



DEPARTMENT OF
HOUSING



CDBG-MIT

PROGRAM GUIDELINES

FARM AND ENERGY RESILIENCE PROGRAM

July 30, 2024
V.1

This page was intentionally left blank.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-MIT PROGRAM GUIDELINES
FARM AND ENERGY RESILIENCE PROGRAM
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	July 30, 2024	Original Version.

Table of Contents

1	Overview	7
2	Definitions	7
3	Program Description	9
4	National Objective	9
5	Eligible Activities, Applicants, and Use of Funds	10
5.1	Eligible Activities	10
5.2	Eligible Applicants	10
5.3	Eligible Use of Funds	10
5.4	Ineligible Use of Funds	11
6	Program Funding	12
7	Program Intake	12
7.1	Application Requirements	13
7.2	Project Quotes	15
7.3	Program-approved REICs Roster	16
8	Program Eligibility	17
8.1	Preliminary Eligibility Review	17
9	Project Requirements	18
9.1	Compliance with Laws, Regulations, and Codes	18
9.2	Project Commencement	18
9.3	Types of Systems	18
9.4	PVS Requirements	19
9.5	BSS Requirements	19
9.6	Equipment Requirements	19
9.7	No Portability Requirement	20
9.8	Design Requirements	20
9.9	Permit Requirements	20
9.10	Installation Requirements	21
9.11	Interconnectivity with Power Grid	21
9.12	Warranties	22
9.13	Cost Reasonableness	22

10	Duplication of Benefits (DOB)	22
10.1	Assistance Considered a Duplication of Benefits	23
10.2	Exceptions to Duplication of Benefits	26
11	Underwriting Process	27
12	Environmental Requirements	28
12.1	Environmental Level of Review	30
12.2	Lead Safe Work Practice Provisions	32
12.3	Asbestos Survey	33
12.4	Floodplain Management	34
13	Award Determination and Grant Agreement Execution	35
14	Project Implementation	36
15	Award Disbursement	37
15.1	Progress Payment Request	37
15.2	Final Progress Payment Request	38
15.3	Final System Validation Monitoring	39
16	Labor Standards	40
17	Section 3	40
18	Application Closeout	41
19	Voluntary Withdrawal	41
20	Non-responsive Applicants	42
21	Program-based Reconsideration and Administrative Review	42
21.1	Program-based Reconsiderations	43
21.2	Administrative Reviews	43
22	Recapture	44
23	General Provisions	44
23.1	Program Guidelines Scope	44
23.2	Program Guidelines Amendments	45
23.3	Extension Deadlines	45
23.4	Established Periods of Time	45
23.5	Written Notifications	45
23.6	Conflict of Interest	45

23.7	Citizen Participation	47
23.8	Citizen Complaints	48
23.9	Anti-Fraud, Waste, Abuse, or Mismanagement.....	48
23.10	Related Laws & Regulations	50
23.11	Cross-Cutting Guidelines.....	50
24	Program Oversight.....	50
25	Severability Clause	50

1 Overview

These Guidelines set forth the requirements for the Farm and Energy Resilience Program (**FER Program** or **Program**), under the Puerto Rico Department of Housing's (**PRDOH**) Community Development Block Grant – Mitigation (**CDBG-MIT**) Action Plan¹. The FER Program aims to foster economic development by enhancing agro-industrial capacity and infrastructure to support more resilient operations. Through the implementation of renewable energy solutions for agribusinesses and farmers, the Program will bolster their ability to withstand energy instability and challenges that may arise in the aftermath of disaster events. Investing in renewable energy development will ensure a steady and reliable energy supply capable of sustaining businesses and upholding supply chains vital to the food and agriculture industry sector, included in the Food, Water, and Shelter Lifeline identified in the CDBG-MIT Action Plan.

Eligible renewable Projects for the Program include Photovoltaic Systems (**PVS**) and Battery Storage Systems (**BSS**), which can be either new installations or expansions of existing systems tailored to meet eligible agribusinesses and farmers' current electricity demands.

2 Definitions

- **Agricultural Business or Agribusiness:** a business engaged in agricultural activities, including the farming of all types of food crops for both human and animal consumption, as well as for use as raw materials in the food industry. Additionally, it encompasses the raising of animals to produce meat, dairy products, and other animal-derived goods.
- **Applicant:** An entity that requests to participate in the FER Program via the submission of an Application. Applicants must meet the requirements described in the Eligible Applicants section of these Guidelines.
- **Award Amount:** The total amount of FER Program funds awarded for: (i) the installation of a new PVS with a new BSS; (ii) the addition of a new BSS to an existing PVS; or (iii) the expansion of an existing PVS and BSS to address unmet load needs.
- **Battery Storage System (BSS):** An electrochemical device that collects energy from the grid or a power generation source and then discharges that energy to provide electricity or other grid services when needed. It consists of an arrangement of several components, including batteries to store energy, an islanding device to disconnect from the utility when grid power is down, power conversion systems to convert direct current (**DC**) to alternating current (**AC**) and vice versa, an energy management system, as well as mounting, cabling, and

¹ The CDBG-MIT Action Plan is available in English and Spanish at <https://recuperacion.pr.gov/en/cdbg-mit/> and <https://recuperacion.pr.gov/cdbg-mit/>.

other electrical equipment, to extend the power available to the designated project area.

- **Battery Storage System Capacity (BSS Capacity):** The sum of each individual nameplate capacity of batteries within a battery bank of a BSS. BSS Capacity is measured in kilowatt-hours (kWh).
- **Commissioning:** A systematic process that ensures and documents that all Project systems perform interactively according to the design intent and the owner's operational needs and, where applicable, do not adversely impact the electric grid or neighboring customers. The commissioning process includes documentation, equipment startup, control system calibration, testing, balancing, and performance testing, among other items.
- **Expert Electrician:** Refers to a person who is a member of the Puerto Rico College of Expert Electricians and authorized by the Puerto Rico Board of Examiners of Expert Electricians to work on electrical installations and with electrical equipment of high and low voltage, in accordance with Act No. 115 of June 2, 1976, as amended, 20 LPRA § 2701 *et seq.*, known as the "Board of Examiners of Expert Electricians Act".
- **Government:** Refers to the Government of Puerto Rico, its agencies, offices, and subdivisions, including public corporations and municipalities.
- **Licensed Engineer or Professional Engineer:** Refers to a person who is a member of the Puerto Rico College of Engineers and Land Surveyors and authorized by the Puerto Rico Board of Examiners of Engineers, Architects, Surveyors, and Landscape Architects to practice the profession of engineering, in accordance with Act No. 173 of August 12, 1988, 20 LPRA § 711 *et seq.*, known as the "Puerto Rico Board of Examiners of Engineers, Architects, Surveyors, and Landscape Architects Act".
- **Participating Property:** Site where the (i) the installation of a new PVS with a new BSS; (ii) the addition of a new BSS to an existing PVS; or (iii) the expansion of an existing PVS and BSS to address unmet load needs will be completed through the FER Program assistance. The Applicant must own the Participating Property or have a long-term lease agreement with a minimum term of fifteen (15) years with the Participating Property owner, with the possibility of extension.
- **Photovoltaic System (PVS):** A device designed to supply power by converting solar energy into DC electricity using semiconducting materials that create voltage or electric current in a material, upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity; an inverter to change the electric current from DC to AC; and,

mounting (racks and others), cabling, metering systems, and other electrical accessories to set up a working system.

- **Photovoltaic System Capacity (PVS Capacity):** The sum of each individual DC nameplate capacity rating of the photovoltaic modules. PVS Capacity is measured in kilowatts (**kW**).
- **Project or System:** Refers to: (i) the installation of a new PVS with a new BSS; (ii) the addition of a new BSS to an existing PVS; or (iii) the expansion of an existing PVS and BSS to address unmet load needs at an eligible Applicant's Participating Property with the FER Program assistance and in compliance with the Grant Agreement's terms and conditions and these Guidelines.
- **Renewable Energy Installation Company (REIC):** A FER Program-approved company that performs the Project's installation. REICs will be approved following the process established in these Guidelines.

3 Program Description

Through this Program, PRDOH will provide grants to eligible Agricultural Business for the design, acquisition, and installation of renewable solar energy Systems to cover 100% of their annual energy consumption need up to two hundred and fifty thousand dollars (\$250,000). The FER Program will be implemented through the following phases:

- Program Intake
- Preliminary Eligibility Review
 - Applicant Eligibility
 - Project Eligibility
 - Duplication of Benefits
 - Initial Environmental Screening
- Underwriting
- Environmental Review
- Award Determination and Grant Agreement Execution
- Project Implementation
- Closeout

4 National Objective

Applications served under the FER Program must demonstrate compliance with a U.S. Department of Housing and Urban Development (**HUD**) national objective as required by the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305, codified at 24 C.F.R. § 570.483. Program activities will be evaluated according to the following national objective:

- Urgent Need Mitigation (**UNM**) national objective – benefit participants with a risk-based need for energy security to reduce the risk of loss of life and property from future disasters and yield community development benefits.²

5 Eligible Activities, Applicants, and Use of Funds

5.1 Eligible Activities

All projects funded by CDBG-MIT must meet a HUD-eligible activity as defined by Section 105(a) of the HCDA. Eligible activities for the FER Program include:

- Section 105 (a)(15) – Assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations
- Section 105 (a)(17) – Economic development assistance to private for-profit entities
- Section 105 (a)(22) – Microenterprise Assistance

5.2 Eligible Applicants

To be eligible to receive funds under the FER Program, an Applicant must meet the following criteria:

- Applicant must be an Agricultural Business with a valid Bona Fide Farmer certification issued by the Secretary of Agriculture in accordance with Section 1020.08 (a)(1) of Act No. 60-2019, as amended, 13 L.P.R.A. § 45019, known as the “Puerto Rico Incentives Code”;³
- Applicant must provide all organizational documents requested in these Guidelines;
- Applicant must be the owner or have site control over the Participating Property evidenced by a long-term lease in effect for a minimum of fifteen (15) years, with the possibility of extension;
- Applicant must not have conflicts of interest, as defined in the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) for the CDBG-DR/MIT programs⁴.

5.3 Eligible Use of Funds

All Program costs must adhere to 2 C.F.R. Part 200, Subpart E, Cost Principles. In general, eligible costs for this Program include:

² Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, 45857, requires the grantee to meet the alternative criteria for the UNM national objective by documenting that the activity: (i) addresses current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas; and (ii) will result in a measurable and verifiable reduction in the risk of loss of life and property.

³ Please note that having a Bona Fide Farmer certification is an additional requirement alongside being classified as an Agricultural Business, as this term is defined in these Guidelines, and that not every business listed in Section 1020.08 (a)(1) of Act No. 60-2019 will qualify as an Agricultural Business under the FER Program. Act No. 60-2019 is available at <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/60-2019.pdf>.

⁴ The COI Policy is available in English and Spanish at <https://recuperacion.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct-policy/> and <https://recuperacion.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/>.

- Costs of design and engineering services for the Project, including costs for any required design or engineering studies or surveys;
- Costs of any required permits for the project;
- Costs of equipment, including photovoltaic modules, charge controllers, transfer switches, inverters, metering equipment, balance equipment, batteries, voltage regulators, as well as mounting, cabling, and other electrical accessories to set up working Systems;
- Costs of site preparation and other work required prior to the installation of the System, including clearing, excavation, grading and leveling, and foundation work;
- Costs of mounting and anchoring structures such as racking systems or other structures that provide primary support for the System equipment;
- Costs of installation and commissioning of the System;
- Costs of required mitigation of hazardous materials, when applicable;
- Inspection and monitoring costs related to the installed Systems;
- The costs of training the end user on PVS and BSS operation and maintenance; and
- Any power grid interconnection costs related to typical interconnection requirements established by the electric power utility.

5.4 Ineligible Use of Funds

Ineligible activities and ineligible use of funds include, but are not limited to:

- Awards to Agricultural Businesses that are involved in the farming of any crop classified as a Schedule I controlled substance by the Controlled Substances Act⁵;
- Grant Agreements transfers;
- Tampering with, reselling, or exchanging the installed System;
- Use of equipment and services above market value;
- Utilization of used or refurbished equipment;
- Property improvements that are not directly associated with the development of a primary support for the renewable energy System;
- Installation of equipment that is not permanent and integral to the System support structure, as defined in Articles 250 and 252 of the Puerto Rico Civil Code⁶ and applicable federal regulations⁷;
- Installation of equipment on land that is not Applicant-owned or controlled through an existing long-term lease agreement with a minimum term of fifteen (15) years;

⁵ 21 U.S.C. § 801 *et seq.*

⁶ 31 LPRA §§ 6051 and 6053

⁷ 24 C.F.R. § 570.207(b)(1)

- Any costs associated with the project that occur before the Grant Agreement execution between the Applicant and PRDOH;
- Purchase and installation of backup power generators;
- Costs of improvements needed to the electrical power grid for the interconnection of the System to become feasible;
- Leases, power purchase agreements, or other financing instruments that delegate, in whole or in part, ownership of the installed Systems; and
- Any activity that directly improves the power grid infrastructure.

6 Program Funding

The FER Program has a minimum award requirement of fifty thousand dollars (\$50,000) and a maximum of two hundred and fifty thousand dollars (\$250,000). Eligible Applicants can receive an award for the installation of a System for one hundred percent (100%) of the eligible Project costs to cover their total annual energy consumption needs up to the maximum award of two hundred and fifty thousand dollars (\$250,000). The award amount for an eligible Applicant under the FER Program will be determined based on the Applicant's selected quote as approved by the Program. The total project cost may not exceed the awarded amount.

7 Program Intake

Applicants will be required to complete a Program intake process and provide supporting documents to conduct an eligibility review process. A complete application for the FER Program requires various documents and data that Applicants must have readily available at the time of application to the Program. All documentation submitted by the Applicant must be valid at the time of submission.

Each Applicant must sign an **Acknowledgement and Consent Statement and Subrogation Agreement** as part of the Program application process. The Acknowledgement and Consent Statement and Subrogation Agreement includes the following acknowledgments and authorizations:

- Applicant authorizes the Program to obtain third-party data directly related to determining Program eligibility, Program award, and compliance with Program requirements;
- Applicant gives the Program access to the Participating Property, as needed, to conduct required Program inspections;
- Applicant agrees to cooperate with the Program and not to interfere with the work or inspections, among others;
- Applicant grants subrogation rights to the Program regarding the right to recover any funds to which they may be entitled for the System installation, among others.

The Program intake period will remain open until all Program funds have been requested via submitted applications.

7.1 Application Requirements

Applicants will be required to submit the following documentation electronically via the Program's website, in English and Spanish, at <https://recuperacion.pr.gov/en/agroenergy> and <https://recuperacion.pr.gov/agroenergia>, as part of their application:

- Government-issued photo identification (federal or state-issued),⁸ which may include:
 - Driver's license;
 - Passport;
 - Military ID Card;
- Bona Fide Farmer certificate issued by the Secretary of Agriculture;
- Evidence of site ownership or control:
 - If the Applicant is the Participating Property owner, they must demonstrate ownership through a copy of the Property Deed or a registration certification from the Property Registry of Puerto Rico, issued within six (6) months before the application date.
 - If the Applicant does not own the Participating Property, they must demonstrate having site control by providing a copy of the current long-term lease agreement for a minimum term of fifteen (15) years - with the possibility of extension- between the Applicant and the Participating Property owner, who must be able to demonstrate ownership through a copy of the Property Deed or a registration certification from the Property Registry of Puerto Rico, issued within six (6) months before the application date. Additionally, the Participating Property owner must complete an **Owner's Consent for Program Participation** authorizing the Applicant's participation in the Program and the installation of the System in the Participating Property as described in the Applicant-selected quote.
- Organizational documentation:
 - Certificate of Good Standing issued by the Puerto Rico Department of State;
 - Negative Debt Certification issued by the Puerto Rico Department of Treasury ("Hacienda"). If the Applicant is on a payment plan, they will need to provide proof of the agreement;

⁸ For all owners with twenty-five percent (25%) or more ownership in the business. For entities with ownership distributions of less than twenty-five percent (25%) among its owners, at least fifty-one percent (51%) of owners must show compliance with the proof of identity requirement.

- Certification of Income Tax Return Filing issued by the Puerto Rico Department of Treasury;
- Income Tax Returns for the last three (3) years or, in the absence of Income Tax Returns, Business Financial Projections for the next three (3) taxable years;
- Merchant Registration Certificate issued by the Puerto Rico Department of Treasury;
- Copy of current Municipal Patent issued by the municipality where the business is located, or proof of exemption under Article 7.206 of Act No. 107-2020, as amended, 21 LPRA § 8168, known as the "Puerto Rico Municipal Code". If the business has requested a payment extension, it must include a copy of the payment plan as approved by the Municipality.
- Electric utility bill, including history, received within three (3) months before the date of the application and issued in the name of the Applicant/Business; or an Electrical Load Study report certified by an Expert Electrician or Licensed Electrical Engineer;
- Three (3) Project Quotes provided by different FER Program-approved REICs. Applicants should select the quote with the lowest cost. If the lowest quote is not selected, the Applicant must explain the reason for their selection and demonstrate that the selected quote is cost-reasonable. In any case, PRDOH reserve the right of accepting or rejecting the Applicant's reasons and selection of a higher priced quote;
- Completed PRDOH Acknowledgement and Consent Statement and Subrogation Agreement;
- Completed PRDOH Duplication of Benefits Self-Certification (**DOB**). Supporting documentation must be included, when applicable;
- Completed PRDOH Conflict of Interest (**COI**) Disclosure Form;
- Any other document requested by PRDOH.

After the Applicant submits its FER Program application, the Program will send a receipt confirmation informing them that a completeness review of the submitted information is pending before considering the application as submitted. Once the Program reviews all submitted documentation and validates its completeness, it will notify Applicants that their application is considered submitted. If the FER Program determines that the application is missing necessary documentation or information, the Program will send the Applicant a **Required Documents Notification** listing the required documentation. The Applicant will have **thirty (30) calendar days** from the date of the notice to respond. Failure to do so within the established time will trigger the Non-responsive Applicants

process.⁹ Once the Program receives the required information, Applicants will receive a confirmation that their application is considered submitted.

7.2 Project Quotes

To determine Project eligibility, FER Program Applicants must include three (3) project quotes by different Program-approved REICs. Quotes must be submitted using the Program-provided template, which may require, but not be limited to, the following information:

- Applicant's name and Participating Property's address;
- Participating Property's coordinates;
- Business' annual energy consumption (in kWh) and PVS Capacity to meet the energy consumption;
- Type of system to be installed (a new PVS with a new BSS; the addition of a new BSS to an existing PVS; or the expansion of an existing PVS and BSS);
- PVS installation type;
- PVS Capacity and BSS Capacity of the systems to be installed;
- Actual PVS and/or BSS Capacities, when applicable;
- List of equipment to be installed, including the brand, model number, unit capacity, and quantity;
- Total Project cost and breakdown divided into the following milestones payments:
 - Pre-Installation Work – includes all costs associated with design and permitting;
 - Civil Work – includes all costs associated with environmental mitigation, site preparation, all work required prior to the installation of the system, including construction of the structural elements that will provide primary support for the System; and
 - Installation Work – includes all costs associated with the installation of the System, including but not limited to photovoltaic modules, batteries, inverters, and cabling.

Project Quotes must also include the following:

- Electric utility bill, including history, received within three (3) months before the date of the application and issued in the Applicant/Business' name; or an Electrical Load Study report certified by an Expert Electrician or Licensed Electrical Engineer;
- The National Renewable Energy Laboratory's (**NREL**) PVWatts Calculation for the Participating Property showing the PVS's maximum capacity to meet the business's annual energy consumption.
- Schematic drawing showing the location of the equipment to be installed on the Participating Property;

⁹ See the Non-responsive Applicants Section of these Guidelines.

- Project site photographs, including photographs of existing structures. If the Participating Property has an existing system, photographs must clearly show the PVS and/or BSS components' location and quantity.

Program staff will review the Project Quotes for initial compliance with FER Program requirements. The Applicant will be notified via a **Required Documents Notification** of any additional information or corrections required.

7.3 Program-approved REICs Roster

For a REIC to be approved for FER Program participation, it must submit a Request for Enrollment into the FER REIC Roster. The following documentation must accompany the request:

- The company's profile, including legal name, tax identification number, Unique Entity Identifier (**UEI**), physical address, postal address, contact phone, email, and authorized representative;
- Evidence of the company's enrollment in the Federal Government's System of Award Management (**SAM**) at <https://sam.gov/content/home>;
- A Commitment of Compliance with the FER Program Terms and Conditions Sworn Statement (PRDOH will provide the Statement's template);
- Evidence of the company's registration with the Puerto Rico Department of Consumer Affairs (**DACO**, by its Spanish acronym);
- Evidence of at least one (1) company employee being a Certified Renewable Electrical Systems Installer under the Puerto Rico Energy Policy Program (**EPP**) from the Department of Economic Development and Commerce (**DDEC**, for its Spanish acronym), Regulation for the Certification of Renewable Energy Systems, No. 7796 (January 19, 2010),¹⁰ as amended by Regulation No. 8080 (September 30, 2011),¹¹ or its subsequent equivalent regulation;
- A Certificate of Good Standing, valid at the time of submission, from the Puerto Rico Department of State in the company's name;
- A Debt Certificate ("Certificación de Deuda"), valid at the time of submission, issued by the Puerto Rico Department of Treasury ("Hacienda") in the company's name. If the REIC is currently on a payment plan, proof of the agreement must be included;
- A Certificate of Income Tax Returns ("Certificación de Radicación de Planillas"), valid at the time of submission, issued by the Puerto Rico Department of Treasury in the company's name;
- An Account Statement ("Estado de Cuenta"), or a Negative Certification ("Certificación Negativa") for companies that do not own any movable or real

¹⁰ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/7796.pdf>.

¹¹ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/8080.pdf>.

property, valid at the time of submission, issued by the Municipal Revenue Collection Center (**CRIM**, for its Spanish acronym) in the company's name;

- Evidence of Public Liability Insurance to cover damages for their projects in an amount no less than one million dollars (\$1,000,000) by occurrence and one million dollars (\$1,000,000) by aggregate, as required under Section 9.5.2.4(e)(2) of Regulation No. 9473¹²
- A Renovation Firm Certification valid at the time of submission, issued by the Environmental Protection Agency (**EPA**) in the company's name;¹³ and
- A PRDOH New Vendor Request Form (PRDOH will provide the template) duly completed and accompanied by its associated forms and documentation.

Requests for Enrollment into the FER Program REIC Roster must be submitted through <https://recuperacion.pr.gov/en/agroenergy> (English) and <https://recuperacion.pr.gov/agroenergia> (Spanish). The FER Program may leverage documentation previously provided by REICs that are approved for participation in other PRDOH Programs. FER Program staff will evaluate each Request for Enrollment into the FER Program REIC Roster and notify companies of their approval or denial via a **REIC Approval Notice** or **REIC Denial Notice**, as applicable. The list of approved REICs will be published by PRDOH at <https://recuperacion.pr.gov/en/agroenergy> (English) and <https://recuperacion.pr.gov/agroenergia> (Spanish).

8 Program Eligibility

Once Applicants submit all required information and documentation as part of the Program intake process, it will be evaluated for compliance with the Program's eligibility requirements. Failure to disclose accurate and complete information may affect eligibility and all such instances will be referred for further action. Applicants may be required to repay PRDOH administrative fees and other costs if they are found to have submitted inaccurate or incomplete information to appear to meet eligibility requirements.

8.1 Preliminary Eligibility Review

The FER Program will conduct a preliminary eligibility review of each Application to assess the following before moving forward with the underwriting process:

- Applicant Eligibility
- Project Eligibility

¹² "Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios", No. 9473 (June 16, 2023), available at <https://jp.pr.gov/wp-content/uploads/2023/10/Reglamento-Conjunto-de-Emergencia-searchable.pdf>.

¹³ Companies interested in becoming Program-approved REICs may submit Requests for Enrollment into the FER Roster without being an EPA Certified Renovation Firm at the time of the request. If found to comply with all other requirements, the Program may conditionally approve the Company as a REIC, subject to the Company submitting a valid Renovation Firm Certification. A conditionally approved REIC will not be able to work with Program applicants until evidence of it being a Certified Renovation Firm is submitted.

- Duplication of Benefits
- Initial Environmental Screening

Applications that are determined to be preliminarily eligible will receive a **Preliminary Eligibility Notice**. While this notice signifies that the application will continue to the next step in the evaluation process (underwriting and environmental review), it does not constitute an award or final eligibility determination. Applications that do not comply with the Program requirements at this stage will be issued an **Ineligibility Determination Notice** stating the reasons for non-compliance.

9 Project Requirements

9.1 Compliance with Laws, Regulations, and Codes

All FER Program Projects must follow applicable laws, regulations, and codes, which include, but are not limited to:

- Regulation No. 7796 of January 19, 2010, known in Spanish as “*Reglamento para la Certificación de Sistemas de Energía Renovable*,”¹⁴ of the DEDC, or its equivalent regulation in place at the time of installation.
- Regulation No. 9473 of June 16, 2023, known in Spanish as “*Reglamento Conjunto Para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocio*,”¹⁵ of the Puerto Rico Planning Board, or the equivalent regulation in place at the time of installation.
- Regulation No. 9049 of November 15, 2018, known as “*Puerto Rico Codes 2018*”, of the Office of Permit Management¹⁶ (**OGPe**, for its Spanish acronym), or its equivalent regulation in place at the time of installation.

9.2 Project Commencement

Only Projects that have not started at the time of Program application are eligible to receive awards under the Program. A Project cannot begin until the Applicant and PRDOH execute a Grant Agreement for the award. The FER Program will not give retroactive awards for work executed prior to application submission and Grant Agreement execution.

9.3 Types of Systems

The FER Program funds must be used for mitigation activities. HUD’s Notice at 84 FR 45838, 45840, defines mitigation as “those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.” A PVS without a BSS cannot provide power to businesses when the power grid is down. Therefore, eligible Systems under the FER Program are (i) the installation of a new PVS with a new BSS; (ii) the

¹⁴ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/7796.pdf>.

¹⁵ Available at <https://jp.pr.gov/wp-content/uploads/2023/10/Reglamento-Conjunto-de-Emergencia-searchable.pdf>.

¹⁶ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/9049.pdf>.

addition of a new BSS to an existing PVS; or (iii) the expansion of an existing PVS and BSS to address unmet load needs. The installation of a PVS without a BSS is not an eligible activity under the FER Program.

9.4 PVS Requirements

9.4.1 PVS Capacity

The PVS must be of sufficient size to produce enough power to compensate, either partially or totally, the Eligible Applicant's business energy needs. PVS capacities over the Eligible Applicant's business annual energy consumption —based on the **twelve (12) months prior** to application submission— are not eligible under the FER Program. For the purpose of calculating the amount to be awarded or disbursed, the Program may adjust the proposed PVS Capacity whenever it exceeds the Eligible Applicant's business annual energy consumption. Maximum PVS Capacity based on annual energy consumption will be corroborated by the FER Program using the NREL's PVWatts Calculator.¹⁷ Applicants will be required to submit with their application a copy of their System's simulation in PVWatts obtained through the NREL's PVWatts Calculator.

9.4.2 PVS Location Requirement

The FER Program will allow roof-mounted, ground-mounted, pole-mounted, or light frame (canopy) structure-mounted PVS installations, as long as they comply with all permitting requirements, laws, regulations, and codes. However, if the Participating Property has an existing structure that could provide primary support for the System as a roof-mounted installation, it should be considered before any of the other mounting solutions.

9.5 BSS Requirements

9.5.1 BSS Capacity

The BSS should be of sufficient size so that power may be extended to the critical loads of the Eligible Applicant's business. Eligible Applicants will determine their own BSS Capacity to address their needs in conjunction with their selected Program-approved REIC. However, BSS Capacities of less than 12kWh are not eligible for the FER Program. For the purpose of calculating the amount to be awarded or disbursed, the FER Program may adjust the proposed BSS Capacity whenever it exceeds the Eligible Applicant's business annual energy consumption.

9.5.2 BSS Location Requirement

The BSS must be a behind-the-meter system. Therefore, it must be connected to the electric utility customer's side of the electric meter.

9.6 Equipment Requirements

All PVS and BSS equipment must be duly certified in accordance with Section IV of Regulation No. 7796. Equipment that requires certification prior to installation includes

¹⁷ NREL's PV-Watts Calculator is available at <https://pvwatts.nrel.gov/>.

photovoltaic modules, inverters, charge controllers, batteries, and any other equipment that will be installed for a renewable energy generation system in Puerto Rico. Systems with equipment not certified under Section IV are not eligible for the FER Program. A list of certified equipment is published periodically by the OGPe.

Equipment installed using FER Program funds must be new. Reconstructed, refurbished, or relocated equipment is not eligible for the Program. Batteries used for BSS shall have lithium-ion chemistry, but PRDOH may approve additional battery technologies.

Inverters are also required to comply with the grid support and communication characteristics and capabilities required in the Institute of Electrical and Electronics Engineers' (IEEE) Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces (IEEE 1547-2018).¹⁸

9.7 No Portability Requirement

All PVS and BSS installations supported by the FER Program awards must be permanently affixed to the Participating Property. Equipment installed on permanent surfaces with fasteners or other industry-standard methods will demonstrate permanent affixion. Any installation showing signs of portability (badly tied equipment, light disconnections, among others) will not be eligible to receive an award disbursement under the FER Program.

9.8 Design Requirements

Project designs must be performed by a licensed engineer, in accordance with Act No. 173-1988. Designs must be consistent with existing site conditions and in accordance with the requirements set forth in Regulations No. 7796 and No. 9049, as well as any other applicable laws, regulations, and codes. Systems designed by people not licensed as engineers are not eligible for the FER Program.

9.9 Permit Requirements

In accordance with Section 9.4.1.3 of Regulation No. 9473, PVS installed on roofs with capacities below one (1) megawatt do not require a construction permit or an occupancy permit. Neither will a building permit be required for systems up to one hundred (100) kilowatts on the ground. The Program-approved REIC will be responsible for all permits related to the commercial Project installation, as applicable. Additional services needed to meet permitting requirements will be the REIC's responsibility. This could include but may not be limited to the provision of the Designated Inspector as required by OGPe.

¹⁸ Available at <https://standards.ieee.org/ieee/1547/5915/>.

All PVS and BSS installations, without consideration of the systems' capacities, must be certified by a duly licensed engineer or expert electrician to ensure the safety and security of the design and installation.

9.10 Installation Requirements

Installations must be performed by a Program-approved REIC and a Certified Renewable Electrical Systems Installer in accordance with Article 17 of Regulation No. 7796, or its subsequent equivalent regulation. Systems installed by REICs not approved by the FER Program or by a person not duly certified under Section III of Regulation No. 7796 are not eligible to receive disbursement of the award. The list of Program-approved REICs is available at <https://recuperacion.pr.gov/en/agroenergy> (English) and <https://recuperacion.pr.gov/agroenergia> (Spanish). The list of Certified Renewable Electrical Systems Installers is available at <https://oipc.pr.gov/listado-de-instaladores-activos-de-sistemas-de-energia-renovable/>.

Installations must be completed in strict compliance with the drawings and specifications requirements outlined in the Project design documents. Upon completion of the installation process by a Program-approved REIC and a Certified Renewable Electrical Systems Installer, the REIC must commission the System. The REIC and Certified Renewable Electrical Systems Installer must provide a copy of the Project design documents duly signed and sealed by the designer.

The REIC shall ensure and document in the Commissioning Report that all systems perform interactively according to the intended design and the owner's operational needs. The commissioning process includes documentation, equipment startup, control system calibration, testing, balancing, and performance testing.

When applicable, the installation process must consider the Lead Safe Work Practices Provisions for Properties Built Prior to January 1, 1978, as further detailed in these Guidelines.

9.11 Interconnectivity with Power Grid

All FER Program-awarded Projects must submit an Evaluation Request to the Power Grid Operator in accordance with the Regulation to Interconnect Generators with the Electrical Distribution System of the Electric Power Authority and Participate in Net Metering Programs, Regulation No. 8915 of February 6, 2017, known in Spanish as the "*Reglamento para Interconectar Generadores con el Sistema de Distribución Eléctrica de la Autoridad de Energía Eléctrica y Participar en los Programas de Medición Neta*", or its equivalent regulation in place at the time of installation.¹⁹ Evaluation Requests must be submitted under the expedited processes available, when applicable.²⁰

¹⁹ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/8915.pdf>.

²⁰ As provided in Section IV of Regulation No. 8915.

This requirement shall be considered satisfied when the Applicant or their REIC submit the Evaluation Request to Interconnect to the Power Grid Operator, not when the Power Grid Operator notifies its determination on the Request.

Properties not connected to the electric power distribution system that are completely off-the-grid will be exempt from complying with this requirement.

9.12 Warranties

All FER Program Systems shall, at minimum, be warranted as specified below:

- **Ten (10) years** warranty for the PVS Panels.
- **Twenty-five (25) years** of Linear Performance Guarantee for the PVS modules.
- **Ten (10) years** warranty on battery banks and inverters.

All warranties shall include:

- Parts, labor, faulty materials, manufacturing defects, defective items, emergency repairs, and installation costs related to equipment failure under the warranty period.
- Repair or replacement of all System components.

REICs shall submit full installation warranty documents to the Applicants, who must then submit a copy to the Program.

9.13 Cost Reasonableness

All costs under federally funded programs must be reasonable, meaning that they do not exceed what a prudent person would incur under similar circumstances as demonstrated by market price for comparable goods and services.²¹

Applicants must demonstrate their Project's cost reasonableness by submitting at least three (3) Project Quotes signed by a representative of a Program-approved REIC.²² Applicants must also sign the selected quote to indicate their selection.

Applicants should select the quote with the lowest cost that covers their annual energy consumption needs. If the lowest quote is not selected, the Applicant must explain the reason and demonstrate the selected quote's cost reasonableness for the Program to approve the selection. PRDOH reserves the right of accepting or rejecting the Applicant's reasons and selection of a higher priced quote.

10 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. § 5121 *et seq.*, prohibits any person, business concern, or other entity

²¹ 2 C.F.R. § 200.404

²² Projects with costs over a two hundred and fifty thousand dollars (\$250,000.00) are not eligible for the FER Program.

from receiving federal funds for any part of a project where the Applicant has received financial assistance from any other program, from private insurance, charitable assistance, or any other source. As such, PRDOH must consider aid received by 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.

When possible, PRDOH will electronically verify disaster recovery assistance received through federally and locally maintained datasets, such as Federal Emergency Management Agency's Individual Assistance (**FEMA IA**) and Small Business Administration (**SBA**) disaster home loan datasets.

The applicable duplication of benefits guidance is included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836 (**2019 DOB Notice**), which updates 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. Provisions at 84 FR 45838, 45840, require CDBG-MIT Grantees to comply with the duplication of benefits (**DOB**) requirements of 84 FR 28836. As such, the DOB policy outlined in these Guidelines follows the guidance issued in the 2019 DOB Notice.

For more information, refer to the PRDOH Duplication of Benefits Policy available in English and Spanish at: <https://recuperacion.pr.gov/en/download/duplication-of-benefits-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

10.1 Assistance Considered a Duplication of Benefits

To calculate DOB, the Program considers (1) total assistance received or available to the applicant, (2) assistance considered to be non-duplicative, and (3) the Applicant's unmet mitigation needs. Total DOB is calculated by subtracting non-duplicative assistance from total assistance received. Under federal law, any DOB must be deducted from the assistance provided by the FER Program. The following are common sources of assistance that may have been received by Applicants.

10.1.1 FEMA Individual Assistance (FEMA IA)

FEMA IA assistance may have been provided to Applicants for property repairs. In the cases where Applicants have received assistance for property repair, and the property had PVS and BSS installed at the time of the storm, the Program will consider such amount a DOB. The Program will determine and verify FEMA IA assistance through FEMA-provided datasets or through Applicant-provided information originating at FEMA, such as a FEMA Award letter. If evidence is provided that the FEMA award included assistance for items

not related to PVS and BSS, then the amounts unrelated to the PVS and BSS will not be counted as a DOB.

10.1.2 Small Business Administration (SBA) Loans

As per recent amendments to the Disaster Recovery Reform Act of 2018 (**DRRA**), Pub. L. 115-254, a subsidized loan was not a duplication of other forms of financial assistance, provided that all federal assistance was used toward a loss suffered due to a major disaster or emergency. However, the DRRA provisions, which applied to disasters that occurred from 2016 to 2021, expired on October 5, 2023. Therefore, the determining factor for applying the DRRA amendment is the date the agreement for loan assistance is awarded (signed by all the required parties, made and entered, and final). As such, subsidized loans awarded after the amendment sunset date are to be included in the DOB evaluation.

Federal regulations deem SBA loans for repair to be a DOB for federally-funded repair programs. If an Applicant has executed a loan with SBA to cover the cost of repairs and such repairs included PVS and BSS, the amount of the approved loan related to PVS and BSS is considered a DOB.

The Program will collect SBA information provided by the Applicant through the application process. In addition, the Program may obtain a data feed from SBA to verify all approved amounts for SBA loans. The Program will collect specific information from SBA that breaks down the approved SBA loan amounts into the different assistance categories (e.g., real property, personal property, vehicles, etc.).

10.1.3 Declined SBA Loans

Declined loans are loan amounts offered by a lender but turned down by the Applicant, meaning the Applicant never signed loan documents to receive loan disbursements. The 2019 DOB Notice updated the treatment of declined loans. A grantee shall not take into consideration or reduce the amount of assistance provided to an Applicant, where such Applicant applied for and was approved but declined assistance from the SBA related to disasters that occurred from 2014 to 2017.²³

The FER Program will attempt to verify declined loan amounts using third-party data from SBA. If it cannot be ascertained from the SBA data whether the Applicant declined the loan, the loan may still be excluded from DOB calculation if the Applicant provides a written certification stating that they did not accept the subsidized loan.

10.1.4 Canceled SBA Loans

Cancelled loans are loan amounts offered by a lender, accepted by the Applicant, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no

²³ 84 FR 28836, 28842

longer available to the Applicant. Canceled SBA loans may be excluded from the calculation of DOB if it can be documented that the undisbursed portion of an accepted loan is canceled and no longer available to the Applicant.²⁴

To document that an SBA loan is canceled, the Applicant must provide either: written communication from the lender confirming the loan is canceled and no longer available to them; 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. In addition, PRDOH must notify SBA that the Applicant has agreed not to take any actions to reinstate the loan or draw additional amounts.

10.1.5 FEMA National Flood Insurance Program (NFIP)

Payments for loss to property under NFIP insurance policies will be deducted from the grant amount to be awarded if such payments included funds for repairs or replacement of solar arrays and BSS. Payments for contents or other expenses are not deducted from the Applicant's funding assistance award. The Program will collect NFIP insurance information from the Applicant through the application process. In addition, the Program may work directly with NFIP to verify the information provided by the Applicant. Flood insurance coverage provided by the Puerto Rico Department of Treasury ("Hacienda"), through Executive Order OE-2017-044, issued on September 1, 2017, will also be evaluated for DOB.

10.1.6 Private Insurance

All property, flood, or casualty insurance settlement amounts for loss of a PVS or BSS in properties are deducted from the Applicant's funding assistance award. Private insurance payments for contents or other expenses are not deducted from the Applicant's funding assistance award. Insurance proceeds are initially determined by the Program through Applicant-provided information. Program Applicants will authorize the Program to contact third-party private insurance providers to verify information provided by the Applicants within their applications. Third-party re-verification will only occur if the Applicant self-attests a claim was filed and cannot provide a claim summary.

10.1.7 Other Energy Efficiency Programs

Puerto Rico has many federal funding sources that may be used for energy resilience improvements to homes or businesses. The Government may also use state funding sources for this purpose. For example, DDEC implements the Energy Support Incentive

²⁴ 84 FR 28836, 28841, states: "The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined [...]."

Program to provide assistance to businesses for the installation of renewable energy systems.

Any assistance that Applicants received for the installation or improvements to PVS and/or BSS will need to be analyzed by the FER Program. For instance, an Applicant who has received assistance for the installation of a PVS through another program may participate in the FER Program for the installation of a BSS, and the assistance for the PVS may not be considered DOB. Nonetheless, a request for additional assistance on the PVS installation in the property may be considered a DOB. The FER Program will consider and analyze the assistance that Applicants have received for the installation or improvements to PVS and/or BSS on a case-by-case basis.

10.1.8 Other Funds

Applicants must report during the application process any funding received for the same purpose of a Program award, such as funding provided by a non-profit entity, the U.S. Army Corps of Engineers (**USACE**), or FEMA Hazard Mitigation Grant Program (**HMGP**) to assist them with rebuilding their property. In addition, Applicants must provide any supporting documentation related to other duplicative funding sources. The Program will then verify and apply these funds as a DOB.

10.2 Exceptions to Duplication of Benefits

Not all assistance received by an Applicant is considered a DOB for the FER Program. The Program will allow for reductions of DOB totals if the Applicant can prove that the use or control of the funds meets certain criteria. In accordance with 84 FR 28836, PRDOH may exclude for DOB purposes "assistance that was: (1) provided for a different purpose; (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost); (3) not available to the applicant; (4) a private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant." Each of these categories is further described next.

10.2.1 Funds for a Different Purpose

Any assistance provided for a different purpose than the CDBG-MIT-eligible activity or a general, non-specific purpose (e.g., "disaster relief/recovery") and not used for the same purpose **must be excluded** from total assistance when calculating the amount of the DOB. Funding received for purposes different from the purpose of assistance offered under the FER Program will be excluded for purposes of DOB determination.

10.2.2 Funds for the Same Purpose but for a Different Allowable Use

Funds received for the same purpose as funds provided under the FER Program but that the Applicant used for a different allowable use may be excluded from the final award calculation. In some instances, funds provided for the same general purpose as the CDBG-MIT funds may have been used by the Applicant for a different allowable use. In

these circumstances, if the Applicant can document that the funds received were used for a different—but eligible—use, then the funds are not duplicative. The Applicant may provide documentation, such as receipts or paid invoices, demonstrating funding was spent on a different eligible use. The Program will review documentation submitted on a case-by-case basis.

10.2.3 Funds Not Available to the Applicant

Funds that are not available to an Applicant may also be excluded from the final award calculation. Funds are not available to a person or entity if the person/entity does not have legal control of the funds when they are received and are used for a non-duplicative purpose. For example, if a business owner's mortgage requires any insurance proceeds to be applied to reduce the lien balance, then the bank/mortgage holder (not the business owner) has legal control over those funds. Therefore, the business owner is legally obligated to use insurance proceeds for that purpose and does not have a choice in using them for any other purpose, such as to rehabilitate the property. Under these circumstances, insurance proceeds do not reduce assistance eligibility.

Alternatively, if a business owner chooses to apply insurance proceeds to reduce an existing mortgage, or requests that the lender demand payment, insurance proceeds reduce the amount of disaster assistance eligibility. In addition, if a mortgage requires insurance proceeds to be used for repairing the property, those proceeds must be considered as assistance for that purpose. A business owner does not need to possess cash assistance to be considered in legal control over benefits received for a particular purpose.

10.2.4 Private Loans

Unlike SBA loans (or any other subsidized loan or federal loan guarantee program that provides aid after a major disaster or emergency), private loans not guaranteed by SBA need not be considered DOB. Private loans are loans that are not provided by or guaranteed by a governmental entity and that require the Applicant to repay the full amount of the loan under typical commercial lending terms. Since private loans are not provided under a government program, they do not need to be considered as potentially duplicative assistance.

10.2.5 Other Assets or Lines of Credit

Other assets or lines of credit available to a business owner need not be included in the award calculation. This includes but is not limited to checking or savings accounts, stocks, bonds, mutual funds, pension or retirement benefits, credit cards, mortgages or lines of credit, and life insurance. Please note that these items may be held in an individual or business's name.

11 Underwriting Process

The FER Program will follow HUD underwriting guidelines at 24 C.F.R. Part 570, Appendix A, as the financial underwriting framework for evaluating the feasibility of all business applications for a Program award. The Program will complete the underwriting review understanding that different levels of review are appropriate for business applications of diverse sizes and scope. Differences in capacity and level of sophistication among the agribusinesses will also be considered.

The objective of the underwriting process is to ensure all eligible Applicants meet the minimum CDBG underwriting criteria at 24 C.F.R. § 570.482(e) before receiving an award from the FER Program. Thus, to accomplish the underwriting objectives of the FER Program, the Underwriter will evaluate, among other factors, if applicable, that:

- Project costs are reasonable;
- All sources of project financing are committed;
- To the extent practicable, CDBG-MIT funds are not substituted for non-Federal financial support;
- The project is financially feasible;
- To the extent practicable, the return of the Applicant's equity investment will not be unreasonably high; and
- To the extent practicable and as applicable, CDBG-MIT funds are disbursed on a pro-rata basis if other sources of funds are provided for the project.²⁵

12 Environmental Requirements

Environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it complies with federal, state, and local environmental regulations. Every project undertaken with federal funds and all activities associated with it, are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. §4321 *et seq.*, as implemented by HUD environmental review regulations at 24 C.F.R. Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Therefore, an environmental review process is required for all awards to be issued under the Program to evaluate the proposed activities for potential impacts to the surrounding environment and end users.

HUD regulations at 24 C.F.R. § 58.22 place specific limitations on activities pending clearance, including committing or spending 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. An environmental review by the responsible entity under 24 C.F.R. Part 58 and an Authority to Use Grant Funds (**AUGF**) must be obtained for each project before commencing work or committing federal or non-federal funds. A violation of this requirement may jeopardize federal funding for the

²⁵ See Appendix A to 24 C.F.R. Part 570.

Program and disallow all costs that were incurred before the completion of the environmental review.

Project activities must comply with various laws and regulations that contain environmental provisions, including but not limited to:

- Protection of Historic Properties (36 C.F.R. Part 800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. Part 55, Executive Order 11988 and Executive Order 11990);
- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**) (16 U.S.C. § 1456), as amended;
- Sole Source Aquifers (40 C.F.R. Part 149);
- Section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536), as amended, and implementing regulations at 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 (42 U.S.C. § 7506), as amended, and Title 40 of the Code of Federal Regulations (40 C.F.R. Parts 6, 51, and 93);
- Sections 1540 (b) and 1541 of the Farmland Protection Policy Act (**FPPA**) (7 U.S.C. §§ 4201-4202) under the Agriculture and Food Act of 1981, as amended, and implementing regulations at 7 C.F.R. Part 658;
- Noise Abatement and Control (24 C.F.R. §§ 51.100 - 51.106);
- Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 C.F.R. §§ 51.200 - 51.208);
- 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. §§ 51.300 - 51.305);
- Contamination and Hazardous Substances (24 C.F.R. § 58.5 (i)(2)(i));
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898).

All Program awards must have documentation of compliance with 24 C.F.R. Part 58 and other environmental requirements. Therefore, all projects shall have an Environmental Review Record (**ERR**) as required by the NEPA process. The ERR shall set forth (a) the proposed project's scope, (b) potential impacts on the project site, (c) the means to mitigate adverse impacts, (d) alternatives to the project (when required), and (e) the decision to implement, reject, or modify the proposed activities, as appropriate.

The Program will prepare an ERR for each application once the Applicant's compliance with preliminary eligibility requirements and underwriting is confirmed. The ERR for each

Application will be completed prior to the notification of a favorable eligibility determination and the execution of a Grant Agreement for the Program's assistance.

If the scope of work presented in the ERR changes, the environmental review must be reevaluated in accordance with 24 C.F.R. § 58.47. If the Responsible Entity determines the change does not require updating the environmental review, the determination is documented, and the project continues. If the change is determined to potentially impact the original environmental findings, the ERR will be updated, or a new ERR prepared, as required. If the original findings are affirmed, no further publication of a finding of no significant impact (**FONSI**) notice is required. Project activities must cease until the reevaluation is completed.²⁶

No work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds, including signing a construction contract. Environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds (24 C.F.R. § 58.22). A violation of this requirement may jeopardize federal funding to a project or, at a minimum, disallow costs that were incurred before the completion of the Environmental Review.

12.1 Environmental Level of Review

To conduct the appropriate level of environmental review the Program will need to determine the project's environmental classification. The term "project" may be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the Program in whole or in part to accomplish a specific objective. The four (4) major environmental classifications for projects and their descriptions are as follows:

12.1.1 Exempt

These activities are financial or administrative in nature and, as such, will not have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. If a project is determined to be Exempt, the Program must document it in writing, including that the project meets the conditions for exemption set forth in 24 C.F.R. § 58.34. In addition to making the written determination of exemption, the Program must also determine compliance with the requirements at 24 C.F.R. § 58.6.

12.1.2 Categorically Excluded Not Subject to 24 C.F.R. § 58.5 (CENST)

Activities that are Categorically Excluded Not Subject To 24 C.F.R. § 58.5 (**CENST**) are unlikely to have an impact on the environment and do not require an Environmental Impact Statement (**EIS**) or Environmental Assessment (**EA**) and FONSI under NEPA, except in extraordinary circumstances as per 24 C.F.R. § 58.2 (a)(3). This category includes those activities listed under 24 C.F.R. § 58.35 (b), which requires environmental compliance with

²⁶ A change in System capacities or equipment does not constitute a change in the scope of work.

regulations at 24 C.F.R. § 58.6. For activities under this classification, no public notice or Request for Release of Funds (**RROF**) is required to use grant funds.

12.1.3 Categorically Excluded Subject to 24 C.F.R. § 58.5 (CEST)

Activities that are Categorically Excluded Subject to 24 C.F.R. § 58.5 (**CEST**) may have an impact on the environment, but those impacts are anticipated to be minor and easily mitigable, and therefore, do not require an EIS or an EA and FONSI under NEPA, except in extraordinary circumstances as per 24 C.F.R. § 58.2(a)(3). This category includes those activities under 24 C.F.R. § 58.35 (a) and requires environmental compliance with the regulations listed at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6. If the project does not require any formal consultation or mitigation to achieve compliance, it will convert to Exempt, and the project may proceed. Otherwise, the Responsible Entity must publish a Notice of Intent to Request Release of Funds (**NOI/RROF**). Once the minimum seven (7) day comment period has lapsed and any comments are addressed, the Responsible Entity will submit an RROF Certification to HUD. HUD will hold the RROF for a fifteen (15) day objection period. If no objections are received during this time, HUD will send a signed AUGF and the project may proceed.

12.1.4 Environmental Assessment (EA)

These are activities that are neither Exempt nor Categorically Excluded from a full NEPA review, and will therefore require an EA documenting compliance with the regulations listed at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6, environmental assessment factors, and other applicable local environmental requirements. Once the ERR is completed and any comments are addressed, the Responsible Entity will either issue a FONSI, indicating the project will not significantly impact the quality of the human environment, or a finding of significant impact (**FOSI**), necessitating an EIS.

If it is determined that the action will not result in a significant impact on the quality of the human environment, the Responsible Entity will publish a Combined Notice of FONSI and NOI/RROF. Once the minimum fifteen (15) day comment period has lapsed and any comments are addressed, the Responsible Entity will submit an RROF to HUD. HUD will hold the RROF for a **fifteen (15) day** objection period. If no objections are received during this time, HUD will send a signed AUGF and the project may proceed.

12.1.5 Tiered Review

Tiering is a specialized form of conducting environmental reviews for a collection of projects that would repeatedly fund the same or very similar activities within a defined local geographic area and timeframe (e.g., retrofitting existing agricultural structures in a specific area or region, over the course of 1 to 5 years) but their specific sites and activities are not yet known. Tiering, as defined at 40 C.F.R. § 1508.1, is a means of making the environmental review process more efficient by allowing parties to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision

at each level of environmental review. A tiered review consists of two stages: a broad-level review (**Tier I**) and subsequent site-specific reviews (**Tier II**).

12.1.5.1 Tier I

The Tier I broad-level review identifies and evaluates issues that can be fully addressed and resolved for similar activities within the defined geographic area. It also establishes the standards, constraints, and processes to be followed in the site-specific reviews to be completed once the locations of individual project activities are known. Consistent with the methodology above, tiered reviews will be utilized for Program activities determined to be CEST that conform to the criteria outlined in Tier I, and are located within the covered geographic area. In cases where a particular site-specific activity does not conform to the limits established in the broad-level review, the broad-level review will not be employed for that site.

12.1.5.2 Tier II

Once individual project sites are identified and determined preliminarily eligible, a Tier II site-specific review will be completed. The site-specific review must be completed before committing HUD funds to the project. This review will address the issues that were not resolved in the broad-level review²⁷ to determine and document the project's adherence to all established protocols and remaining requirements. Because tiered environmental review records are not complete without both the broad-level and site-specific tiered review, the Tier II site-specific reviews will reference the corresponding broad-level review and be filed together or linked to one another within the project file.

12.2 Lead Safe Work Practice Provisions

HUD's Lead Safe Housing Rule (**LSHR**) applies to federally assisted housing built before 1978 unless the project qualifies for one of the exceptions listed under 24 C.F.R. § 35.115. Notably, not all PVS and BSS installation-only projects under the FER Program will be subject to the LSHR requirements, as most systems are anticipated to be installed on non-residential structures and some projects may qualify for exceptions under 24 C.F.R. § 35.115. Contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, childcare facilities (defined as residential, public, or commercial buildings where children under age six are present on a regular basis), and schools built before 1978 must also comply with the Environmental Protection Agency's (**EPA**) Renovation, Repair, and Painting (**RRP**) Rule outlined in 40 C.F.R. § 745. The RRP Rule does not apply to minor maintenance or repair activities where less than six (6) square feet of lead-based paint is disturbed in an interior room or where less than twenty (20) square feet of lead-based paint is disturbed on an exterior surface. Additionally, all projects must comply with testing, clearance, abatement, and disposal requirements of the Puerto Rico Department of Natural and Environmental Resources (**DRNA**, for its

²⁷ See 40 C.F.R. § 1508.11.

Spanish acronym) Regulation No. 9098 for the Proper Management of Lead-based Paint Activities, of July 16, 2019.²⁸

These regulations are in place to address any potential presence of lead-based paint or other lead hazards in the target structures receiving federal assistance and protect against environmental contamination as a result of handling and disposing of lead-contaminated materials. Although the FER Program is an agribusiness initiative, it is possible that these businesses may be integrated with the farmers' residences. Therefore, all projects will be reviewed for and subject to compliance with HUD's LSHR, EPA's RRP Rule, and DRNA Regulation No. 9098.

To ensure compliance with programmatic requirements, all REICs must be EPA Certified Firms under the RRP Rule and must have at least one RRP-Certified Renovator readily available to be present on-site when required. The Program will require that REICs adhere to safe lead work practices in compliance with 29 C.F.R. § 1926.62 for any lead-based paint disturbances.

12.3 Asbestos Survey

Because of its fiber strength and resistance to heat, asbestos has been used in various building construction materials in different forms, such as troweled or sprayed-on surfacing material, thermal system insulation (**TSI**), and other miscellaneous asbestos-containing materials. Ducting and plumbing, floor tiles, ceiling tiles, wallboards, roofing material, and mastic are examples of materials with the possibility of containing asbestos, known as suspect asbestos-containing material (**SACM**).

Friable asbestos-containing material may easily contaminate the air, representing a hazard to any person exposed. Fibers from non-friable asbestos-containing materials may also be released into the air by material disturbance during product use, demolition work, building or property maintenance, repair, and remodeling, causing the material to become crumbled, pulverized, or reduced to powder.

The relation between exposure to asbestos fibers and the chance of developing harmful health effects is directly proportional, and symptoms may take many years to develop following exposure. This is one of the reasons the National Emission Standards for Hazardous Air Pollutants (**NESHAP**) regulations under the Clean Air Act (**CAA**) and the DRNA Regulation No. 5300 for the Control of Atmospheric Pollution, of July 26, 1995, as amended by Regulation No. 9420, of November 21, 2022,²⁹ specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings. Any work for the Program that will result in Regulated Asbestos-Containing Material (**RACM**) being stripped, removed, dislodged, cut, drilled, or similarly disturbed in

²⁸ Available at <http://app.estado.gobierno.pr/ReglamentosOnLine/Reglamentos/9098.pdf>.

²⁹ Regulations No. 5300 and No. 9420 are available at <https://www.dma.pr.gov/wpcontent/uploads/2020/03/Regulations-for-the-Control-of-Atmospheric-Pollution-RCAP-1995-Regulation-No-5300.pdf> and <https://www.dma.pr.gov/wp-content/uploads/2022/03/Rules-102-210-425.pdf>.

excess of the combined regulatory amount must comply with and follow 40 C.F.R. § 61.145 for Notification requirements and Procedures for asbestos emission control.

If SACM is identified, an asbestos survey must be performed before rehabilitation and/or retrofit work is conducted on any target structure receiving federal assistance. In the case of asbestos-containing materials (**ACM**), the regulations require notification to the DRNA before any work is performed to mitigate homogeneous areas found to contain ACM.³⁰

All asbestos surveys for the Program will be performed by asbestos inspectors certified by the DRNA. The asbestos survey will consist of the identification of suspected ACMs in areas to be disturbed and the collection of samples following the sampling requirements stated in 40 C.F.R. § 763.86, as applicable. During the survey process, every effort should be made to collect the required samples in the least possible destructive and sufficient manner to determine whether the material is or not ACM. The nature of the asbestos survey will be to determine the location and extent of ACMs that may be disturbed during repair/retrofit of a target unit. Samples of SACM shall be processed or evaluated by accredited laboratories for testing of asbestos presence in materials. Asbestos content determination shall be performed utilizing Polarized Light Microscopy, Point Counting, and Transmission Electron Microscopy as established in 40 C.F.R. § 61.140. The management, removal, or disturbance of ACM will comply with all applicable rules and regulations. The Program will require a clearance examination to be performed and submitted to the DRNA when required under Regulation No. 9420.

12.4 Floodplain Management

The FER Program will use the most current, approved version of FEMA's Flood Insurance Rate Map (**FIRM**) or Preliminary Flood Insurance Rate Map (**PFIRM**) to identify whether a property is located within or outside of the 100-year floodplain. A 100-year floodplain, as defined by FEMA, includes areas that have a one percent (1%) annual chance of flooding any given year. Floodplain designation will be determined by the site-specific environmental review.

The Program will conduct an appraisal when a property is located within a designated floodplain to determine its current market value. The appraiser must be duly licensed and qualified to conduct real estate property appraisals in Puerto Rico. Upon completion of the appraisal, the appraiser must prepare an appraisal report that includes:

- A detailed description of the appraised property;
- General market data and comparable properties;
- Separate valuation for each structure and the land;
- Supporting information for valuation conclusions; and
- Certification of the appraisal, noted by the appraiser's signature.

³⁰ Materials that meets the definition of regulated ACM in accordance with 40 C.F.R. § 61.141 and 40 C.F.R. § 61.145(b) require in person or via certificated mail notification to the EPA at least 10 working days prior to the general permit submittal and before any demolition or renovation of structures or areas of a structure with ACM. A copy of the notification is required stamped by the EPA before proceeding to request a General Permit from the DRNA.

The Program will use the appraisal to calculate the Substantial Improvement factor of the Program-sponsored improvements. As defined in 24 C.F.R. § 55.2(b)(12), a Substantial improvement refers to any repair, reconstruction, modernization, or improvement of a structure where the cost is equal to or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair starts or, if the structure has been damaged and is being restored, before the damage occurred. Additionally, it encompasses any repair, reconstruction, modernization, or improvement that results in an increase of more than twenty percent (20%) in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

A Substantial improvement does not include any project aimed solely at bringing a structure into compliance with existing state or local health, sanitary, or safety code specifications necessary to ensure safe living conditions. It also excludes any alteration of a structure listed on the National Register of Historic Places or on a State Inventory of Historic Places. Structural repairs, reconstruction, or improvements that do not meet this definition are considered "minor improvements".

Federal regulations prohibit substantial improvements whenever a property is located within a floodplain without elevating or floodproofing the structure to the required height above the Base Flood Elevation (**BFE**).³¹

A Regulated Floodway comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. This is the segment of the floodplain that will generally carry the flow of flood waters during a flood and is typically the area of greatest risk to structures in the floodplain. No HUD financial assistance may be approved for any action located in a floodway unless an exception listed in 24 C.F.R. § 55.8(a) applies.

The Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a, requires that projects that receive federal assistance and are located in an area identified by FEMA as being within a 1-percent annual chance/100-year floodplain on the effective Flood Insurance Rate Map (**FIRM**), obtain and maintain flood insurance under the NFIP for insurable structures. To be able to purchase flood insurance, the community in which the property is located must be participating in the NFIP. If the community is not participating in the NFIP, federal assistance cannot be used in those areas.

13 Award Determination and Grant Agreement Execution

³¹ If the project involves Substantial Improvement, National Flood Insurance Program (**NFIP**) regulations require the affected structure(s) be elevated to the BFE. Local law or program policy may require additional elevation (or "freeboard") beyond FEMA's minimum elevation requirements. See: <https://www.hudexchange.info/programs/environmental-review/floodplain-management/>.

The Program will send an Eligibility and Award Notice to Applicants who were deemed preliminarily eligible and successfully completed the underwriting and environmental review processes informing them of their eligibility and the Project award amount. The Eligibility and Award Notice will include the **Grant Agreement** as an attachment for the Applicant to sign in acceptance of the FER Program award's terms and conditions. Applicants must submit the signed Grant Agreement to the FER Program within **twenty (20) calendar days** from the date of the Eligibility and Award Notice. Failure to submit the signed Grant Agreement within the allotted timeframe will trigger the Non-responsive Applicant process.³²

The Grant Agreement is the contract between an Eligible Applicant and PRDOH for the FER Program awarded funds. The Grant Agreement will include the terms, conditions, obligations, and necessary support documents for the Applicant to receive the FER Program award. These include, but may not be limited to:

- The amount of FER Program awarded funds for the Applicant's Project.
- The Applicant's obligation to ensure compliance with all Project requirements outlined in these Guidelines, including those related to design, permit, equipment, installation, no portability, location, interconnection, and any other requirements from federal, state, or local laws and regulations in relation to the System.
- The Applicant's obligation to ensure their chosen REIC complies with any environmental mitigation requirements determined necessary through the project's environmental review process.
- The required documentation to submit Progress Payment Requests and a Final Progress Payment Request upon completion of the System's installation by the REIC and the Certified Renewable Electrical Systems Installer.
- PRDOH's obligation and the Applicant's acceptance thereof to inspect the System installed for compliance with the Grant Agreement's requirements before full disbursement of the award.
- The Applicant's acceptance that PRDOH will only issue Project award payments directly to the REIC.

The Applicant must not sign a contract with the REIC until both the Applicant and PRDOH have executed and signed the Grant Agreement.

The Grant Agreement's terms and conditions between an Eligible Applicant and PRDOH are final. The Program will not allow changes to the Project's eligibility requirements, execution period, or awarded funds.

14 Project Implementation

³² Refer to the Non-Responsive Applicants Section of these Guidelines.

The installation of a System under the FER Program is the Applicant's responsibility. Applicants are responsible for compliance with the Project requirements set forth in the FER Program Guidelines and the Grant Agreement. Applicants will have a **maximum of twenty-four (24) months** from the Grant Agreement's execution date to complete the Project and submit the corresponding payment requests to PRDOH.

15 Award Disbursement

The FER Program will never disburse more than the amount awarded in the Grant Agreement.

To limit any adverse effects on the REIC's cash flow, while maintaining adequate controls for compliance with Program activities, the Program award will be disbursed as follows:

- **Progress Payment Requests (PPR):** Applicants can submit progress payment requests for completed work at specific milestones³³. The Program will start processing the payment once it determines that the progress payment request complies with all Program requirements. A retainage of up to 20% will be deducted from the requested amount.
- **Final Progress Payment Request (Final PPR):** This constitutes the payment of the retained amount to reach 100% disbursement of the awarded amount. This payment will be processed after completion of the System's commissioning and interconnection package submission to the electric power utility. Payment will be subject to a Final System Validation Monitoring site visit by a Program representative.

Articles 1120 and 1125 of the Puerto Rico Civil Code of 2020, 31 LPRA §§ 9151 & 9163, allow any person to pay a creditor on behalf of the debtor in good faith. Under the FER Program, PRDOH awards the funds to the Applicant, who becomes the REIC's debtor when the installation is completed. The payment by PRDOH directly to the REIC extinguishes the Applicant's debt toward the REIC as well as PRDOH's obligation for disbursing the award under the Grant Agreement. Since direct payments significantly reduce the risk of misuse and misplacement of funds, the FER Program will only issue payments directly to the REICs up to the awarded amount after confirmation of compliance with the Grant Agreement and Program requirements through the Program's Final System Validation Monitoring. Direct payment to REICs will be a condition for assistance in the Grant Agreement executed between the Applicant and PRDOH. PRDOH will not insert itself into the contractual relation between the Applicant and the REIC and will only issue payments to the company that completed the installation.

15.1 Progress Payment Request

³³ For the specific Project installation milestones that may trigger PPRs, please refer to the Progress Payment Requests subsection of these Guidelines.

Applicants can submit PPRs when the following project installation milestones have been completed:

- **Pre-Installation Work** – Includes all design and permitting-related costs.
- **Civil Work** – Includes all costs associated with environmental mitigation, site preparation work for the System's installation, and mounting and anchoring structures or other structures that provide primary support for the System's equipment.
- **System's Installation Work** – Includes all system's installation-related costs including but not limited to PV modules, batteries, inverters, and cabling.

Applicants must include the following documentation with each PPR to be evaluated for compliance with the Program's requirements:

- REIC invoice for work performed during the period;
- Documentation related to the milestone for which payment is requested;
- Progress report certified by the Project installer and, in the case of Projects with a construction permit, the report must be submitted by the Designated Inspector;
- Cost Breakdown/Progress payment report;
- Applicant's approval of work performed;
- Photographic evidence of work performed; and
- Any other document required by PRDOH.

Subsequent PPRs cannot be submitted until the previous PPR has been approved by the Program.

If the progress work and submitted PPR documentation are found in compliance with the Grant Agreement's terms and conditions and the requirements set forth in these Guidelines, the Program will recommend the corresponding progress payment via a **Progress Payment Request Approval Notice**.

In cases of non-compliance, the Applicant will receive a **Progress Payment Request Returned Notice** detailing the deficiencies that must be corrected before the Program can approve the payment. The Applicant will have a **forty-five (45) calendar day** period to correct the deficiencies identified and resubmit a new PPR to PRDOH.

15.2 Final Progress Payment Request

Upon successful Project completion, the Applicant shall request that PRDOH disburse the retained amount via a Final PPR.

Applicants must include the following documentation with the Final PPR to be evaluated by the Program for compliance with applicable requirements:

- The as-built drawings for the installed System, duly executed and stamped by the System's designer;
- A **Lead Safe Work Practices Screening Form** for the Project, if applicable;

- Photographic evidence of the installed System, which must show the PVS and/or BSS's location, total count and nameplate capacity, and any other System component's location and total count.
- The Commissioning Report for the installed System;
- The Photovoltaic System Certificate for the installed System prepared by the Certified Renewable Electrical Systems Installer;
- Evidence of submission of an Interconnection Request for the System to the local Power Grid Operator. Properties not connected to the electric power distribution system that are completely off-the-grid will be exempt from complying with this requirement;
- A copy of the System warranties package, provided to the Applicant by the Program-approved REIC;
- The **Compliance with Project Eligibility Certification Form** duly executed by the Project's Certified Renewable Electrical Systems Installer;
- The **Acknowledgement of Operations and Maintenance Training Form** duly executed by the Applicant and the Project's Certified Renewable Electrical Systems Installer;
- The Designated Inspector's final report, if the Project requires a construction permit;
- Construction permit closeout, if the Project requires a construction permit; and
- Any other document required by PRDOH or the Grant Agreement.

Upon receipt of a Final PPR, the FER Program will review it for completeness and compliance with Program requirements. If the Final PPR is found in compliance with the Grant Agreement's terms and conditions and the requirements set forth in these Guidelines, the Program will recommend the corresponding final payment subject to a Final System Validation Monitoring site visit via a **Final Progress Payment Request Pre-approval Notice**.

The Program will notify the Applicant of any issues identified in the Final PPR for correction and resubmission to PRDOH via a **Final Progress Payment Request Returned Notice**. The Applicant and their chosen REIC will have a **forty-five (45) calendar day** period to correct deficiencies identified in the Final PPR and resubmit a new version to PRDOH.

15.3 Final System Validation Monitoring

When the Program determines that the Final PPR complies with the FER Program requirements, it will contact the Applicant to coordinate a Final System Validation Monitoring site visit. Both the Applicant and the REIC must participate in the Program's monitoring site visit.

During the monitoring site visit, a Program representative will:

- Examine the System installed by the Applicant's selected REIC to verify compliance with the Grant Agreement's terms and conditions and the requirements outlined in these Guidelines;
- Take photographic evidence of the installed System; and
- Determine the final award amount to be disbursed.

Installations of Systems found in compliance with the Grant Agreement's terms and conditions and the requirements outlined in these Guidelines will be recommended for final disbursement and closeout via a **Final System Validation Monitoring Notice**.

In cases of non-compliance, the Applicant will receive a **Failed System Validation Monitoring Notice** and will have the opportunity to modify/recertify the installation and request a new monitoring site visit to the Program. Applicants must request a Final System Validation Monitoring Site Visit within **ninety (90) calendar days** from the date of the failed inspection.

16 Labor Standards

Projects receiving CDBG-MIT funding are required to comply with federal labor standards laws, including Davis-Bacon Act of 1931 and Related Acts (**DBRA**), as amended, 40 U.S.C. § 3141 *et seq.*; Fair Labor Standards Act of 1938 (**FLSA**), as amended, 29 U.S.C. § 201 *et seq.*; Contract Work Hours and Safety Standards Act (**CWHSSA**), as amended, 40 U.S.C. § 3701 *et seq.*; Copeland Anti-Kickback Act, as amended, 40 U.S.C. § 3145 *et seq.* Together, these laws ensure that workers are paid the appropriate prevailing wage rate and are treated fairly by employers receiving CDBG-MIT funding to execute program activities. Each of these laws requires important recordkeeping practices to ensure compliance and allow for accurate and efficient reporting as required by PRDOH.

PRDOH has adopted the Davis Bacon and Related Acts Policy, which must be followed by all contractors and subcontractors in the performance of construction work financed in whole or in part with CDBG-DR/MIT assistance. This Policy is available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/davis-bacon-and-related-acts-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-la-ley-davis-bacon-y-las-leyes-relacionadas/>. For all other labor standards, refer to the PRDOH's Cross-cutting Guidelines, available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/download/guias-intersectoriales/>.

17 Section 3

All contractors and subcontractors who receive CDBG-MIT funding for construction projects over the two hundred thousand dollars (\$200,000) threshold are required to comply with HUD regulations at 24 C.F.R. Part 75, commonly referred to as the Section 3 Final Rule. Section 3 ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and

consistent with existing federal, Government of Puerto Rico, and local laws and regulations, be directed to low- and very low-income persons so that they can take part in recovery activities in proximity to work location. Section 3 requirements include adhering to HUD's established benchmarks for the percentage of total work hours to be completed by Section 3 Workers and Targeted Section 3 Workers.

The PRDOH Section 3 Policy is available in English and Spanish on the PRDOH website at: <https://recuperacion.pr.gov/en/download/section-3-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-seccion-3/>.

18 Application Closeout

Upon Project completion and the corresponding award disbursement, the FER Program application shall be closed. This process will consist of assuring all the work performed is compliant with these Guidelines and the Grant Agreement's terms and conditions. The Program staff will conduct a complete review of the application file to ensure all necessary documentation is present and the application is ready for closeout.

Requirements for closeout are as follows:

- All eligibility and DOB documentation is in compliance with the requirements of these Guidelines and sufficient to justify the Applicant's participation and subsequent award;
- All environmental review documentation, including evidence of environmental mitigation measures, complies with the requirements of these Guidelines and is sufficient to justify the activities performed at the Participating Property;
- The appropriate parties have duly completed and executed all FER Program Forms required through the application process;
- All supporting documents and data are included in the application file for PRDOH's Grant Management system of record;
- All FER Program funds used have been properly accounted for and reconciled with disbursements made to the Program-approved REIC;
- Compliance with other requirements for closeout established by PRDOH in the Grant Agreement and the REIC's Commitment of Compliance with the FER Program Terms and Conditions.

Outreach will be made to the Applicant in the event any additional information is necessary to close the application. Once all levels of quality assurance and control are complete, the Applicant will receive a FER Program Final Notice and their application will be assigned a closed status.

19 Voluntary Withdrawal

An Applicant may request to withdraw from the Program at any time before the award disbursement has commenced. If the Applicant requests to withdraw after at least part

of the award has been disbursed, the Program will issue a **Voluntary Withdrawal Denial Notice**.

To initiate the voluntary withdrawal process, the Applicant will notify the FER Program in writing, via electronic or postal mail, of their desire to withdraw from the Program. After reviewing the voluntary withdrawal request, the Program will provide a **Voluntary Withdrawal Notice** to the Applicant. The application status will be officially updated to withdrawn **fifteen (15) calendar days** after the date of the Voluntary Withdrawal Notice. Upon completion of the withdrawal request and receipt of the Applicant's signature on any required forms, the Program will send the Applicant a **Voluntary Withdrawal Confirmation Notice** informing them that the application status has been updated to "Withdrawn" and the case has been closed. Therefore, the Applicant will not be able to rejoin the Program at any time in the future.

20 Non-responsive Applicants

The FER Program will make reasonable efforts to contact Applicants to schedule meetings, collect documentation, or obtain other necessary information. Contact attempts will be made using different methods of communication and at different times of the day or week. The following is a list of some of the circumstances under which the FER Program may trigger a Non-responsive Applicant process:

- If the FER Program has made **three (3) consecutive unsuccessful attempts** to contact an Applicant with no follow-up contact from the Applicant, the Program will send the Applicant a Non-responsive Notice.
- If the FER Program sends a Required Documents Notification to an Applicant and no response is received within **thirty (30) calendar days** of the date of the letter, the Applicant will be sent a Non-responsive Notice.
- If the FER Program issued an Eligibility and Award Notice to an Applicant and the Applicant fails to return the Grant Agreement signed within **twenty (20) calendar days** of the date of the letter, the Applicant will be sent a Non-responsive Notice.

The Non-responsive Notice provides contact information for the FER Program, advises the Applicant of the reasons for the Non-responsive Notice, and notifies the Applicant to contact the Program or complete an action within **fourteen (14) calendar days** of the date of the letter. If the Applicant fails to contact the Program or complete the action within the **fourteen (14) calendar days** allowed, the Program will send the Applicant a Non-responsive Confirmation Notice, and the application will be closed.

21 Program-based Reconsideration and Administrative Review

FER Program Applicants may contest any determination or denial based on Program policy. However, Applicants may not challenge a federal statutory requirement. 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 the Applicant fails to contest a determination within the allotted time, the inaction will be deemed as an acceptance of the determination.

21.1 Program-based Reconsiderations

Applicants who wish to contest a FER Program determination may file a Reconsideration Request directly with the Program by submitting a written request via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the notice was filed in the agency's record. However, if the date on which the copy of the notice is filed in the agency's records differs from the postal or electronic mail date of said notice, the **twenty (20) calendar day term** shall be calculated from the postal or electronic mail date. 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 the one sent first. Program notices will include the electronic and postal information where these will be received, 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 on 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. The Program will notify Applicants 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 Program determination. Therefore, Applicants who believe the initial Program determination to be erroneous may submit, at their discretion, either a Program-based Reconsideration Request or an Administrative Review Request directly to PRDOH in accordance with Regulation No. 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies.³⁴

21.2 Administrative Reviews

If an Applicant disagrees with a Program determination or with the Reconsideration Request Denial determination, said party may file directly with PRDOH an Administrative Review Request in accordance with Regulation No. 4953. The Applicant must submit such

³⁴ 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>.

request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination was filed in the agency's records. However, if the date on which the copy of the notice is filed in the agency's records differs from the postal or electronic mail date, the **twenty (20) calendar day term** shall be calculated from the postal or electronic mail date. 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 the one sent first. The request may be submitted via email to: LegalCDBG@vivienda.pr.gov; via postal mail to: CDBG-DR/MIT Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR/MIT Legal Division, 606 Barbosa Avenue, Juan C. Cordero Dávila 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, they may file a Judicial Review petition before the Puerto Rico Court of Appeals within **thirty (30) calendar days** after a copy of the notice has been filed in the agency's records. 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 No. 38-2017, as amended, 3 L.P.R.A. § 9672, known as the "Uniform Administrative Procedures Act of the Government of Puerto Rico".

22 Recapture

Instances may arise where an Applicant must return all or part of the awarded funds to the Program. The Program is responsible for recapturing duplicative funds, funds awarded to Applicants who become non-compliant, funds identified as potential overpayments, and funds awarded due to fraudulent information provided by the Applicant, among other circumstances. All Applicant files will be reviewed and reconciled for accuracy to ensure compliance with Program requirements and federal guidelines.

Once it has been determined that an Applicant must return funds to the CDBG-MIT Program, they must repay the funds in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount.

For more information about the PRDOH CDBG-DR/MIT Recapture Policy, see: <https://recuperacion.pr.gov/en/download/recapture-of-funds-policy/> (English) and <https://recuperacion.pr.gov/download/politica-de-recaptura-de-fondos/> (Spanish).

23 General Provisions

23.1 Program Guidelines Scope

This document sets forth the policy governing the FER Program. These Guidelines are intended to aid and provide 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 the 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 Program benefits in said cases.

23.2 Program Guidelines Amendments

PRDOH reserves the right to modify the policies established in these Guidelines if they, as written, do not reflect the intended policy or cause procedures to be impracticable, 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 when evaluating any situation encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date appearing on the cover of the Guidelines. Each version of the Program Guidelines will contain a detailed version control log that outlines any substantive amendments, inclusions, and/or changes.

23.3 Extension Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such an extension will jeopardize the Program's completion schedule or the schedule of an individual Project. This 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 these Guidelines or any applicable federal or state law or regulation, or to the terms of time established in these Guidelines to request a Program-based Reconsideration, Administrative Review, and Judicial Review.

23.4 Established Periods of Time

Unless otherwise specified, all established periods of time addressed in this, and all CDBG-DR and CDBG-MIT 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 L.P.R.A. Ap. V, R. 68.1.

23.5 Written Notifications

All Program determinations will be notified in writing. If an Applicant believes that the Program made a determination without it being written, the Applicant may request that such decision be made in writing and duly substantiated.

23.6 Conflict of Interest

As stated in 84 FR 45838, 45845, federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible for program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

Several federal and state conflict of interest laws can govern CDBG-MIT-assisted activities. Therefore, PRDOH has enacted the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) in conformity with the following applicable federal and state regulations:

- HUD conflict of interest regulations, 24 C.F.R. § 570.611;
- 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);
- The Puerto Rico Department of Housing Organic Act, Act No. 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*;
- The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*; and
- The Puerto Rico Government Ethics Office Organic Act, Act No. 1-2012, as amended, 3 LPRA § 1854 *et seq.*

The COI Policy outlines PRDOH's responsibility, in its role as grantee, to identify, evaluate, disclose, and manage apparent, potential, or actual conflicts of interest related to CDBG-DR/MIT-funded projects, activities, and/or operations. In accordance with 24 C.F.R. § 570.489, the COI Policy also includes standards of conduct governing employees engaged in the award or administration of contracts.

As defined in the COI Policy, a conflict of interest is a situation in which any person who is a public servant, employee, agent, consultant, officer, or elected official or appointed official of PRDOH, or any designated public agencies, or of subrecipients that are receiving funds under the CDBG-DR/MIT Programs may obtain a financial or personal interest or benefit that is or could be reasonably incompatible with the public interest, either for themselves, or those with whom they have business ties, or an organization which employs or is about to employ any of the parties indicated herein, or a member of their family unit during their tenure or for **two (2) years** after.

PRDOH will not tolerate such conflicts of interest. Program officials, their employees, agents, and/or designees are subject to state ethics laws and regulations, including, but not limited to, Act No. 1-2012, regarding their conduct in the administration and granting of awards and program activities.

According to Act No. 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member

of their family unit, relative, partner, or household member has a conflict of interest that may result in benefit for any of the above-mentioned. In the case that any of the abovementioned relationships have ended during the **two (2) years** preceding the public servant's appointment, they shall not intervene, either directly or indirectly, in any matter related to them until **two (2) years** have elapsed after their appointment. This prohibition shall remain in effect insofar as 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.

The above conflict of interest statement does not necessarily preclude PRDOH Program officials, their employees, agents, and/or designees from receiving assistance from the Program. On a case-by-case basis, PRDOH Program officials, their employees, agents, and/or designees may still be eligible to apply and to receive assistance from the Program if the Applicant meets all Program eligibility criteria, as stated in these Guidelines, and requirements set forth in the COI Policy. PRDOH Program officials, their employees, agents, and/or designees should disclose their relationship with PRDOH at the time of their application.

The COI Policy and all CDBG-DR/MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/> and <https://recuperacion.pr.gov/recursos/politicas/>.

23.7 Citizen Participation

Throughout the duration of the Grant, all citizen comments on PRDOH's published Action Plan, any substantial amendments to the Action Plan, performance reports, and/or other issues related to the general administration of CDBG-DR/MIT funds, including all programs funded by this Grant, 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 are Monday through Friday from 8:00am-5:00pm
- **Via email to:** infoCDBG@vivienda.pr.gov
- **Online at:** <https://recuperacion.pr.gov/en/contact-us/contact/> (English)
<https://recuperacion.pr.gov/contactanos/contacto/> (Spanish)
- **In writing to:** Puerto Rico CDBG-DR/MIT Program
P.O. Box 21365
San Juan, PR 00928-1365

The Citizen Participation Plan and all CDBG-DR/MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/> and <https://recuperacion.pr.gov/recursos/politicas/>. For more

information on how to contact PRDOH, please refer to <https://recuperacion.pr.gov/en/contact-us/> and <https://recuperacion.pr.gov/contactanos/>.

23.8 Citizen Complaints

As part of addressing Puerto Rico's long-term recovery needs, PRDOH welcomes citizen complaints on any issues related to the general administration of CDBG-DR/MIT funds throughout the duration of the Grant. It is PRDOH's responsibility, as a CDBG 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) working days**, where practicable. See 24 C.F.R. § 91.115(h) and 24 C.F.R. § 570.486(a)(7).

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

- **Via e-mail to:** LegalCDBG@vivienda.pr.gov
- **Online at:** <https://recuperacion.pr.gov/en/contact-us/complaints/> (English)
<https://recuperacion.pr.gov/contactanos/quejas/> (Spanish)
- **In writing to:** Puerto Rico CDBG-DR/MIT Program
Attn: CDBG-DR/MIT Legal Division-Complaints
P.O. Box 21365
San Juan, PR 00928-1365

Although formal complaints are generally required to be submitted in writing, they may also be received verbally and by other means necessary, as applicable, when PRDOH determines that the complainant's particular circumstances do not allow them to submit the complaint in writing. However, in these instances, PRDOH shall convert these complaints into written form. These alternate methods for submitting complaints include, but are not limited to:

- **Via phone:*** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
- **In-person at:*** PRDOH's Headquarters Office or Program-Specific Intake Centers

* Attention hours are Monday through Friday from 8:00am-5:00pm.

The Citizen Complaints Policy and all CDBG-DR/MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

23.9 Anti-Fraud, Waste, Abuse, or Mismanagement

PRDOH, as grantee, is committed to the responsible management of CDBG-DR/MIT funds by advocating strongly for the allocated resources while maintaining a comprehensive

policy for preventing, detecting, reporting, and rectifying fraud, waste, abuse, or mismanagement.

Pursuant to 84 FR 45838, 45845, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-MIT funds. Additionally, PRDOH encourages any individual who is aware of or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-MIT Program, to report such acts to the CDBG-DR/MIT 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, or suspected acts, of fraud, waste, abuse, or mismanagement of CDBG-DR/MIT funds. This 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/MIT Program.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-DR/MIT	
CDBG-DR/MIT Hotline	787-274-2135 (English/Spanish/TTY)
Postal Mail	Puerto Rico Department of Housing CDBG-DR/MIT Internal Audit Office P.O. BOX 21355 San Juan, PR 00928-1355
Email	hotlineCDBG@vivienda.pr.gov
Online	Filling out the AFWAM Submission Form available in English and Spanish at https://recuperacion.pr.gov/app/cdbgdrrpublic/Fraud and https://recuperacion.pr.gov/app/cdbgdrrpublic/Fraud
In person	Request a meeting with the Deputy Audit Director of the CDBG-DR/MIT Internal Audit Office located at PRDOH's Headquarters at 606 Barbosa Avenue, Building Juan C. Cordero Dávila, Río Piedras, PR 00918.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)
Postal Mail	HUD Office of Inspector General Hotline 451 7th Street SW

	Washington, D.C. 20410
Email	HOTLINE@hudoig.gov
Online	https://www.hudoig.gov/hotline

The AFWAM Policy and all CDBG-DR/MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

23.10 Related Laws & Regulations

The laws and regulations mentioned in these Guidelines are not an exhaustive list of all regulations applicable to the FER Program. The lack of a reference to other applicable regulations does not negate or preclude the FER Program from applying those laws or an Applicant from receiving services when applicable. If there are any discrepancies between the Guidelines and the applicable laws and regulations, then the latter will prevail. If, at any time, the applicable laws and/or regulations are amended, the new provisions will apply to the Program.

23.11 Cross-Cutting Guidelines

Some federal and local requirements apply to all CDBG-DR/MIT-funded programs. The Cross-Cutting Guidelines cover topics such as financial management, environmental review, labor standards, acquisition, relocation, civil rights, and fair housing, among others. The requirements described in the Cross-Cutting Guidelines apply to all programs outlined in PRDOH's CDBG-DR and CDBG-MIT Action Plans and their amendments.

The Cross-Cutting Guidelines and all CDBG-DR/MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

24 Program Oversight

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

25 Severability Clause

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

END OF GUIDELINES