CDBG-DR

PROGRAM GUIDELINES

CDBG-DR GAP TO LOW-INCOME HOUSING TAX CREDITS PROGRAM

(LIHTC PROGRAM)

DEPARTMENT OF HOUSING

GOVERNMENT OF PUERTO RICO

October 20, 2026

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PUERTO RICO DEPARTMENT OF HOUSING

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VERSION CONTROL

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1 Overview

Puerto Rico faces an increased need for affordable rental housing stock in the aftermath of Hurricanes Irma and María. The substantial reduction in available housing units caused by the storms' destruction, combined with a surge of displaced residents in need of housing, represents a major hindrance to long-term recovery. Incentives are required to spur development and replenish the current inventory of new or rehabilitated, resilient, and affordable rental housing. Effective utilization of the Low-Income Housing Tax Credits (**LIHTC** or **Program**) Program combined with Community Development Block Grant-Disaster Recovery (**CDBG-DR**) funding will maximize said incentive.

The CDBG-DR Gap to Low-Income Housing Tax Credits Program, as approved in the Puerto Rico Disaster Recovery Action Plan (**Action Plan**), as amended, will provide the incentive required to spur development, and replenish the current inventory of new or rehabilitated, resilient, and affordable rental housing.[1]

The Program's objective is to leverage LIHTC to amplify the impact of CDBG-DR funding and expand the inventory of affordable multifamily and elderly rental units. To accomplish this, the Puerto Rico Department of Housing (**PRDOH**) will provide CDBG-DR gap funding through grants or loans to supplement LIHTC financing for the development or rehabilitation of affordable rental housing. All developments funded through this Program will primarily benefit low- and moderate-income (**LMI**) populations.

2 Definitions

- **Accessible**: When used with respect to the design, construction, or alteration of a facility or a portion of a facility, other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase *accessible to and usable by* is synonymous with accessible.[2]

[1] The Puerto Rico Disaster Recovery Action Plan, as amended, can be accessed at: https://recuperacion.pr.gov/en/action-plan/ (English) and https://recuperacion.pr.gov/plan-de-accion/ (Spanish).

[2] See: 24 C.F.R. § 8.3 and § 8.4.

- **Americans with Disability Act of 1990** (**ADA**): The ADA, 42 U.S.C. § 12101 *et seq.,* is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

- **Area Median Family Income** (**AMFI**)**:** Median household income adjusted by family size for a given area. The Department of Housing and Urban Development (**HUD**) has adjusted income limits for all of Puerto Rico. Adjusted income limits are updated annually by HUD and can be accessed at the HUD Exchange website.[3]

- **Award:** Means the CDBG-DR allocation provided, to qualified LIHTC projects, to fulfill the identified unmet funding gap required to make the LIHTC project financially feasible.

- **Broadband infrastructure**: Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (**FCC**) definition in effect at the time the pre-construction estimates are generated. The FCC defines broadband speeds as one hundred (100) Megabits per second (**Mbps**) download, twenty (20) Mbps upload.[4]

- **CDBG-DR Agreement:** The contractual agreement between the Puerto Rico Housing Finance Authority (**PRHFA**) and the Developer for the use of CDBG-DR funds as gap financing to projects with LIHTCs. Funds cannot be released without a signed agreement in place.

- **Community Development Block Grant – Disaster Recovery** (**CDBG-DR**): A term for the HUD funding stream that is allocated to eligible disaster recovery entities via congressional appropriations.

[3]For information on Income Limits for All Areas in Puerto Rico, see https://www.hudexchange.info/resource/5334/cdbg-income-limits/.
[4] See: https://docs.fcc.gov/public/attachments/DOC-401205A1.pdf.

- **Cost reasonableness**: Construction costs that are deemed reasonable and consistent with market costs at the time and place of construction in compliance with Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314.
- **Developer:** Any individual, association, corporation, joint venture, or partnership undertaking a LIHTC development under this Program. When referring to the operational aspect of a project, the applicable entity may actually be the Owner.
- **Environmental Review Record** (**ERR**)**:** A detailed record documenting the existence of negative impacts on a site; the means to mitigate said negative impacts; alternatives to the project (if needed); and the rejection of the proposed activities if all other options fail and it becomes the most prudent action to take.
- **Fair Housing Act of 1968** (**FHA**)**:** The FHA, 42 U.S.C. § 3601 *et seq.,* prohibits discrimination against protected classes of people in the sale, rental, financing of housing, or other housing-related activities. The FHA requires that United States HUD grantees and their subrecipients take reasonable steps to ensure meaningful access to their programs and activities for protected classes. The FHA also requires HUD and its program participants to affirmatively further the purposes of the FHA.
- **Force Majeure:** In the event of the occurrence of fire, earthquake, natural disaster, hurricane, riot, an action of governmental authority in its sovereign capacity, strike, labor dispute or disturbance, embargo, war, insurrection, or civil disturbance, including inclement weather, hereinafter collectively referred to as causes of Force Majeure, during the term of the Agreement, neither PRDOH nor the PRHFA nor the contractor, shall be liable to each other for breach of the Agreement (except for payment obligations under the Agreement) for the duration of the conditions caused by such occurrence.
- **Housing and Community Development Act of 1974** (**HCDA**)**:** Section 109 of the HCDA, 42 U.S.C. § 5301, *et seq*., prohibits the discrimination on the basis of race, color, national origin, disability, age, religion, and sex within Community Development Block Grant (**CDBG**) programs or activities.

- **Internal Revenue Code** (**IRC**)**:** Body of law that codifies all federal tax laws and are implemented by the Internal Revenue Service (**IRS**) through its Treasury Regulations and Revenue Rulings.

- **LIHTC Rent Rate:** LIHTC rents are based on a geographic area's income levels and the use restriction tied to the unit. These rates are communicated annually by HUD and, for this program, by PRHFA. Under this Program, LIHTC incomes are considered LMI.
- **Low Income Housing Tax Credits** (**LIHTC**)**:** Included in the Tax Reform Act of 1986, 26 U.S.C. § 1, *et seq.*, which introduced the IRC Section 42 to incentivize the development of affordable housing. There are two types of credits: nine percent (9%) available for new construction or rehabilitations that are not financed with tax-exempt bonds; and four percent (4%) available for existing housing (acquisition) or for new construction or rehabilitations financed with tax-exempt bonds.

- **Low to Moderate Income** (**LMI**)**:** Low- and moderate-income populations have incomes not more than eighty percent (80%) of the AMFI as established by HUD. This income standard changes from year to year and varies based on household size and geography. HUD has calculated adjusted income limits for Puerto Rico which are used to make LMI determination.

- **Management Agent:** An entity that has day-to-day direct responsibilities for a HUD-insured and/or assisted multifamily housing property. The Developer is responsible for seeking out and selecting a management agent that meets the standards outlined in Chapter 2 of HUD's The Management Agent Handbook (**Handbook 4381.5**). The HUD-Developer management agent relationship is defined and subject to the requirements and procedures set forth in Handbook 4381.5.[5]

- **Placed-in-Service:** The date when at least one (1) unit of the project is suitable for occupancy. In Puerto Rico, this is validated with the submittal of a Use Permit ("Permiso de Uso") issued by the Municipal Permits Office with a hierarchy from

[5] HUD's The Management Agent Handbook (4381.5) can be accessed at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4381.5.

I to V, or the Puerto Rico Permits Management Office ("Oficina de Gerencia de Permisos" (**OGPe**, by its Spanish acronym)).

- **Public Housing:** All housing developed with funds from the United States Government and/or of the Commonwealth of Puerto Rico, that is safe, hygienic, and adequate to rent to low-income families.[6]
- **Puerto Rico Action Plan** (**Action Plan**)**:** Defines how the CDBG-DR funding allocation by HUD will be utilized in order to meet the humanitarian needs of the Island's residents through the implementation of a transformative recovery program. The Action Plan provides an analysis of the first damage calculation and reports on the programs that will meet unmet needs of housing, planning, economic recovery, and infrastructure.[7]
- **Puerto Rico Department of Housing** (**PRDOH**)**:** The Department of Housing of Puerto Rico has been designated as the Grantee responsible for administering the CDBG-DR funds allocated to Puerto Rico for the recovery from disasters caused by Hurricanes Irma and María in 2017. PRDOH is responsible for providing oversight of this program.
- **Puerto Rico Housing Finance Authority** (**PRHFA**)**:** PRHFA (also referred to as **AFV**, for its Spanish acronym) is a government instrumentality of Puerto Rico. It is the designated Subrecipient tasked with administering this Program.
- **Puerto Rico Public Housing Administration** (**PRPHA**)**:** PRPHA (also referred to as **AVP**, for its Spanish acronym) is a government instrumentality of Puerto Rico created under Act No. 66 approved on August 17, 1989, as amended, known as the "Organic Act of the Puerto Rico Public Housing Administration", 17 L.P.R.A. § 1001, *et seq.* The PRPHA is a Public Housing Agency (**PHA**) created by law to administer the Puerto Rico Public Housing Program for the purpose of providing decent, safe, and sanitary housing under the United States Housing Act of 1937, 42 U.S.C. §1437, *et seq.* (**Housing Act**), the regulations promulgated by HUD, and

[6] 17 L.P.R.A. § 1001.
[7] The Puerto Rico Disaster Recovery Action Plan can be accessed at: https://recuperacion.pr.gov/en/action-plan/ (English) or https://recuperacion.pr.gov/plan-de-accion/ (Spanish).

the PRPHA's Organic Act, and other applicable federal or local laws, rules, regulations and ordinances.

- **Program Income:** Program income means gross income that is directly generated from a CDBG-funded activity. Program income is subject to the CDBG Program regulations in perpetuity.

- **Qualified Allocation Plan** (**QAP**): Any plan— (i)which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions, (ii)which also gives preference in allocating housing credit dollar amounts among selected projects to— (I) projects serving the lowest income tenants, (II) projects obligated to serve qualified tenants for the longest periods, and (III)projects which are located in qualified census tracts (as defined in 26 U.S.C. § 42(d)(5)(B)(ii) and the development of which contributes to a concerted community revitalization plan, and (iii)which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits. 26 U.S.C. § 42(m)(1)(B).

- **Qualified Basis:** The amount of eligible basis to be used to generate low-income housing tax credits. The appropriate base is determined on the percentage of the property that will be used to provide affordable housing.

- **Responsible Entity** (**RE**)**:** Defined as a Grantee that receives CDBG assistance.[8] The RE must complete the environmental review process. The RE is responsible of ensuring compliance with the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321, *et seq.*, Federal laws and authorities, issuing the public notification, submitting the request for release of funds and certification (when required), and ensuring the Environmental Review Record (**ERR**) is complete. The RE must designate a Certifying Officer (the "responsible Federal official") to ensure compliance with NEPA and the Federal laws and authorities cited at 24

[8] See: 24 C.F.R. Parte 58.

C.F.R. § 58.5. In addition, the funding recipient is responsible for designating an Environmental Officer.

- **Subrecipient Agreement:** The contract between PRDOH and PRHFA to administer and implement the Program.
- **Substantial Damage:** Defined as damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred. 44 C.F.R. § 59.1.
- **Substantial Improvement:** Defined as any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure". [9]
- **Substantial Rehabilitation:** For the purposes of determining when installation of broadband infrastructure is required as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a program, it means work that involves: (1) Significant work on the electrical system of the multifamily rental housing. "Significant work" means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than seventy percent (75%) of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than four (4) units; "entire system" refers to the electrical system of the building undergoing rehabilitation; or (2) rehabilitation of the

[9] 44 C.F.R. § 59.1.

multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than seventy percent (75%) of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than four (4) units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.[10]

- **Surety Bond:** This type of bond is issued to one party of a contract as a guarantee against the non-compliance of the other party to perform the obligations specified in the contract.
- **Uniform Federal Accessibility Standards** (**UFAS**)**:** Prescribes uniform standards for the design, construction, and alteration of buildings that ensure individuals with disabilities have ready access to and use of them in accordance with the Architectural Barriers Act of 1968 (**ABA**), 42 U.S.C. § 4151-4157.
- **United States Department of Housing and Urban Development** (**HUD**): The principal federal agency responsible for programs concerned with serving unmet housing needs, enforcing fair housing, and promoting community development.
- **Voluntary Compliance Agreement** (**VCA**)**:** Voluntary and full settlement of a disputed complaint, under the Federal Fair Housing Act of 1968 (Title VIII), 42 U.S.C. § 3601 *et seq.*, between HUD and a public agency. PRHFA and PRDOH are subject to the following VCA: *Conciliation Agreement and Voluntary Compliance Agreement between HUD and Alicea Cruz, Wanda I. (Complainant) and Égida Vistas del Rio-Yaritza Mateo Alvarado, Admn., María Collazo, Social Worker, PRDOH and PRHFA (Respondents) of July 21, 2016*. PRPHA is subject to the following VCA: *Voluntary Compliance Agreement Between HUD and Puerto Rico Public Housing Administration of September 29, 2016*. The document is in writing and signed by the parties; it addresses each cited violation; it specifies the corrective or remedial action to be taken, within a

[10] 24 C.F.R. § 5.100

stated period of time, to come into compliance; it provides assurance that discrimination will not recur; and it provides for enforcement by the Attorney General of the United States.

3 Program Description

The CDBG-DR LIHTC Program addresses the need for safe, quality, and affordable rental housing in Puerto Rico. Hurricanes Irma and María devastated the already limited affordable rental housing stock, underscoring the need to rehabilitate aging buildings and strengthen their resilience. More than seventy-six percent (76%) of Puerto Rico's rental stock was constructed before 1990. Before the hurricanes, the public housing and Section 8 waiting lists included 25,000 and 7,955 persons, respectively.[11] Additionally, more than 14,500 renter-occupied households and 13,300 owner-occupied households experienced overcrowding by one (1) or more persons.[12]

PRDOH entered into a Subrecipient Agreement (**SRA**) with Puerto Rico Housing Finance Authority (**PRHFA**) to provide CDBG-DR gap funding to expand other public and private financing for the construction of affordable rental housing developed under the PRHFA's LIHTC Program. Under typical LIHTC Program, a Developer secures a construction and/or permanent loan from a private lender or public agency, gap financing from a public or private source, and equity from private investors in exchange for LIHTCs. CDBG-DR funding will address capital shortfalls (**gaps**) and expedite qualified, shovel-ready new construction and/or rehabilitation projects.

HUD describes the LIHTC Program as "the most important resource for creating affordable housing in the United States today".[13] The Program provides federal income tax credits to support the development of affordable rental housing. It offers two principal credit categories: the nine percent (9%) credit and the four percent (4%) credit. According to the U.S. Internal Revenue Code (**IRC**), the applicable tax credit percentages are those that will yield amounts of credit over a ten (10) year period with a present value equal to: (i) seventy percent (70%) of the qualified basis of a new building that is not federal subsidized for the taxable year; and (ii) thirty percent (30%)

[11] Waiting list figures as of June 2014.
[12] Estudios Técnicos, Inc. (Ed.). (2018). *Report on the Housing Industry Situation* (pp. 5-6). San Juan, PR: Puerto Rico Builder's Association.
[13] HUD, *Low-Income Housing Tax Credit,* (Rev. May 24, 2019), https://www.huduser.gov/portal/datasets/lihtc.html

of the qualified basis of a project of a building not described in (i).[14] The nine percent (9%) credit is generally reserved for new construction and is intended to provide a subsidy of seventy percent (70%) of the buildings qualified basis. The four percent (4%) credit applies to properties acquired for rehabilitation or for projects funded using tax-exempt bonds and is designed to deliver up to thirty percent (30%) subsidy.[15]

The Puerto Rico Public Housing Authority (**PRPHA**) is the second largest housing authority in the U.S., with more than 53,000 units across 327 properties. PRPHA reported initial damage claims exceeding $119 million for 15,386 public housing units. As part of a strategic plan based on asset repositioning, PRPHA has implemented mixed-income, and mixed finance strategies to generate high-qualified, and diversified housing options. In alignment with this strategy, PRDOH may allocate targeted funding under this Program to address affordable housing needs through potential public housing projects.

Developers receiving CDBG-DR funds must shall comply with all applicable requirements associated with each funding source.

4 National Objective

The National Objective of this Program is to benefit LMI populations with incomes below eighty percent (80%) Area Median Family Income (**AMFI**), as determined using HUD's Modified Income Limits for CDBG-DR Puerto Rico.[16] Each project shall meet this objective by ensuring that at least fifty one percent (51%) of its residential units are affordable to and occupied by LMI households, as defined by the applicable adjusted income limits for Puerto Rico.[17]

5 Eligible Activities

All projects funded by CDBG-DR must meet a HUD-eligible activity, as defined by Section 105(a) of the HCDA, 42 U.S.C. § 5305. Eligible activities for the LIHTC-DR Program include:

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[14] 26 U.S.C. § 42(b)(1)(B)
[15] Congressional Research Service, *An Introduction to the Low-Income Housing Tax Credit*, RS22389, (April 26, 2023), https://sgp.fas.org/crs/misc/RS22389.pdf
[16] 24 C.F.R. § 570.483(b)(3)
[17] For information on the Income Limits for All Areas in Puerto Ric, see https://www.huduser.gov/portal/datasets/cdbg-income-limits.html.

- Clearance, demolition, removal, reconstruction, and rehabilitation of buildings and improvements, including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately-owned properties, and including the renovation of closed school buildings.
- New housing construction, as allowed in Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, 5861.[18]

5.1 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, but are not limited to:

- Soft costs incurred in support of eligible construction activities, including but not limited to site surveys, permit acquisition, legal, engineering and architecture fees, and other PRHFA and/or PRDOH reviewed and approved soft costs.
- Clearance of environmental contamination from sites to be used for renovation and reconstruction projects;
- Staff costs and related expenses required for management of contractors procured for the Project, outreach efforts for marketing the Program, screening of potential applicant households, and other eligible services related to the completion of the Program;
- New Construction of housing as part of a commercial structure (mixed-use); and
- Costs of permanent or structural fixtures.

5.2 Ineligible Use of Funds

The following are ineligible use of funds or activities for the Program. This list shall not be interpreted as all-encompassing and may be subject to change:

- Entertainment, including amusement, recreation, and social activities; food and alcohol associated with parties or socials, meals, lodging, transportation, and gratuities associated with entertainment;

[18] Given the reduction of affordable housing stock due to Hurricane Maria and Irma, compounded by a lack of affordable housing and a stagnant economy, the development of affordable rental units through new construction is critical for Puerto Rico's recovery.

- Pre-award costs, including costs associated with the preparation of the Grant proposal;
- Contributions or donations of cash, services or properties;
- Fundraising activities
- Lobbying;
- Supplanting Federal and State funds;
- Operating costs associated with day-to-day expenses of the organization not associated with the approved project;
- Support service-only activities;
- Overhead Costs;
- Furniture and equipment not permanently affixed to the property or are not integral to the operation of the housing development;
- Project reserves including but not limited to operating reserves, lease-up or rent-up reserves, insurance reserves, reserve for replacement, escrow reserves, or similar financial reserve accounts;
- Construction contingency fees
- Commercial facilities and costs attributable to the commercial portion of the project;
- Rental assistance;
- Reimbursement of bond transaction fees;
- Reimbursement of construction interest on an interim or permanent construction loan; and
- Any costs that are unallowable under federal cost principles set forth in 2 C.F.R. Part 200, Subpart E, or that are associated with activities prohibited under 24 C.F.R. §570.207, the HCDA or the applicable federal regulations.

6 Program Method

Under the PRHFA Qualified Allocation Plan 2016 (**QAP 2016**) funding cycle, there are several existing shovel-ready projects in the nine percent (9%) LIHTC pipeline. For the second phase of the program, PRHFA implemented the Qualified Allocation Plan 2020 (**QAP 2020**) funding cycle for LIHTCs four percent (4%) projects. Contingent on available CDBG-DR funding, PRHFA may conduct subsequent funding rounds and continue to address the increased need for affordable housing stock. CDBG-DR funds,

in conjunction with LIHTCs and other financing, are intended to maximize available funding sources and create projects that accomplish multiple goals.

The completion period for each project will vary depending on the type of LIHTC approved:

- **New construction projects with nine percent (9%) LIHTC**: are expected to be placed in service no later than the close of the second calendar year following the calendar year in which the nine percent (9%) LIHTC allocation is made.
- **New construction projects with four percent (4%) LIHTC and tax-exempt financing**: Section 42 of the IRC does not require a specific period for construction completion (placed-in-service in Puerto Rico). Project owners will request the issuance of the four percent (4%) LIHTC allocation certificate after the construction is finalized.
- **All LIHTC Acquisition & Substantial Rehabilitation projects (nine percent (9%) and four percent (4%) Tax Exempt)**: 24-month period selected by the project owner and placed-in-service at the end of such period (or shorter period at the project owner's election).
- Nevertheless, CDBG-DR funds must be expended within the term of the SRA.

All projects are expected to begin construction within **forty-five (45) to sixty (60) days** following the execution of the CDBG-DR Agreement. This timeline may be extended on a case-by-case basis due to unforeseen circumstances or delays resulting from events beyond the Developer's reasonable control.

In creating affordable rental housing stock, the Program funds eligible activities such as housing construction and acquisition, implementation of the Green Building Standards, increased accessibility requirements, broadband infrastructure, and other activities to supplement the existing LIHTC Program.

The housing industry has experienced exacerbated economic challenges and growing demand for affordable housing resulting in elevated development costs per square foot. Under the CDBG-DR LIHTC Program and pursuant to 83 FR 40314, all construction costs must be reasonable and consistent with market costs, at the time and place of construction. To ensure that the requirements for the scope of LIHTC Projects are fulfilled, the Program has established the following thresholds:

- **Substantial Rehabilitation:** Total development costs[19] must not exceed $734.04 per square foot of living area.

- **New Construction:** Total development costs must not exceed $616.00 per square foot of living area.

PRDOH establishes these thresholds to allow for streamlined costs, and to ensure that the proposed control limit for the development costs per square foot is reasonable for the best use of CDBG-DR funds and in compliance with federal regulations. Notwithstanding the foregoing thresholds, PRDOH may, on a case-by-case basis, approve exceptions to the established not-to-exceed cost limits when justified. Any such exception must demonstrate that the proposed costs remain reasonable.

Projects funded through this Program must comply with the affordability periods and levels required by 83 FR 40314 or those upon which their LIHTC awards were conditioned, whichever requirements are more stringent. Affordability periods outlined in 83 FR 40314 are as follows:

- Rehabilitation or reconstruction of multi-family rental projects with eight (8) or more units must remain affordable for a period of no fewer than **fifteen (15) years.**
- New construction of multi-family rental projects with five (5) or more units must remain affordable for a period of no fewer than **twenty (20) years.**

LIHTC compliance periods and affordability levels are specified in the property's *Carryover Allocation Agreement* with PRHFA and are specific to each property.

All approved projects under these Guidelines are governed by Section 42 of the Internal Revenue Code, 24 C.F.R. Part 570; the Federal Register Notices 83 FR 40314 and 83 FR 5844; and all other applicable federal statutes or regulations governing the CDBG-DR Program by Congress, HUD, PRDOH, and PRHFA. Amendments to applicable statutes or regulations may become effective immediately and apply to the projects funded under this Program.

[19] Development costs include the project's hard costs, soft costs, and Developer fees.

7 Program Eligibility

7.1 Phase 1 – LIHTCs 9% Phase, under QAP 2016

For the first phase of this Program, eligible Projects include rental housing developments that have been awarded or reserved in 2018, 2019, 2020, and 2021 LIHTCs from the QAP 2016 cycle, Notice of Funds Availability 2016 (**NOFA-2016**).[20] The selection criteria and other important aspects can be found in QAP 2016. PRHFA will allocate CDBG-DR funds (grants and/or loans) to fill any existing financial gaps. Prior to being awarded CDBG-DR funding under Phase 1, the following must be completed and submitted for each eligible project:[21]

- PRHFA LIHTCH Program Threshold Review;
- PRHFA LIHTCH Program Ranking Evaluation, under the QAP 2016;
- PRHFA LIHTCH Program Technical Feasibility Study and Cost Evaluation;
- Initial PRHFA LIHTCH Program Underwriting Analysis and Subsidy Layering Review; and
- PRDOH Environmental Review Process.

Should any CDBG-DR funds remain after those projects' financial needs are satisfied, they may be allocated once applications of four percent (4%) LIHTCs can be received and reviewed for CDBG-DR funding needs.[22]

The QAP 2016 (and attached annexes) published at https://www.afv.pr.gov/nofa/ should be used in conjunction with these Program Guidelines, for detailed responsibilities and compliance requirements. The Cross-Cutting Guidelines, which apply to all of Puerto Rico's CDBG-DR Programs, should also be consulted and are available in English and Spanish at https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/ and https://recuperacion.pr.gov/download/guias-intersectoriales/.

[20] For CDBG-DR purposes, the term "award," with regards to the Program, means the date of execution of the *Binding Commitment for a Certificate of Reservation for a Low-Income Housing Tax Credits Allocation* and/or *Carryover Allocation Agreements*.

[21] As established in the QAP 2016, PRHFA conducted an initial threshold review and ranking evaluation. Between 2018 and 2019 PRHFA revised the already conducted initial review and evaluation to assess the project applications for compliance with CDBG-DR requirements.

[22] 26 U.S.C. § 42.

7.2 Phase 2 – LIHTCs 4% Phase, under QAP 2020

For Phase 2, eligible rental housing projects will be selected based on the QAP 2020 published by PRHFA. The selection criteria and other relevant information can be found in QAP 2020.[23] PRHFA will allocate CDBG-DR funds (grants and/or loans) to fill any existing financial gaps.

Prior to being awarded CDBG-DR funding under Phase 2, the following must be completed and submitted for each eligible project:

- PRHFA LIHTCH Program Threshold Review;
- PRHFA LIHTCH Program Ranking Evaluation, under the QAP 2020;
- PRHFA LIHTCH Program Technical Feasibility Study and Cost Evaluation;
- Initial PRHFA LIHTCH Program Underwriting Analysis and Subsidy Layering Review; and
- PRDOH Environmental Review Process.

7.3 Public Housing Projects

Based on data provided by the PRPHA to address affordable housing needs, PRDOH will fund potential public housing projects. Considering these facts, PRDOH will fund these projects for preservation, rehabilitation, or qualified new construction that are part of a comprehensive plan to redevelop, replace, and/or rehabilitate existing PRPHA inventory.

The CDBG-DR funding reservation will be based upon the threshold review, point ranking evaluation, environmental review, technical and financial feasibility reviews, and any other applicable factors as determined by PRHFA and PRDOH.

8 Construction Requirements

The CDBG-DR Agreement, as previously defined, cannot be executed until compliance with the following requirements is certified. The implementation of the requirements included in this section, except for the Environmental Review, which must be developed by a third-party environmental consultant, must be evaluated and certified by PRDOH before the execution of the CDBG-DR Agreement.

[23] QAP 2020 is available at: https://recuperacion.pr.gov/en/lihtc/.

Projects under construction and shovel ready (those able to begin construction once the CDBG-DR Agreement is signed) will be prioritized. Readiness to proceed will be validated by the PRHFA's Inspector's review of the technical evaluation of plans, specifications, studies, permits and governmental endorsements, among other documents, that Developers will provide.

Housing units that were built or rehabilitated with CDBG-DR funds must meet, at a minimum, all applicable local codes and regulations, rehabilitation standards, zoning and related ordinances at the time of project completion.

8.1 Implementation of Green Building Standards

All new construction of residential buildings and all replacement of substantially damaged residential buildings must comply with HUD-approved Green Building Standards.[24] Therefore, LIHTC projects that meet criteria for new construction or replacement of substantially damaged buildings are required to obtain at least one of the following listed certifications:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- Leadership in Energy and Environmental Design (**LEED**) (New Construction, Homes, Midrise, Existing Buildings Operations, and Maintenance, or Neighborhood Development);
- ICC–700 National Green Building Standard;
- Environmental Protection Agency (**EPA**) Indoor AirPlus (ENERGY STAR® a prerequisite); or
- Any other equivalent comprehensive green building program acceptable to HUD, such as the "Permiso Verde" issued by the applicable Puerto Rico Permits Office.

As part of the CDBG-DR project submission, the Developer shall provide the following required documentation to demonstrate compliance:

[24] As required by 83 FR 5844 and amended by 84 FR 4836.

- Project narrative, blueprints, and specifications updated with the Green Building Standard requirements. Description of the design parameters, strategies, and implementation process to ensure compliance with the selected standard(s). Includes statement of the project's overall green development goals and expected intended outcomes of addressing those goals.
- Notification of which Green Building Standard(s) is being pursued.
- Certification of Compliance certifying that the project complies with the selected Standard(s).[25]
- Provide a checklist, or other suitable documentation, which demonstrates adherence to the selected standard(s).
- Notification of the person or team in charge of the implementation of the Green Building Standard(s) at the Project.
- Register the Project with the organization or entity, as required, in charge of providing the certification of the project from the selected Green Building Standard. Provide the Application or Registration Confirmation Evidence.
- For those cases pursuing the "Permiso Verde", submit the following:[26]
    - A valid Pre-qualification Certification from the OGPe ("Certificado de Pre-Cualificación de Proyecto Verde-OGPe");
    - Notification of the Green Design Guides under "Permiso Verde" that will be pursued;
    - Register the project with the organization or entity in charge of providing the certification of the project from the selected Green Building Standard; and
    - Provide application or registration confirmation evidence.
- Supporting documentation as deemed necessary or requested by PRDOH and/or PRHFA, or other designated entity, during the process of the application evaluation and throughout the duration of the project.

[25] The Certification of Compliance does not replace the Final Green Building Standard Certification in the case of new construction/replacement of substantially damaged residential buildings.

[26] The "Permiso Verde" requirements are outlined in the "Reglamento conjunto para la evaluación y expedición de permisos relacionadas al desarrollo, uso de terrenos y operación de negocios" (**Regulation No. 9473**) effective on June 16, 2023.

For rehabilitation of non-substantially damaged structures, Developers shall adhere to the guidelines specified in the HUD Community Planning and Development (**CPD**) Green Building Retrofit Checklist,[27] to the extent applicable, of the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When rehabilitation work includes replacing older or obsolete products, the Developer must use ENERGY STAR®-labeled, Water Sense-labeled, or Federal Energy Management Program (**FEMP**)-designated products and appliances.

The Developer(s) shall provide the following documentation to demonstrate compliance:

- Project Narrative, blueprints, and specifications updated with the latest version of the HUD CPD Green Building Retrofit Checklist requirements. Describe the design parameters, strategies, and the implementation process to ensure compliance with such Checklist. Include statement of the projects overall green development goals and expected intended outcomes of addressing such goals.
- Certification of Compliance certifying that the project complies with the HUD CPD Green Building Retrofit Checklist.

PRHFA will verify the CDBG-DR project application(s) for compliance with the Green Building Standards as part of the technical review required as a prerequisite to the CDBG-DR Agreement being signed and the disbursement of CDBG-DR funds.

8.2 Broadband Infrastructure Requirements

Any new construction or substantial rehabilitation for multifamily rental housing that is funded or supported by HUD and/or CDBG-DR funds must include installation of broadband infrastructure.[28]

PRDOH and PRHFA aim to narrow the digital divide in low-income communities served by HUD. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by CDBG-DR funding will provide a platform for individuals and families residing in such housing to

[27] The HUD Community Planning and Development (**CPD**) Green Building Retrofit Checklist can be accessed at: https://files.hudexchange.info/resources/documents/CPD-Green-Building-Retrofit-Checklist.xls
[28] 83 FR 5844

participate in the digital economy and increase their access to economic opportunities.

Projects are excluded from this requirement only if one of the below exclusions can be documented and validated by PRHFA:

- The location of the new construction or substantial rehabilitation makes installation of broadband infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in nature of its Program, or activity, or in an undue financial burden; or
- The structure of housing, to be substantially rehabilitated, makes installation of broadband infrastructure infeasible.

While projects are only required to include one form of broadband infrastructure, it is recommended to install more than one form, as this will promote competition among service providers on quality and price for residents.

As part of the technical review required as a prerequisite to the CDBG-DR Agreement being signed, PRHFA will verify the CDBG-DR project applications for compliance with Broadband Infrastructure requirements.

8.3 Accessibility Requirements

Pursuant to the *Conciliation Agreement* and *VCA*, all CDBG-DR LIHTC Program-funded developments must comply with the following accessibility requirements:

- Twelve percent (12%) of the total ground floor and/or elevator-serviced unit inventory must be made fully mobility-accessible under the 2010 ADA Standards and, wherever applicable, the Uniform Federal Accessibility Standards (**UFAS**); and
- Three percent (3%) of the total unit inventory must be made sensory-accessible under the 2010 ADA Standards and, wherever applicable, the UFAS.[29]

Prior to commencing construction, the Developer shall provide the following:

[29] Conciliation Agreement and Voluntary Compliance Agreement between HUD and Alicea Cruz, Wanda L. and Égida Vistas del Rio, *et. al*., Section 18(a) (2016).

- Preliminary drawings of the proposed new construction and/or rehabilitation, including a site plan, building elevations, and unit floor plans.
- The project designer shall certify that the development will comply with the accessibility requirements of the FHA and, wherever applicable, the 2010 ADA Standards and UFAS.
- Proof of professional liability insurance covering the project's designer for an amount not less than ten percent (10%) of the estimated construction cost, in case of negligence.
- Proof of performance or surety bond for one hundred percent (100%) of the construction contract.
- A signed certification from a qualified licensed registered architect (**RA**) and/or professional engineer (**PE**) retained for the accessibility inspection of the new construction and/or project rehabilitation must be provided as verification that covered units and project's common areas comply with the accessibility mandates of the FHA and, wherever applicable, the 2010 ADA standards and UFAS.

PRHFA will verify the CDBG-DR project applications for compliance with accessibility requirements as part of the technical review, which is required as a prerequisite to the CDBG-DR Agreement being signed.

Further, PRHFA shall comply and ensure that all its employees, including contractors, subcontractors, project owners, and management agents comply with PRHFA's Civil Rights and Fair Housing Compliance Policy and all applicable measures provided for in the VCA.

9 Environmental Requirements

9.1 Environmental Review

Environmental Review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. All projects undertaken with federal funds and all associated activities are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321 *et seq.*, and HUD's environmental review regulations at 24 C.F.R. Part 58. Therefore, an environmental review process is required for all

awards to be issued under the Program to ensure that the proposed activities will not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users.

24 C.F.R. § 58.22(a) prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives before the completion of an environmental review. 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, such as signing a construction contract, etc. Specifically, environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds.[30] **All program recipients must comply with all applicable Federal, State, and local environmental laws and regulations. A violation of this requirement may jeopardize federal funding to a project and disallow all costs that were incurred before the completion of the Environmental Review.**

PRDOH is the Responsible Entity for environmental matters regarding CDBG-DR funded projects and activities[31]. In accordance with 24 C.F.R. Part 58, PRDOH shall maintain a written Environmental Review Record (**ERR**) for each project. The ERR shall document the environmental review process and demonstrate compliance with all applicable federal environmental law, regulations, authorities, and requirements, including those identified in 24 C.F.R. § 58.5 and § 58.6. As applicable, the ERR shall include the following:

- Description of the project and activities that PRDOH has determined to be part of a project;
- Evaluation of the effects of the project or the activities on the human environment;
- Documents demonstrating compliance with applicable statutes and authorities, in particular, with those cited in 24 C.F.R. § 58.5 and § 58.6; and

[30] 24 C.F.R. § 58.22.

[31] Projects subject to 24 CFR Part 50 are reviewed directly by HUD, Office of Public and Indian Housing (**PIH**), in coordination with applicable agencies. In all cases, PRDOH, as Grantee, retains responsibility for ensuring compliance with all applicable environmental statutes, regulations, and authorities prior to the commitment or expenditure of CDBG-DR funds.

- Records of the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, and findings of no significant impact.)

Further, PRDOH will issue an environmental clearance letter[32] to PRHFA upon successful completion of the environmental review process for each project.

9.2 Environmental Level of Review

To conduct the appropriate level of environmental review, the Program will need to determine the environmental classification of the project. The term "project" may be defined as and 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 three (3) major environmental classifications for projects and their descriptions are as follows:

9.2.1 Exempt Activities

These are activities which, by their nature, are highly unlikely to 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 in writing that the project is exempt and 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 whether any of the requirements of 24 C.F.R. § 58.6 are applicable and address them as appropriate.

9.2.2 Categorically Excluded Activities

These activities require no Environmental Impact Statement (**EIS**) or Environmental Assessment (**EA**) and Finding of No Significant Impact (**FONSI**) under NEPA.[33] These activities are divided into those that are subject to related laws and authorities at 24 C.F.R. § 58.5 and those that are not. Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 include: tenant-based rental assistance; supportive services; operating costs; economic development activities; activities to assist homebuyers in the purchasing existing dwelling units or units under construction; and affordable housing predevelopment costs with no

[32] Projects subject to 24 C.F.R. Part 50 are reviewed directly by HUD, PIH, and in coordination with applicable agencies. In all cases, PRDOH, as Grantee, retains responsibility for ensuring compliance with all applicable environmental statutes, regulations, and authorities prior to the commitment or expenditure of CDBG-DR funds.
[33] 24 C.F.R. § 58.35.

physical impact. To complete environmental requirements for categorically excluded activities not subject to 24 C.F.R. § 58.5, the Program must make a finding of categorical exclusion and include such finding in the ERR. When these kinds of activities are undertaken, it is not required to issue a public notice or to submit a Request for Release of Funds (**RROF**). In any case, environmental compliance is required for the items listed in 24 C.F.R. § 58.6.

Examples of categorically excluded activities subject to related laws and authorities under 24 C.F.R. § 58.5 include: acquisition, repair, improvement, reconstruction, or repair of public facilities; special projects directed toward the removal of material and architectural barriers; and repair of buildings and improvements for residential units and non-residential buildings. The ERR for these activities must contain a written determination of the finding of a categorical excluded activity subject to 24 C.F.R. §58.5, including a description of the project, a citation of the applicable subsection of 24 C.F.R. § 58.35(a), and written documentation as to whether there were any circumstances which required compliance with 24 C.F.R. § 58.5 and § 58.6.

The documentation must support the determinations related to compliance, including correspondence with applicable agencies with jurisdiction. Upon completion, there should be one (1) of three (3) environmental findings: (1) the project converts to Exempt (i.e., 24 C.F.R. § 58.34(a)(12)); (2) the project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or (3) the unusual circumstances of the project result in a significant environmental impact and, therefore, compliance with NEPA is required. If upon completion it is determined that compliance is required for one (1) or more of the Federal laws and authorities listed in 24 C.F.R. § 58.5, then a public notification known as Notice of Intent to Request Release of Funds (**NOI/RROF**) must be posted. After a **seven (7) day** comment period, a RROF and Environmental Certification must be prepared. The Environmental Certification certifies compliance with all environmental review requirements.

9.2.3 Activities Requiring an Environmental Assessment

These activities are neither exempt nor categorically excluded and will require an EA documenting compliance with NEPA, HUD, and the environmental requirements of other applicable federal laws. Once the Environmental Review has been completed and any comments addressed appropriately, the project may be found to not constitute an action that significantly affects the quality of the human environment

and, therefore, does not require the preparation of an Environmental Impact Statement; or the project constitutes an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement.

If it is determined that the action does not significantly affect the quality of the environment, then the Program will post a public FONSI and NOI/RROF in accordance with 24 C.F.R. § 58.33. The RROF Environmental Certification must be submitted to HUD no sooner than **fifteen (15) days** after publishing the NOI/RROF and FONSI and HUD will hold the Release of Funds for a **fifteen (15) day** period to allow for public comment on the RROF.[34] If no comments are received during this time, HUD will send a signed Release of Funds called the Authority to Use Grant Funds (**AUGF**) and the project may proceed.

9.3 Lead-Based Paint Poisoning Prevention Act

To successfully fulfill the requirements in the Environmental Review, funded projects must comply with the Lead-Based Paint Poisoning Prevention Act[35] and related federal and local regulations, including HUD's Lead Safe Housing Rule (**LSHR**)[36] and EPA's Renovation, Repair, and Painting (**RRP**) Rule.[37] 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 Spanish acronym) Regulation No. 9098 for the Proper Management of Lead-based Paint Activities, of July 16, 2019, as well as all regulations and procedures stipulated by the Government of Puerto Rico, and any amendments thereof.

9.3.1 Lead-Based Paint Poisoning Prevention in Certain Residential Structures

Whenever federal funds, such as CDBG-DR, are used to assist housing built before 1978, steps must be taken to address lead hazards. A lead-based paint hazard is any condition that causes exposure to lead from dust-related hazards, soil-lead hazards, or lead-based paint that is deteriorated, or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. The

[34] 24 C.F.R. § 58.45

[35] 42 U.S.C. § 4821-4846

[36] 24 C.F.R. Part 35.

[37] 40 C.F.R. Part 745.

Program will comply with provisions for lead reduction found at 24 C.F.R. Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures.

The requirements established by this regulation are as follows:

- Notifications:
    - Lead Hazard Information Pamphlet - All program Applicants must receive a Lead Hazard Information Pamphlet at the time of application and shall sign an acknowledgement form, of which a copy will be placed into the Applicant's file.
    - Notice of Lead Hazard Evaluation – Developers and tenants of program assisted properties must receive results of any lead hazard evaluation work within **fifteen (15) calendar days** of the evaluation. A copy of this notice will be kept within the Applicant's file.
    - Notice of Lead Hazard Reduction Activity – Developers and tenants of program assisted properties must be notified of the results of any lead hazard reduction activity within **fifteen (15) calendar days** of clearance. A copy of this notice will be kept within the Applicant's file.
- Lead Hazard Assessment/Evaluation – Including visual assessments, paint testing, and risk assessments. Each method has specific requirements defined in subpart R of the regulation (24 C.F.R. Part 35) and must be done by qualified professionals.
- Lead Hazard Reduction – Including paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements defined in Subpart R on Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities and must be done by qualified professionals.[38]

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

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

[38] 24 C.F.R. Part 35, at §§ 35.1300 - 35.1355.

eligible for rehabilitation. In addition, the Program requires that a visual assessment be performed for all developments post-1978.

9.3.2 Lead Hazard Assessment

Lead hazard assessments for the Program will cover:

- Identification of the existence, nature, severity, and location of lead-based paint hazards as well as paint (or documentation that no such hazards have been identified); and
- Description of the options for controlling lead hazards in the event that hazards are found, including interim controls and abatement measures.

The lead hazard assessment process for the Program will begin with the collection of information about the property from the owner using HUD-approved forms. The Risk Assessor or Lead-Based Paint Inspector will use this information to make decisions about the location of the environmental testing within the dwelling of the property.

The lead hazard assessment will entail:

- A visual assessment of the selected dwelling units and common areas; and
- Environmental testing, which includes testing of deteriorated paint and (if needed) other painted surfaces and collection of dust and soil samples.

9.4 Residential Lead-Based Paint Hazard Reduction Act

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq.*, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this Act directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

Before ratification of a contract for housing sale or lease, sellers, and landlords must:

- Provide the EPA-approved lead-based paint hazards information pamphlet ("Protect Your Family from Lead in Your Home" pamphlet, currently available in English, Spanish, Vietnamese, Russian, Arabic, and Somali).
- Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

- Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).
- Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.
- Sellers must provide homebuyers with a **ten (10) day period** to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

9.5 Asbestos Surveys

Because of its fiber strength and resistance to heat, asbestos has been used in a variety of building construction materials for insulation and as a fire retardant. Asbestos has also been used in a wide range of manufactured goods, mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings.

Asbestos fibers may be released into the air by the disturbance of asbestos-containing materials during product use, demolition work, building or home maintenance, repair, and remodeling. In general, exposure may occur when asbestos-containing materials are disturbed or damaged in some way to release particles and fibers into the air. Exposure to asbestos increases risk of developing lung diseases.

In general, the greater the exposure to asbestos, the greater the chance of developing harmful health effects. Disease symptoms may take many years to develop following exposure.

The National Emission Standards for Hazardous Air Pollutants (**NESHAP**) regulations under the Clean Air Act of 1963, as amended, 42 U.S.C. § 7401 *et seq.*, specify work

practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings. The regulations require notification to the pertinent State agency before any demolition, or before any renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. Therefore, the Program must perform an asbestos survey before conducting any reconstruction work.

An asbestos survey is used to locate and describe asbestos-containing materials in a structure. The Program will conduct comprehensive building asbestos surveys through inspection of the properties. All asbestos surveys for the Program will be performed by Asbestos Inspectors certified by EPA or the DRNA. The asbestos surveys will visually review all suspect asbestos-containing materials associated with the buildings' interior and will collect samples for laboratory analysis.

During the survey process, every effort shall be made to collect required samples in the least destructive manner possible. The nature of the asbestos survey will be to determine the location and extent of asbestos-containing materials that may be disturbed during repair or demolition activities. Samples of presumed asbestos-containing materials shall be processed or evaluated by accredited laboratories for testing of asbestos presence in materials. Asbestos content determination shall be performed, as necessary, by utilizing Polarized Light Microscopy, Point Counting, and Transmission Electron Microscopy.

9.6 Flood Insurance Program Requirements

Projects located in a Special Flood Hazard Area (**SFHA**), (also known as the 100-year floodplain) on the Effective Flood Insurance Rate Map (**FIRM**) that receive assistance under CDBG-DR programs must obtain and maintain flood insurance in the amount and duration prescribed by the Federal Emergency Management Agency's (**FEMA**) National Flood Insurance Program. Section 102(1) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area.

For loans, the amount of flood coverage must at least equal the outstanding principal balance of the loan or the maximum limit of coverage made available under the National Flood Insurance Program, whichever is less. For grants, flood insurance coverage must be continued for the life of the building regardless of the transfer of

ownership. The amount of coverage must at least equal the total project cost or the maximum coverage limit of the National Flood Insurance Program, whichever is less.

As set forth in the CDBG-DR Agreement, PRHFA will ensure that projects requiring flood insurance obtain and maintain flood insurance throughout the life of the building. PRHFA will monitor compliance throughout the affordability period.[39]

FEMA recommends, although not required, to purchase flood insurance for those properties outside the SFHA that are prone to flooding in order to better protect the Developer from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future.

If a CDBG-DR Gap to LIHTC project is to be located in a SFHA, the activity must be designed or modified in order to minimize potential harm to or within the floodplain.[40] Residential structures located in the 100-year floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 C.F.R. § 55.2(b)(1), must be elevated with the lowest floor, including the basement, at least two (2) feet above the base flood elevation.[41]

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 from receiving Federal funds for any part of such loss for which they have received financial assistance under any other program, from private insurance, charitable assistance, or any other source. As such, PRDOH must consider disaster recovery 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. To be eligible to receive CDBG-DR funds under the Program and as part of the application process, all Applicants must confirm and provide assurance that efforts will be made to avoid a "duplication of benefits." PRDOH understands and expects that some projects funded through this

[39] PRHFA will ensure compliance with flood insurance by requiring a flood insurance policy declaration, or a paid receipt for the current annual flood insurance premium, and a copy of the application for flood insurance under review.
[40] Executive Order 11988, *Floodplain Management*.
[41] 83 FR 5844.

Program may also be able to receive other types of Federal funding. Therefore, a DOB analysis will be performed for each funded project.

Program controls to prevent DOB include, but are not limited to:

- Certification that the Applicants will notify PRDOH of all potential DOBs as part of the information submitted in their applications;
- Verification of specific DOBs through various available sources such as FEMA, the Small Business Administration (**SBA**), insurers, and any other sources of funding;
- Requiring Applicants to authorize PRDOH to contact all potentially duplicative funding sources on their behalf to verify all funding sources received and/or approved; and
- Calculation of DOB per Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836.

The DOB guidance included in 84 FR 28836 (**DOB 2019 Notice**), updates the DOB guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060 for CDBG-DR grants received in response to disasters declared between January 1, 2015, and December 31, 2021. As such, the DOB policy outlined in these Guidelines follows the guidance issued in the 2019 DOB Notice.[42]

For more information about DOB, refer to 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/.

[42] The 2019 DOB notice updates 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. FEMA, as per recent amendments to the Disaster Recovery Reform Act of 2018 (**DRRA**), Pub. L. No. 115-254, advises that a loan is not a duplication of other forms of financial assistance, provided that all federal assistance is used toward a loss suffered due to major disaster or emergency. 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). Subsidized loans awarded after the amendment sunset date are to be included in the DOB evaluation.

10.1 Declined SBA Loans

Declined loans are loan amounts offered by a lender, but turned down by the applicant, meaning the applicant never signed the loan documents to receive loan disbursement. The 2019 DOB Notice updated the treatment of declined loans. A grantee shall not consider 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.[43] Therefore, declined subsidized loans, including SBA loans, are not to be included in the DOB calculation.

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

10.2 Cancelled SBA Loans

Cancelled loans are loan amounts offered by a lender, accepted by the Applicant, but for a variety of reasons, all or portion of the loan amount was not disbursed and is no longer available to the Applicant. Cancelled SBA loans may be excluded from the calculation of DOB if it can be documented that the undisbursed portion of an accepted loan is cancelled and no longer available to the Applicant. To document that an SBA loan is cancelled, the applicant must provide either: written communication from the lender confirming the loan is cancelled and no longer available to the applicant; or a legally binding agreement between PRDOH and the applicant that indicates the period of availability of the loan has passed and the applicant agrees to not 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 action to reinstate the loan or draw additional amounts.

10.3 FEMA National Flood Insurance Program Insurance (NFIP)

Payments for loss to dwellings under NFIP insurance policies will be deducted from the grant amount to be awarded. Payments for contents or other expenses are not deducted from the applicant's funding assistance award. The Program will collect NFIP

[43] 84 FR 28836, 28842.

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 Department of Treasury of Puerto Rico (Departamento de Hacienda de Puerto Rico), through Executive Order, EO-2017-044 issued September 1, 2017, will also be evaluated for duplication of benefits.

Insurance proceeds taken by a mortgage company as a forced-mortgage payoff will not be counted as long as the applicant provides proper documentation. The applicant will need to provide supporting documentation demonstrating that mortgage payment was involuntary, and the PRHFA will verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a DOB that will be counted in an applicant's award calculation.

11 Compliance Monitoring

The QAP 2016 and QAP 2020 include a Compliance Monitoring Plan, pursuant to the requirements stated in 26 U.S.C. § 42. PRHFA will notify the U.S. Internal Revenue Service (**IRS**) of noncompliance with the LIHTC Program.

In accordance with the QAP's Compliance Monitoring Plan,[44] Developers or Management Agents are required to provide annual certifications of qualified low-income tenants, including tenant income and rents charged, the number of qualifying low-income units, as well as any other pertinent information to determine compliance.[45]

Developers are advised that PRHFA is required to perform compliance monitoring. To facilitate monitoring, PRHFA and its designees will have access to all project information, including but not limited to, physical access to the project, financial records, and tenant information for the purpose of monitoring compliance with 26 U.S.C. § 42 and with CDBG-DR requirements.

In the case of a noncompliance incident, PRHFA will advise the Developer, as well as notify the IRS or any other federal agency, as deemed necessary. Further note that

[44] 26 U.S.C. § 42.

[45] For specific compliance requirements for the LIHTC Program outlined in QAP 2016 and QAP 2020, Annex O, see https://www.afv.pr.gov/wp-content/uploads/2016/07/Annex-O-Compliance-Monitoring-Plan-REV-JULY-2016.pdf.

regardless of the status of the noncompliance incident (resolved or not) all incidents related to the LIHTC laws and regulations will be reported to the IRS.

11.1 Occupancy Requirements

To be considered an eligible housing activity under CDBG-DR funding, rental housing must be occupied by LMI households. The rents must be considered "affordable" to meet this criterion. HUD defines "affordable housing" as one that a household can obtain for thirty percent (30%) or less of its income; this varies from city to city. LIHTC rents are set at thirty percent (30%) of the income of the Area Median Income (**AMI**). tied to the unit.[46] This is calculated with an assumed family size of 1.5 persons per bedroom. For guidance on determining maximum rents and income limits for Puerto Rico LIHTC projects, limits are annually published by PRHFA.[47]

Household income at move-in must not exceed the applicable income limit designated for the household's family size in accordance with the affordability requirements defined by HUD.[48] Prior to moving in or taking possession of a unit, the Developer or Management Agent is required to certify that the household meets the income requirements. Certification of residents after move-in may impact the Developer's ability to claim tax credits for the unit. For compliance guidance, refer to the QAP 2016, Annex O – Compliance Monitoring Plan.[49]

If a family's income increases after they move in, the family is not disqualified from staying in the unit even if the increase is above the unit's income requirements. In buildings that have a mix of tax credits units and other types of units (such as units that are market rate), the Developer must follow the "next available unit rule". This means that if a tenant in a LIHTC unit's income increases to more than one hundred forty percent (140%) of the AMI, the next available unit must be rented to someone within the appropriate income level for admission. However, the tenant with the increased income is still eligible to remain in their unit.

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[46] HUD Affordable Housing Program, https://www.hudexchange.info/programs/home/.

[47] As of date, the most recent publication is: PRHFA Circular 18-01 "Developers and Management Agents of Properties participating in the Low-Income Housing Tax Credit (LIHTC) Program" (April 4, 2018).

[48] Income limits are published annually at www.hudexchange.info. For FY 2026 income limits for Puerto Rico, effective June 1, 2026, see https://www.hudexchange.info/resource/5334/cdbg-income-limits/.

[49] Annex O of the QAP 2016 is available at: https://www.afv.pr.gov/wp-content/uploads/2016/07/Annex-O-Compliance-Monitoring-Plan-REV-JULY-2016.pdf

All Developers under contract to PRHFA must comply with federal, state, and local laws that prohibit discrimination on the basis of disability, including but not limited to the Federal Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, the Federal Fair Housing Act of 1968 (Title VIII), 42 U.S.C. § 3601 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (504), 29 U.S.C. § 701 *et seq.*, and ADA. In addition, Developers cannot discriminate against voucher families and must accept Section 8 voucher tenants.

All new and existing LIHTC projects with fully accessible units for occupancy by individuals with mobility and/or sensory impairments shall provide access to those unit on a preferential basis as follows:

- Preference will be given to the occupant of another unit within the same project having disabilities requiring accessibility features of the vacant unit and who is occupying a unit lacking such features.
    - If no such occupant exists, then preference will be given to an eligible qualified applicant on the waiting list having disabilities requiring the accessibility features of the vacant unit.
- In the case that the unit is offered to an applicant without disabling conditions needing of the unit's accessibility features, the Developer and/or manager shall require the applicant to agree (and shall incorporate this VCA to the lease) to move to a non-accessible unit whenever it becomes available and within the delivery of a written notification.

Developers and Management Agents shall adopt suitable means to ensure the information regarding the availability of accessible units reaches eligible individuals with disabilities and shall undertake reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals.

12 Financing Requirements

12.1 Subsidy Layering Review and Underwriting

The Subsidy Layering Review (**SLR**) will certify that there is no overlap of government subsidies when combining housing assistance programs with other forms of federal funds administered by Federal, Puerto Rico, or local agencies.

To perform this review, PRHFA will evaluate each project to determine a reasonable level of profit or return for Developer or a Developer's investment. Based on this determination, PRHFA will determine whether and, how much, the Developer must

invest, and/or which other funding sources and types can be applied to the project. The review will ensure that costs are eligible for each project, and all income and expenses are reasonable and within the prescribed standards.

Pro-forma statements will be prepared by PRHFA based on the analysis described above, which will include recommended sources and uses of funds, as well as projected operating income for the term of affordability. These will include the amount of LIHTCs that a project would be eligible to receive, as well as the amount of permanent financing based on the established parameters, governmental subsidies, capital contributions, CDBG-DR funds, and funds from PRHFA or other state or private programs.

PRHFA's underwriting requirements are outlined in the QAP 2016 and QAP 2020, section 5.3 - *Underwriting and Financial Feasibility Analysis*. The purpose of the underwriting requirements is to ensure that:

- Project costs are reasonable;
- All sources of project financing are committed;
- To the extent practicable, CDBG-DR funds are not substituted for non-Federal financial support;
- The project is financially feasible;
- To the extent practicable, the return on the Developer's equity investment will not be unreasonably high; and
- To the extent practicable, CDBG-DR funds are reimbursed on a needed pro-rata basis with other finances provided to the project.

PRHFA will underwrite the rents according to LIHTC limits except for projects that intend to use project-based rental assistance (e.g., Section 8, Project Based Vouchers, Public Housing Agencies (**PHAs**), or similar legislation), which will be underwritten as per applicable regulations, provided written evidence is submitted (e.g., award letter indicating gross rents approved for the project or executed rental subsidy agreement). Also, when combining LIHTC properties with a project-based rental assistance program, the Developers shall ensure that they meet both sets of program rules regarding income limits application. For more information, see the QAP 2016 and QAP 2020, section 5.2 - *Development Budget and Pro Forma Assumptions Review*; and section 5.3 - *Underwriting and Financial Feasibility Analysis*.

12.2 CDBG-DR Funding Considerations

Further, CDBG-DR funds may not be used in conjunction with PRHFA's HOME Program. Projects may receive HOME funds from other Participating Jurisdictions. CDBG-DR awards must meet LIHTC's rent and income limits, use, and compliance monitoring limitations, as well as any other existing or future regulatory requirements.

CDBG-DR allocations will be based on the equity gap identified for each submitted application following evaluation under the applicable QAP 2016 and QAP 2020 requirements, underwriting guidelines, and any additional CDBG-DR requirements. PRHFA may also require updated sources and uses budget and any additional financial information necessary to complete its review. CDBG-DR funds will be first awarded to projects that received a LIHTC award during or prior to NOFA-2016.

Funds will be disbursed monthly on a draw basis. No disbursements are allowed unless the CDBG-DR Agreement is signed and dated by both parties (PRHFA and Developer). Refer to the Section on *Responsibilities of the Developer,* for a detailed description of the Developer's duties before the execution of the CDBG-DR Agreement, during construction and after completion of construction.

12.3 Allowable Expenditures

CDBG-DR funds awarded under this Program will only reimburse eligible and reasonable costs incurred to develop a project. No CDBG-DR funds will be advanced to reimburse a project cost unless the Draw Request with supporting documentation is submitted and approved by the PRHFA. No funds shall be disbursed until all funding commitments and agreements are executed, and environmental conditions are satisfied.

Purchases from affiliated persons or entities must be backed by an appraisal, acceptable to the PRHFA in its sole discretion. Construction/Rehabilitation costs must be identified and outlined in the payment and sources of the development budget. All costs must be reasonable and documented as such.

Only costs identified in the CDBG-DR Agreement will be considered eligible for payment by this Program. All construction costs must be reasonable and consistent

with market costs at the time and place of construction.[50] **Extended overhead costs required to complete the CDBG-DR proposal submission are not allowable costs.**

The development budget will identify the payment source of each line item. Developers must ensure that only CDBG-DR eligible costs are included in invoices submitted to the Program. Invoices will also be verified by the PRHFA personnel responsible for each project. CDBG-DR funds may be used for capital investment in eligible LIHTC projects. Capital investments are costs that are included in the eligible basis of a project under the IRC. [51]

Certain "soft" costs for construction such as surveys, site and utility plans, professional fees, and other pertinent costs will be considered at the discretion of PRHFA, if such costs are determined to be necessary and appropriate to achieve the national objective of the Program.

These Program Guidelines do not provide a complete or exhaustive list of costs. All costs are subject to review and approval of PRHFA and PRDOH; as such, any costs incurred prior to execution of the CDBG-DR Agreement will be the sole responsibility of the Developer.

12.4 Additional Funding Requirements

Accounting of disbursements and projects' expenditures will be ongoing to ascertain that funds are expended according to the terms of the CDBG-DR Agreements. This process will help identify those projects that do not comply with deadlines. PRHFA will track and report fund commitments and expenditures, and beneficiary information, when available, to PRDOH on a quarterly basis. This task will be a joint effort between the PRHFA Financing and Tax Credit Department and their Accounting/Pre-Audit Department.

Developers shall commit to the development funding plan[52] (schedule of performance and development budget) outlined in their respective CDBG-DR Agreements, which must be acceptable to PRHFA, and acknowledge that:

[50] 83 FR 40314
[51] 26 U.S.C. § 42
[52] The development funding plan refers to the development budget and schedule of performance for each project. It is incorporated as part of the CDBG-DR Agreement.

- Development of the qualified rental property will be constructed and placed in service by the date stipulated in the LIHTC Carryover Allocation Agreement.
- Developers shall file a monthly report providing confirmation of progress toward meeting the established expenditure deadlines. The assigned PRHFA personnel will review the plan and enforce compliance.
- A Project that is not completed in accordance with the terms and conditions of the CDBG-DR Agreement can be considered terminated prior to completion, and all CDBG-DR funds will be recaptured.

If the Development is not completed on or before the Completion Date outlined in the CDBG-DR Agreement for any reason other than an act of God or *force majeure*, PRHFA shall be entitled to all rights and remedies as provided for in the CDBG-DR Agreement.

The CDBG-DR Agreement will set forth all CDBG-DR programs and crosscutting federal grant requirements. These will be enforceable through the recordation of a restriction binding on all Developers and successors. In Puerto Rico, it is achieved with a public deed recorded at the appropriate Property Registry.

PRHFA reserves the right to exercise its prudent discretion when the circumstances so warrant it. PRHFA and PRDOH will recapture funds not expended within the terms stipulated in the CDBG-DR written agreements. Recaptured funds will be returned to the Program for future use.

12.5 Change Order Requests

Depending on each project's percentage of completion and an assessment of whether any project delays will affect meeting CDBG-DR deadlines, Developers may be responsible for any equity gap they may face. Changes in plans or specifications after the CDBG-DR Agreement have been executed including any increase or decrease in the quantity of work to be performed or materials, equipment, or supplies to be furnished, shall not be allowed without the express written permission of PRHFA.

Requests for change orders shall only be considered if the Developer demonstrates the change is necessary, reasonable, and cannot be funded through the Project's contingency budget or through funding sources other than CDBG-DR. Request for change orders should not result in an increase of more than five percent (5%) of the approved budget in the executed CDBG-DR Agreement.

PRHFA will evaluate all requests for a change order to determine whether costs are necessary and reasonable for the timely completion of the Project or to protect the initial investment of CDBG-DR funds. Approval of change orders is subject to the discretion of the PRHFA, and availability of CDBG-DR funds. Change order requests for an increase in the value of the CDBG-DR Agreement in excess of five percent (5%) will only be considered if the Developers can demonstrate that the change order is required due to a substantial or unexpected change in Project circumstances beyond the control of the Developer. Requests for change orders in excess of five percent (5%) will be considered on a case-by-case basis.

Any work performed outside of the approved scope of work without prior authorization by means of a Change Order shall not be eligible for reimbursement under the CDBG-DR Agreement. Developers shall be responsible for all costs incurred due to activities performed beyond the approved scope of work without prior authorization by a duly authorized change order.

12.6 Program Income

Program Income is defined as gross income generated from the use of CDBG-DR funds and received by PRDOH or its subrecipients, regardless of when the funds were appropriated and whether the activity has been closed out, subject to the exclusion provided in 83 FR 5844. Program Income shall be calculated based on the income attributable to the CDBG-DR-funded portion of each LIHTC Project.

Subrecipients shall report, retain, and use Program Income in accordance with the Subrecipient Agreement. Subrecipients shall remain subject to all applicable CDBG-DR laws, regulations, and PRDOH policies and procedures for as long as Program Income exists.

For more information on the use and management of Program Income, please consult the PRDOH CDBG-DR/MIT Program Income Policy, see: https://recuperacion.pr.gov/en/download/program-income-policy/ (English) and https://recuperacion.pr.gov/download/politica-de-ingresos-del-programa/ (Spanish).

13 Responsibilities of the Developer

13.1 Before Execution of the CDBG-DR Agreement

This section sets forth the responsibilities and obligations that the Developer must meet in order to enter into a binding CDBG-DR Agreement with PRHFA.

All existing LIHTC projects under this Program will be required to submit a new proposal as part of the CDBG-DR Agreement. This proposal shall include, but is not limited to, a revised development funding plan accounting for the costs and timeline of implementing the CDBG-DR requirements, an updated design and plan specifications, updated threshold review documentation (i.e. Designer's Preliminary Opinion Letter, Valid Construction Permit, etc.), and other documentation as requested by PRHFA.

The following documentation must be received and accepted by PRHFA prior to the execution of the CDBG-DR Agreement:

- A written report by PRHFA that includes:
    - Blueprints that have been received and approved by all pertinent Governmental Authorities;
    - New construction and/or rehabilitation, as shown by the Blueprints, will comply with all applicable zoning and construction laws, ordinances, and regulations;
    - Construction Contract that satisfactorily provides for the construction of the new construction and/or rehabilitation;
    - Roads and utilities necessary for the full utilization of the new construction and/or rehabilitation for its intended purpose have been completed or are contemplated or the presently installed and proposed roads and utilities are sufficient for the full utilization of the new construction and/or rehabilitation for its intended purpose; and
    - New construction and/or rehabilitation performed to date, if any, has been carried out in accordance with the Plans and will be completed with all necessary roads and utilities on or before the Construction Completion Date.
- Current Financial Statements of the Authorized Representative of the Developer, and/or Owner, and any other financial documents and/or data deemed reasonably required by PRHFA.

- Evidence of payment and performance bonds, and labor and materials payment bonds, each for penal sums equal to the amount of the Construction Contract, and a Wage Payment Bond for twenty percent (20%) of such amount, or as otherwise provided by law, each naming PRHFA and PRDOH as co-obligees, with a company having a rating of "A", or better and a financial size of "V", or better with Best's Rating Service and acceptable to PRHFA, the Workman's Compensation Fund, and other insurance policies (alongside evidence of the payment of premiums) required hereunder and/or under any other Loan Document, and all documents related to construction, including without limitation, the Construction Contract, and agreements with and from the Contractor and Developer's Architect.
- Copy of the Construction Contract and a copy of the Developer's Agreement with the Developer's Architect certified by the Developer.[53]
- The Project Cost Statement.
- A copy of the public instrument (deed, lease agreement, sales contract, option agreement, among others) establishing the Developer's acquisition or of the Developer's interest in the premises, along with any related documentation.
- The Developer must provide evidence that they have met all conditions defined in its LIHTC-Operating Agreement as of the date of the Initial Advance with respect to ensuring that the Capital Contributions have been complied with to the extent possible.
- An ERR. Refer to Environmental Review Section of these Guidelines. This includes the Approved RROF and FONSI, if applicable.
- Copies of any inspection and/or test records and reports made by or for the Developer's Architects.
- A construction schedule, or other schedule identifying the tasks to be performed and the dates by which such tasks are expected to be completed, for the new construction and/or rehabilitation.
- A progress schedule showing the interval of time over which each item of Direct Cost and Indirect Cost is projected to be incurred and paid, as well as a breakdown of all Direct Costs to be incurred for the construction of the new construction and/or rehabilitation; and

[53] The terms and conditions of such agreements must be acceptable to PRHFA.

- Evidence of compliance with CDBG-DR funding requirements, including but not limited to, adherence to, at least, one Green Building Standard, compliance with VCA standards, and the inclusion of Broadband Infrastructure requirements.

The following items must be received and reviewed by PRHFA's Legal Counsel prior to the execution of the CDBG-DR Agreement:

- The Loan Documents and any other document reasonably required by PRHFA;
- Evidence of paid Title Insurance policy;[54]
- Evidence that all taxes and other levies imposed upon the Premises or on the Developer's Interest in the Premises and/or new construction and/or rehabilitation are fully paid and current;
- Copies of all applicable authorizations as determined by PRHFA or PRHFA's Counsel (on behalf of PRHFA):
    - Plot plan and subdivision approvals;
    - Zoning variances;
    - Sewer, building, flood, and all permits required for construction, use, occupancy, and operation of Premises;
- Agreements from Developer's Architects and the Contractors, including but not limited to, design agreement(s), construction contract agreement(s);
- A survey of the Premises, certified by a duly licensed professional engineer (PE) to practice civil engineering or surveyor, acceptable to PRHFA and the Title Insurer showing:
    - The location of the perimeter of the Premises by courses and distances;
    - All easements, rights-of-way, and utility lines referred to in the title policy required by the agreement or which actually service or cross the Premises;
    - The lines of the streets abutting the Premises and the width thereof, and any established building lines;
    - Encroachments and the extent thereof upon the Premises;
    - The new construction and/or rehabilitation to the extent constructed, and the relationship of the new construction and/or rehabilitation by distance to the perimeter of the Premises, established building lines and street lines; and

[54] The paid title insurance policy must be equal to the mortgage and issued by the Title Insurer. The Title Insurer shall ensure the mortgage to be valid first lien on the Mortgaged Property free and clear of all defects, liens, claims, and encumbrances, and shall contain reference to a survey.

  - If the Premises are described as being on a filed map, a legend relating the survey to said map;
- Copy of the Developer Operating Agreement, as amended, and a copy of the organization documents of the Managing Member of the Developer, and the appropriate legal authorizations of Developer issued by agencies of the Government of Puerto Rico and/or the state of incorporation (to the extent required); and
- An opinion of Developer's legal counsel that encompasses, among other matters, the organization and existence of the Developer, the power of the Developer to enter into the Loan Documents and to perform all transactions contemplated by the agreements referred to therein, and the due execution, validity and enforceability of the Loan Documents, Note(s), Security Agreement, and all other documents and instruments pertaining to the Loan.

It is the Developer's responsibility to ensure that the applicable Building Code(s) are applied, and permits are obtained. See www.jp.pr.gov for more information.

For a complete list of required documents, please refer to the PRHFA Closing Checklist.

13.2 Prerequisites for Initial Disbursement

Upon signature of the CDBG-DR Agreement, the Developer shall provide proof of payment of performance bonds, labor bonds, and materials payment bonds before the initial disbursement.

Prior to the initial CDBG-DR disbursement, the Developer shall furnish proof of compliance with and fulfillment of all CDBG-DR requirements.

13.3 During Construction

The Developer must begin construction no later than **forty-five (45) days** from signing the CDBG-DR Agreement with PRHFA. In the case of delays caused by events beyond the Developer's control, construction can begin within **sixty (60) days**. This timeline may be extended on a case-by-case basis due to unforeseen circumstances or delays resulting from events beyond the Developer's reasonable control.

13.4 Monitor Construction Progress

Throughout the duration of the construction, the Developer shall comply with all restrictions, covenants, and easements affecting the Premises, the Developer's

Interest in the Premises, or the new construction and/or rehabilitation, and ensure satisfaction of all material conditions of the Agreement.

To monitor construction progress, PRHFA and its representatives shall be granted access during normal business hours, and be allowed to enter the construction site to perform the following activities, as deemed necessary:

- Inspect new construction and/or rehabilitation and all materials to be used in the construction;
- Examine Blueprints;
- Assess compliance with all applicable cross-cutting regulations and Program Guidelines; and
- Any other activities PRHFA deems necessary for the success of the Project.

Until the Date of Conversion to permanent financing, the Developer shall submit monthly reports to PRHFA indicating the state of completion of the new construction and/or rehabilitation compared to estimates, and such other information as PRHFA may reasonably request. The reports shall be delivered to PRHFA in an acceptable form and substance.

13.5 Contractor Management

The Developer should include the following provisions as part of the Construction Contract with the Contractor:

- The Contractor will deliver copies of all major subcontracts, change orders, and any other contract, purchase order, or subcontract covering labor, materials, equipment, or furnishings to or for the new construction and/or rehabilitation to PRHFA;
- The names of all individuals or entities contracted by the Contractor for the construction, rehabilitation, or provision of labor or materials.

Further, the Developer shall acknowledge that PRHFA will retain ten percent (10%) of each construction payment, to be reimbursed in accordance with the terms of the CDBG-DR Agreement, the Bonds, and the Construction Contract. All such subcontractors to be utilized by the Contractor in the development and construction of the new construction and/or rehabilitation shall be reasonably acceptable to PRHFA.

13.6 Regulatory Compliance

Upon demand by PRHFA or its representatives, the Developer shall be required to correct any defects (including structural) in the new construction and/or rehabilitation or any departures from the Blueprints not approved by PRHFA.

If the Developer fails to comply with federal statutes, regulations or the terms and conditions of the CDBG-DR Agreement, PRHFA may take one or more of the following actions:

- Take remedies such as temporarily withholding cash payments pending correction of the deficiency by the Developer;
- Disallow all or part of the cost of the activity or action not in compliance;
- Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 - OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement);
- Withhold further Federal awards for the project or program; or
- Take any remedies deemed necessary and that may be legally available.

The Contractor shall cooperate and deliver data or documents in connection with the new construction and/or rehabilitation to PRHFA as requested. PRHFA reserves the right to request copies of all contracts, bills of sale, statements, receipted vouchers, or agreements in the following cases:

- Developer claims title to any materials, fixtures, or articles incorporated in the new construction and/or rehabilitation; or
- Subject to the lien of the Mortgage; or
- Incurred costs which are entitled to CDBG-DR funds.

13.7 Financial Management

The Developer is responsible for paying all Direct Costs, Indirect Costs, and expenses for completion of the new construction and/or rehabilitation and satisfying all the conditions outlined in the CDBG-DR Agreement, including but not limited to:

- All document and stamp taxes, recording and filing expenses and fees, in connection with the transactions contemplated hereby;
- All taxes, insurance premiums, liens, security interests, or other claims or charges against the Premises, Developer's Interest in the Premises, or new construction and/or rehabilitation; and

- All costs of completion of the work to be performed by Developer in space to be occupied in the new construction and/or rehabilitation (including public space outside the property boundaries) to permit the lawful occupancy thereof for the purposes contemplated in the Operating Agreement.

The Developer shall maintain a standard and modern system of accounting of its dealings and business affairs, in accordance with generally accepted accounting principles, and allow PRHFA or any of its agents or representatives to have access to and to examine its books and records at any time or times hereafter during business hours and copy from any and all of said books and records; have its books to be audited annually by a reputable accounting firm licensed in Puerto Rico.

The Developer shall pay and discharge all taxes, assessments, and governmental charges and levies imposed upon it or upon its income or profits, or upon any property belonging to it, on or prior to the date in which penalties attached thereto, provided that Developer shall not be required to pay any such tax, assessment, charge, levy or claim, the payment of which is being contested in good faith, by the proper proceeding and such non-payment will not create a lien on the Premises, on Developer's Interest in the Premises, or the new construction and/or rehabilitation.

The Developer shall, within **one hundred twenty (120) days** after the end of its fiscal year, provide PRHFA with its audited Financial Statements without any qualification or exception reasonably deemed material by PRHFA. In addition, the Developer may be required to provide an unaudited Financial Statement signed by its Managing Member (no more than once monthly).

Pursuant to the above section, the Developer shall maintain the Premises, Developer's Interest in the Premises, and the new construction and/or rehabilitation free and clear of any and all liens, charges, claims, defects, and encumbrances except the Mortgage, PRHFA's restrictive covenants, and such others as have been previously approved in writing by PRHFA.

Upon request of PRHFA, the Developer may need to execute, deliver, obtain, and furnish, at their own expense, such documents as may be necessary to:

- Perfect and maintain the Mortgage and the pledge and security interest hereunder and the other Loan Documents; and

- Fully consummate the transactions contemplated under the CDBG-DR Agreement and maintain the principal amount of the Mortgage and the additional credits thereunder in amounts, which in the sole, but reasonable, discretion of PRHFA, will fully secure the payment and performance of all indebtedness, liabilities, and obligations under the Agreement and other Loan Document.

13.8 Legal Considerations

The Developer shall promptly notify PRHFA of any claim, suit, proceeding, or matter brought against or made known to the Developer, which, if adversely determined or otherwise, would have a material adverse effect upon the Premises, Developer's Interest in the Premises, the new construction and/or rehabilitation, or financial condition or business affairs of Developer.

The Developer shall indemnify, defend and hold PRHFA and PRDOH officials harmless from all losses, liabilities, costs, expenses (including reasonable attorneys' fees) that PRHFA and PRDOH may suffer as a result of any claims or suits brought by any broker, finder, agent or similar entity claiming through or as a result of dealings with Developer relative to the acquisition of Developer's Interest in the Premises or in connection with the execution hereof or the consummation of the transactions contemplated hereby and Developer's obligations herein shall survive the expiration or termination of the Agreement and the payment of the Loan.

13.9 Substantial Completion

Upon Substantial Completion, the Developer shall pay the amounts retained or held back from the Contractor as contractual retainage in accordance with the terms of the Construction Agreement and the Bonds. In order to release the funds, the following is required:

- Receipt of the Use Permit ("Permiso de Uso") for the new construction and/or rehabilitation and the release from the bonding company that issued the Bonds.
- Written recommendation from PRHFA confirming that:
    - Construction of the new construction and/or rehabilitation has been completed;
    - All necessary utilities and roads have been finished and made available for use;

  - Receipt of satisfactory evidence of the approval and issuance of permits by all Governmental Authorities of the new construction and/or rehabilitation in their entirety for permanent occupancy; and of the contemplated uses thereof, to the extent any such approval is a condition of the lawful use and occupancy thereof.
- If requested by PRHFA, a current final "as built" or "completion" survey of the Premises, certified to PRHFA and the Title Insurer, showing the completed new construction and/or rehabilitation.
- Architect's certificate confirming that the new construction and/or rehabilitation has been completed substantially in accordance with the Blueprints and acknowledging payment in full for the Architect's services.
- Developer's certificate, accepting the new construction and/or rehabilitation as completed.
- Final releases of payment from all persons who supplied material services, labor or materials for the new construction and/or rehabilitation and certificates from the Contractor and the sub-contractors acknowledging such payments, including an affidavit; and
- Such other evidence or documents as PRHFA may deem reasonably necessary.

Projects will achieve substantial completion only after all units are one hundred percent (100%) construction complete, and Use Permit ("Permiso de Uso") have been issued.

13.10 Rent Up Phase

Each project is required to achieve its Placed-in-Service by December 31 of the second year after signing the LIHTC Carryover Allocation Agreement. If not, the Developer may lose the LIHTCs.

After placed-in-service is reached, the Developer has **one (1) year** to certify full occupancy of the project, if not the LIHTC will be prorated by the number of occupied units and the portion of vacant units may result in lost LIHTCs.

Once approval has been given that the project is ready for occupancy, the Rent Up/Lease Up phase of the project is initiated. In this phase, the Management Agent is responsible for facilitating the leasing process and ensuring that households in LIHTC units meet the income eligibility requirements. In order to ensure eligibility, the Management Agent shall verify all income, household characteristics, and any

circumstances that may affect income eligibility and compliance with LIHTC requirements prior to signing a lease agreement.

In order to facilitate this process, other activities may include advertising, maintaining a model unit, providing on-site office space for the Management Agent and staff, and any other activities to rent the property.

14 Affirmative Marketing and Fair Housing

PRDOH's Fair Housing and Equal Opportunity (**FHEO**) Policy establishes requirements and provides guidance for ensuring that CDBG-DR/MIT programs do not discriminate against protected classes of people. The PRHFA must ensure that no person shall on the ground of race, color, national origin, religion, sex, sexual orientation, age, familial status, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination by the CDBG-DR Program.[55] The PRHFA, as the designated Subrecipient, holds the main responsibility for the implementation of the Outreach Plan including the following activities:

1. Implementation and maintenance of the Outreach Plan;
2. Timely formulation and dissemination of communications;
3. Identify and address key communication issues that may arise;
4. Work closely with PRDOH to ensure that target audience receives adequate information;
5. Proposing modifications to reflect changing environments based on the Program's needs.

Activities include, but are not limited to:

- Publish programmatic information as necessary (e.g. Program Guidelines, training material, outreach material, etc.);
- Provide PRDOH with required documentation and information as specified in 83 FR 5844 for posting on PRDOH CDBG-DR website https://recuperacion.pr.gov/welcome/en/index.html (English) and https://recuperacion.pr.gov/welcome/ (Spanish).

[55] 24 C.F.R. Part 6; See also Basically CDBG (November 2007) 19-9 HUD, Office of Block Grant Assistance. https://www.hudexchange.info/trainings/basically-cdbg/.

- Supply non-essential information (when requested) such as bulletins, newsletters, or marketing materials for publication on PRDOH CDBG-DR website, and
- Engage Program stakeholders in the Program design and the execution of the Program (e.g. Developers, General Contractors, Consultants, etc.).

The PRDOH will be responsible for providing oversight, guidance, and support to PRHFA in the execution of the Outreach Plan.

PRHFA will be responsible for the administration of the Program, will take measures to affirmatively market and ensure accessibility to the Program, as follows:

1. Identify the groups it seeks to benefit with the Program, assess which groups and/or protected classes are historically underserved and are least likely to apply to the Program, and will employ affirmative marketing strategies to encourage Program participation from these groups.
2. Retain documentation of all marketing measures used, including copies of all advertisements and announcements that will be available for public viewing upon request.
3. Provide reasonable accommodation as needed to make the Program accessible to people with disabilities, will hold informational meetings and in-person application intake in building or areas that are ADA compliant, and provide appropriate assistance to those who are hearing or visually impaired when requested.
4. Use the Fair Housing logo in advertising, post Fair Housing posters and related information, and, in general, inform the public of its rights, and PRDOH and PRHFA's obligations under Fair Housing Act (**FHA**) regulations.
5. Monitor Program participation to assess how marketing strategies are working and ensure that protected classes of people are not being intentionally or unintentionally discriminated against.

In addition to marketing through widely available media outlets, PRHFA and PRDOH will take the additional following measures:

- Advertise with media outlets which provide unique access for persons who are considered members of the protected classes under the **FHA**.
- Applications will be accepted digitally, to make the Program accessible.

The FHEO Policy is available in English and Spanish on PRDOH website at https://recuperacion.pr.gov/en/fair-housing/ and https://recuperacion.pr.gov/fair-housing/.

14.1 Language Access Plan

PRDOH, its subrecipients, and contractors are responsible for complying with the PRDOH Language Access Plan (**LAP**). The purpose of the LAP is to ensure meaningful access to federally assisted programs and activities for persons who, because of national origin, are limited in their Spanish or English proficiency. The LAP provides concrete action steps that shall be followed by PRDOH, subrecipients, and contractors to ensure that appropriate language services and translated vital documents are made available to potential and actual Program participants and in outreach activities per the LAP.

The LAP is available in English and Spanish on the PRDOH website at: https://recuperacion.pr.gov/en/download/plan-de-acceso-al-idioma/ and https://recuperacion.pr.gov/download/plan-de-acceso-al-idioma/.

15 Uniform Relocation Act

As a HUD-assisted Program, and in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (**URA**), 42 U.S.C. § 4601 *et seq.*, the government wide implementing regulations found at 49 C.F.R. Part 24; and Section 104(d) of the HCDA, except where waivers or alternative requirements have been provided by HUD. Pursuant to 24 C.F.R. § 42, Subpart C, all programs within the PRDOH CDBG-DR portfolio are subject to URA requirements and regulations. The primary purpose of these laws and regulations is to provide uniform, fair, and equitable treatment for individuals whose real property is acquired or who are displaced in connection with federally funded projects.

All programs in the PRDOH CDBG-DR Portfolio, including this Program, are subject to URA regulations. Projects funded under the Program, which include activities that result in displacement, must comply with all applicable URA regulations for notifying property owners, businesses, and tenants who may be subject to displacement. Persons and entities qualifying as “displaced persons” may be eligible for relocation assistance benefits, which must be accounted for in project budgets.

The Developer shall provide PRHFA, and any of their authorized representatives with access to all URA documentation, including, but not limited to, tenant relocation files, URA notices, implementation progress reports, and any other record as determined by PRDOH, PRHFA, and any of their authorized representatives.

For more information on how URA regulations apply to the CDBG-DR Program, please refer to the PRDOH Uniform Relocation Assistance Guide and Residential Anti-Displacement and Relocation Assistance Plan available in English and Spanish at: https://recuperacion.pr.gov/en/download/ura-adp-guidelines/ and https://recuperacion.pr.gov/download/guias-ura-adp/.

16 Minority, Women, Veteran and Labor Surplus Area Business Enterprises (M/WBE/VOBE/Labor Surplus)

2 C.F.R. § 200.321 requires the non-Federal entity to take necessary steps to ensure that all recipients, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance ensure that, when possible, contracts and other economic opportunities are directed to minority business enterprises (**MBE**), women-owned business enterprises (**WBE**), together M/WBE, veteran-owned business enterprises (**VOBE**), and labor surplus area firms, as identified by the U.S. Department of Labor. This section highlights some of the key areas for this area of regulation. PRDOH has provided a comprehensive policy guide for M/WBE implementation and is made available on the PRDOH website. This section does not replace the guidance provided in the policy guide.

MBE means a business enterprise that is at least fifty-one percent (51%) owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

WBE is an independent business concern that is at least fifty-one percent (51%) owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.

A VOBE is a business that is at least fifty-one percent (51%) owned and controlled by one or more veterans of the U.S. Armed Forces who actively manage and operate the business.

Compliance with these provisions requires the adoption of reasonable affirmative actions to encourage participation by the above-mentioned types of businesses. Such actions include, but are not limited to:

- Maintaining and using updated vendor and solicitation lists that include these types of businesses;
- Offer equitable opportunities for these types of businesses to participate in bidding proposal processes whenever they are deemed eligible;
- Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- Establish delivery schedules or conditions that encourage the participation of these types of businesses; and
- Coordinate with organizations such as the U.S Small Business Administration and the Minority Business Development Agency (**MBDA**) of the U.S. Department of Commerce to identify and encourage the participation of these types of businesses in contracting opportunities funded with CDBG-DR;
- Requiring a contractor under Federal award to apply this section to subcontracts.

Compliance is ensured by requiring, as applicable, subrecipients, program partners and contractors take all reasonable and documented steps to promote the participation of M/WBE, VOBE, and Labor Surplus Areas in contracting opportunities funded with CDBG-DR.

If, after making good faith efforts, a subrecipient is unable to meet the participation objectives established by PRDOH, they may submit a request for a Waiver. The request must set forth the reasons for the inability to meet any or all the participation requirements together with an explanation of the good faith efforts undertaken. For more information on the specific requirements applicable to the M/WBE, refer to the PRDOH M/WBE Policy guide available in English and Spanish at https://recuperacion.pr.gov/en/download/mwbe-policy/ and https://recuperacion.pr.gov/download/politica-mwbe/.

17 Section 3 Requirements

All entities receiving CDBG-DR funding, including Recipients, Awardees, Contractors, Subcontractors, and/or Developers, are required to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) and implementing regulations at 24 C.F.R. part 75. 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 Section 3 eligible persons and business concerns. For public housing financial assistance, PHAs, regardless of size or number of public housing units, are required to comply with Section 3 and its reporting requirements.[56]

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the regulatory thresholds. This includes demolition projects, general rehabilitation activities. For housing and community development financial assistance projects, Section 3 applies to grantees on a project basis.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects receiving HUD housing and community development financial assistance when the total amount of such assistance exceeds $200,000. Lead Hazard Control and Healthy Homes (**LHCHH**) assistance is excluded when calculating this threshold. For projects receiving LHCHH assistance, the applicable threshold is $100,000. Neither HUD public housing financial assistance nor HUD housing and

[56] Section 3 applies to both:

- Public Housing Financial Assistance – (i) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937; (ii) Operations and management assistance provided pursuant to Section 9(e) of the 1937 Act; (iii) Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and (iv) The entirety of a mixed-finance development project as described in 24 C.F.R. § 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in subsections (i) through (iii).
- Housing and Community Development Financial Assistance expended for housing rehabilitation, housing construction, or other public construction.

community development financial assistance is included when calculating this threshold.

Recipients of LHCHH funding must also comply with Section 3 regulations and report on the entirety of the project when the total amount of HUD housing and community development financial assistance to the project exceeds $200,000 excluding LHCHH funding or if any public housing financial assistance is provided.[57]

Under 24 C.F.R. Part 75, workers may be certified as Section 3 workers or Targeted Section 3 workers through several methods. A PHA or recipient may report these workers for **five (5) years** from the date their certification as a Section 3 worker or Targeted Section 3 worker is established.

For more details please refer to the PRDOH CDBG-DR Section 3 Policy in English and Spanish at https://recuperacion.pr.gov/en/section-3/ and https://recuperacion.pr.gov/seccion-3/.

18 Reasonable Accommodation Policy

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.S. § 794, requires owners and managers of any project receiving an award under the LIHTC-DR Program to make reasonable accommodations and modifications for individuals with disabilities. The purpose of Section 504 is to avoid discrimination and ensure these individuals have an equal opportunity to access and enjoy the benefits of the Program. Requests for reasonable accommodation (changes to a rule, policy, practice, or service) and reasonable modifications (structural changes to a building or dwelling) most commonly arise in housing programs. However, Section 504 applies to all federally funded programs and activities. A reasonable accommodation is a change, modification, alteration or adaptation in policy, procedure, practice, program, or facility that provides a qualified individual with a disability the opportunity to participate in, or benefit from, a program (housing or non-housing) or activity. For housing, such accommodations may include those which may be necessary in order

[57] The requirements of Section 3 apply to all programs receiving public housing financial assistance regardless of the amount of assistance received from HUD. Section 3 also applies to the entirety of a mixed-finance development project as described in 24 C.F.R. § 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.

for the person with a disability to use and enjoy a dwelling, including public and common use spaces.

PRHFA and Management Agents must evaluate requests for reasonable accommodation to determine if and how requests can be accommodated. PRHFA and its agents can deny the request if the request constitutes a fundamental alteration in the nature of the program or constitutes an undue financial and administrative burden. The determination not to grant reasonable accommodation shall not be made without the concurrence of PRHFA's 504 Administrator. The 504 Administrator is the person the PRHFA designates as responsible for ensuring that the PRHFA complies with federal, state, and local laws that protect the rights of people with disabilities.

PRDOH and PRHFA, including its Developers, will create and maintain a reasonable accommodations and modifications log which shall document the following information: (1) date and time of the accommodation/modification inquiry or request; (2) nature of the inquiry or request; (3) action taken; (4) whether the request was rejected, or a change was made to the originally requested accommodation(s); and (5) documentation reflecting the final disposition of each request. The Reasonable Accommodation Policy and all CDBG-DR/MIT Program policies are available in English and Spanish on PRDOH website https://recuperacion.pr.gov/en/resources/policies/general-policies/ https://recuperacion.pr.gov/recursos/politicas/politicas-generales/.

19 Project Closeout

Projects will be closed out through standard procedures. Although HUD record retention requirements generally apply to a period beginning **three (3) years** after closeout, PRHFA's compliance monitoring plan requires retention of records for at least **six (6) years** after the due date for filing the federal income tax return for that closeout year. Additionally, records for the first year the credit is provided must be kept for at least **six (6) years** beyond the federal income tax return filing due date for the last year of the compliance period of the building.

As required by 83 FR 5844, records will also be safeguarded to demonstrate that the rents charged on the set-aside units are restricted and income-eligible households occupy the units for at least:

1. **Fifteen (15) years** for rehabilitation or reconstruction of multi-family rental projects with **eight (8) or more** units, or a Section 42 of the IRC use period; or
2. **Twenty (20) years** for new construction of multi-family rental projects with **five (5) or more** units, or a Section 42 of the IRC extended use period.[58]

Authorized representatives of PRHFA will monitor projects assisted with CDBG-DR funding. As deemed necessary, PRDOH will provide oversight.

19.1 Additional Documents

Throughout the Program, PRHFA may request additional documents from Developers to evaluate project applications or to comply with applicable State and Federal laws and regulations.

20 Recapture

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

Once it has been determined that a Subrecipient or Applicant must return funds to the CDBG-DR 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).

21 General Provisions

21.1 Program Guidelines Scope

This document sets forth the policy governing the Program. These program guidelines are intended to aid and provide guidance in Program implementation and closeout and should not be construed as exhaustive instructions. All Program activities must

[58] See 26 U.S.C. § 42 on Low-income housing credit.

comply with the policies hereby stated. In addition, all program staff must adhere to established program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of program activities.

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

21.2 Program Guidelines Amendments

PRDOH reserves the right to modify the policies established in these guidelines if the program guidelines, as written, do not reflect the intended policy or make procedures 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 for the evaluation of all situations encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date that appears on the cover of these guidelines. Each version of the program guidelines will contain a detailed version control log that outlines any substantive amendment, inclusions and/or changes.

21.3 Disaster Impacted Areas

As described in the CDBG-DR Action Plan, and its amendments, the Government of Puerto Rico will solely use CDBG-DR funds for necessary expenses aimed at addressing unmet recovery needs, as well as the reconstruction of communities affected by Hurricanes Irma and María and protecting them against future major disasters. This as part of a broader vision for long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in Puerto Rico as identified in disaster declaration numbers DR-4336 and 4339. Through the Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, HUD identified that, for Puerto Rico, all components of the Island are considered “most impacted and distressed” areas. Therefore, these guidelines apply to all 78 municipalities of Puerto Rico.

21.4 Extension of Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual 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 any applicable federal or state law or regulation or to the terms of times established in the QAP 2020 to request a Program-based Reconsideration, administrative review and/or judicial review.[59]

21.5 Established Periods of Time

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

21.6 Written Notifications

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

21.7 Conflict of Interest

Federal regulations require that State grantees be responsible for program administrative requirements,[60] including those established in 24 C.F.R. §570.489(h) related to conflicts of interest, both in the direct Grant administration and while of carrying out eligible activities.

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

1. HUD conflict of interest regulations, 24 C.F.R. § 570.611 and 24 C.F.R. § 85.36;

[59] https://www.afv.pr.gov/wp-content/uploads/2020/09/QAP-2020-LIHTC-LOW-INCOME-HOUSING-TAX-CREDITS.pdf
[60] 83 FR 5844

2. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 at § 200.112 and § 200.318(c)(1);
3. Puerto Rico Department of Housing Organic Act, Act No. 97 of June 10, 1972, as amended, 3 L.P.RA. § 441 *et seq.*;
4. The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 L.P.R.A. § 1881 *et seq.*; and
5. The Government Ethics Act, Act No. 1-2012, as amended, 3 L.P.R.A. § 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 funded projects, activities and/or operations. Said Policy is intended to serve as guidance for the identification of apparent, potential or actual conflicts of interest in all CDBG-DR assisted 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 the PRDOH, or of any designated public agencies, or of subrecipients that are receiving funds under the CDBG-DR Program may obtain a financial or personal interest or benefit that is or could be reasonably incompatible with the public interest, either for themselves, or with those whom they have business, 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.

Such conflicts of interest will not be tolerated by PRDOH. PRDOH, Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to, Act No. 1-2012 as amended, regarding their conduct in the administration, 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 his/her family unit, relative, partner or housemate has a conflict

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

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 this guideline. 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 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/.

21.8 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 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: Monday – Friday from 8:00 a.m. to 5:00 p.m.
- **Via email at**: 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 Program
  P.O. Box 21365
  San Juan, PR 00928-1365

The Citizen Participation Plan and all CDBG-DR 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/.

21.9 Citizen Complaints

As part of addressing Puerto Rico's long-term recovery needs, citizen complaints on any issues related to the general administration of CDBG-DR funds are welcome throughout the duration of the grant. It is PRDOH's responsibility, as grantee, to ensure that all complaints are dealt with promptly and consistently and at a minimum, to provide a timely, substantive written response to every **written** complaint within **fifteen (15) business days**, where practicable, as a CDBG grant recipient. See 24 C.F.R. §91.115(h) and 24 C.F.R. § 570.486(a)(7).

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

- **Via email at:** CDBGResponde@vivienda.pr.gov
- **Online at:** https://recuperacion.pr.gov/en/contact-us/complaints/ (English)
  https://recuperacion.pr.gov/contactanos/quejas/ (Spanish)
- **In writing at:** Puerto Rico CDBG-DR Program
  Public and Community Affairs Division-Complaints
  P.O. Box 21365
  San Juan, PR 00928-1365

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

- **Via telephone: *** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)

- **In-person at: *** PRDOH Headquarters Office or Program-Specific Intake Centers
  *Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.[61]

The Citizen Complaints Policy and all CDBG-DR 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/.

21.10 Fraud, Waste, Abuse or Mismanagement

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

PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-DR funds. In addition, PRDOH encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.[62]

[61] Hours may vary. PRDOH recommends calling ahead prior to arrival to corroborate.
[62] 83 FR 40314

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 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 CDGB-DR Program.

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

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

The AFWAM Policy and all CDBG-DR 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/.

21.11 Related Laws and Regulations

These guidelines make reference as to how the provisions of certain laws apply to the Program. However, other related laws may exist which are not included in these Guidelines. This does not negate or preclude the Program from applying the provisions of those laws, nor an applicant from receiving services, when applicable. Moreover, PRDOH can enact, or may have enacted, regulations that address how the laws mentioned in these guidelines are managed. If there are any discrepancies between these guidelines and the laws and/or regulations mentioned in them, then the latter will prevail over the guidelines. If at any time the laws and/or the applicable regulations mentioned in these guidelines are amended, the new provisions will apply to the Program without the need to amend these guidelines.

21.12 Cross-Cutting Guidelines

Some federal and local requirements apply to all programs funded by CDBG-DR. These Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; fair housing; among others. The requirements described in the above referenced Cross-Cutting Guidelines, apply to all programs described in PRDOH's CDBG-DR Initial Action Plan and its amendments.

The Cross-Cutting Guidelines and all CDBG-DR 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/.

22 Program Oversight

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

23 Severability Clause

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

END OF GUIDELINES.