



DEPARTMENT OF
HOUSING



CDBG-DR PROGRAM GUIDELINES

**CITY REVITALIZATION PROGRAM
ECONOMIC DEVELOPMENT ACTIVITIES**

Supplemental Guide

This page was intentionally left blank.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR PROGRAM GUIDELINES
City Revitalization Program – Economic Development Activities
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	February 10, 2022	Original version
2	September 19, 2022	Changes include edits in the Project Criteria section to clarify the requirements for projects in Special Flood Hazard Area.

Table of Contents

1	Overview	5
1.1	Purpose and Scope	5
1.2	Applicability	5
2	National Objectives	6
2.1	Low-and Moderate-Income (LMI) Persons	6
3	Eligible Use of Funds	6
3.1	Eligible Activities	6
3.2	Eligible Cost	7
3.3	Ineligible Cost	8
4	Community-Based Development Organization (CBDO).....	8
4.1	Criteria for a 105(a)(15) Designation	9
4.2	Approving an Organization as a CBDO	9
5	Program Eligibility	10
5.1	Project Criteria.....	11
6	Evaluation and Selection of Economic Development Projects	13
6.1	Procurement and Selection	13
6.2	Project Underwriting	13
7	Funding.....	16
8	Additional Items to Consider.....	16
8.1	Program Income	16
8.2	Supplanting.....	19
8.3	Recapture or Resale Requirements.....	19
8.4	Reversion of Assets.....	19
9	Program-Based Reconsideration and/or Administrative Review	20
9.1	Program-Based Reconsideration Request.....	20
9.2	Administrative Review Request.....	21
9.3	Other Applicable Federal Laws and Policies	21

1 Overview

The Puerto Rico Department of Housing (**PRDOH**), as grantee, is committed to the responsible management of the Community Development Block Grant Disaster Recovery (**CDBG-DR**) funds. The U.S. Department of Housing and Urban Development (**HUD**) allocated these funds to address Puerto Rico's long-term recovery needs caused by Hurricanes Irma and María, which made landfall in September 2017. In doing so, PRDOH has developed a comprehensive Program Portfolio consisting of Housing, Economic Recovery, Infrastructure, Planning and Multisector Programs to help rebuild communities. The purpose of these programs is to generate a long-term investment in social capital, fortify the economy, and set the stage for stability and continuity in government modernization and efficiency. As part of meeting those commitments, through the implementation of such programs, PRDOH and its Subrecipients will promote economic revitalization, as eligible and allowed by CDBG-DR regulations.

This Economic Development Guide is a supplement to the City Revitalization Program Guidelines, available in English and Spanish at: <https://cdbg-dr.pr.gov/en/city-revitalization/> and <https://cdbg-dr.pr.gov/revitalizacion-de-la-ciudad/>. **All the provisions set forth in this guide are applicable exclusively to economic development activities.**

1.1 Purpose and Scope

In accordance with the Action Plan and Program Guidelines, the City Revitalization Program (**CRP Program** or **Program**) will implement economic development projects that will focus on revitalization of urban, downtown, or key economic corridors through transformative development or redevelopment of blighted and underutilized structures. Economic development activities funded utilizing CDBG-DR funds under the Program will have the primary goal of creating new jobs and/or contributing to an overall revitalization strategy.

Since Economic Development projects involve a high level of risk due to the regulatory complexity and inherent business risks of such activities, this guide establishes additional requirements to the project application process to maximize the potential for long-term success. If properly administered and implemented, funded activities can provide many types of benefits to the communities. Projects must submit a business plan, feasibility study, work plan, market studies, and evidence of financial safeguards that demonstrate financial viability and capacity to minimize risk.

1.2 Applicability

All projects with an economic development component must adhere to the City Revitalization **CRP** Program Guidelines and requirements outlined in this Economic Development Guide.

2 National Objectives

Economic development activities must meet one (1) of three (3) National Objectives defined in the authorizing statute of the CDBG Program and more fully described in 24 C.F.R. § 570.208. Furthermore, it must meet the public benefit standards as stipulated by HUD and those defined by PRDOH.¹

2.1 Low-and Moderate-Income (LMI) Persons

In accordance with 24 C.F.R. § 570.208, all CDBG funded activities must meet one (1) of three (3) National Objectives:

- Benefit Low- and Moderate-Income Persons (**LMI**)
- Prevention of Elimination of Slum and Blight (**SB**)
- Meeting an Urgent Need (**UN**)

For most economic development activities implemented by the Program, the LMI Job Creation/Retention (**LMJ**) will apply. To meet the LMJ national objective, the project must create or retain full-time equivalent (**FTE**) jobs as per PRDOH CDBG-DR Policy, of which fifty-one percent (51%) must be held or made available to LMI persons. In determining compliance with the CDBG-DR LMJ National Objective, ~~the CDBG-DR only permanent job creation/retention can~~ be considered.²

In Federal Register Notice Vol. 83, No. 28 (February 9, 2019), 83 FR 5844, 5866, HUD provided alternative and waiver requirements allowing for an alternative method for determining the LMI status of an employed person via the annual wages or salary of their job. A person is considered income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., the number of persons).

Multiple National Objectives may be appropriate for the same project. It will be PRDOH's discretion to approve a National Objective other than LMJ if it deems ~~it that~~ another National Objective is applicable, and ~~that~~ the application clearly demonstrates that the economic development activity provides an overall economic and public benefit.

3 Eligible Use of Funds

3.1 Eligible Activities

¹ See the National Objectives section of the CRP Program Guidelines.

² A permanent job is one which, at the time of hire, was or is expected to continue indefinitely with no predetermined end date. A seasonal job may be considered permanent if the season is long enough for the job to be considered as the employee's principal occupation. A temporary job is one that lasts one (1) year or less and/or has a specific end date (such as a contract job). Jobs indirectly created by the project (i.e., remote location, "trickle-down" or "spin-off" jobs) would not be considered valid.

All projects funded in whole or in part with CDBG-DR funds must be a HUD eligible activity as defined by Section 105(a) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, or made eligible by a waiver or alternative requirement by an applicable Federal Register notice. All projects and any economic development activities that will be undertaken in this Program must be in accordance with at least one (1) of the following eligible activities according to the HCDA:

1. **Section 105(a)(14)** – Provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including:
 - Acquisition of real property;
 - Acquisition, construction, reconstruction, rehabilitation, or installation of
 - public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and
 - commercial or industrial buildings or structures and other commercial or industrial real property improvements; and
 - Planning

Funding to a public or private non-profit entity that is carrying out a commercial activity under 105(a)(14) cannot include assistance for equipment, supplies, maintenance, or general operating or working capital.

2. **Section 105(a)(15)** – Assistance to a Community Based Development Organization (**CBDO**) or Non-Profit Organization³ which includes activities to conduct and carry out community economic development projects that increase economic opportunity, principally for low- and moderate-income individuals. The activity must be primarily “carried out” by the non-profit entity.
3. **Section 105(a)(17)** - Provision includes assistance to a for-profit entity via grant, loan or other funding mechanism that promotes economic development within the community.

3.2 Eligible Cost

The following costs, related specifically to Economic Development projects, are eligible for funding under this Economic Development Guide supplement of the CRP Program:

Applicable to sections 105(a)(14), 105(a)(15) and 105(a)(17):

- Site acquisition;
- Site improvement costs;
- Hard construction costs;

³ As defined by PRDOH in these Guidelines.

- Soft costs, such as architectural, engineering, legal, permitting fees or construction related insurance;
- Planning;
- Any other eligible related costs, as determined and approved by PRDOH.

Applicable to sections 105(a)(15) and 105(a)(17) only:

- Operating or maintenance expenses.

3.3 Ineligible Cost

The following costs, related specifically to Economic Development projects, are ineligible for funding under this Economic Development Guide supplement of the CRP Program:

- Pre-application costs and application development costs;
- Advances of any type, including construction; and
- Operating or maintenance expenses under Section 105(a)(14).

4 Community-Based Development Organization (CBDO)

These CBDO organizations are non-profits who provide community economic development, neighborhood revitalization or energy conservation activities. The 24 C.F.R. § 570.204 establishes a definition and selection criteria for an organization to be considered a CBDO for the CDBG Entitlement program. In contrast, HCDA, dictates that states are not bound by the Entitlement program's CBDO qualification requirements in 24 C.F.R. § 570.204. The language in HCDA Section 105(a)(15) allows a much broader range of non-profit organizations to qualify in the State CDBG program than in the Entitlement program. Thus, PRDOH has the discretion to define what they consider to be a CBDO (also called a 105(a)(15)-designated organization) to meet the recovery needs in Puerto Rico.

Section 105(a)(15) of the HCDA permits a qualified non-profit to use CDBG-DR funds to carry out any eligible activity as part of a community economic development project, including, but not limited to the acquisition, construction, rehabilitation, or installation of commercial or industrial buildings and other real property equipment and improvements. CDBG recipients may provide grants or loans to CBDO's to develop, equip, own, and operate a commercial enterprise.

The following highlights a few examples of the types of entities that typically qualify as a 105(a)(15) organization:

- Small Business Investment Companies organized under 15 U.S.C Section 681;
- SBA Section 504 Certified Development Companies;
- Community Action Agencies;
- Community Development Corporations;
- Local Development Corporations; and

- Community Housing Development Organizations (**CHDOs**) under the HOME program.

4.1 Criteria for a 105(a)(15) Designation

Economic development activities supported under 105(a)(15) may only include assistance to neighborhood-based non-profit organizations, local development corporations, non-profit municipal organizations organized under Puerto Rico's General Law of Corporations,⁴ and other non-profit organizations serving the development needs of the communities to carry out a neighborhood revitalization or community economic development project. To be designated as a CBDO or 105(a)(15) organization to implement PRDOH's CDBG-DR programs, the following criteria must be met:

- The organization is organized under state or local law to carry out community development activities which address the development needs of the community in question; and
- An integral part of the organization's mission is the improvement of the economic environment of its community by performing activities that increase economic opportunity, primarily for low- and moderate-income persons or ~~that~~ are expected to create or retain businesses or permanent jobs within the community; and
- Any of the organization's monetary profits must be only incidental to its operations; and
- The organization is not an agency or instrumentality of the UGLG and operates with autonomy and is separate from administrative functions of the UGLG, and ~~that~~ the UGLG itself does not play a controlling role in the organization; and
- The organization does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees.

All entities interested ~~to be~~ in being designated as a CBDO should submit a Written Request to PRDOH, along with the supporting documents to justify that they meet the criteria stated above.

4.2 Approving an Organization as a CBDO

PRDOH or its designee will review and approve submissions for 105(a)(15) designations. The review file should contain a cover sheet summarizing the results, submitted documentation ~~from the organization~~, and a copy of the signed approval letter.

~~Request documents from the organization.~~ Sufficient documentation (if applicable) includes, but is not limited to:

⁴ Municipal non-profit organizations must meet requirements found in Article 5.016 of Puerto Rico's Municipal Code.

- Existing designations as a Small Business Investment Company organized under 15 USC Section 681, an SBA Section 504 Certified Development Company, or Community Housing Development Organizations (**CHDOs**) under the HOME program
- Organization's Mission Statement
- Organization's bylaws
- IRS Non-profit Determination Letter
- Certificate of Incorporation
- Copies of policies and procedures
- Rosters of board members
- Submission of a plan for the use of program income to further aid the communities being served by CDBG-DR funding
- Certificate of Good Standing issued by the PR State Department.

PRDOH will first verify if the organization already has one of the designations as a Small Business Investment Company, SBA, or HOME, as stated above. If so, the organization is automatically considered a CBDO. ~~In the absence of~~ Without those preexisting designations, PRDOH will collect ~~the~~ applicable documentation listed above to verify if the organization meets ~~all~~ the above listed criteria. If PRDOH determines ~~that~~ the documentation ~~adequately~~ meets the ~~criteria~~ requirements, the organization is qualified to participate as a CBDO. PRDOH will issue an approval letter ~~to be sent~~ to the organization and compile the submitted documentation, completed review cover sheet, and a copy of the approval letter for record keeping in the appropriate system.

5 Program Eligibility

~~In order~~ To be eligible to engage in Economic Development projects and activities under the CRP Program, Subrecipients and Municipalities must select an eligible non-profit or for-profit entity with a minimum level of experience in developing, owning, and managing economic development projects. ~~The~~ Selection of the eligible entity must be through an open and competitive process. Municipalities will not be allowed to develop, own, manage and administer an economic development project in its entirety.

Acceptable implementation structures include the following, however, PRDOH will consider alternatives on a case-by-case basis:

1. Projects owned by a public entity and operated by a private or public non-profit entity or a private for-profit entity;
2. Projects owned and operated by a public or private non-profit entity or private for-profit entity; and
3. Projects owned and operated by a community-based development organization.

5.1 Project Criteria

The Eligible Use of Funds section in the CRP Program Guidelines outlines all the eligible projects that a Subrecipient may undertake and will be implemented under the Program. All proposed economic development projects must meet the applicable requirements established in the CRP Program Guidelines, as well as those established in this supplemental guide.

Economic Development projects implemented under the CRP Program must meet the following criteria:

1. The project must be located within the municipal boundary in a designated downtown area or key growth area, as defined by the municipal government or other eligible entity. ~~If construction activities are needed, the project must not be located in a Special Flood Hazard Area (SFHA), also known as the 100-year floodplain.~~
2. Depending on project location, 24 C.F.R. § 55 requires the implementation of a procedure known as the "Eight (8)-Step Decision Making Process". Projects that may be located completely or in part within a Special Flood Hazard Area (SFHA) must follow this procedure unless the activities included as part of the project fall within the exceptions established in 24 C.F.R. § 55.12. If project construction activities are necessary and located within a SFHA, the following requirements must be met:
 - 100-Year Floodplain (A, A1-30, AE, AH, AO, AR or A99): the Eight (8)-Step Decision-making Process⁵ is required to determine whether practicable alternatives are available to locating the project in the floodplain, amongst other requirements, unless an exception in 24 C.F.R. § 55.12 applies.
 - Floodway⁶ (AE hatched): financial assistance is prohibited unless an exception in 24 C.F.R. § 55.12l applies or the project is a functionally dependent use (e.g., dams, marinas, and port facilities) or the construction is a floodplain function restoration activity.
 - Coastal High Hazard Areas⁷ (V, V1-30 or VE): critical actions⁸ and new construction in these areas unless an exception in 24 C.F.R. § 55.12(c) applies or the project is a functionally dependent use, and otherwise

⁵ To see all the requirements involved in the "eight (8) step decision making process", please see the full text of regulation 24 C.F.R. § 55.20 which can be found at the following link: <https://www.ecfr.gov/current/title-24/subtitle-A/part-55/subpart-C/section-55.20>.

⁶ 24 C.F.R. § 55.2 defines floodway as that portion of the floodplain, which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest.

⁷ 24 C.F.R. § 55.2 defines Coastal high hazard area as an area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations.

⁸ 24 C.F.R. § 55.2 defines a Critical action as any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property.

requires the action to be designed for location in a Coastal High Hazard Area.

If construction activities are needed and the project is located within a Non-Special Flood Hazard Area, the following requirements must be met:

- **500-Year Floodplain (B or shaded X):** An 8-Step Process is required for critical actions unless it is inapplicable per 24 C.F.R. § 55.12(b) or the 5-Step Process is applicable per 24 C.F.R. § 55.12(a).
3. The project must tie back to the qualifying disasters, by contributing to the economic revitalization of urban, downtown, or key economic corridors.
 4. Proponents are encouraged to seek alternative funding sources or to leverage additional funding sources to maximize the impact of CDBG-DR funds. If the project has additional sources of funding, all sources of funding required to complete the project must be identified, documented as committed and accessible prior to funding commitment, and Notice to Proceed. If the Proponent cannot secure alternative or leverage additional funding, they must document these efforts.
 5. The Project must successfully obtain a Tier I or Tier II environmental review⁹ clearance and receive an Authority to Use Grant Funds.
 6. Any project ~~that involves~~ **involving** the acquisition, or rehabilitation or reconstruction of real property, that is occupied must comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.* If the project site is occupied by any residential or commercial tenants who will be displaced by the project activities, URA relocation requirements will apply.¹⁰
 7. Projects must meet a Public Benefit Standard set by PRDOH. Typically, economic development activities must meet the public benefit standards stipulated under 24 C.F.R. § 570.209(b) and 24 C.F.R. §570.482(f) to ensure the amount of public benefit derived is commensurate with the amount of CDBG assistance being provided to the activity. However, the Federal Register Notice for Hurricanes Maria and Irma (Federal Register Notice), 83 FR 5844, waived the public benefit standards at 24 C.F.R. § 570.482(f) and 24 C.F.R. §570.209 (b) and (d) for activities that create or retain jobs or businesses. **Notwithstanding, in the interest of promoting the responsible expenditure of federal funds, all CRP Program**

⁹ Tier I review will address and analyze those environmental impacts related to the proposed action that might occur on a typical site within the geographic area (e.g. floodplain, coastal zone, wetlands, aboveground storage tanks, etc.). Tier II review will identify those environmental impacts that will vary by site and may only be observed when specific project locations are known (e.g. historic preservation, hazardous materials, noise abatement, asbestos removal, etc.). For more information refer to the Environmental Review Section of the CRP Program guidelines.

¹⁰ For more information about URA see the PRDOH CDBG-DR URA and ADP Guide published in English and Spanish at <https://cdbq-dr.pr.gov/en/download/ura-adp-guidelines/> and <https://cdbq-dr.pr.gov/download/guias-ura-adp/>.

economic development activities must create one or more permanent, full-time equivalent (FTE) jobs¹¹ for every \$100,000 spent on the project.

6 Evaluation and Selection of Economic Development Projects

6.1 Procurement and Selection

Subrecipients must select an eligible entity with experience developing, owning, and managing economic development projects. The selection of the experienced eligible entity must be through an open and competitive process.

1. **Open & Competitive Selection:** Subrecipients must develop a solicitation to provide opportunity for potential Developers to submit projects and be selected through an open and competitive process. PRDOH will provide Notice of Available Funding (**NOFA**) or Request for Proposal (**RFP**) templates.
2. **Selection:** Subrecipients must review and evaluate Projects submitted through the project solicitation process. The selection process will include the following reviews at a minimum: eligibility review, assessment of long-term viability, verification of financial feasibility and cost reasonableness, timeliness and schedule, and Developer capacity.

PRDOH requires ~~that~~ all Subrecipients of this Program follow the provisions of 2 C.F.R. §200.318 to 2 C.F.R. §200.327 and maintain comprehensive records of all acquisition processes.

6.2 Project Underwriting

HUD provides guidelines for evaluating and selecting economic development projects in 24 C.F.R. § 570.209 ~~for Entitlements~~, and 24 C.F.R. Parts 570.482(e), (f), and (g), and Appendix A to 24 C.F.R. Part 570. Per Federal Register Notice Vol. 83 No. 157 (August 14, 2018), 83 FR 40314, Appendix A: Guidelines and Objectives for Evaluating Project Costs and Financial Requirements, ~~it~~ is required to evaluate all economic development activities undertaken by for-profit entities under HCDCA Section 105 (a)(17). While the use of the underwriting requirements found in Appendix A to 24 C.F.R. Part 570 is not mandatory ~~guidelines referenced above are voluntary for the annual State and Entitlement CDBG-DR programs~~, 83 FR 40314 requires, at a minimum, the financial underwriting requirements found in Appendix A to assess risks associated with the

¹¹ Full-Time Equivalent (FTE): Puerto Rico labor laws provide that the regular full-time work week equals forty (40) hours per week. FTE is calculated by dividing an employee's hours worked by 40. Part-time employee hours may be combined to determine an FTE amount (For example, One 40 hour/week position = One FTE. One 20 hour/week position =0.5 FTE. Two 20 hour/week positions= One FTE).

proposed project prior to the provision of financial assistance with CDBG-DR funds. The referenced HUD underwriting requirements and objectives are to ensure ~~that~~:

- The project costs are Reasonable;
- All funding sources are identified and committed;
- CDBG funds are not substituted for non-Federal financial support (often referred to as Supplanting of Federal Funds);
- The project is financially feasible;
- The return on the owner's equity investment will not be unreasonably high, to the extent possible; and
- CDBG funds are disbursed on pro-rata basis with other funding sources provided to the project, to the extent practicable.

As part of the application review, PRDOH or its designee will perform an underwriting analysis to determine ~~that~~ the project is feasible and sustainable and ~~that~~ the costs are reasonable and necessary. To facilitate the underwriting review and analysis, a Business Plan must be submitted for all economic development projects prior to final approval. The project business plan should include, at a minimum, the following components:

6.2.1 Company Owner Team Overview:

- Business team structure and organizational chart with detailed descriptions of roles, responsibilities, contributions of each team member, and legal structure.
- Description of current business stage or status.
- Management Team summary which provides the credentials of the team that demonstrate the team's experience with and capacity in carrying out all aspects of project implementation.

6.2.2 Feasibility Study

Completed within the last two (2) years which includes:

- Financial Plan that details the financial projections, including a pro-forma Financial Statement (income statements, balance sheets, and cash flow statements) and any key assumptions used in the projections.
- All sources and uses of funds both to develop the project venture and to operate and maintain the venture into the future.
- Industry Analysis, performed by an experienced independent market research firm, which describes the landscape in which the company will be operating and demonstrates a genuine need in the market for the activity's products and services, that the market is large enough to support substantial sales, and ~~that~~ the industry parameters support the team's strategy.
- Customer Analysis demonstrating what specific customer segments the company/project is targeting and their demographic profiles.

- Competitive Analysis demonstrating the activity's direct competitors and the company and project's key competitive advantages.
- Marketing Plan describing how the funded project activity will penetrate its target market with its products and services.
- Operations and Maintenance Plan (**OMP**) should detail processes, short and long term, necessary to provide services. The OMP should include descriptions of the following:
 - Ownership and management information including ownership of land and assets and any lease or operating agreements;
 - Descriptions and use of all facility components including restrooms, parking areas, public spaces, accommodations, recreational areas, etc.;
 - Processes and responsibilities for the management of facilities including but not limited to, hours of operation, staffing, security, clientele, communications plan, reporting, etc.; and
 - All revenue generating sources, expenses, and resources used to cover any expenses operate and maintain the facility.

6.2.3 Work Plan

Including, at a minimum, the following items:

- Detailed project description identifying project location, past and present site conditions, and a detailed project scope.
- Implementation schedule including all major tasks necessary to complete the project, discipline, or responsible party to complete the task, and start and end date for each task.
- Proposed Planning, Design, Construction, and Implementation team demonstrating capability to complete all phases of the project.
- Project Conceptual Architectural Programming Level or Preliminary Schematic Design Drawings that provide enough detail to allow the reviewer to understand the scope of the work to be designed and implemented.
- Project Cost Estimate which includes all projected costs associated with all aspects of project implementation and an Opinion of Probable Cost based on Architectural Programming Level or Preliminary Schematic Design Drawings prepared and certified by a design professional licensed in Puerto Rico.
- Letters of Intent to Subrecipient with descriptions of roles, responsibilities, and from each participating team member to be formalized through contract agreements and/or Memorandum of Understanding (**MOU**), as appropriate.
- Evidence of one (1) or more of the following **financial safeguards or bonding requirements**:
 - Insurance bond covering the total project implementation costs prior to enterprise initial operation for the period starting with PRDOH approval

until receipt of Certificate of Occupancy and/or commencement of enterprise activities, or;

- Private Partner contributing a minimum of fifty percent (50%) of the total project implementation and operating costs for the period starting with PRDOH approval until expiration of the reversion of assets period.

7 Funding

Funding for the CRP Program will be distributed in one of the following methods depending on the eligible activity the project will undertake.

1. Municipalities will receive direct Subrecipient funding for the development of a commercial property to be leased to a public or private non-profit or a private for-profit entity for an economic development purpose; or
2. Municipalities will receive Subrecipient funding to provide a grant or loan to a public or private non-profit or a private for-profit entity for the development of a commercial property for an economic development purpose.

8 Additional Items to Consider

In addition to the compliance requirements detailed in the CRP Program Guidelines and PRDOH's Cross Cutting Guidelines,¹² special attention should be given to the following areas:

8.1 Program Income

The definitions of Program Income found in 24 C.F.R. § 570.489(e) and 24 C.F.R. § 570.500 (a) are essentially identical and include descriptions of what does and does not constitute program income.¹³ In summary, HUD requires the following with respect to Program Income:

- Grantee shall establish policy regarding the use and retainment of program income (*See Management of Program Income Section from the Program Income Policy*).
- All program income retained by Subrecipients must be used to fund a CDBG eligible activity that meets a National Objective, except for administrative and technical assistance costs, and is subject to the same laws, regulations and requirements as the grant and Federal Register from which they were generated so long as it exists.

¹² The Cross-Cutting Guidelines are available at: <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/> (Spanish) and <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/>.

¹³ For more information about Program Income refer to the CDBG-DR Program Income Policy available in the PRDOH website in English and Spanish at <https://cdbg-dr.pr.gov/en/download/program-income-policy/> and <https://cdbg-dr.pr.gov/download/politica-de-ingresos-del-programa/>

- Careful tracking and reporting of program income generation, retention, and disposition.
- Agreements with Subrecipients must include provisions regarding retainment of program income, and specification of the eligible uses of any program income retained by the Subrecipient. All Program income, as defined at 24 C.F.R. § 570.500 generated by activities carried out with CDBG-DR funds must be returned to PRDOH if retention of such funds is not previously authorized by PRDOH.

8.1.1 Return, Eligible Uses, Retainment, and Transfer of Retained Program Income

PRDOH holds all discretionary authority regarding retention and remittance of all or part of any program income balances held by Subrecipients at the end of each program year.¹⁴ Thus, PRDOH must authorize retention or require remittance of program income by a Subrecipient on an annual basis. In addition, PRDOH has the discretion to require remittance of program income to cover the costs of administration and provision of technical assistance associated with the either the activity which generated the program income or additional eligible CDBG-DR activities undertaken using program income.

The 24 C.F.R. § 570.489(e) and 24 C.F.R. § 570.504 (b) also contain regulations regarding the disposition of program income including return, retention, and use of program income.

Program Income: Return, Retention, and use of Program Income	
24 C.F.R. § 570.489 (e)	<ul style="list-style-type: none"> • Paragraph (e)(3) gives the State (i.e., PRDOH) the discretion of deciding whether to allow the unit of general local government (i.e., Subrecipients) to retain program income or return the funds to the State, except in certain cases stipulated in paragraph (e)(3)(ii)(A). • As per paragraph (e)(3)(i) the program income returned to the State, except for the amount used by the State for administrative or technical assistance, must be distributed in accordance with the action plan in effect at the time the program income is distributed.
24 C.F.R. § 570.504 (b)	<ul style="list-style-type: none"> • Paragraph (b)(1) allows program income received prior to grant closeout to be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

¹⁴ 24 C.F.R. § 570.503(b)(3)

The above referenced alternative requirements for program income clarify that program income received before and after closeout of the grant that generated program income, and are used to continue disaster recovery activities, is treated as additional CDBG-DR funds. These funds are subject to the requirements of 83 FR 5844 and must be used in accordance with the grantee's disaster recovery Action Plan. However, the Federal Register alternative requirements further clarify that in all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of 83 FR 5844, but rather the State grantees regular CDBG program rules. Thus, the eligible uses of retained program income varies depending on the applicable situation described above.

8.1.2 Disposition and Reversion of Assets

If CDBG funds are used by a Subrecipient to acquire or improve real (land and buildings) or personal (tangible or intangible property other than real property such as equipment, supplies, vehicles, copyrights, patents, etc.) property, Federal regulations require that the subrecipient be responsible for ensuring that the property:

- It continues to be used for its intended and approved purpose; or used for another eligible activity that meets a National Objective for a specified period. For personal property, the period is generally the useful life of the property (see 2 C.F.R. § 200.313 § 200.314). For real property the stated period is until five (5) years after expiration of the funding agreement, or for such longer period of time as determined to be appropriate by PRDOH (see 24 C.F.R. § 570.503(b)(7)(i)). If the use of any real property is changed, the Subrecipient must comply with the regulations at 24 C.F.R. § 570.505.
 - For example, if a Subrecipient uses CDBG-DR funds to construct a building for the purposes of providing job training as a public service, under the LMI Area Benefit National Objective, and three (3) years later subsequently changes the use of the building, the change in use would need to be approved by PRDOH and meet a National Objective, or the Subrecipient would need to reimburse PRDOH for the appraised value of the building, less the value of any improvements made with non-CDBG funds.
 - If sold prior to the periods stated in 2 C.F.R. § 200.313 and 2 C.F.R. § 200.314 for Equipment and Supplies and 24 C.F.R. § 503(b)(7)(ii) for real property, the proceeds would constitute program income, and the Subrecipient must reimburse PRDOH for the prorated CDBG-DR share of the property's value.
- Is inventoried, tracked, and maintained in good condition (see 2 C.F.R. § 200.313 (d) and 24 C.F.R. § 570.502).

Compliance Requirements for Disposition and Reversion of Assets	
Personal Property - 2 C.F.R. § 200.313 & 200.314, 24 C.F.R. § 570.502	Reversion of assets for personal property (i.e., equipment, etc.)
Real Property - CFR 570.503(b)(7)(i)	Reversion of assets for real property.
Change in use of real property - 24 C.F.R. § 570.505	If use is changed, must continue to meet a National Objective.

8.2 Supplanting

PRDOH and its Subrecipients will not use CDBG-DR funds to supplant other funds allocated by the Government of Puerto Rico or local governments, designated for the same eligible activities. At any time during the execution of the CDBG-DR eligible activities, PRDOH may request the subrecipients to submit their internal procedures and documentation to prevent any supplanting funds issue. Subrecipients must ensure to maintain ongoing documentation for PRDOH and HUD monitoring purposes which clearly demonstrates that no supplanting of funds already available to the subrecipients has occurred with the granted CDBG-DR funds.¹⁵

8.3 Recapture or Resale Requirements

Subrecipients may be required to repay all, or a portion of CDBG-DR funds received if one of the following occurs:

1. A Subrecipient withdraws from the Program prior to completion of the Project and fails to meet a National Objective;
2. The Subrecipient does not meet the reversion of assets for the period specified in these Guidelines.
3. A Subrecipient is found to have used program funds for an ineligible activity or cost;
4. The Subrecipient does not report the receipt of additional insurance, SBA FEMA, non-profit assistance and/or other duplication of benefits received after the award, and/or;
5. If a Project assisted with CDBG-DR funds is sold during the applicable reversion of assets period, resale or recapture provisions apply to ensure the continued provision of economic development.

8.4 Reversion of Assets

¹⁵ See the PRDOH CDBG-DR Duplication of Benefits Policy published in English and Spanish in the PRDOH Website at <https://cdbq-dr.pr.gov/en/download/duplication-of-benefits-policy/> and <https://cdbq-dr.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>

If CDBG-DR funds are used by a Subrecipient to acquire or improve real (land and buildings) or personal (tangible or intangible property other than real property such as equipment, supplies, vehicles, copyrights, patents, etc.) property, Federal regulations require that the subrecipient is responsible for ensuring ~~that~~ the property continues to be used for its intended and approved purpose or used for another eligible activity that meets a National Objective for a specified period. For personal property, the period is generally the useful life of the property (see 2 C.F.R. § 200.313 & 200.314). For real property, the period is until five (5) years after expiration of the funding agreement, or for such longer period of time as determined to be appropriate by PRDOH (see 24 C.F.R. § 570.503(b)(7)(i)). If the use of any real property is changed, the Subrecipient must comply with the regulations at 24 C.F.R. § 570.505.

9 Program-Based Reconsideration and/or Administrative Review

Subrecipients of the Program may contest any determinations or denials based on Program policy. However, a Subrecipient may not challenge a federal statutory requirement. Subrecipients have the right to request a Program-based Reconsideration with the Program or request an Administrative Review directly with PRDOH, as stated below. If the Subrecipient fails to contest a determination within the time allotted, the inaction will be deemed as an acceptance of the determination.

9.1 Program-Based Reconsideration Request

Subrecipients who wish to contest a Program determination may file a Program-based Reconsideration Request directly with the Program by submitting a written request via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the notice was filed in the record of the agency. Provided that, if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic) of said notice, the ~~aforementioned~~ **twenty (20) calendar day-term** shall be calculated from the mailing date (postal or electronic). Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. Program notices will include the electronic and postal information where these will be received, as these may vary.

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

The Program will review and address the Reconsideration Request within **fifteen (15) calendar days** of its receipt. Subrecipients will be notified of the reconsideration

determination via a Reconsideration Request Approved or a Reconsideration Request Denied notification.

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that a Subrecipient has to challenge a determination made by the Program. Therefore, Subrecipients who believe the initial determination of the Program to be erroneous, may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953)¹⁶.

9.2 Administrative Review Request

If a Subrecipient disagrees with a Program determination, or with the Reconsideration Request Denial determination, said party may file directly to PRDOH, as grantee, an Administrative Review Request in accordance with the ~~mentioned~~ Regulation 4953. The Subrecipient must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic), the ~~mentioned~~ **twenty (20) calendar day-term** shall be calculated from the mailing date (postal or electronic). Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. Submit the request via email to: LegalCDBG@vivienda.pr.gov; via postal mail to: CDBG-DR Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, P.R. 00918.

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

9.3 Other Applicable Federal Laws and Policies

¹⁶ For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adiudicacion-formal..pdf>

Subrecipients are able to find additional information regarding different topics related to the administration and implementation of CDBG-DR funds and its Subrecipients in the following guides and policies. The following is not an exhaustive list of the PRDOH CDBG-DR Policies. All the PRDOH CDBG-DR Policies are available in English and Spanish at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

END OF GUIDELINES.