of URA and Section 104(d) of the Housing and Community Development Act listed below, concerning the use of CDBG-DR funds allocated under 83 FR 5844.

- The One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCDA and 24 C.F.R. § 42.375.
- The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 C.F.R. § 42.350.
- The requirements of sections 204 and 205 of the URA, and 49 C.F.R. § 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b).
- Section 414 of the Stafford Act (including its implementing regulation at 49 C.F.R. § 24.403(d)(1)).

**You may access the PRDOH's Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan, and all policies in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## 19 Drug Free Workplace

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §81, as implemented by 24 C.F.R. Subpart F, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee.

PRDOH guarantees compliance with this Act and is committed to fight the serious problem of the illegal use of controlled substances in Puerto Rico. The use of controlled substances, in or out of the workplace or in its surroundings, is incompatible with the effective performance of the functions and duties of its officials and employees.

True to this commitment, PRDOH adopted Regulation 6145, approved on May 5, 2000, in accordance with the legal authority granted by Act No. 78 of August 14, 1997, as amended, known as the "Act to Regulate Tests for the Detection of Controlled Substances in Public Employment". This regulation is applicable to all PRDOH officials and employees.

**You may access Regulation 6145 in Spanish at: <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/6145.pdf>.**

## 20 Timely Distribution of Funds

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (**Appropriations Act**), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office of Management and Budget (**OMB**). The OMB waived the two (2) year expenditure requirement under 83 FR 40314; however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR funds on eligible activities

within six (6) years of HUD's initial obligation of funds remains in effect. The six (6) years expenditure period commences with the initial obligation of funds provided under 83 FR 5844. Additionally, per 83 FR 5844, the provisions at 24 C.F.R. § 570.494 and 24 C.F.R. § 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C § 1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be canceled and will be made unavailable for obligation or expenditure for any purpose.

## **21 Property Management and Distribution**

PRDOH will comply with regulations governing property management and distribution of real property, equipment, financial obligations, and return of un-obligated cash post program closeout. Applicable regulations can be found in 24 C.F.R 570.502, 24 C.F.R. §570.505, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343, 2 C.F.R. § 200.344(b), 2 C.F.R. § 200.344(d)(4) and 24 C.F.R. § 570.489(j).

### **21.1 Use, Management and Disposition of Real Property**

The standards of 24 C.F.R. § 570.505 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient should control the use of the property in accordance with its intended purpose and take good care of it and may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.483 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

PRDOH will keep records to document the ownership, use, management and/or disposition of real property, including inventory data. For more information about local policies and regulations applicable to the management and disposition of Real Property by PRDOH, refer to Regulation No. 9133, approved on December 9, 2019, known in Spanish as "Reglamento Único para la Evaluación y Disposición de Bienes Inmuebles".

The Regulation 9133 is available at <https://aafaf.pr.gov/assets/regla-unico-comite-disposicion-bienes-inmuebles-9-12-2019.pdf>.

## 21.2 Insurance Coverage

In accordance with 2 C.F.R. § 200.310, a recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by PRDOH. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

## 21.3 Closeout and Post-Closeout Adjustments

Pursuant to 2 C.F.R. § 200.343, during the period of Federal award closeout, PRDOH must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with the regulations cited above. After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and PRDOH, provided that the grantee's responsibilities are met, including those for property management as applicable. See 2 C.F.R. § 200.344(b).

## 22 Limited English Proficiency

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) et seq., and pursuant to and in accordance with Executive Order No. 13166, Improving Access to Services for Persons With Limited English Proficiency, and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, dated January 22, 2007, and effective February 21, 2007 (**HUD Guidance**), recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities to individuals with Limited English Proficiency (**LEP**). The previously cited Executive Order No. 13166, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with LEP and impairments disabilities. Fair access is ensured through the implementation of a Language Assistance Plan (**LAP**), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training.

Puerto Rico is unique among most HUD recipients in that the language predominately spoken is Spanish. This is also the language in which government is generally conducted. For this reason, PRDOH established a LAP that describes its policies and procedures to ensure LEP individuals have meaningful access to the CDBG-DR Program, whilst also taking Limited Spanish Proficiency (**LSP**) into consideration.

Language for LEP/LSP individuals can be an obstacle to obtaining important benefits or services, understanding, and exercising important rights, complying with applicable



responsibilities, or understanding the information provided by federally funded programs and activities.

PRDOH is committed to ensuring that programs and resources are accessible to LEP/LSP persons, without discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, status as a veteran, disability, familial status, or national origin. PRDOH is further committed to providing written translations of documents and interpretation to LEP/LSP individuals whose primary language is determined to be a frequently encountered language.

PRDOH is also committed to ensure fair and meaningful access to programs and services for families and individuals with LEP/LSP and impairments disabilities in a nondiscriminatory manner, and in complying fully with all Federal, State and local nondiscrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity.

**You may access the CDBG-DR Language Access Plan, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## **23 Anti-Fraud, Waste, Abuse or Mismanagement**

PRDOH, as grantee, is committed to the responsible management of CDBG-DR funds by being a good advocate of the resources while maintaining a comprehensive policy for preventing, detecting, reporting, and rectifying fraud, waste, abuse, or mismanagement.

Pursuant to 83 FR 40314, PRDOH implements adequate measures to create awareness and prevent fraud, waste, abuse, or mismanagement among other irregularities in all programs administered with CDBG-DR funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

The Anti-Fraud, Waste, Abuse, or Mismanagement Policy (**AFWAM Policy**) is established to prevent, detect, and report any acts of fraud, waste, abuse or mismanagement of CDBG-DR funds. The AFWAM Policy applies to any allegations or irregularities, either known or suspected, that could be considered acts of fraud, waste, abuse or mismanagement, involving any citizen, previous, current or potential applicant, beneficiary, consultant, contractor, employee, partner, provider, subrecipient, supplier, and/or vendor under the CDBG-DR Program. The process established in the AFWAM Policy is for concerns to be raised, investigated and, where appropriate, acted upon.

Several federal and state conflict of interest laws can govern CDBG-DR assisted activities. Therefore, as another tool to prevent fraud, waste, abuse, or mismanagement, PRDOH has enacted the Conflict of Interest Policy and Standards of Conduct in conformity with the applicable federal and state regulations.

### 23.1 Reporting Fraud

Any allegations of fraud, waste, abuse, or mismanagement related to CDBG-DR funds or resources must be reported to the CDBG-DR Internal Audit Office, directly to the OIG at HUD, or any local or federal law enforcement agency.

Any person, including any employee of the CDBG-DR Program, who suspects, witnessed or discovered any fraud, waste, abuse, or mismanagement, relating to the CDBG-DR Program, should report it immediately to the CDBG-DR Internal Audit Office by any of the following means:

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH	
CDBG-DR Hotline	787-274-2135 (English/Spanish/TTY)
Postal Mail	Puerto Rico Department of Housing CDBG-DR Internal Audit Office P.O. BOX 21355 San Juan, PR 00928-1355

Email	<a href="mailto:hotlineCDBG@vivienda.pr.gov">hotlineCDBG@vivienda.pr.gov</a>
Internet	Filling out the <b>AFWAM Submission Form</b> <sup>16</sup> available in English and Spanish at <a href="http://www.cdbg-dr.pr.gov">www.cdbg-dr.pr.gov</a>  <a href="https://cdbg-dr.pr.gov/app/cdbgdpublic/Fraud">https://cdbg-dr.pr.gov/app/cdbgdpublic/Fraud</a>
In person	Request a meeting with the Deputy Audit Director of the CDBG-DR Internal Audit Office located at PRDOH's Headquarters at 606 Barbosa Avenue, Building Juan C. Cordero Dávila, Río Piedras, PR 00918.

Allegations of fraud, waste or abuse can also be reported directly to the OIG by any of the following means:

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<sup>16</sup> As defined in the PRDOH CDBG-DR AFWAM Policy, an **Anti-Fraud, Waste, Abuse, or Mismanagement Submission Form (AFWAM Submission Form)** is an electronic document that may be used for the purpose of reporting allegations of fraud, waste, abuse, or mismanagement related to CDBG-DR funds. This form can be submitted online, by electronic or postal mail or in person. The complainant may choose to remain anonymous or specify that their contact information stay confidential.

<b>REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG</b>	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)
Postal Mail	HUD Office of Inspector General (OIG) Hotline 451 7th Street SW Washington, D.C. 20410
Email	<a href="mailto:HOTLINE@hudoig.gov">HOTLINE@hudoig.gov</a>
Internet	<a href="https://www.hudoig.gov/hotline">https://www.hudoig.gov/hotline</a>

It is possible that a citizen may disclose acts of fraud, waste, abuse, or mismanagement of CDBG-DR funds to any CDBG-DR Program staff (at Intake Centers, Regional Offices, events, or others). Therefore, any information received must be treated with extreme confidentiality and must be shared to the PRDOH CDBG-DR's Internal Audit Office by following the established procedure. In those instances, PRDOH CDBG-DR's Internal Audit Office will refer all reported instances of fraud, waste, abuse or mismanagement to HUD's OIG Fraud Hotline.

**You may access the CDBG-DR Anti-Fraud, Waste, Abuse, or Mismanagement Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

**The direct link to report fraud directly with PRDOH is <https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud>.**

## 24 Conflict of Interest

A conflict of interest, as defined by 24 C.F.R. § 570.611, exists when any person who is an employee, agent, consultant, decision maker, officer or elected/appointed official of any recipient receiving funds under the Program may obtain a financial interest or benefit from a CDBG-DR assisted activity, has financial interest in any contract, subcontract or agreement with respect to a CDBG-DR assisted activity or with respect to the proceedings of such an activity, either for themselves or with those whom they have business or immediate family ties during their tenure or for one (1) year after.

Such conflicts of interests will not be tolerated by PRDOH. PRDOH, Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations in regard to their conduct in the administration, granting of awards and program activities. The conflict of interest standards set forth in in the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) are in conformity with the following applicable federal and state regulations:

1. HUD conflict of interest regulations, 24 C.F.R. § 570.611 and 24 C.F.R. §85.36;
2. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements

for Federal Awards, 2 C.F.R. Part 200 at §200.112 and §200.318 (c)(1);

3. Puerto Rico Department of Housing Organic Act, Act No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 *et seq.*; known as the "Department of Housing Organic Act;"
4. The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 L.P.R.A. § 1881 *et seq.*; and
5. The Puerto Rico Government Ethics Office Organic Act, Act No. 1-2012, as amended, 3 L.P.R.A. § 1854 *et seq.*

Pursuant to 2 C.F.R. § 200.318(c)(1) and 24 C.F.R. § 570.489(g) and (h), PRDOH implements the COI Policy, which constitutes written standards of conduct covering conflicts of interest and governing actions of CDBG-DR public servants, employees, officers and/or designees engaged in the selection, award and administration of all CDBG-DR related contracts. In addition, it asserts the duty of all employees, vendors, contractors, and applicants related to the CDBG-DR Programs to disclose any real or potential conflict of interest.

Conflicts of interest must be avoided and when they arise, should be immediately identified, and attended to. Consequently, PRDOH and the CDBG-DR Program expect full disclosure from all employees, vendors, contractors, and applicants regarding any real or potential conflict of interest.

The possibility of a conflict of interest arising is not limited to the PRDOH. CDBG-DR programs have an exhaustive scope and reach that affect different communities and government agencies. As these programs are developed and evolve, its reach broadens as different partners join the efforts. It is the public servants' responsibility to be fully informed and continuously partake in the full disclosure process. Public servants must evaluate their functions and responsibilities and how they are or may be in position to influence the decision-making process, gain insider information or benefit from CDBG-DR assisted activities, contracts or agreements, be it for themselves or a member of their family unit. This disclosure process must be an ongoing and constant activity as PRDOH, and CDBG-DR programs continually evolve and numerous partners are added.

As stated in 24 C.F.R. § 570.611 (d)(2), there are a variety of situations that may allow for HUD to grant an exception to the conflict of interest prohibition. These will be considered on a case-by-case basis. When determining whether an exception request may be granted, HUD shall conclude that such an exception would further the purpose of the Program and effective and efficient administration of the Program can be maintained.

**You may access the CDBG-DR Conflict of Interest and Standards of Conduct Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## 25 Personally Identifiable Information (PII) and Confidentiality

In order to implement Federal assistance programs, PRDOH, as CDBG-DR funds grantee, needs to collect, maintain, use, retrieve and disseminate information related to those individuals who apply for CDBG-DR funded assistance. Due to the nature of the programs, applicant's records may contain income information, insurance information housing inspection reports, and annotations of various types of assistance. Some, if not most of the information on the applicant's records is considered personally identifiable information.

As means of internal control when managing Federal awards funds, PRDOH must "take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designated as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality." 2 C.F.R. § 200.303(e). In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, the PRDOH has systems in place for the protection of PII obtained. These systems include the management of username and passwords, physical and digital files, and archives, use of programs, applications and software, etc.

As per 2 C.F.R. § 200.79 stated, Personally Identifiable Information (**PII**) refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Due to the nature of personal information, the definition of PII is necessarily broad and not anchored to any single category of information or technology. Rather, it requires a case-by-case analysis of the specific risk that an individual can be identified through certain information.

**You may access the PII, Confidentiality, and Nondisclosure Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

### 25.1 Confidentiality and Nondisclosure

PRDOH is expected to protect the information entrusted to it by the people looking for CDBG-DR Program assistance. The right to privacy and protection of personal information is embedded in the Puerto Rico Penal Code of 2012, 33 LPRA § 5021 *et seq.* Article 173 of the Penal Code states that any person that disseminates, publishes, reveals or gives away

to a third party, data, communications or images referred to in articles 171<sup>17</sup> and 172<sup>18</sup> of this Code, or either offers or solicits such distribution or access, shall be sanctioned. 33 L.P.R.A. § 5239.

The Puerto Rican Government Open Data Act, Act 122-2019, states as public policy of the Government of Puerto Rico that the effective management of government data is essential to support processes of innovation of all sectors, to facilitate a culture of continuous improvement and accountability, for sustainable economic development and growth, and to generate tangible, valuable, and impactful results for its citizens. Confidentiality exceptions to this Act include that the information is protected by law, that revealing the data would cause harm to third parties, information that, if divulged, could invade the privacy of a third party, and all information related to the physical address, phone number, emergency contact information, Social Security number, credit card number, financial or tax information, bank activity, and confidential information of private third parties. Act 122-2019, Art. 4.

PRDOH CDBG-DR Program parties shall agree to take reasonable steps or measures to protect confidential or sensitive information and will not, without express written authorization from the affected party, use, market, or disclose confidential or sensitive information. PRDOH CDBG-DR contractors and subcontractors shall abide by the confidentiality and non-disclosure clause in their contracts.

**You may access the PII, Confidentiality, and Non-disclosure Policy and all CDBG-DR General Policies, in English and Spanish at:** <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

## 26 Record Accessibility

PRDOH provides Petitioners access to records regarding the use of CDBG-DR funds on PRDOH's CDBG-DR website. Persons may access program records through official Freedom of Information Act (FOIA)<sup>19</sup> requests submitted to PRDOH.<sup>20</sup> Persons may not access records directly from PRDOH Subrecipients or Contractors. As stated before,

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<sup>17</sup> Article 171 refers to violations of personal communications; when somebody, without authorization and with the purpose of gaining knowledge for themselves or for others, takes any means of communication, or intercepts them, will be sanctioned. If the person is in possession of these documents as part of their work functions, they will not be considered as authorized to use the information for any other purpose other than strictly that of the mean for which it was intended to. 33 L.P.R.A. § 5237

<sup>18</sup> Article 172 refers to changing or using personal data in files; any person who, without authorization, takes possession, utilizes, modifies or alters, in perjury of the information holder or a third party, information which is personal, filed in electronic or physical means, will be sanctioned. 33 L.P.R.A. § 5238

<sup>19</sup> 5 U.S.C. § 552.

<sup>20</sup> For more information and instructions on the FOIA process for requesting information, visit <https://www.foia.gov/howto.html>

records are kept to document compliance with program requirements, with federal, state, and local regulations, and to facilitate audit review by HUD. CDBG-DR records are subject to FOIA, and thus accessible to the public.

However, according to FOIA, there are nine (9) exemptions from disclosure for certain categories of information to protect against certain harms, such as an invasion of personal privacy, or harm to law enforcement investigations. The FOIA authorizes agencies to withhold information when they reasonably foresee that disclosure would harm an interest protected by one of nine (9) exemptions.<sup>21</sup>

By amending the FOIA in 1986, Congress created a mechanism to protect sensitive law enforcement matters under subsection (c) of the Act. These three (3) provisions, referred to as record "exclusions," are reserved for certain specified circumstances. The record exclusions expressly authorize federal law enforcement agencies under these circumstances to "treat the records as not subject to the requirements of the FOIA".<sup>22</sup> According to the Code of Federal Regulations, no Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the nonfederal entity pertinent to a Federal award. Exceptions to these restrictions are the protected personally identifiable information or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the FOIA.<sup>23</sup>

Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions. Notwithstanding 2 C.F.R. § 200.337, recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.<sup>24</sup> Applicant records maintained by PRDOH CDBG-DR are confidential and are not made public unless required by law. As stated in 83 FR 5844, "during the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records".

**You may access the CDBG-DR Recordkeeping, Management and Accessibility Policy (RKMA Policy), and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

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<sup>21</sup> See FOIA nine (9) exemptions in detail at: <https://www.foia.gov/about.html>

<sup>22</sup> <https://www.justice.gov/oip/blog/foia-guidance-6>

<sup>23</sup> 2 C.F.R. § 200.337

<sup>24</sup> 2 C.F.R. § 200.337

## 26.1 Transparency Act, Act 141-2019

On August 1, 2019, the Government of Puerto Rico enacted The Transparency and Expedite Procedure for the Public Information Access Act, Act 141-2019, (**Transparency Act**) with the main purpose of regulating, via legislation, the public information access pursuant to the fundamental constitutional rights of freedom of speech, press, and association. The Transparency Act applies to all three branches of Government, including public corporations and municipalities. The Transparency Act establishes, as a public policy of the Government of Puerto Rico, that all information and documentation that is originated, stored or received in any of the government's dependencies, even though it might be in control of a third party, is presumed to be public and should be accessible to all people and the press, upon request. Government entities have the duty to disclose periodically, proactively, and up-to-date information about their operations, the execution of their delegated functions and all the public documentation regarding their daily work routine.

On March 2, 2020, the Puerto Rico Department of Justice issued the Circular Letter 2020-01, in which it delineated the applicable rules and specific procedures for the evaluation and expedite processing of public information requests that other government entities shall adopt, according to the Transparency Act. Hence, PRDOH adopts the rules and procedures determined in the Circular Letter 2020-01 and includes them as part of the Recordkeeping, Management and Accessibility Policy (**RKMA Policy**).

### 26.1.1 Public Information Request (PIR) Form

In accordance with the Transparency Act, any person can submit a public information request without having to demonstrate any particular or legal interest. PRDOH developed a Public Information Request (**PIR**) Form, which is posted in English and Spanish the CDBG-DR website for any Petitioner to be able to submit such request, at their convenience. See <https://cdbg-dr.pr.gov/en/public-information-request/> and <https://cdbg-dr.pr.gov/solicitud-de-informacion-publica/>.

## 27 Record Management

Federal regulation states “[e]ach recipient shall establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirement of this part.” 24 C.F.R. § 570.506.

As per 83 FR 5844, and consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to:

- Enable HUD to make the applicable determinations described at 24 C.F.R. § 570.493;



- Make compliance determinations for activities carried out directly by the State; and
- Show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system.

The following records are the minimum required by § 570.506, and as such, PRDOH and its subrecipients/administering entities will maintain:

- Records providing a full description of each activity assisted with CDBG-DR funds.
  - Location;
  - Amount of CDBG-DR funds budgeted, obligated, and expended; and
  - The provision in Subpart C under which it is eligible.
- Records demonstrating that each activity undertaken meets one of the criteria for National Objectives, as set forth in § 570.208.
- Records that demonstrate that the recipient has made determinations required as a condition of eligibility of certain activities. Where applicable, records which demonstrate compliance with the requirements of § 570.202(g) or § 570.204(a)(5) or document the State's grant recipient's basis for exception to the requirements of those paragraphs.
- Records which demonstrate compliance with citizen participation requirements.
- Records which demonstrate compliance with the requirements regarding acquisition, displacement, relocation, and replacement housing.
- Fair housing and equal opportunity records.
- Financial records, as required by 2 C.F.R. part 200, 24 C.F.R. § 570.502, and state requirements, which include, but not limited to:
  - Current authorizations and obligations of CDBG-DR funds;
  - Unobligated balances (funds remaining available for distribution);
  - Assets and liabilities;
  - Program income (if any);
  - Evidence indicating that the use of program funds belongs to the eligible activity; and
  - Evidence indicating that each expenditure is necessary, reasonable, and directly related to the project.
- Agreements and other records related to lump sum disbursement to private financial institutions for financing rehabilitation.
- Records required to be maintained in accordance with other applicable laws and regulations.

**You may access the CDBG-DR Recordkeeping, Management and Accessibility Policy (RKMA Policy), and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.**

## 27.1 Record Retention

As per 2 C.F.R. § 200.333 on Retention Requirements for Records and 24 C.F.R. § 570.490(d) on Recordkeeping Requirements, all official records on programs and individual activities shall be retained for the greater of **three (3) years**, starting from the closeout of the grant or beyond the end of the affordability period for each housing activity, whichever is longer. If any other laws and regulations as described in 24 C.F.R. § 570.490 applies to a project, the record retention period may be extended. All records involved in litigation, claims, audits, negotiations, or other actions, which have started before the expiration date of their retention, will be kept until completion of the action and resolution of all issues or the end of the regular **three (3) year** period, whichever is longer.

As a general practice, PRDOH maintains files for **five (5) years** after grant close-out with HUD. Exceptions for longer file retention are provided at 2 C.F.R. § 200.333 and include:

- Audits started before the end of the three (3) year period;
- HUD notifies in writing to extend retention period;
- Program Income after the period of performance; and
- Real property monitoring.

## 27.2 Reporting

Pursuant to 24 C.F.R. §570.507, entitlement grant recipients shall submit an annual performance and evaluation report in accordance with 24 CFR Part 91. Nevertheless, as stated in 83 FR 5844, HUD waived PRDOH from the requirements of 24 CFR Part 91.<sup>25</sup> Alternatively, HUD required PRDOH to enter all information regarding its performance, while administering CDBG-DR funds, in the DRGR system with sufficient detail to permit HUD's review of PRDOH's performance on a quarterly basis through the Quarterly Performance Report (QPR) and to enable remote review of PRDOH's data.<sup>26</sup>

## 27.3 Quarterly Performance Reports (QPR)

The purpose of the Quarterly Performance Report (QPR) is to report progress on the grant and DRGR activities by quarter on a cumulative basis. Each quarter's accomplishments, financial data, and a progress narrative are provided. Quarterly accomplishments are collected with monthly vendor invoices. All QPRs will be publicly available in English and Spanish at <https://www.cdbg-dr.pr.gov/en/reports/> or <https://www.cdbg-dr.pr.gov/reportes/>.

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<sup>25</sup> 83 FR 5844, 5852.

<sup>26</sup> *Id.*

## 28 Citizen Participation Plan

PRDOH has developed a Citizen Participation Plan (**CPP**) in compliance with 24 C.F.R. § 91.115 and 83 FR 5844 and applicable U.S. Department of Housing and Urban Development (HUD) requirements to set forth the policies and procedures applicable to citizen participation. The requirements outlined in the U.S. Department of Housing and Urban Development Federal Register Notices for Community Development Block Grant-Disaster Recovery (**CDBG-DR**) and Community Development Block Grant – Mitigation (**CDBG-MIT**) supersede, waive, and replace certain requirements with respect to citizen participation.<sup>27</sup>

The CPP is intended to maximize the opportunity for citizen involvement in the planning and development of the CDBG-DR and CDBG-MIT Programs, including but not limited to:

- The amount of assistance expected to be received by impacted communities;
- The range of eligible activities to be undertaken;
- Performance reports; and
- Other Action Plan and program activities.

The goal of the CPP is to provide all of Puerto Rico's residents, including those with disabilities or limited English proficiency (LEP), with an opportunity to participate in the planning and assessment of the PRDOH's CDBG-DR and CDBG-MIT programs. In order to facilitate citizen involvement, PRDOH has coordinated actions to encourage participation and allow equal access to information about the program.

Throughout the duration of the grants, all citizen comments on PRDOH's published Action Plans, any substantial amendments to Action Plans, performance reports and/or other issues related to the general administration of CDBG-DR and CDBG-MIT funds, including all programs funded by these grants, are welcomed.

Citizen comments may be submitted through any of the following means:

- **Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)  
Attention hours: Monday to Friday from 8:00am-5:00pm
- **Via email at:** [infoCDBG@vivienda.pr.gov](mailto:infoCDBG@vivienda.pr.gov); or [CDBG-MIT@vivienda.pr.gov](mailto:CDBG-MIT@vivienda.pr.gov)
- **Online at:** <https://www.cdbg-dr.pr.gov/en/contact/> (English version)  
<https://www.cdbg-dr.pr.gov/contact/> (Spanish version)
- **In writing at:** Puerto Rico CDBG-DR Program/CDBG-MIT Program  
P.O. Box 21365

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<sup>27</sup> Federal Register Notices Vol. 83, No. 28 (Friday, February 9, 2018), 83 FR 5844; Federal Register Notice Vol. 83, No.157 (Tuesday, August 14, 2018), 83 FR 40314; Federal Register Notice Vol. 84 No. 169 (Friday, August 30, 2019) 84 FR 45838; and Federal Register Notice Vol. 85 No. 17 (January 27, 2020), 85 FR 4676.

San Juan, PR 00928-1365

The Citizen Participation Plan is available in English and Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>. It may be directly accessed at <https://www.cdbg-dr.pr.gov/en/citizen-participation/> and <https://www.cdbg-dr.pr.gov/participacion-ciudadana/>.

## 29 Citizen Complaints

As part of addressing Puerto Rico's long-term recovery needs, citizen complaints on any issues related to the general administration of CDBG-DR funds are welcome throughout the duration of the grant. It is PRDOH's responsibility, as grantee, to ensure that all complaints are dealt with promptly and consistently and at a minimum, to provide a timely, substantive written response to every **written** complaint within **fifteen (15) business days**, where practicable, as a CDBG grant recipient. See 24 C.F.R. § 570.486(a)(7).

Citizens who wish to submit formal complaints related to CDBG-DR funded activities may do so through any of the following means:

- **Via email at:** [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov)
- **Online at:** <https://cdbg-dr.pr.gov/en/complaints/> (English)  
<https://cdbg-dr.pr.gov/quejas/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR Program/CDBG-MIT Program  
Attn: CDBG-DR/MIT Legal Division  
P.O. Box 21365  
San Juan, PR 00928-1365

You may access the CDBG-DR Citizen Complaints Policy, and all CDBG-DR General Policies, in English or Spanish at <https://www.cdbg-dr.pr.gov/en/resources/policies/> or <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

## 30 Program-Based Reconsideration and/or Administrative Review

CDBG-DR Program applicants and participants may contest any determinations or denials based on program policy. However, federal statutory requirements may not be challenged. Applicants have the right to request a Program-based Reconsideration with the Program or request an Administrative Review directly with PRDOH, as stated below. If an applicant fails to contest a determination within the time allotted, the inaction will be deemed as an acceptance of the determination.

### 30.1 Program-Based Reconsideration Request

Applicants may file a written Program-based Reconsideration Request directly with the Program, via electronic or postal mail, within **twenty (20) calendar days** from the date a

copy of the notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic) of said notice, the aforementioned **twenty (20) calendar day-term** shall be calculated from the mailing date or the date the electronic mail was sent, whichever applies. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be one sent beforehand. Program notices will include the electronic and postal mailing addresses on where to submit these, as these may vary.

Applicants who file a Program-based Reconsideration Request are encouraged to provide individual facts or circumstances, as well as supporting documents to justify their petition. In the Reconsideration Request process, the Program will only review facts and information already included in an Applicant's file, unless the Applicant submits new documentation. The Program has the discretion to accept or reject new documentation based upon its relevance to the Program-based Reconsideration Request.

The Program will review and address the Reconsideration Request within **fifteen (15) calendar days** of its receipt. Applicants will be notified of the reconsideration determination via a Reconsideration Request Approved or a Reconsideration Request Denied notification.

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that an Applicant has to challenge a determination made by the Program. Therefore, Applicants who believe the initial determination of the Program to be erroneous, may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953)<sup>28</sup>.

### **30.2 Administrative Review Request**

If an Applicant disagrees with a Program determination, or with the Reconsideration Request Denial determination, said party may file directly to PRDOH, as grantee, an Administrative Review Request following the procedure established in Regulation 4953. The Applicant must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the record of the agency. Provided that if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic) of said notice, the aforementioned **twenty (20) calendar day-**

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<sup>28</sup> For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adjudicacion-formal..pdf>

**term** shall be calculated from the mailing date or the date the electronic mail was sent, whichever applies. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be one sent beforehand. Administrative Review Requests shall be submitted via e-mail to: [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov); via postal mail to: CDBG-DR Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, PR 00918.

If the Applicant disagrees with any **final** written determination on an Administrative Review Request notified by PRDOH after completing the Administrative Adjudicative Procedure, said party may file a Judicial Review petition before the Court of Appeals of Puerto Rico within **thirty (30) days** after a copy of the notice has been filed. See Act No. 201-2003, as amended, 4 L.P.R.A. § 24 *et seq.*, known as the "Judiciary Act of the Commonwealth of Puerto Rico of 2003", and Section 4.2 of Act 38-2017, as amended, known as the "Uniform Administrative Procedures Act of the Government of Puerto Rico", 3 L.P.R.A. § 9672.

## **31 General Provisions**

### **31.1 Program Guidelines Scope**

Program Guidelines sets forth the policy governing the Program. These program guidelines are intended to aid and provide program activity guidance in Program implementation and closeout and should not be construed as exhaustive instructions. All Program activities must comply with the policies hereby stated. In addition, all Program staff must adhere to established program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of Program activities.

However, PRDOH reserves the faculty to authorize, in its sole discretion, the granting of Program benefits to any Applicant, only when exceptional circumstances, not contemplated in these guidelines, justify it. Such faculty will be exercised on a case-by-case basis in compliance with local, state and federal requirements. PRDOH is in no way obligated to grant the Program benefits in said cases.

### **31.2 Program Guidelines Amendments**

PRDOH reserves the right to modify the policies established in these guidelines if the Program Guidelines, as written, do not reflect the intended policy or cause procedures to be unfeasible, among any other circumstances. If an amended version of these guidelines is approved, the amended version fully supersedes all other previous versions and should be used as the basis for the evaluation of all situations encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date that appears on the cover of these guidelines. Each version of the Program

Guidelines will contain a detailed version control log that outlines any substantial amendments, inclusions and/or changes.

### **31.3 Disaster Impacted Areas**

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-DR funds solely for necessary expenses related to disaster relief, long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas of Puerto Rico as identified in disaster declaration numbers DR-4336 and 4339. Through the Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, HUD identified that, for Puerto Rico, all components of the Island were considered "most impacted and distressed" areas. Therefore, these guidelines apply to all 78 municipalities of Puerto Rico.

### **31.4 Extension of Deadlines**

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual construction project. The aforementioned strictly applies to program deadlines or established program terms. Under no circumstance(s) does the faculty to extend deadlines apply to the established terms of time in any applicable federal or state law or regulation, or to the terms of times established in these guidelines to request a Program-based Reconsideration, administrative review, and/or judicial review.

### **31.5 Established Periods of Time**

Unless otherwise specified, all established periods of time addressed in this and all CDBG-DR Program Guidelines will be considered calendar days. On this matter, PRDOH, as grantee, will follow Rule 68.1 of the Rules of Civil Procedure of Puerto Rico, 32 LPRA Ap. V, R. 68.1.

### **31.6 Written Notifications**

All determinations made by the Program will be notified in writing. If an applicant believes that any determination was made without being written, the applicant may request that such decision be made in writing and duly substantiated.

### **31.7 Related Laws and Regulations**

PRDOH Program Guidelines and General Policies make reference as to how the provisions of certain laws apply to the Program. However, other related laws may exist which are not included in these Guidelines. This does not negate or preclude the Program from applying the provisions of those laws, nor an applicant from receiving services, when applicable. Moreover, PRDOH can enact, or may have enacted, policies that address how the laws mentioned in these guidelines are managed. If there are any discrepancies between these guidelines and the laws and/or regulations mentioned in them, then the

latter will prevail over the guidelines. If at any time the laws and/or the applicable regulations mentioned in these guidelines are amended, the new provisions will apply to the Program without the need to amend these guidelines or policies.

### **32 Program Oversight**

Nothing contained within these guidelines is intended to limit the role of PRDOH, HUD, and/or corresponding authorities from exercising oversight and monitoring activities of the Program.

### **33 Severability Clause**

If any provision of these guidelines, or the application thereof to any person, partnership, or corporation, or circumstance, is deemed invalid, illegal, or incapable of being enforced to any extent by a competent court, the remainder of these guidelines, and the application of such provisions, will not be affected. All valid applications of these guidelines shall be severed from any applications deemed invalid, leaving the valid applications in full force.

**END OF DOCUMENT.**



## Appendix A

**Disclaimer: these policies may be updated from time to time.**

You may access the current version of all policies in English or Spanish at <https://cdbg-dr.pr.gov/en/resources/policies/> or <https://cdbg-dr.pr.gov/recursos/politicas/>.

Policy Name
<p><b>Subrecipient Management Policy</b></p> <p><a href="https://cdbg-dr.pr.gov/en/download/subrecipient-management-policy/">https://cdbg-dr.pr.gov/en/download/subrecipient-management-policy/</a> (English)</p> <p><a href="https://cdbg-dr.pr.gov/download/politica-para-el-manejo-de-subrecipientes/">https://cdbg-dr.pr.gov/download/politica-para-el-manejo-de-subrecipientes/</a> (Spanish)</p>
<p><b>Financial Policy</b></p> <p><a href="https://cdbg-dr.pr.gov/en/download/financial-policy/">https://cdbg-dr.pr.gov/en/download/financial-policy/</a> (English)</p> <p><a href="https://cdbg-dr.pr.gov/download/politica-financiera/">https://cdbg-dr.pr.gov/download/politica-financiera/</a> (Spanish)</p>
<p><b>Procurement Manual</b></p> <p><a href="https://cdbg-dr.pr.gov/en/download/procurement-manual-cdbg-dr-program/">https://cdbg-dr.pr.gov/en/download/procurement-manual-cdbg-dr-program/</a> (English)</p> <p><a href="https://cdbg-dr.pr.gov/download/manual-de-adquisiciones-programa-cdbg-dr/">https://cdbg-dr.pr.gov/download/manual-de-adquisiciones-programa-cdbg-dr/</a> (Spanish)</p>
<p><b>Minority and Women-Owned Business Enterprise Policy (W/MBE Policy)</b></p> <p><a href="https://cdbg-dr.pr.gov/en/download/mwbe-policy/">https://cdbg-dr.pr.gov/en/download/mwbe-policy/</a> (English)</p> <p><a href="https://cdbg-dr.pr.gov/download/politica-mwbe/">https://cdbg-dr.pr.gov/download/politica-mwbe/</a> (Spanish)</p>
<p><b>Davis Bacon and Related Acts Policy</b></p> <p><a href="https://www.cdbg-dr.pr.gov/en/download/davis-bacon-and-related-acts-policy/">https://www.cdbg-dr.pr.gov/en/download/davis-bacon-and-related-acts-policy/</a> (English)</p> <p><a href="https://www.cdbg-dr.pr.gov/download/davis-bacon-and-related-acts-policy/">https://www.cdbg-dr.pr.gov/download/davis-bacon-and-related-acts-policy/</a> (Spanish)</p>

**Section 3 Policy**

<https://cdbg-dr.pr.gov/en/download/section-3-policy/>(English)

<https://cdbg-dr.pr.gov/download/politica-sobre-seccion-3/>(Spanish)

**Occupational Safety & Health Policy**

<https://cdbg-dr.pr.gov/en/download/osh-r3-guideline/> (English)

<https://www.cdbg-dr.pr.gov/download/politica-osh/> (Spanish)

**Equal Access Regardless of Sexual Orientation or Gender Identity**

<https://www.vivienda.pr.gov/wp-content/uploads/2015/09/Reglamento-Hostigamiento-Sexual - InglCs.pdf> (English)

<https://www.vivienda.pr.gov/wp-content/uploads/2015/09/Reglamento-Hostigamiento-Sexual.pdf>  
(Spanish)

**Fair Housing and Equal Opportunity Policy**

<https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-ftheo-policy-for-cdbg-dr-programs/> (English)

<https://cdbg-dr.pr.gov/download/politica-de-equidad-de-vivienda-e-igualdad-de-oportunidades-para-los-programas-cdbg-dr/> (Spanish)

**Recordkeeping, Management and Accessibility Policy**

<https://www.cdbg-dr.pr.gov/en/download/record-keeping-management-and-accessibility-policy-rkma-policy/> (English)

<https://www.cdbg-dr.pr.gov/download/politica-sobre-manejo-administracion-y-accesibilidad-de-documentos/>(Spanish)

**Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan**

<https://www.cdbg-dr.pr.gov/en/download/ura-adp-guidelines/>  
(English)

<https://www.cdbg-dr.pr.gov/download/guias-ura-adp/> (Spanish)

**Drug Free Workplace**

<http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/6145.pdf>

**Property Management and Distribution**

<https://aafaf.pr.gov/assets/regla-unico-comite-disposicion-bienes-inmuebles-9-12-2019.pdf>

**Anti-fraud, Waste, Abuse, or Mismanagement Policy**

<https://www.cdbg-dr.pr.gov/en/download/afwam-policy/> (English)

<https://www.cdbg-dr.pr.gov/download/politica-afwam/> (Spanish)

**Conflict of Interest and Standards of Conduct Policy**

<https://www.cdbg-dr.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct-policy/> (English)

<https://www.cdbg-dr.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/> (Spanish)

**Personally Identifiable Information, Confidentiality, and Nondisclosure Policy**

<https://cdbg-dr.pr.gov/en/download/personally-identifiable-information-confidentiality-and-nondisclosure-policy/> (English)

<https://cdbg-dr.pr.gov/download/politica-sobre-informacion-de-identificacion-personal-confidencialidad-y-no-divulgacion/> (Spanish)

**Citizen Participation Plan**

<https://www.cdbg-dr.pr.gov/en/download/citizen-participation-plan/> (English)

<https://www.cdbg-dr.pr.gov/download/plan-de-participacion-ciudadana/> (Spanish)

**Citizen Complaints Policy**

<https://www.cdbg-dr.pr.gov/en/download/citizen-complaints-policy/> (English)

<https://www.cdbg-dr.pr.gov/download/politica-sobre-presentacion-de-quejas/> (Spanish)